



Cornell University Library

The original of this book is in
the Cornell University Library.

There are no known copyright restrictions in
the United States on the use of the text.

CORNELL UNIVERSITY LIBRARY



3 1924 061 132 407

AMERICAN AND ENGLISH RAILROAD CASES.

A complete collection of all the railroad law as decided by the American, English and Canadian courts of last resort.

Elaborate notes to the more important cases. As a means of giving the working lawyer a full collection of all the cases on the subjects treated, together with able and judicious criticism upon the points presented, they are simply invaluable.

AMERICAN AND ENGLISH CORPORATION CASES.

This series presents a full collection of the cases in all the courts of last resort, both in America and England, on the law of private and municipal corporations other than railroad companies.

1.—*SCOPE.* Among the topics treated of will be the following:

PRIVATE CORPORATIONS.—*Agency, Assessments, Building Associations, Dissolution of Corporations, Dividends and Earnings, Ecclesiastical and Religious Corporations, Elections, Mandamus, Officers, Organization, Powers, Stock and Stockholders, Taxation.*

MUNICIPAL CORPORATIONS.—*Assessments, Bonds, Powers, Ordinances, Poor Laws, Streets, Taxes, Intoxicating Liquors, Injuries to Person and Property, etc., etc.*

2.—*NOTES.* The annotations are a special feature, being very full and exhaustive.

These works are issued in monthly Parts, each Part containing not less than 224 pages. Three parts make a complete volume. When Part 3 is published, the Parts are returned to the publisher by the subscriber, and are bound in best law sheep and returned by mail WITHOUT CHARGE FOR BINDING. The subscription price is \$4.50 per volume, including NOTES OF CASES.

EDWARD THOMPSON CO., Publishers,
Northport, Long Island, N. Y.

THE
AMERICAN AND ENGLISH
ENCYCLOPÆDIA
OF
LAW.
INDEX-DIGEST.

BY
THOMAS J. MICHIE.

VOLUME XXX.



NORTHPORT, LONG ISLAND, N. Y.
EDWARD THOMPSON COMPANY, LAW PUBLISHERS.
1896.

COPYRIGHT 1896,
By EDWARD THOMPSON CO.
All Rights Reserved.

PREFACE.

THE publishers, realizing how much the usefulness of the work depends upon a thorough Index, have spared no pains to make the INDEX to the Encyclopædia as complete as possible. The demand for a complete key to the work, on the part of our subscribers, has been persistent, and we hope that the present volume, with its successor, which will appear immediately, will completely satisfy this want.

The especial importance of an Index to the Encyclopædia arises from three reasons.

First: The large number of subjects which have necessarily been touched on by many different and widely separated articles. Such subjects, for instance, as "Master and Servant," "Negligence," "Wills," and the like.

The second reason is not less important, viz: the size of a large number of the articles in the Encyclopædia. There are not a few of these which contain more matter than an ordinary text book, for example, the articles on "Taxation," "Homicide," "Wills," "Trusts and Trustees," "Executors and Administrators," etc.

And thirdly, in the Encyclopædia, it has been policy to subdivide the larger articles as much as possible, and in the INDEX, these subdivisions will be gathered under the main title.

A word may not be amiss as to the mechanical arrangement of the subjects. The main titles in the INDEX are printed in large capitals. Subdivisions are represented by small black letters and further by indentation.

INDEX-DIGEST

TO

ENCYCLOPÆDIA OF LAW

A, 1, 1
 "A" sea, 1, 1
 A year's rent, 1, 1
ABANDON, ABANDONMENT, 1, 1
See LACHES; LANDLORD AND TENANT;
 MARINE INSURANCE; SALVAGE.
As cause for divorce, *see* DIVORCE.
 Canals, 28, 1054
 Child, 1, 3
Dedication or abandonment of an inven-
tion to the public, *see* DEDICATION OR
 ABANDONMENT OF AN INVENTION.
 Definition, 1, 1; 5, 420
 Divorce, 1, 3
 Dower barred by, 5, 912
 Drains, 6, 29
Easements, 6, 147
 Created by Deed, 6, 148
 Definition, 6, 148
 Permanent obstruction of common
 way, 6, 148
 Presumption, 6, 147
Eminent Domain, 6, 603
 Abandonment of Public Use, 6, 603
 Alteration of plank road or canal
 into railroad, 6, 604
 Change in line of railroad, 6, 604
 Diversion of property of railroad to
 manufacturing business, 6, 604
 Diversion of property to inconsistent
 use, 6, 603
 Failure to complete road, 6, 604
 Failure to operate, 6, 604
 Non-user, 6, 604
 Sale of right of way, 6, 604
 Examples of, 1, 2
 Ferry franchise, 7, 943
 Intent the essence, 1, 1
 Joint tenants and tenants in common,
 11, 1143
 Laches, 12, 543
 Land before valid title is required by
 disseisin, 1, 295
Mechanics' liens, as to the abandonment
of contract by contractor, *see* ME-
 CHANICS' LIENS.
Mines and mining claims, *see* MINES
 AND MINING CLAIMS.
 Office, 1, 3

Of Railroads, Location or Right of Way,
 19, 836
Abandonment of condemnation pro-
ceedings, *see* EMINENT DOMAIN.
 Abandonment of a road, 19, 837
 Effect of abandonment, 19, 837
 Examples of abandonment, 19, 836, 837
 Grant from private person, 19, 854
 Sale or transfer of the right of way,
 19, 836
 What constitutes an abandonment,
 19, 836
Of rights, 1, 3
Patent Law
 Application, 18, 31
 Reissue, 18, 46
Rent, 12, 751
 Whether a Release, 12, 751
 Abandonment for sufficient cause,
 12, 751
 Assent of landlord, 12, 752
 Landlord's consent to abandonment,
 12, 751
 Necessity of surrender of premises,
 12, 751
 Rerent by landlord, 12, 751
 Voluntary abandonment, 12, 751
 Specific performance, 22, 1063
Streets, *see* STREETS.
 Torts, 1, 3
Trade-marks, *see* TRADE-MARKS.
 What may be abandoned, 1, 4
ABATE, 12, 759
ABATEMENT, 1, 6; 6, 825
See BILLS OF REVIVOR; DEATH; EQUI-
 TY; FORMER SUIT PENDING; LEGA-
 CIES AND DEVISES; NUISANCES;
 PLEADING; REVENUE LAWS.
 Bastardy, 2, 144
Corporations
 Abatement of actions by dissolution of,
 4, 276
 Effect of consolidation in suits
 against corporation 4, 272q
Costs
 Upon abatement of action by death
 of either party, 4, 331
 Death of defendant after execution is-
 sued, but before levy of sale, 5, 283

ABATEMENT—Cont'd**Divorce**, 5, 773

Death of either party, 5, 773

Death of either party pending appeal, 5, 774

Death of party after case is taken under advisement by court, 5, 778

Party dying after case has been fully tried, 5, 774

Statutes, 5, 773

Where other relief is prayed for in bill, 5, 573

Ejectment, 6, 214, 245; 7, 266

In California, 6, 214

In Colorado, 6, 214

In Connecticut, 6, 214

In Illinois, 6, 214

In Louisiana, 6, 214

In Maine, 6, 214

In Maryland, 6, 214

In Massachusetts, 6, 214

In Michigan, 6, 214

In Mississippi, 6, 214

In New Hampshire, 6, 214

In New Jersey, 6, 214

In Pennsylvania, 6, 214

In Rhode Island, 6, 214

In Tennessee, 6, 214

In Vermont, 6, 214

In Wisconsin, 6, 214

Forcible entry and detainer, 8, 165

In election cases, 6, 417

Mandamus, 14, 223**Married Women**, 14, 650

Dissolution of marriage, 14, 651

Nuisances, 16, 970, 979

Action on the case, 16, 979

By order of the court, 16, 979

Criminal, 16, 970

Definition, 16, 989

Mitigation of damages, 16, 988

Notice, 16, 990

Notice of ordinances, 17, 239

Ordinances, 17, 239

Private, 16, 989

Excessive abatement, 16, 989

Whether injured party acts at his peril, 16, 989

Whether injured party may abate, 16, 989

Public, 16, 990

Disturbing public peace, 16, 990

Examples, 16, 990

In general, 16, 990

Killing dangerous animals, see ANIMALS.

Notice, 16, 990

One sustaining special injury, 16, 990

Who May Abate, 16, 991

Apparent conflict of authority, 16, 991-994

Illustrations, 16, 991-994

Individual suffering no special injury, 16, 991

Individual suffering special injury, 16, 990

Reconciliation of authorities, 16, 994

Right of the individual, 16, 991

True rule, 16, 994

Of Action and Right of Action, 1, 13; 7, 334, 371, 413, 477*As to liability of administrators on contracts of decedents*, see EXECUTORS AND ADMINISTRATORS.*As to revival*, see BILLS OF REVIVOR.**Actions ex Contractu**, 7, 262

Action for breach of promise of marriage, 7, 263

Action founded upon personal suffering of deceased, 7, 262

Actions of account, 7, 262

Actions of a personal nature, 7, 262

Choses in action assigned, 7, 263

Choses in action of a bankrupt, 7, 263

Choses in action of a corporation sole, 7, 263

Contract between master and servant, 7, 262

Damage to personal estate, 7, 263

Exclusive right of personal representative, 7, 262

General rule as to actions *ex contractu*, 7, 262

Interests of deceased several, though the words of contract were joint, 7, 263

Joint interest in choses in action, 7, 263

Promise made to deceased for benefit of third party, 7, 264

Real Covenants, 7, 264

Collateral covenant, 7, 264

Covenant broken in lifetime of deceased, 7, 264

Covenants which run with the land, 7, 264

Where there was substantial damage to estate of deceased, 7, 264

Actions ex Delicto, 7, 265

Action against sheriff for escape, 7, 266

Action for criminal conversation, 7, 267

Action for seduction, 7, 267

Action founded upon personal injury, 7, 265

Alterations, 7, 266

Assault and battery, 7, 265

At common law, 7, 265

Deceit, 7, 265

Detinue, 7, 266

Diverting watercourses, 7, 266

Ejectment, 6, 214, 245; 7, 266

False imprisonment, 7, 265

Injuries sustained by defective highways, 7, 267

Injury to real estate, 7, 267

In Massachusetts, 7, 266

Libel, 7, 265

Malicious prosecution, 7, 265

Obstructing lights, 7, 266

- Replevin, 7, 266
 Slander, 7, 265
 Statutes regarding injury to real estate, 7, 267
 Statutory, 7, 267
 Trespass, 7, 265
 Trespass *quare clausum fregit*, 7, 266
 Trover, 7, 265
 Waste, 7, 266
 Where there is injury to personal estate of decedent, 7, 265
 Wrong to freehold, 7, 266
 Actio personalis moritur cum persona, 7, 477
 Administrators de bonis non, 7, 416
 Application of court to grant motion to revive, 5, 131
 Assignability and survivability of things in action, 5, 132
 Attachment, 7, 416
 Civil damage acts, 7, 479
Death
 After execution sued out, 7, 417
 At common law, 5, 130
 Between interlocutory and final judgment, 7, 415
 Between judgment and execution, 7, 414
 Between verdict and judgment, 7, 414
 Effect of death on writ of attachment, 5, 134
 Effect of death upon an award, 7, 417
 Of either party to a suit in equity, 5, 133
 Of executor or administrator pending suit, 7, 415
 Of lunatic, 5, 130
 Of nominal party to the suit, 5, 131
 Of one or two or more plaintiffs, 5, 131
 Of partner, 5, 131
 Of party after judgment, 5, 134
 Of party before judgment, 5, 130
 Of party to an action in admiralty, 5, 133
 Of sole plaintiff, 7, 413
 Executors and administrators, 7, 477
 Exemplary damages, 7, 477
 In equity, 7, 418
 In Alabama, 7, 413
 In Connecticut, 7, 413
 In England, 7, 414
 In Iowa, 7, 413
 In Massachusetts, 7, 414
 In New Hampshire, 7, 413
 In New York, 7, 413
 In Pennsylvania, 7, 414
 In Tennessee, 7, 414
 Judgment nunc pro tunc, 7, 414
 Motion to revive, 7, 413
 Replevin, 7, 478
 Scire facias to revive judgment, 7, 415
 Statutes providing for survival, 5, 131
 Statutes providing that there shall be no abatement, 7, 413
 Statutory modifications, 7, 478
 Survival of right of action ex contractu, 5, 132
Survival of Right of Action ex Delicto, 5, 132
 Where the wrong has caused a loss to estate of aggrieved party, 5, 132
 Survival of right of action for breach of promise of marriage, 5, 132
 Trover, 7, 478
 Warrant of attorney to confess judgment, 7, 417
 What is meant by personal action, 7, 477
 Writs of error, 7, 418
 Of a freehold, 1, 14
Of legacies and devises, see **LEGACIES AND DEVISES**.
Plea in, 1, 9
 Coverture, 18, 554, 555
 Defense
 Summons, 24, 527, 528
 Distinguished from plea to the jurisdiction, 18, 520
 In covenant, 4, 556
 Judgment, 5, 561
 Jurisdiction, 12, 309
 Amount in controversy, 12, 309
 Pointing out court which has, 12, 310
 Want apparent on face of record, 12, 309
 Where no court has, 12, 310
 Justice of the peace, 12, 451
Misjoinder, 11, 1015²⁶; 17, 607
 Joint tenants and tenants in common, 11, 1141
 Misnomer, 16, 128, 129
 Non-joinder, 17, 609
 Officers and agents of private corporations, 17, 176
 Partition, 17, 737
 Puis darrein continuance, 18, 518
 Removal of causes, 20, 1019
 Variance between process and complaint in declaration, 5, 351
Pleas in abatement in criminal cases, see **CRIMINAL PROCEDURE**.
 Public officers, 19, 525
 When suit in equity abates, 2, 270
 Writ of error, 6, 818-825
ABBREVIATIONS, 1, 15
 See **NAMES**.
 Bills and notes, 1, 18
 Definition of, 1, 15
 Expert testimony, 1, 17
 In affidavits, 1, 15
 In ballots, 1, 15
 In deeds, 1, 16
 In judgments, 1, 18
 In pleading, 1, 19
 In wills, 1, 20
Indictment, 10, 550
 General rule, 10, 550
 Signs for degrees of longitude, 10, 550
 Use of figures, 10, 585
 "&" for "and," 10, 550
Instances, 1, 17
 Co., 3, 287

ABBREVIATIONS—Cont'd**Instances—Cont'd**

- C. O. D., 1, 17; 3, 289
- F. O. B., 1, 18
- I. O. U., 1, 17; 11, 843
- J. P., 12, 1; 15, 695
- Jr., 16, 121
- L. S., 13, 1191
- M., 13, 1194
- N. P., 16, 922
- Sr., 16, 121
- W. Va. for West Virginia, 10, 515

Judicial notice, 12, 167, 199

Name, 16, 115; 1, 18

As to initials, see NAME.**Examples, 16, 115**

- Ben., 16, 115
- Geo., 16, 115
- Mr., 16, 115
- Mrs., 16, 115
- William and Wilhelm, 16, 115

Railroad company, 16, 116

Of officer's return, 1, 20

Of residences, 1, 20

Parol Evidence

To explain, 1, 17

To show, 1, 545

Questions of law and fact, 19, 652

Railroad, 16, 116

Taxation

Assessment roll, 25, 220

Usages and customs, 1, 17

Verdict, 28, 406

ABDUCT, 1, 21**ABDUCTION, 1, 21; 17, 388***See* KIDNAPPING.*Enticing husband*, see SEDUCTION.*Enticing wife*, see HUSBAND AND WIFE.

Burden of proof, 17, 389

Chaste character, 1, 25

Consent, 12, 519

Consent of child, 1, 326

Criminal conspiracy to abduct, 4, 604

Criminal process, 17, 389

Definition of, 1, 21

Enticing Away Woman for Purposes of**Prostitution, 21, 1053**

Adult woman, 21, 1053

Federal statutes against the importa-

tion of women, 21, 1053

Married woman, 21, 1053

Evidence of, 1, 26

Examples, 17, 388-390

Harboring and Enticing Away Child, 17, 388

Burden of proof, 17, 389

Criminal process, 17, 389

Examples, 17, 388-390

In general, 17, 388

Intention, 17, 388

In general, 17, 388

In good faith, 1, 24

Intention, 17, 388

Inveigle, 11, 780

Libel and slander, 13, 339

Obtaining fraudulent consent of guardian,
1, 24

Of girls under sixteen, 1, 22

Statutes, 21, 1053

"Taking" for purpose of prostitution,
25, 2

Taking out of the possession, 1, 23

What is, 1, 23

What is not, 1, 22

Witnesses, 29, 634

ABETTING, see ACCESSORY; AIDERS AND ABETTERS.**ABETTOR, see ACCESSORY; AIDERS AND ABETTERS.****ABEYANCE, 1, 26**

Of a fee simple, 1, 26

Of a freehold, 1, 26

ABIDE, 1, 27

Abide by, 2, 703

Abiding conviction, 4, 145

By an award, 1, 27

"Follow the event," 8, 75

Stipulation (in admiralty) 23, 573, 574

The decision, 1, 27

The judgment of the court, 1, 27

ABILITY, 1, 28**ABLE, 1, 28**

Able bodied, 1, 28

ABODE

"Last place of abode," 12, 902

Place of abode, 18, 464

ABORTION, 1, 28*See* QUICK WITH CHILD.

Accessories, 1, 30; 29, 828

At common law, 1, 28

Attempt to Commit, 4, 663

On a woman who is not pregnant, 4,
664

Big with child, 2, 192

Cause to be taken, 3, 47

Conspiracy to commit, 4, 597

Criminal, 15, 220

Death of child, 1, 31

Declarations of a woman upon whom
abortion has been committed, 4, 865

Definition of, 1, 28; 15, 220

Dying declarations, 6, 106

Evidence in, 1, 31; 15, 220; 29, 828

Expert evidence, 7, 501

Fœticide, 15, 220

Intention, 1, 29

Justifiable, 15, 220

Libel and slander, 13, 334, 387

Life insurance, 13, 641

Manslaughter, 9, 591

Means by which committed, 15, 221

Merger, 15, 367

Noxious thing, 1, 29; 16, 861

Pregnancy, 1, 30

Res gestæ, 21, 115

Seduction, 21, 1040

Verdict in second degree, 9, 568

Witnesses, 1, 30

Accomplice, 29, 828

ABOUT, 1, 32; 21, 543*See* MORE OR LESS.

About the person, 3, 410

In a charter party, 1, 33

In a contract, 1, 32

- In and about, 10, 322
 In shipping contract, 1, 34
 Lying about, 13, 626
 On or about, 10, 588; 17, 184
 "Sav about," 21, 544
- ABRIDGE**, 13, 230
- ABROAD**, see **BEYOND THE SEAS**.
- ABSCOND**, 1, 34
See **ABSCONDING DEBTOR**.
 Definition of, in attachment, 1, 897
- ABSCONDING DEBTOR**, 8, 785; 10, 214
See **ATTACHMENT, BILLS AND NOTES**.
 Necessity of demand upon bill or note of, 2, 405
- ABSENCE**, 1, 35
See **SURVIVORSHIP**.
 Bigamy, 2, 194
 Definition of, 1, 35
 Presumptions of continuance of life, 19, 74; 1, 40
 Examples, 19, 74
 In general, 19, 74
Presumption of Death, 1, 37; 19, 75
 After seven years' absence, 19, 46
 Arising from, 1, 37; 7, 97
Probate, 19, 184
 As *prima facie* evidence of death, 19, 187
 Contest over a will, 19, 184
 Death necessary to a grant, 19, 184
 Death presumed from absence, 19, 184
 Impeachment of decree, 19, 184
 Intestacy necessary to grant of administration, 19, 184
 Person civilly dead, 19, 187
 When a will has been probated, 19, 184
 Presumption of survivorship, 1, 42
- ABSENTED**, 1, 44
- ABSENTEE**, 1, 44; 5, 506
- ABSOLUTE**, 1, 44
 Absolute property, 19, 289
- ABSOLUTELY**, 1, 45
- ABSTRACT**, 1, 45
- ABSTRACT OF TITLE**, 1, 46
 Arrangement of, 1, 46
 Copyright, 4, 153
 Definition, 1, 46
Ejectment, 6, 215
 In Alabama, 6, 215
 In Georgia, 6, 215
 In Iowa, 6, 215
 In Maine, 6, 215
 In Mississippi, 6, 215
 In New Jersey, 6, 215
 In Pennsylvania, 6, 215
 In Texas, 6, 215
 Furnished by a vendor, 1, 46
 Inspection of records, 20, 522
 Liability of examiners, 1, 48
 Points which it should contain, 1, 47
Vendor's Duty to Furnish, 28, 129
 Adverse possession, 28, 130
 Condition precedent, 28, 129
 Examples, 28, 129, 130
 Generally, 28, 129
 In England, 28, 129
 In United States, 28, 129
 Title deduced from government, 28, 130
- ABUSE**
Abuse of female, see **RAPE**.
 And misuse, 1, 49
 Carnal knowledge, 2, 735
- ABUSE OF PROCESS**, see **SHERIFFS; MALICIOUS PROSECUTION**.
- ABUT-ABUTTING**, 1, 49
- ABUTMENT**, 1, 50
- ABUTTING OWNERS**, see **ELEVATED RAILROADS; LOCAL ASSESSMENTS; STREETS; STREET RAILWAYS**.
- ACCEPT**, 1, 50
- ACCEPTANCE**, 1, 50; 2, 315
See **BILLS AND NOTES; CONTRACTS; TRUSTS AND TRUSTEES**.
For acceptance of deed, see **DEEDS**.
Of public office, see **PUBLIC OFFICE**.
Within the statute of frauds, see **FRAUDS, STATUTE OF**.
 Assignments, 6, 658
 Of bond, 2, 460
- Tender**
 Reasonable time for decision, 25, 927
- ACCEPTOR**, 2, 315
- ACCESS**, see **LEGITIMACY**.
- ACCESSION**, 1, 50; 18, 410
Confusion of goods, see **CONFUSION OF GOODS**.
 Accounts, confusion in, 1, 60
- Animals**, 1, 51; 9, 760
 Increase, 1, 51
 Increase of horses, 9, 760
 Increase where bequest for life has been made, 1, 572
 Mortgagee's right to increase, 1, 572
 Property in domestic animals, 1, 572
 Where animal is subject to conditional sale, 3, 435
 By substitution, 9, 991
- Crops**, 1, 51
- Damages in**, 1, 58
- Definition**, 1, 50
- Erosion**, 6, 809
- Execution**, 1, 58
- Innocent possession**, 1, 52
- Recaption**, 19, 1100
- Replevin**, 1, 58
- Separate property of married women**, 22, 33
- Trover**
Measure of Damages as Affected by
Accession, 26, 829
 Coal, 26, 833
 Confusion of goods, 26, 834
 Co-owners, 26, 830
 Defendant acting in bad faith, 26, 829
 Defendant acting maliciously, 26, 829
 Defendant a purchaser without notice, 26, 835
 Defendant's labor prior to conversion, 26, 829
 Goods manufactured upon shares, 26, 830

ACCESSION—Cont'd**Trover—Cont'd****Measure of Damages as Affected by Accession—Cont'd**

Goods transported to another place, 26, 830

Increase after time of conversion, 26, 829

Increase by act of defendant, 26, 829

Logs, 26, 833

Ore, 26, 833

Severed portions of the realty, 26, 830, 832

Value immediately after severance, 26, 83

Trustees, 1, 60

Wrongful possession, 1, 52

ACCESSORY, 1, 61

See CRIMINAL LAW; RECEIVING STOLEN PROPERTY.

As to prize fight, see PRIZE FIGHT.

For competence of, see WITNESSES.

Abortion, 1, 30; 29, 828

Acts of, as acts of principal, 4, 618, 705

After the fact, 1, 72

After the fact is a principal, 1, 74

Aiders and Abettors, see AIDERS AND ABETTERS.

As principals, 1, 453

Counsel or procure, 4, 331

Definition of, 1, 453

In counterfeiting, 4, 336

All participants in an attempt to commit a misdemeanor as principals, 4, 662

Approval, 1, 640

As witness in divorce suit, 5, 830

Bawdy houses, 5, 696

Before Fact, 1, 67

As Principal, 1, 71

To criminal conspiracy, 4, 618

In criminal conspiracy, 4, 618

Common criminal purpose, 1, 66

Conflict of Laws

Persons in one state accessory to one committing crime in another state, 3, 537

Constructive presence, 1, 70

Corroboration, 7, 106

See also WITNESSES.

Creditability of

Question for jury, 4, 857

Crime not committed as suggested 1, 69

Definition, 1, 61; 29, 827

Equal liability for acts of each of those engaged in a criminal conspiracy, 4, 618

Forgery, 8, 489

Gaming

Uncorroborated testimony, 8, 1064

Homicide

See infra, MURDER.

Indictment of accessories, 9, 644

Husband and wife, 9, 828

In abortion, 1, 30

In affray, 1, 319

Inciting another to commit an offense, 4, 671, 672

Indictment, 1, 65

As principal, conviction as accomplice, 15, 362

Joinder, 10, 599g

Common law rule, 10, 599g

"Jointly and severally," 10, 599g

Misdemeanor, 10, 599h

Obscenity, 10, 599h

Officers of corporations, 10, 599h

Murder, 15, 364

Unlawfully, 10, 598

Innocent agent, 1, 65

Instigation

Countermanded, 1, 69; 9, 576

Through an intermediate agent, 4, 672

To commit crime, 4, 706

To commit a different crime, 1, 69; 4, 672

Intervening time between instigation and consummation of offense, 4, 672

In trespass, 1, 63

Joinder, 9, 642; 10, 599l

Knowledge before the crime, 1, 68

Larceny, 12, 781

Actual presence, 12, 781

After the fact, 12, 781

Agent, 12, 781

Aiders and abettors, 12, 780

Before the fact, 12, 781

Petit, 12, 781, 794

Liability of one committing a crime through intervention of innocent agent, 4, 706

Manslaughter, 9, 578

Mayhem, 14, 987

Merger, 15, 362

Murder, 9, 575

After the Fact, 9, 576

Definition, 9, 576

Passively allowing felon to escape, 9, 576

Relationship of brother and sister, 9, 577

Relationship of husband and wife, 9, 576

Relationship of parent and child, 9, 576

Before the Fact, 9, 575

Definition, 9, 575

Means need not be those prescribed, 9, 576

Of what degree of murder guilty, 9, 576

Person must have been absent at commission of crime, 9, 575

Responsibility for all consequences of unlawful acts, 9, 576

What constitutes one an accessory, 9, 575

Where adviser countermands his order, 9, 576

Indictment, 15, 364

Necessity of intent, 1, 64

Pardon, 1, 77

Particeps criminis, 17, 469

Person seeking to discover crime, 1, 65

- Prisoner whom others attempt to rescue, 1, 757
 Punishment of, 4, 728
 Rape, 19, 948
 Receiver of stolen goods, 29, 828
 Sodomy, 22, 828
 Suicide, 24, 491
 To arson, 1, 774
 To assault and battery, 1, 818
 To bigamy, 2, 192
 Trespass, 26, 580
 Venue, 28, 235
Warrants
 Accomplish as complainant, 28, 716
 Whether mere knowledge of offense constitutes one an accessory, 4, 655
- ACCIDENT**, 1, 82-87
See ACTS OF GOD; INEVITABLE ACCIDENT; NEGLIGENCE.
As to innkeepers' liability for, *see* INNS AND INNKEEPERS.
As excuse for crime, 4, 686
Bill in equity, allegation of, 6, 756
Carriers of Passengers excused from liability by, when, 2, 746
Definition, 1, 82, 87; 4, 41
 In equity, 6, 717
Distinguished from act of God, 4, 41
In equity, 1, 85; 6, 717
Injunctions
 Judgment, 10, 896
Instances of what are accidents, 1, 87
Instruction, examples of, 11, 272
Liability where inevitable accident causes injury, 4, 41
Res judicata, 21, 223
Test of liabilities for, 1, 82
Unavoidable Accident, 27, 419
 See INEVITABLE ACCIDENT.
 Bill of lading, 27, 420
 Service of process, 27, 420
- ACCIDENT INSURANCE**, 1, 87
See generally ACCIDENT; INSURANCE.
As to concealment, *see* INSURANCE.
As to insurable interests, *see* INSURANCE.
As to insurance agencies, *see* INSURANCE AGENTS.
As to policy, *see* INSURANCE.
As to premiums, *see* INSURANCE.
As to reinsurance, *see* INSURANCE.
As to remedies, *see* INSURANCE.
As to reputation, *see* INSURANCE.
As to waiver on estoppel, *see* INSURANCE.
As to warranty, *see* INSURANCE.
Violating law, *see* VIOLATING LAW.
Voluntary exposure, *see* VOLUNTARY EXPOSURE.
- Arbitration**, 1, 93
 Causes which have been held to fall within the clause, 7, 584
 Construction of term, 7, 584
- Death Effected by External, Violent or Accidental Means**, 7, 584
Definition, 1, 87
Definition of an accident, 1, 87
Instances of what are accidents, 1, 88
- Measure of damages*, 1, 93
Notice of accident to the company, 1, 92d
Policies, stipulations in limiting liability, 1, 91
Public or private conveyance, 1, 92a; 4, 138
Recovery over by insurance company, 1, 93
- Stipulation**
 Against change of occupation, 1, 92b
 Against liability on death by poison, 1, 92a
 Against suicide while insane, 1, 92b
 For due diligence on part of insured, 1, 91
 That traveler should comply with company's rules, 1, 92a
- Suicide*, 1, 92b; 24, 493
The policy, 1, 87
"Traveling by public or private conveyance", 1, 92a; 4, 138
What is a total disability, 1, 92c
- ACCOMMODATING**, 1, 94
ACCOMMODATION PAPER, *see* BILLS AND NOTES.
ACCOMPLICE, *see* ACCESSORY.
- ACCORD AND SATISFACTION**, 1, 94
See COMPOSITION WITH CREDITORS.
See generally PAYMENT.
- Additional security given*, 1, 101
Definition, 1, 94
Justice of the peace, 12, 454
Libel and slander, 13, 477
Must be advantageous to creditors, 1, 96
Must be legal, 1, 96
New consideration, 1, 99
Note for note, 1, 103
Part payment as satisfaction, 1, 97
Payment by note, 1, 102
Payment in property, 1, 99
Performance should not be by a stranger, 1, 97
Procured by fraud, 1, 106
Procured by mistake, 1, 107
Puis darrein continuance, 18, 518
Receipts, 19, 1123
Satisfaction a bar, 1, 94
Seduction, 21, 1027
Statute of frauds, 8, 660
Tender not accepted, 1, 95
Trespass, 26, 635
With one of joint makers of the note, 1, 106
With one of the several joint obligors, 1, 104
With one of two joint creditors, 1, 106
With one of two joint tort-feasors, 1, 105
Without satisfaction, 1, 94
Without satisfaction not a bar, 1, 94
- ACCORDING**, 1, 107
According to law, 1, 107; 12, 956
- ACCOUNT**, 1, 108
See ACCOUNT STATED; ACCOUNT RENDER; ASSUMPSIT; AUDITORS; BILL OF PARTICULARS; EXECUTOR AND ADMINISTRATOR; GUARDIAN AND WARD; SURROGATE AND PROBATE COURTS; TRUST AND TRUSTEES.

ACCOUNT—Cont'd*Accounts of agents, see AGENTS.*

Antichresis, duty of pledgee in, 1, 610

Auctioneers, 1, 980

Bailee's duty to account, 2, 56

Bill in Equity

Laches, 12, 572

Close of transaction, 12, 573

Computing lapse of time, 12, 573

Example, 12, 572-574

Fraud, 12, 574

General rule, 12, 572

Limited period in which account will be decreed, 12, 574

Loss of evidence, 12, 573, 574

Mere delay, 12, 573

Respondent not in condition to render account, 12, 573

When account has been settled, 12, 574

When laches bar to plaintiff's bill, 12, 572

Parties, 6, 752, 753

Persuaded by probate proceedings, 7, 420

Books of Account

Admissibility in evidence, 2, 467m

Confusion in, 1, 60

Definition of, 1, 108

Equitable relief against mistake, 15, 626

Factor's duty to, 3, 332

False pretenses, 7, 801

Falsifying, 7, 754

As an offense, 7, 802

Entries to deceive examining agents, 7, 801

False entries as evidence, 7, 801

False entries in book of bank, 7, 801

Fraudulent intent, 7, 802

Indictment, 7, 802

Averment, 7, 802

Of fraudulent intent, 7, 802

Of jurisdictional facts, 7, 802

Municipal treasurer, 7, 801

Forfeiture of agent's salary by failure, 1, 399

For or on account of, 8, 79

Husband and wife, 9, 799

Infringement of patent, 10, 767

Injunctions, 10, 818

Insimul computassent, 1, 884

Interest, 5, 528z²⁵, 528z²⁸; 11, 385

Account not rendered, 11, 386

Amount ascertained, 11, 386

Amount capable of being ascertained, 11, 386

Annual balances, 11, 385

Demand for payment, 11, 386

Executors and Administrators, 7, 426

Annual balances, 7, 429

Calling money in without reason, 7, 428

Compound Interest, 7, 429

Computing, 7, 430

For detaining commissions, 7, 430

For disobeying directions, 7, 430

In favor of representative, 7, 434

Examination under oath, 7, 428

How often rests shall be taken, 7, 431

In absence of willful default, 7, 428

In England, 7, 431

In Pennsylvania, 7, 431

Interest for undue delay in paying over legacy, 7, 427

Keeping money dead in representative's hands, 7, 428

Manner of calculating interest, 7, 429

Neglecting to invest, 7, 428

Neglect or refusal to account, 7, 428

On costs paid by executor, 7, 433

Pendency of account in court, 7, 428

Rate of interest, 7, 429

Rests and compound interest, 7, 429

When interest allowed to executor, 7, 432

Where Executor

Becomes guardian or trustee, 7, 428

Deals with assets for his own benefit, 7, 427

Is directed to invest, 7, 430

Mingles funds with his own, 7, 427

Redeems land, 7, 433

Liquidated accounts, 11, 385

Mutual cash accounts, 11, 385

On balance of, 5, 528z²⁵Open mutual cash accounts, 5, 528z²⁵

Services, 11, 386

Unliquidated Accounts, 11, 385

For work and labor, 11, 386

When correctness of account has been acknowledged, 11, 385

Where goods were sold for cash, 11, 385

Laches, 12, 579

Limitation of Action, 13, 724**Merchant's Account, 13, 764**

Distinguished from mutual accounts, 13, 765

Repeal, 13, 764

Statutory provisions, 13, 764

Mutual Accounts, 13, 764

Accounts must be shown to be mutual, 13, 76

As an acknowledgment, 13, 765

Distinguished from merchant's accounts, 13, 765

From date of last item, 13, 765

General rule, 13, 765

Mere payment against creditors, 13, 766

Stated accounts, 13, 766

When mutual account is terminated, 13, 766

When statute runs, 13, 765

Stated accounts, 13, 766

Liquidation, 13, 846

Long account, 13, 1050

Master in Chancery, 14, 932

Case depending upon local rules, 14, 935

Collateral matters, 14, 934

Conflicting testimony, 14, 934

Details, 14, 934

Examples, 14, 993-936

In California, 14, 935

- In Delaware, 14, 935
- In Kentucky, 14, 925
- In Maryland, 14, 935
- In New York, 14, 934
- In Virginia, 14, 935
- Miscellaneous, 14, 935, 936
- Order for references, 14, 932
- Power of master under rule of court, 14, 935
- Scope of master's authority, 14, 932
- Showing proper equity, 14, 934
- Mechanics' Liens**, 15, 39
 - Furnishing material upon open account, 15, 70
- Merchants' accounts, 15, 311
- Mere account, 15, 311
- Merger, 15, 341
- Mistake, 15, 626
- Mutual Accounts**, 16, 4
 - See infra*, LIMITATION OF ACTIONS.
 - Application of statutes to other accounts, 16, 15
 - As to manner of keeping, 16, 14
 - Between whom mutual accounts can exist, 16, 5
 - Debits and credits merely, 16, 6
 - Definition, 16, 4
 - Distinguished from ordinary accounts, 16, 5
 - Examples, 16, 4, 5
 - In Iowa, 16, 5
 - In New Hampshire, 16, 5
 - In South Carolina, 16, 5
 - Items, 16, 6
 - Merchants, 16, 5
 - Mutuality, 16, 12, 13
 - Necessity of cause of action, 16, 6
 - One item of credit alone, 16, 6
 - Party bringing action on a mutual account, 16, 14
 - Reciprocal demands, 16, 6
 - Set-off, 16, 4
 - What are not, 16, 6
 - Whether mutual indebtedness works extinguishment of debt, 16, 11
 - Whether part payment makes account mutual, 18, 233
- No Exeat**, 16, 378
 - Belief as to amount, 16, 379, 380
 - In general, 16, 378
 - Positive oath as to debt, 16, 379
 - "Open account," 17, 193
 - Application of payment, 18, 249
- Record, 20, 488
- Referees**, 20, 670
 - Compulsory references, 20, 670
 - Long accounts, 20, 670
- What Is Meant by an "Account,"** 20, 673
 - Account not involving action, 20, 676
 - Account stated, 20, 675
 - Bill of particulars, 20, 675
 - Incidental or collateral account, 20, 675
 - In general, 20, 673
 - Items of damage, 20, 673
 - Mutuality, 20, 673
 - Policies of insurance, 20, 673
 - Questions triable by jury, 20, 676
 - Statement of debts and credits, 20, 673
- What Is Meant by "Long" Account**, 20, 676
 - Examples, 20, 676, 677
 - Few items, 20, 676
 - Generally, 20, 676
 - Two items, 20, 676
 - Three items, 20, 676
 - Four items, 20, 676
 - Six items, 20, 676
 - Seven items, 20, 676
 - Ten items, 20, 676
 - Fifteen items, 20, 676
 - Several items in a single bill of goods, 20, 677
- When a reference will not be granted, 20, 672
- Where one issue involves long account, 20, 672
- Running, 1, 109
- Set-off, 22, 217
- Statute of Frauds**
 - Whether accounts are goods, wares and merchandise within, 8, 710
- Surrogates' courts, 24, 985
- Tontine Insurance**
 - Conflict of opinion, 26, 66
 - In Illinois, 26, 67
 - In Massachusetts, 26, 67
 - Whether insured entitled to, 26, 65
 - Whether transitory or local, 1, 184
- ACCOUNT RENDER**, 1, 128
 - Against executors and administrators, 1, 130
 - Against whom it lies, 1, 129
 - Appeal from auditors, 1, 132
 - Arbitration, 1, 131
 - As it exists in United States, 1, 133
 - Attitude of auditors, 1, 132
 - Auditors in, 1, 131
 - Auditor's report, 1, 133
 - Before justice of the peace, 1, 134
 - Between partners, 1, 129
 - Definition, 1, 128
 - Final judgment in, 1, 133
 - Generally, 1, 129
 - History of, 1, 128
 - In Connecticut, 1, 135
 - In Massachusetts, 1, 129
 - In New York, 1, 129, 134
 - In Pennsylvania, 1, 129, 135
 - In United States, 1, 129
 - In Vermont, 1, 135
 - Judgment of quod computet, 1, 131
 - Obsolete in New York, 1, 134
 - On what demands it lies, 1, 130
- Partnership**, 17, 1270
 - In Massachusetts, 17, 1270
 - In New England, 17, 1270
 - Practically obsolete, 17, 1270
- Processes in, 1, 131
- Receivers, 1, 130
- Survival, 7, 262

ACCOUNT RENDER—*Cont'd***Trusts and Trustees**

Parties in action for accounting, 27, 284

Writ of error, 1, 133

ACCOUNT STATED, 1, 108

See ACCOUNT RENDER; ACCOUNT.

Acquiescence, 1, 115

Admissions, 1, 115

Agents power to settle an account, 1, 357

And how stated, certainty requisite, 1, 114

As admission of liability, 1, 110

As a new promise, 1, 123

Bank pass book, 1, 127; 1, 117

Broker's pass book, 1, 124

Conclusiveness of, 1, 111

Conclusive upon whom, 1, 111

Cross demands made in futuro, 1, 123

Definition, 1, 108, 110

Distinguished from account closed, 1, 110

Distinguished from balance of account, 1, 108

Effect of giving a note for balance, 1, 120

Founded upon equitable liability, 1, 112

How Stated, 1, 113

Insufficient admission of acknowledgments, 1, 115

Illegal claims, 1, 123

Instructions, examples of, 1, 268-271

Interest from time it was rendered, 1, 124

In writing or by parol, 1, 122

I. O. U., effect of, 1, 120

Liability upon, between merchants, 1, 124

Mutual agreement, 1, 113

Necessity of mutual agreement, 1, 112

Necessity of signature, 1, 116

Official account, 1, 112

Official accounts, conclusiveness of, 1, 113

Open accounts, 1, 109

Opening the Account, 1, 125

For fraud, 1, 125

For omission, 1, 125

For undue advantage, 1, 125

Mistake, 1, 125

Mistake as to one item, 1, 126

Negligence in detecting errors, 1, 126

When it cannot be opened, 1, 126

Where settled by bond or release, 1, 125

Partnership

Defenses to Action for Account, 17, 1285

Acquiescence of parties, 17, 1285

Clear proof to warrant opening, 17, 1288

Error in settlement, 17, 1288

Error of judgment, 17, 1287

Error of law, 17, 1287

False representations, 17, 1287

Fraud in settlement, 17, 1288

In general, 17, 1285

Intentional or improper omission of items, 17, 1287

Loss of books, 17, 1288

Open as to all items, 17, 1288

Opening for mistake, 17, 1287

Partial settlement, 17, 1286

Re-opening, 17, 1286

Repudiation, 17, 1288

Setting aside, 17, 1286

Settlement by majority, 17, 1286

Showing specific acts of fraud, 17, 1288

Surcharging and falsifying, 17, 1289

Waiver, 17, 1285

Where fraud has entered into settlement, 17, 1287

Whether a good defense, 17, 1285

Pass book of bank when made up, 1, 117, 127

Payment under duress, 1, 119

Pleadings, 1, 127

General issue in assumpsit, 18, 542

Presumption in favor of deed, 1, 219

Reasonable Time

Omitting several mails to pass, 1, 121

Several months, 1, 121

Two years, 1, 121

Three years, 1, 121

To dispute an account, 1, 121

What constitutes a question of law, 1, 121

Receipt for balance under duress, 1, 120

Re-examination, 1, 124

Retaining account without objection, 1, 116

Set-off, 1, 122

Settled accounts, 1, 109

Settled accounts, conclusiveness of, 1, 109

Sickness explaining silence, 1, 119

Statute of Frauds

Account stated as memorandum, 8, 711

Statute of limitations, 1, 116

Surcharge and falsify, 1, 128

To third parties, 1, 122

To whom statement must be made, 1, 121

ACCOUNTABLE, 1, 135**ACCOUNTABLE RECEIPT, 1, 135****ACCRETION, 1, 136**

See ACCESSION; ISLANDS.

Ad filium aquæ, 1, 189

Batture

Definition of, 2, 157

Contiguity necessary, 1, 138

Definition, 1, 136

Of alluvion, 1, 136

Of reliction, 1, 137; 5, 640

Deposit caused by artificial works, 1, 137

Entry by owner on stranded property, 1, 142

Formation of new shore on unnavigable river, 1, 138

Imperceptibility of, 1, 137

In whom title vests, 1, 136

Landlord and tenant, 12, 698

Legacies and devises, 13, 186

Liability of owner of stranded property, 1, 142

Limitation of actions, 13, 724

Necessity of imperceptibility, 1, 137

On rivers and streams, 1, 137

Reliction must be slow, 1, 137

Remainderman and life tenant, 13, 218

Stranded property, 1, 141

What are navigable waters, 1, 139
 While the property is urban, 1, 139
ACCRUE, 1, 142
 Accrue and occur distinguished, 1, 142
 In the sense of exist, 1, 142
ACCUMULATED SURPLUS, 1, 142
ACCUMULATION
As to trust for, see **PERPETUITIES**.
ACCUSE, 1, 143
 Charged with crime—accused of crime,
 3, 121
 Threat to accuse, 1, 143
ACCUSTOMED, 1, 143
ACKNOWLEDGMENT, 1, 143
See **NOTARY PUBLIC**.
Conclusiveness, see *infra*, **CERTIFICATE**.
Privy Examination, see *infra*, **MARRIED WOMEN**.
Wills, see **WILLS**.
Act and Deed
 Equivalent to executed in an acknowledgment, 1, 156
 As an authentication, 1, 1024
 Assignment for the benefit of creditors,
 1, 859
 Before justice of the peace, 12, 507
 By agent or attorney, 1, 170
 By order of court, 1, 170
Certificate, 1, 147; 5, 444
Act and Deed
 Equivalent to executed, 1, 156
 Admission in evidence of uncorrected,
 1, 150
 Amendment of, 1, 150
 Cannot be aided by parol proof, 1, 165
 Compliance with statutory requirements,
 1, 149
Conclusiveness of, 1, 148, 158; 5, 444;
 14 630, 633
 Insufficient acknowledgment, 1, 160
 Where wife is stated to be a minor,
 1, 61
 Construction of acknowledgment by
 reference to principal instruction, 1,
 156
 Construction where ambiguous, 1, 156
 Contains official character of person
 taking, 1, 147
 Corporate seal, 1, 159
 Correcting mistake, 1, 149
 Correction by oath, 1, 150
 Correction of clerical or grammatical
 errors, 1, 152
 Defective attestation, 1, 153
 Equity, power to correct mistakes, 1,
 150
 Erasures and interlineation, 1, 152
 Essential to married woman's deed, 1,
 165
 Evidence, clearness of to impeach, 1,
 161
 Evidence of official character, 1, 148
 Examination made in foreign language,
 1, 149
 Grantor's name, 1, 155
 Identity of party making, 1, 154
 Impeachment of, 1, 158, 160; 16, 767

Impeachment of married woman's acknowledgment, 1, 165
 Insufficient compliance with statute, 1,
 155
 Necessity of officer's seal, 1, 158
 Necessity of stating place or date in,
 5, 444
 Notary public, 16, 767
 Officer's official character may be
 shown aliunde, 1, 157
 Official making on assurance of third
 party, 1, 155
Omissions Which Have Been Held Fatal
 "Acknowledged," 1, 151, 156
 "And does not wish to retract," 1, 151
 Christian name of grantor, 1, 152
 Consideration, 1, 152
 Examination of cases holding omissions
 of words of identity not fatal,
 1, 154
 "Executed," 1, 156
 "For purpose herein set forth," 1,
 151
 Grantee's name for grantor, 1, 151
 Grantor's name, 1, 151
 Identity of party making, 1, 154
 "Ill usage," 1, 151
 "Known," 1, 151
 Making known contents of deed to
 wife, 1, 166
 Mistake in Christian name, 1, 152
 Notaries of county, 1, 152
 "Of identity," 1, 151
 "Personally," 1, 150
 "Personally known," 1, 155
 Privy examination of married women,
 1, 165
 Relinquishment of dower where required,
 1, 169
 "Sealed and delivered," 1, 152
 "Separate and apart," 1, 166
 "Signed," 1, 151
 Statement of private examination,
 1, 151
 To affix seal, 1, 157
 Vital words not supplied by intentment,
 1, 152
 "Voluntary," 1, 151
 Wife acts freely without duress, 1, 168
 Wife "does not wish to retract," 1,
 167
 Wife will execute the deed, 1, 168
Omissions Which Have Been Held Not Fatal, 1, 150, 155
 Acknowledgments, 1, 151
 "And acknowledged the said mortgage,"
 1, 151
 "And deed," 1, 150
 "Appeared," 1, 151
 "Are," 1, 151
 "Before me," 1, 151
 "Consideration," 1, 151
 Date, 1, 153
 "Freely," 1, 169
 "Fully," 1, 151
 "Given under my hand and seal of
 office," 1, 150

ACKNOWLEDGMENT—Cont'd**Certificate—Cont'd****Omissions Which Have Been Held Not****Fatal—Cont'd**

Grantor's name, 1, 150

"Hand and seal," 1, 151

"Her act and deed," 1, 150

"His," 1, 151

"Husband," 1, 151

"Known," 1, 151

"Out of presence," 1, 151

"Seal," 1, 150

"Seal" before "of office," 1, 151

"Sealed and delivered," 1, 151

State name, 1, 151

Surname, 1, 150

To affix seal, 1, 157

Trustee's title, 1, 151

Unimportant words, 1, 149, 151

Words of identity, 1, 150

Parol evidence to show fraud, 5, 445

Presumption after twenty years' restriction, 1, 150

Prima Facie Evidence, 1, 165

Of facts recited, 1, 160

Of its own genuineness, 5, 445

Of officer's authority, 1, 147

Of officer's jurisdiction, 1, 147

Rejection of redundant words, 1, 152

Seal of officer, 1, 157; 21, 914

Sheriff's deed, words of identity, 1, 155

Signature must show official character, 1, 157

Signature of the officer, 1, 156

Statement that subscribing witness knew person executing, 1, 155

States in which the privy examination need not appear, 1, 167

Stating official title of officer, 5, 444

Stating the facts necessary, 1, 149

To show acknowledgment of execution, 1, 156

Understandingly equivalent to freely and voluntarily, 1, 169

Use of words of equivalent import, 1, 152

What constitutes description of official character, 1, 148

Whether impeachable by officer, 1, 148

Chattel Mortgages

Necessity of acknowledgment by mortgagor, 3, 182

Corporations

Deeds of, 1, 159; 4, 242

Proper person to make, 1, 159

Curative Acts

Defective acknowledgments, 3, 760, 761

Date

Necessity of, 5, 78

Presumption arising from date, 5, 78

Deeds

Necessity of, 5, 443

Defective, who may take advantage of, 1, 158

Definition, 1, 143

Estoppel, 1, 146, 166; 14, 639

Feme sole, 1, 169

Foreign language, examination in, 1, 149

Impeachment, want of jurisdiction, 1, 161

In another state, 1, 147

Interpreter, examination by, 1, 149

Lease, 12, 989

Marriage settlements, 14, 541

Married Women, 9, 32, 33; 14, 629

Against whom fraud may be claimed, 14, 633

Bona fide purchaser, 14, 633

Certificate, 14, 630

Bona fide purchasers, 14, 630

Conclusiveness, 14, 630, 633

Necessity, 1, 165; 14, 630

Parol evidence, 1, 165; 14, 631

Perfect, 14, 633

Prima facie evidence, 14, 630

Reformation in equity, 14, 631

Validity of deed without, 14, 630

What it must show, 14, 630

"Does not wish to retract," 1, 168

Duress, 1, 168, 169; 14, 633

Estoppel, 1, 166; 14, 639

Forgery, 14, 633

Fraud, 14, 633

Husband taking wife's acknowledgment, 5, 444

Illinois statute, 1, 164

Impeachment of certificate by officer, 14, 633

Living as feme sole, 1, 170

Necessity of acknowledgment, 5, 443

Necessity of presence, 1, 163

Party with notice of defects, 14, 633

Powers, 18, 952

Privy Examination, 1, 159, 161, 165, 167; 5, 428; 14, 629

Agreement to convey, 14, 635, 636, 637

Must have been made before acknowledgment, 1, 166

Need not appear in certain states in certificate, 1, 167

Presence of husband, 1, 166

Power of attorney, 14, 635

Should not be by attorney, 1, 166

Through interpreter, 1, 166

Release of legacy, 1, 170

Separate acknowledgment of wife, 1, 161

Separate property of married women, 22, 42

Statutes authorizing conveyance of land by married women, 1, 164

Statutes permitting conveyance to be followed strictly, 1, 164

Strict compliance with statute, 1, 164; 5, 428

Unsupported testimony of wife, 14, 633

When no special acknowledgment necessary, 14, 630

Whether husband and wife must acknowledge at same time, 14, 630

Wife must act freely without duress, 1, 168

Wife willingly executes the deed, 1, 168
 Necessity of, 1, 144
Notary Public, 16, 767
 Amending certificates, 16, 767
 Authority to take acknowledgments, 16, 767
 Capacity to act as affected by interest, 16, 774
 Collateral attack upon certificate, 16, 767
 Concurrent power with other officers, 16, 767
 Liability for Negligence or Misconduct
 Where grantor did not execute deed, 1, 155; 16, 781
 Notarial certificate, 16, 767
 Overthrowing certificate, 16, 767
 Proof of official character, 16, 767
 Of arbitrations, 1, 654
 Officer interested in conveyance, 5, 443
 Of plot dedicating streets to public, 5, 396
 Proof of handwriting, 9, 267
 Proved by subscribing witnesses, 1, 163
Recording Acts, 20, 553
 Acknowledgment dispensed with, 20, 554
 Acknowledgment in another county or state, 20, 555
 As prerequisites to valid recordation, 20, 553
 Effect on validity, 20, 553
 False representation, 20, 553
 In Illinois, 20, 554
 In Kansas, 20, 554
 Strictness required, 20, 554
 Substantial compliance, 20, 553
 To insure authenticity of instrument, 20, 553
 What law governs, 20, 554
 When sufficient proof of deed, 20, 554
 Reformation of instruments 15, 662
 Seals, 1, 157; 21, 914
Sheriffs' Deeds, 22, 694
 Statutes, 22, 694, 695
 In general, 22, 694
 Necessity, 22, 694
 Signature as evidence of official character, 1, 148
 Specific performance, 22, 923, 924
 Stipulation (in admiralty), 23, 568
Subsequent Acknowledgments
 Acknowledgment affecting vested rights, 1, 163
 Where it does not affect rights of third person, 1, 163
 Taken by deputy, 5, 624
 Taken by officer outside of his jurisdiction, 5, 444
Tax Deeds, 24, 703; 25, 691
 Acknowledged deed as evidence, 25, 692
 Formal inaccuracies, 25, 691
 Recording, 25, 693
 Whether necessary, 25, 691, 692
 Totally in writing, 1, 144
Trust Deeds and Power of Sale Mortgages, 26, 873

Defective, 26, 873
 Examples, 26, 873
 Necessity, 26, 873
 Whether ministerial, 1, 144
Who May Take, 1, 144
 See infra, **NOTARY**.
 An officer de facto, 1, 144
 An officer whose term is terminated, 1, 145
 A party interested, 1, 145
 A trustee of a corporation, 1, 145
 A trustee of the deed of trust, 1, 144
 Attorney for the husband, 1, 144
 Commissioner, 1, 145
 Consuls, 1, 144
 Deputies, 1, 144
 Instrument may be referred to to aid the certificate, 1, 146
 Judges, 1, 144
 Officer outside of his jurisdiction, 1, 146
 Presumption that officer acted within his jurisdiction, 1, 146
 Provost-marshal, 1, 144
 Recording of deed by person interested not noticed, 1, 145
 Relative of the party making the acknowledgment, 1, 144
ACQUAINTED, 1, 170
 Personally acquainted with, 1, 171
ACQUIESCED, 1, 171
 See **LACHES**.
ACQUIRED, 1, 171
 Otherwise acquired, 1, 171
ACQUITTAL, 1, 171
ACQUITTANCE, 1, 171
 Necessity of seal, 1, 171
 Receipt and acquittance, 1, 172
ACQUITTED, 1, 172
ACROSS, 1, 172
ACT, 1, 172, 173
 See **STATUTES**.
 Act and Deed
 Equivalent to executed, 1, 156
 Act of congress, 1, 173
 Act of insolvency, 1, 178
 Acting in his official capacity, 1, 173
 "Acts and means," 19, 983
 Implication of intention, 1, 173
 In all my business, 1, 173
 In pursuance of an, 1, 173
 Judicial act, 1, 173
 Municipal act, 1, 173
 Necessary acts, 16, 371
 Passing of an act, 1, 173
 Reasonable act, 19, 1078
 Suffer any act, 1, 173, 179
ACT OF GOD, 1, 173
 Accident and act of God distinguished, 4, 41
 As proximate cause, 1, 176
 Bail, sureties, release of, by, 2, 29
 Carrier of Goods, 1, 173; 2, 715, 844
 Delay in delivery, 2, 845
 Excused by, 7, 547, 562
 Cas fortuits, 3, 20
 Caution necessary, 1, 177
 Death, 1, 174

ACT OF GOD—*Conf'd*

- Definition of, 1, 174; 16, 398
- Distinguished from inevitable accident, 16, 397
- Duties excused by, 1, 173, 174
- Earthquake, 1, 174
- Elements, 6, 447
- Express companies, 7, 547, 562
- Fires, 1, 176
- Floods, 1, 174
- Frost, 1, 174
- Guaranty, 9, 84
- Illness, 1, 174
- Immediate necessity, 1, 175
- Inns and innkeepers, 11, 54, 58
- Liability for injury, 4, 41
- Main agency, intervention of, 1, 176
- Must be proximate cause, 1, 176
- Particular negligence, 1, 177
- Proximate and remote cause, 1, 176
- Public officers, 19, 483
- Storm, 1, 174
- Tempests, 1, 174
- Warehouse and warehouseman, 28, 648
- Waste, 10, 824
- Whether action will lie, 1, 179
- Winds, 1, 174
- Working contracts, 29, 925

ACTING, 1, 178

- Acting as attorney, 1, 178

ACTIONS, 1, 178

- See all recognized forms of actions under respective heads, as ASSUMPSIT, DEBT, COVENANT, etc.

See ABATEMENT; CIVIL ACTION; DEMAND; ELECTION; EXPLOSIONS; FORECLOSURE OF MORTGAGES; FORMA PAUPERIS; JOINDER OF ACTIONS; LIMITATION OF ACTIONS; NOLLE PROSEQUI; NONSUIT; PARTIES TO ACTIONS; PLEADING; REAL ACTIONS; RETRAKIT; STAY OF PROCEEDINGS.

- As to action on sister state's judgment, see JUDGMENT OF SISTER STATES.

- As to consolidation of actions, see JOINDER OF ACTIONS.

- As to fictitious actions, see PARTIES TO ACTIONS.

- For personal injuries, see CARRIERS OF PASSENGERS.

Appearance, 1, 182

- By attorney, 1, 184
- Effect of general appearance, 1, 183
- General appearance, 1, 183
- Special appearance, 1, 183
- What constitutes, 1, 182
- What is not an appearance, 1, 183
- Withdrawal, 1, 184

- Bill of discovery in aid of, 2, 201

- Bringing an action or suit, 2, 566

- Cause of, 3, 46

Civil Actions for Damages in Case of Public

- Wrongs, 17, 515
- At common law, 17, 515
- Obstruction of roads, 17, 517
- Felony resulting in death, 17, 515

Larceny, 17, 515

- Limitation to common law rule, 17, 515

Nuisances, 17, 517**Public duties, 17, 518**

- Public wrongs without special damages to the individual, 17, 516

Robbery, 17, 515

- Statutory provisions in the United States, 17, 516

Taxpayers, 17, 518**Civil damage acts, 3, 257****Collusive Suits, 17, 502**

- Allegation that action is collusive, 17, 503

- Cause of action assigned to give jurisdiction, 17, 503

Improper motive, 17, 502**Interest not bona fide, 17, 502****Joinder of parties, 17, 503****Presumptions, 17, 504****Commencement, 1, 184; 5, 535****Commencement of suit in equity, 1, 184****Consent as a bar, 1, 181****Course of an, 4, 446****Cumulation, 1, 184e****Definition of, 1, 178; 5, 526****De minimis non curat lex, 5, 113****Discontinuance, 1, 18, 19; 5, 674**

- Act changing time for holding terms of court, 5, 675

- After defendant has filed a set-off, 5, 676

As to any court, 5, 677**As to effect of, 5, 677****As to one of several defendants, 5, 676****As to one of two or more causes of action, 5, 677****As to one or more of several defendants, 5, 676****At what time held, 1, 184g****Barred with non-suit, 5, 675****Cause, 5, 678****Cure, 5, 677****Definition, 5, 674****Ends the particular action, 5, 677****Failure of clerk to docket a case, 5, 675****Failure of clerk to note continuance, 5, 675****Failure to continue process from term to term, 5, 675****Failure to transmit transcript of court where change of venue has been taken, 5, 675****For fraud, 1, 184g****Improper and unwarranted continuances, 5, 675****Of an action as to one co-defendant, 5, 675****Proceeding to trial, 5, 677****Right to discontinue, 5, 676****Submission to arbitration, 5, 675****Successive continuances, 5, 675****Terms on which allowed, 1, 184g****Voluntary withdrawal of a suit by plaintiff, 5, 676**

- What amounts to, 5, 675.
 Where discontinuance would result in injury to defendant, 5, 676
 Whether a bar to a subsequent action, 5, 677
 Who may discontinue, 1, 184^g
 Dismissal, 5, 691
 For damages, 1, 179
 In sense of demand, 5, 526
 Jurisdiction of courts, 1, 184^f
 Jurisdiction, where remedy is statutory, 1, 184^f
 Legal damages, necessity of, 1, 179
Local and Transitory, 5, 354
 Definition of, 1, 184^f
 What have been held local, 1, 184^f
 What have been held transitory, 1, 184^f
 Maintain an action, 14, 2
 Mixed actions, 15, 697
 Necessity of right of action to complete, 1, 180
 Non-appearance, 1, 184
 Nudum pactum, 1, 181
Pendency of Suit in Foreign State
 As a defense, 3, 535
 "Proceedings," 19, 220
Right to Sue Depending on Privity, 17, 518
 See ASSIGNMENTS.
As to the effect of statutes providing that actions shall be prosecuted by the real party in interest, see PARTIES TO ACTIONS.
As to the right of trustee to sue, see TRUSTS.
Contracts for Benefit of Third Parties, 17, 528
 Examples, 17, 528, 529
 Grantee of mortgagor who has assumed mortgage, 17, 529
 Simple contracts, 17, 528
 Under the codes, 17, 529
 Where contract is under seal, 17, 529
 Whether third party may sue, 17, 528
 Fraudulent representations in contract, 17, 521
 Generally, 17, 518
 Guaranty, 17, 521
 Manufacturers, 17, 519
 Merchants, 17, 519
 Misfeasance of public officers, 17, 520
 Obligations to one and his successors, 17, 530
Obligee in written contract, see LIFE INSURANCE.
Obligee in Written Contract, 17, 521
 Action on must be in name of obligee, 17, 521, 522
 Bonds, 17, 526
 Code provisions, 17, 527
 Error in stating name of obligee, 17, 521
 Examples, 17, 526-528
 Name of obligee, 17, 526
 Party aggrieved, 17, 527
 Person intended to be secured, 17, 527
 Real party in interest, 17, 526-528
 Statutes, 17, 527
 Subscription papers, 17, 522
 Sheriff's sales, 17, 521
Torts, 17, 559
 Insurance companies, 17, 559
 Joint tortfeasors, 17, 560
 Test of assignability, 17, 560
 Whether assignments, 17, 559
 Whether question of privity is involved, 17, 559
 Warranty, 17, 521
 Whether mortgagee may sue grantee who has assumed mortgage, 17, 529
 Whether vendor can sue assignee of vendee, 17, 530
 Splitting of actions, privity, 1, 184^d
 Splitting of actions, 1, 184^c; 11, 1015^z
Statutory Damages
 Injuries caused by defective bridge, 2, 538
Statutory Remedies, 1, 184^e
 Case within provision of statute, 1, 184^e
 Culmination, 1, 184^e
 Necessity of following, 1, 184^e
 Prescribed for a common-law right cumulative, 1, 184^g
 Subject of action, 11, 1009
 Termination, 1, 184^e
 Transitory actions, 1, 184^f
 Two suits for same cause founded upon different securities, 1, 184^d
When Maintainable, 1, 179
 Damage, 1, 179
 Exercising an illegal right, 1, 179
 For public wrongs, 1, 180
 Illegal ground, 1, 180
 Injuries sustained by a class of individuals, 180
 Intruding on right of way, 1, 180
 Malicious motive, 1, 179
 Prevention of wrong, 1, 180
 Proof of actual damages, 1, 179
 Without proof of actual damage, 1, 179
- ACTIVE**
 Debts, 5, 163
ACTOR, see THEATERS.
ACTUAL, 1, 184^g
 See ADVERSE POSSESSION.
Actual Receipt
 Within the statute of frauds, see FRAUDS, STATUTE OF.
 Actual and constructive fraud distinguished, 1, 184^g
 Actual and continued change of possession, 1, 184^h
 Actual cash payment, 1, 185
 Actual cash value, 1, 185
 Actual change of possession, 3, 90
 Actual confinement, 3, 497
 Actual control, 1, 187
 Actual cost, 1, 185; 21, 303
 Actual damages, 1, 187
 Actual determination, 1, 186
 Actual market value, 1, 186
 Actual military service, 1, 186
 Actual notice, 1, 184^h; 16, 790
 Actual occupation, 1, 186

ACTUAL—Cont'd

Actual ouster, 1, 186
 Actual place of abode, 25, 138
 Actual Possession, 1, 184^g
 See ADVERSE POSSESSION; POSSESSION.
 Actual residence, 1, 186; 12, 125
 Actual seizure, 1, 187
 Actual settler, 1, 186
 Actual total loss, 1, 185
 Actually employed, 1, 187
 Actually occupied, 1, 187
 Actually sold, 1, 186
 Constructive and actual possession, 1, 184^h
 Fraud, 8, 635

ACTUALLY

Actually chargeable, 3, 122
 "ACTUAL PLACE OF ABODE," 25, 138
 ADDITION, 1, 187

Addition erected to a building, 1, 187
 All future erections or additions, 1, 188
 Any addition of a building, 1, 188
 To a building, 2, 603

ADDITIONAL, 1, 187

ADDRESS OF LETTERS, *see* LETTERS.

ADEMPMENT OF LEGACIES, *see* LEGACIES.

ADEQUATE, 1, 189

Adequate cause, 1, 189
 Adequate crossings, 1, 189
 Adequate remedy, 20, 974
 AD FILUM AQUÆ, 1, 189

ADHERING, 1, 190

ADJACENT, 1, 190; 24, 68; 25, 520

Adjacent and contiguous synonymous, 1, 190

Adjacent occupant or proprietor, 1, 190
 Distinguished from adjoining, 1, 190

ADJOINING, 1, 191, 766; 24, 68; 25, 520

Distinguished from adjacent, 1, 190
 Synonymous with contiguous, 1, 191

ADJOURNMENT, 1, 192; 12, 298; 25, 951

See ARBITRATION AND AWARD; CONTINUANCES.

Adjourned or Special Terms, 12, 298

Continuation of regular term, 12, 298
 Power expressly conferred, 12, 298
 Power of judges, 12, 298
 Presumption as to proceedings, 12, 298
 Validity, 12, 298

Adjourned session, 1, 192

Auditor's discretion as to, 1, 1013

By telegram, 12, 14

Clerk of court, 19, 562^f

Effect upon bail, 2, 19

From day to day, 12, 14

Homicide, 9, 656

Indictment found at, 10, 463

Judicial Sales, 12, 217

Discretion, 12, 217
 No one present, 12, 217
 Notice of adjournment, 12, 218
 Proclamation of adjournment, 12, 218
 Sale under decree, 12, 218
 To prevent sacrifice, 12, 218
 When duty of officer to adjourn, 12, 217

Justice of the Peace

Absence of justice, 12, 444
 Affidavit, 12, 443
 Deposition of facts to which absent witness would testify, 12, 443
 Entry upon docket, 12, 444
 In general, 12, 442-445
 Materiality of evidence, 12, 443
 Waiver of defects, 12, 444
 Want of material testimony, 12, 443
 When a party may have, 12, 443
 Without consent of parties, 12, 443

Of arbitration proceedings, 1, 682

Poor debtor, hearing, 18, 828

Power of grand juries, 9, 14

Power of judge to order, 4, 834

Preliminary examination, 12, 415

Referees, 20, 690

Absence of material witnesses, 20, 690

Adjournment on motion of, 20, 690

Applications to the court, 20, 690

Discretion of, 20, 690

Grounds justifying adjournment, 20, 690

Imposition of conditions, 20, 690

Power of referee, 20, 690

When court will interfere, 20, 690

School meetings, 21, 798

Statutes

Approval by governor, 23, 182

Prevention of Return of Bill by Adjournment, 23, 188

Adjournment from day to day, 23, 189

Adjournment must be final, 23, 189

Allowing bill to become a law, 23, 189

Effect of filing bill, 23, 189

Extension of time, 23, 188

Parol evidence to show adjournment, 23, 189

Supplementary Proceedings, 24, 641

Indefinite Adjournment

Examples, 24, 641

Judgment debtor refusing consent, 24, 641

Right of judge to adjourn, 24, 641

Taxation

Sale, 25, 383

Adjournment from day to day, 25, 383

Examples, 25, 383

Indefinite, 25, 383

Right of officer, 25, 383

Tax sale, 25, 367

Trust Deeds and Power of Sale Mortgages

Adjournment for one day, 26, 914

Duty of officer, 26, 913

Notice of Adjournment, 26, 913

Adjournment until next day, 26, 914

Sufficiency, 26, 913, 914

Power of officer or trustee, 26, 913

Time of adjournment, 26, 914

Trustee's sale, 27, 230

United States commissioners, 27, 551

Validity of proceedings at adjourned term, 4, 835

Verdict: sealed verdict, 28, 409

ADJUDGED, 1, 192

ADMINISTER

Administer or cause, 3, 48

ADMINISTRATION, 1, 193; 7, 174See EXECUTORS AND ADMINISTRATORS;
PROBATE AND LETTERS OF ADMINISTRATION.

Expenses of, in statute, 1, 193

ADMINISTRATORS, see EXECUTORS AND ADMINISTRATORS.

On judgment obtained against another administrator of the same intestate, 5, 171

ADMINISTRATOR'S SALE, see DEBTS OF DECEDENTS.**ADMIRALTY**, 1, 193, 200, 202

See BOTTOMRY; DECREE; DEMURRAGE; GENERAL AVERAGE; INTERNATIONAL LAW; JETTISON; MARITIME LIENS; MASTER OF A VESSEL; NAVIGABLE WATERS; NAVIGATION; RESPONDENTIA; SALVAGE; SEAMEN, SHIPS AND SHIPPING; STIPULATIONS (IN ADMIRALTY); TOWAGE; TUGS AND TOWS; WRECK.

Admiralty and embargo laws, see INTERNATIONAL LAW.*Capture*, see INTERNATIONAL LAW.*High sea*, see HIGH.

Abatement, 5, 134

Actions in personam, 1, 201

Actions in rem, 1, 201

Appeal, 1, 201

Appraisements, 1, 635

Canals, 28, 1053

Charter Party, see CHARTER PARTY.

Damages, 3, 155

Jurisdiction over, 3, 154

Remedy for breach, 3, 154

Citation to appear, 1, 202

Contracts not maritime, 1, 198

Costs, 16, 364

Attorney's fees, 16, 365

Discretion of court, 16, 365

Failure to render assistance, 16, 364

Inevitable accident, 16, 364

Neither to blame, 16, 364

Vessel most in fault, 16, 364

Where both vessels in fault, 16, 364

Where Costs Should be Divided, 16, 364

Who should bear costs, 16, 364

Death of party to an action in, 5, 134

Decree in personam, 1, 204

Decree in rem, 1, 204

Decrees, 1, 203

See DECREE.

Collision, 16, 364

Conclusiveness, 12, 149w

Adjudication of prize, 12, 149w

Foreign condemnation, 12, 149w

Record not showing ground of condemnation, 12, 149w

Title, 22, 149w

Degrees of negligence, 16, 427

Evidence, 1, 203

Foreign money, 15, 708

Forma pauperis, 8, 545

History of, 1, 193

Information, 10, 705

Joinder of actions, 1, 202

Jurisdiction, 1, 194; 27, 584*Maritime liens*, see MARITIME LIENS.*United States courts*, see UNITED STATES COURTS.

As dependent upon character of parties, 1, 196

Between admiralty and state courts, 3, 526

Cases of admiralty and maritime jurisdiction, 3, 22

Charter party, 3, 154

Contracts within, 1, 197

Courts having, 1, 200

Exclusive, 1, 200

General scope of, 1, 197

Navigable Waters, 1, 195; 16, 257**State Jurisdiction Over Interstate Waters**, 16, 257

Commerce clause in United States constitution, 16, 257

Fixing compensation for pilots, 16, 258

Port and harbor regulations, 16, 258

Providing for pilotage, 16, 258

Regulating speed of steamboats, 16, 258

Regulations, 16, 257

Of colonial courts, 1, 194

Over bridges, 1, 196

Over foreign waters, 1, 196

Over high seas, 1, 194

Over internal commerce, 1, 195

Over Tidal Waters, 16, 247

Between inclosing headlands, 16, 248

Qualifications of doctrine, 16, 247

Statutory extension, 16, 247

The marine league, 16, 247

Where coast is indented, 16, 248

Over torts, 1, 195

Over what waters it extends, 1, 194

Vessels within, 1, 196

What persons within, 1, 196

Laches, 12, 574

Change in condition, 12, 575

General principles, 12, 574

Lapse of time alone, 12, 574, 575

Statute of limitations, 12, 576

Whether a bar, 12, 574

Marshalling assets, 14, 707

Motions, 15, 890

Negligence

Degrees of negligence, 16, 427

Partnership, 17, 1273

Pending action, 1, 203

Pleadings in, 1, 203

See NAVIGATION.

Amendment of libel, 1, 203

Answer and demurrer, 1, 203

Libel, 1, 203

Prize, see INTERNATIONAL LAW.

Prize causes, 1, 200

Procedure in, 1, 201

Procedure upon bottomry bond, 2, 493

ADMIRALTY—Cont'd

- Res Judicata**, 2 1, 276-278
 - Foreign judgments, 2 1, 280
- Restraint of lower courts**, 1, 204
- Sale of Vessel Under Decree of**, 2 2, 738
 - Effect of, 2 2, 738
 - Examples, 2 2, 738, 739
 - Passage of title, 2 2, 738
 - Ship sold for unseaworthiness, 2 2, 739
- Set-off and recoupment**, 1, 203
- Special bail**, 2 2, 895

Torts

- By the agents of the owners, 1, 199
- Test of, 1, 199
- Within the jurisdiction, 1, 199
- Witnesses, 2 9, 564

ADMISSIONS, 7, 65; 9, 338

See CONFESSIONS; DECLARATIONS; ESTOPPEL.

See generally HEARSAY EVIDENCE; WITHOUT PREJUDICE.

By conduct, *see* ESTOPPEL.

For judgment by default as admission, *see* DEFAULT.

To prove marriage, *see* MARRIAGE.

Account stated, an admission of liability, 1, 110

Action on official bond, 17, 80

Against Whom Admissible, 7, 68; 9, 340

Admissions by an attorney of record, 9, 350

Admissions by attorney when not authorized by client, 1, 955; 9, 351

Admissions in disparagement of title

9, 345

Attorney and client, 1, 955; 9, 350

Cestui que trusts, 9, 343

Co-defendants, 9, 341

Community of interests, 9, 343

Devisees, 9, 343

Distributees, 9, 343

Executors, 9, 343

Heirs, 9, 343

Husband and Wife, 9, 351

Admission in wife's favor, 9, 352

Admission of husband in derogation of his own title, 9, 352

Admissions of husband regarding wife's separate estate, 9, 352

How fact of agency must be established, 9, 352

Where husband acts as wife's agent, 9, 352

Where wife has authority as husband's agent, 9, 351

Where wife sues in her own right, 9, 351

Wife's admissions not competent, 9, 351

In favor of party making, 9, 341

Inhabitants of political division, 9, 344

Joint interests, 9, 341, 354

Legatees, 9, 343

Life tenant and remainderman, 9, 343

Member of a board of officers, 9, 344

Nominal party in interest in suit, 9, 352

Of executors and administrators, 9, 341

Officers of corporations, 9, 349

Persons making them, 9, 340

Persons united in an unlawful design, 9, 344

Principal and Agent, 7, 66; 9, 348

After dissolution, 9, 348

Before agency commenced, 9, 348

Made after transaction took place, 9, 349

Not within scope of the agency, 9, 348

Owner and crew, 9, 348

Proof of, fact of agency, 9, 350

Principal and surety, 9, 344

Public officers, 9, 349

Real party in interest in suit, 9, 352

Stockholders, 9, 344

Stranger in the suit, 9, 353

Tenants in common, 9, 343

Trustees, 9, 341, 343

Trustees and cestui que trusts, 9, 353

Agents, 7, 66

See infra, AGAINST WHOM ADMISSIONS.

Agreed case, 2 4, 156

Answer of defendant to bill of discovery, 2, 202

Attorney, 1, 955; 9, 350

Bank cashier's admissions as binding bank, 2, 120

Bastardy

Of prosecutrix, 2, 145

Of the putative father, 2, 153

Bigamy of defendant, to prove, 2, 196

By conduct, 9, 339

By prosecuting attorney that evidence sought to be taken is true, 4, 855

By real party, 7, 66

By Silence, 9, 339

Person under arrest, 9, 339

Possession of unanswered letters, 9, 339

When silence is an admission, 9, 339

Where party is under no obligation to reply, 9, 339

By strangers, 7, 68

Caution in receiving, 9, 356

Character of, 9, 338

Contradiction, 9, 356

Criminal Conspiracy

Larceny, 1 2, 859

Definition, 7, 65; 9, 338

Direct, 9, 338

Directors, 17, 100

Disparagement of Title, 9, 345

Evidence against whom, 9, 346, 347

Former holder of negotiable paper, 9, 346

Heirs, devisees, and legatees, 9, 345

Made when title was not in possession of person making it, 9, 346

Necessity of identity of interests, 9, 346

To rebut record title, 9, 346

Duress, 9, 354

Ejectment, 6, 245/

Estoppel, *see* ESTOPPEL.

Admissions in open court, 7, 23

Executors and Administrators, 7, 374

See infra, JOINT EXECUTORS AND ADMINISTRATORS.

Extension of the import, 9, 356

For purpose of effecting a compromise, 9, 353

Guardian ad litem, 9, 157

Guardian and Ward

Infants, 10, 689

Handwriting, 9, 269

Showing mistake in admission of genuineness, 9, 269

How proved, 9, 355

Implied from assumed character, 9, 339

In affidavit, 9, 340

Incidentally, 9, 338

In depositions, 9, 340

In papers inoperative for purpose intended, 9, 340

In pleadings in a former action, 9, 340

In pleading stricken out, 9, 340

Joint Executors and Administrators, 11, 1020

Creating new liability, 11, 1021

Effect of new promise upon statute of limitations, 11, 1020

General rule, 11, 1020

Instances, 11, 1020, 1021

Made in character of executor, 11, 1020

Judgments, 12, 149e

Larceny, 12, 858

Competency of witnesses, 12, 860

Confessions, 12, 859

Conspirators, 12, 859

Corpus delicti, 12, 858

Corroborated proof, 13, 859

Declarations made before, 12, 859

Promise to pay, 12, 860

Silence, 12, 859

Third persons, 12, 860

When competent, 12, 858

Lost wills, 13, 1136

Matters stated as mere hearsay, 9, 353

Mechanics' Liens

Admissions of agents, 15, 190

Admissions of contractor, 15, 190

Negotiations for a compromise, 9, 353

New trial, 16, 677

Notary public, 16, 785

Offers of money to buy peace, 9, 353

Officers and Agents of Private Corporations,

17, 155, 177

Examples, 17, 155, 156

In general, 17, 156

Representations, 17, 156

Scope of agent's authority, 17, 156

Of indebtedness, 1, 112; 9, 356

Of infants, 5, 496f; 10, 689

Of matters of fact, 9, 353

Parol evidence, 9, 354

Part payment, 18, 232

Patent law, 18, 104

Payment of money in court, 25, 942

Perjury, 18, 332

Persons jointly interested, 7, 66

Pilots, 18, 457

Principal and surety, 7, 67

Privileged communications, 19, 135

Proof of facts admitted, 7, 84

Rape, 19, 966

Receipts, 19, 1112

Recitals in a bond, 2, 464

Replevin, 20, 1107

Representations, 17, 100

Resulting trusts, 10, 18, 30, 34, 49

Seduction, 21, 1046

Statute of Limitations

Admissions by joint contractors, 7, 67

Stockholder's evidence of membership, 23, 783

Subscribing witness, 9, 264

Sunday, 24, 579

Telegraphs and telephones, 25, 835

Tenancy for life, 12, 681

To adverse party, 9, 340

To contradict documentary proof, 9, 355

To third person, 9, 340

Trespass, 26, 658

Trover, 26, 814, 815

Trusts and trustees, 27, 301

Under legal compulsion, 9, 354

Weight as evidence, 9, 356

When admissible, 9, 353

When competent evidence against one joint defendant, 9, 341, 354

Where the party making the admission testifies, 29, 787

Whole Admission Must Be Proved, 9, 355

Contradictory statements, 9, 355

Matters distinct from the admission, 9, 355

Portions of conversation heard, 9, 355

Right of jury to reject parts, 9, 355

Whole answer to bill of discovery must be made, 2, 202

Who may make admissions on behalf of others, 7, 66

ADOPTION OF CHILDREN, 1, 204

Adopted father appointing guardian, 9, 89

Collateral inheritance tax, 24, 446

Definition, 1, 204

Descent and distribution, see *infra*, SUCCESSION.

Earnings of child, 14, 759

Services, 1, 207

Status, 1, 205

Statutory regulations, 1, 205

Succession, 1, 205, 206; 24, 424.

Adoption by husband and wife jointly, 1, 206

Assent of both parents to the adoption, 24, 424

Civil law, 24, 424

Common law, 24, 424

Effect of statutes, 24, 424

Estate of adopting parent's ancestors, 24, 425

Estate of children born to adopting parents, 24, 425

Inheritance from adopted child, 1, 206

Inheritance from child's natural parents, 24, 425

Law in United States, 24, 424

ADOPTION OF CHILDREN—Cont'd**Succession—Cont'd**

Other members of the adopting family,
24, 424

Representation, 24, 424

Statutes prescribing formalities of
adoption, 24, 424

Taxes, 24, 447

Whether parent succeeds to estate of
adopted child, 24, 425

Whether issue includes adopted children,
11, 870

ADULT, 1, 207

Adult including females, 1, 207

ADULTERATION, 1, 207

Adult, 1, 207

Complaint for, 1, 209

Definition of food, 8, 76

Evidence of, 1, 209

Indictment for, 1, 210

Intoxicating liquors, 11, 739

Necessity of intent, 1, 209

Of milk and food products, 1, 208

Oleomargarine, 1, 208; 17, 180

Examples of violation of statutes, 17,
181

Original package, 17, 182

Police power, 17, 180

Statutes complied with, 17, 181

Whether an imitation of butter, 17, 181

Practice, 1, 209

Sale of dangerous drugs, 1, 208

ADULTERY, 1, 209

See **CRIMINAL CONVERSATION.**

See generally **FORNICATION; LEWD AND
LASCIVIOUS COHABITATION AND CON-
DUCT; SEDUCTION.**

As cause of divorce, see **DIVORCE.**

As to enticing servant away, see **MA-
STER AND SERVANT.**

As provocation reducing murder to man-
slaughter, 9, 585, 611

Bill of particulars, 1, 216

Consent of woman not essential, 1, 213

Conviction of fornication, 8, 559

Definition, 1, 211; 5, 781

Definition at common law, 1, 209

Definition of fornication, 1, 211

Discontinuance at complainant's request,
1, 216

Dower barred by, 5, 912

Evidence, 1, 214

See also *infra*, **WITNESSES.**

Admissibility of that of particeps crim-
inis, 1, 216

Delivery of woman, 1, 216

Mitigation of damages, 1, 216

Of improper familiarity, 1, 214

Of prior and later adultery to that
charged, 1, 214

Pecuniary circumstances of the parties,
1, 214

Proof of actual marriage, 1, 214

Proof of former conviction, 1, 216

Reputation for chastity, 1, 216

Sex of parties, 1, 216

Homicide, 9, 585, 611

Infamous crime, 10, 605

Instruction, examples of, 11, 268, 269-272

Invalid divorce as defense, 1, 213

Larceny by wife of husband's goods in
concurrence with her adulterer, 4, 702

Larceny of wife's clothes, 3, 286

Libel and slander, 13, 300, 334

Live together, 13, 929

Living in

What is, 1, 212; 5, 783

Merger with unlawful cohabitation, 1,
211

Necessity of intent, 1, 213

Presumption, 19, 7, 75

Presumption as to averment in indictment,
1, 216

Proof of marriage, 14, 530

Reasonable doubt, 19, 1087

Recaption of wife, 19, 1094

Religious or social usage as defense, 1
213

Separation deeds, 22, 70, 71

Single act, 1, 211

Solicitation, 1, 213; 4, 670

Statutory modifications, 1, 211

"Taken" in the act of adultery, 25, 2

Validity of second marriage in another
state, of person divorced for adultery,
3, 600

When fornication is, 8, 556

Whether indictable at common law, 1,
210

Whether one may be acquitted without
the other 13, 281

Whether one may be prosecuted without
the other, 13, 281

Witnesses

Wife as, 2, 149; 29, 627, 639

Husband and wife, 1, 214; 29, 634

ADVANCES

Advancements, 1, 224

Advancing, 1, 224

ADVANCEMENTS, 1, 216; 13, 92

See **GIFTS; HOTCHPOT.**

Agreement that it shall bar further claim,
1, 219

Amounts advanced very small, 13, 96

As part of intestate's estate, 1, 223

Bequest of residue, 13, 98

By wife, under power to divide a property,
1, 224

Change of debts to, 1, 223

Change of gifts to, 1, 223

Declaration of the donor, 1, 219

Definition, 1, 216

Devises of real estate, 13, 98, 102

Differences

In amounts, 13, 95

In limitations, 13, 95

In times of payment between two pro-
visions, 13, 96

Directions in will as to, 1, 220

Effect of ademption of life interest upon
ulterior limitation, 13, 94

Effect of refusal to bring into hotchpot,
1, 223

Evidence to rebut, 1, 221

Extrinsic Evidence, 13, 105
 Declarations, 13, 108
 Determining what meant by subsequent act, 13, 105
 Effect of release, 13, 109
 Gift, 13, 106
 Legacies to strangers, 13, 107
 Portions, 13, 106
 Proving or disproving parental relationship, 13, 105
 Raising presumption, 13, 107
 Raising presumption in first instance, 13, 105
 Rebuttal, 13, 107
 Receipts, 13, 108
 Repelling presumption itself, 13, 105, 106
Fathers, 1, 221
 Gifts between parent and child, 8, 1334
Grandfathers, 13, 93
Husband and Wife, 13, 581
 Creditor, 14, 581, 582
 Rebutting presumption of advancement, 14, 581
 What sufficient rebuttal, 14, 581
In loco parentis, 13, 94
 Intention, 13, 97
Interest, 11, 396
 Charging of, 1, 222
 Upon, from death of parent, 1, 222
 Legacy certain and advancement contingent, 13, 97
 Legacy of subsequent advancement not of same kind, 13, 97
 Legacy or advancement given in compensation, 13, 97, 98
Mothers, 1, 221; 13, 93
 Must be voluntary, 1, 224
No Parental Relation, 13, 94, 99, 103
 Acceptance by legatee in lieu of legacy, 13, 100
 General rule, 13, 99
 In California, 13, 103
 In Kentucky, 13, 103
 In Virginia, 13, 103
 In West Virginia, 13, 103
 Where shown to be on account of legacy, 13, 99
 Payment to husband, 13, 92
 Pecuniary legacy and subsequent gift of house and lot, 13, 97
Presumption, 1, 218; 8, 1334
 A bond or promissory is given, when, 1, 219
 Account stated, 2, 219
 Between a loan and advancement, 1, 218
 Conveyance of land, 1, 218
 Declaration in the deed of gift, 1, 219
 Express agreement by the child, 1, 218
 Loan to a son-in-law, 1, 219
 Necessity of declaration by parent, 1, 218
 Purchase in name of son, 1, 218
 That advancement is in lieu of legacy, 13, 92
 That legacy is by portions, 13, 92

Voluntary conveyances, 1, 218
 Prior to legacy, 13, 94
 Propriety of "advances" in reference to, 1, 224
 Pro tanto ademption of legacy, 13, 92
 Putative father, 13, 93
 Rebuttal, 13, 95, 96
 Refundment, where it exceeds donee's share, 1, 223
 Relinquishment of donee's title by bringing into hotchpot, 1, 223
 Republication of will by codicil, 13, 99
Resulting Trusts
 Burden of proof, 10, 24
 Character impressed by original transaction, 10, 24
 Extension of doctrine, 10, 21
 Extent of trusts when transaction is in fraud of creditors, 10, 23
 General rule, 10, 18
 Illegitimate children, 10, 19
 Land purchased with community property, 10, 20
 Legal wife, 10, 20
 Mother purchasing property in name of son and daughter, 10, 21
 Payment of part of purchase-money, 10, 18
 Presumption of advancement may be rebutted, 10, 24
 Purchase by any one standing in loco parentis, 10, 22
 Purchase by brother in name of another brother, 10, 22
 Purchase by father in name of son and stranger, 10, 21
 Purchase by father in name of son-in-law, 10, 21
 Purchase by grandfather in name of grandchild, 10, 22
 Purchase by husband in name of wife, 10, 19
 Purchase by husband in name of wife and stranger, 20, 21
 Purchase by son in name of father, 10, 19
 Purchase by uncle in name of nephew, 10, 22
 Purchase with property of wife, title in husband, 10, 21
 Slaves, 10, 23
 Stocks, 10, 22
 Transaction will not be construed as advancements if in fraud of creditors, 11, 23
 What evidence admissible to rebut presumption, 10, 25
 What evidence sufficient to rebut the presumption, 10, 24
 When father takes title in name of child, 10, 18
 When the doctrine extends to personal property, 10, 22
 When title is taken in name of daughter, 10, 19
 When title is taken in name of several children, 10, 19

ADVANCEMENTS—*Cont'd***Resulting Trusts—*Cont'd***

When title is taken in name of son and stranger, 10, 19

Where son is minor, 10, 18

Where trust will arise between husband and wife, 10, 20

Satisfaction of debt by, 13, 89

Satisfaction of portions by advancement, 13, 91

Settlement preceding will, 13, 95

Share of residue, 13, 98

Specific legacies, 13, 98

Statute of distributions, 1, 216

Statutes and their construction, 1, 220

Subsequently becoming worthless, 1, 222

Uncles, 13, 93

Under the English statute, 1, 221

What It May Consist of, 1, 217

Annuities, 1, 217

Complete in donor's lifetime, 1, 217

Contingent portions, 1, 217

Future enjoyments, 1, 217

Gifts and inconsiderable sums, 1, 217

Life insurance policy, 1, 217

Money expended in maintenance of a son, 1, 217

Presents for the purpose of pleasure or amusement, 1, 217

Restriction upon alienation, 1, 217

When value to be computed, 1, 222

Where advancement is equal to or greater than the amount of the legacy, 13, 92

Where grandchildren take per capita, 1, 221

Where grandchildren take per stirpes, 1, 221

Whether a legacy or distributive share is an advancement, 13, 91

Will preceding settlement, 13, 9

ADVERSE POSSESSION, 1, 225

See ACTUAL; COLOR OF TITLE.

See generally LIMITATIONS OF ACTIONS; MINES AND MINING CLAIMS; PARTY WALLS; PRESCRIPTION.

As to the dedication of highways, public parks, etc., see DEDICATION.

Abandonment, 1, 295

Abandonment after the statutory period, 1, 295

Actual occupancy, necessity of, 1, 292

Actual possession, see *infra*, POSSESSION MUST BE ACTUAL.

Animo clamandi, 26, 24

Actual possession of water, 1, 297

Adverse party, 17, 474

Against the public where land is dedicated to public uses, 5, 411

Agent, 1, 244

Boundaries and Fences, 1, 248

Inclosure of another's land by mistake, 1, 148

By tenant for life, 6, 881

Champerly and Maintenance

Possession which will render sale of land by another champertous, 3, 81

Color of title, see COLOR OF TITLE.

Constructive possession, 26, 24

Conveyance of co-tenant, 1, 234

Cultivation, 1, 259

Declarations

That party does not hold adversely, 1, 304

Deed not recorded, 1, 283

Definition, 1, 225

Definition of adverse user, 1, 225

Dower barred by, 5, 920

Easements, claim to, 1, 297

Effect of, 1, 301

Ejectment, 6, 204-235

As a bar, 6, 235

Co-tenants, 6, 236

Disseizor defined, 6, 205

General rule as to, 6, 236

In Maine, 6, 204

In Massachusetts, 6, 205

In North Carolina, 6, 204

In Ohio, 6, 204

In South Carolina, 6, 204

In West Virginia, 6, 205

Mere lapse of time without adverse possession, 6, 235

What constitutes, 6, 236

Elevated railroads, 23, 1083

Enclosures, 1, 259

Entirety, 1, 261

Entry by person claiming title, 1, 227

Essentials, 1, 228

Exclusiveness, 1, 261

Executory contract, 1, 229

Foreclosure sale, 1, 246

Fraud, 1, 292

Gifts, 1, 280

Good faith, 1, 277

Government, 13, 716

Highways

Encroachment upon, and nuisance, 1, 297

Holding not adversely to all, 1, 276

Hostile or Adverse, 1, 228, 230

Agent, 1, 244

Attorney and client, 1, 245

Between mortgagor and mortgagee, 1, 245

Between vendor and vendee, 1, 247

Bond for title, 1, 230

Boundaries, 1, 148, 248

Agreement on, with intent only to claim to true line, 1, 249

Agreement to, 1, 249

Designated by grantor, 1, 250

Continuous and notorious, 1, 228

Conveyance by life tenant, 1, 237

Enclosure by means of, 1, 248

Executory contract, 1, 243

Husband and wife, 1, 250; 9, 803; 11, 1121

Influence, 1, 228

Land held after payment of purchase-money, 1, 230

Land held by executory contract, 1, 229

Landlord and tenant, see *infra*, LANDLORD AND TENANT.

Life estate of, 1, 237

- Life tenant's estate acquired adversely,
1, 238
- Mortgage**
Possession of mortgagee after condition broken, 1, 246
- Mortgagor and Mortgagee**
After foreclosure sale, 1, 246
When it becomes adverse, 1, 246
- Ouster, 1, 232**
Evidence of, 1, 233
What constitutes, 1, 233
Part not actually occupied by tenant,
1, 239
Pendente lite purchaser, 1, 247
Possession of dower, 1, 237
Presumptive entry, 1, 251
Subpurchaser, 1, 230
Subtenant, 1, 240
Trusts, see infra, TRUSTS.
Vendor and purchaser, 1, 247; 28, 140,
141
Vendor's disclaimer of vendee's title,
1, 247
- Husband and wife, 1, 250; 9, 803; 11,
1121
- Improvements, 1, 294**
Notice of adverse claim, 1, 294
In cemeteries, 3, 51
Instruction, examples of, 11, 267, 268,
269, 272, 274
Intent as an element, 1, 227
Intention must be manifest, 1, 227
Interference of title, 1, 288
Interruption, 1, 271
Invalid conveyance of title, 1, 285
- Joint Tenants and Tenants in Common, 1,**
235; 11, 1081, 1112; 17, 707, 710
Conveyance of property in adverse
possession of co-tenant, 1, 234; 11,
1119
Effect of ouster, 11, 1119
Examples, 11, 1121
Husband and wife, 11, 1121
North Carolina doctrine, 11, 1121
- Ouster and Disseisin, 11, 1081, 1113**
Acts amounting to ouster, 11, 1117
Acts inconsistent with rights of co-
tenant, 11, 1117
Acts which amount to ouster be-
tween landlord and tenant, 11, 1118
Conveyance of whole property, 1,
234; 11, 1114
Evidence of ouster, 11, 1116
Exclusive possession for great length
of time, 11, 1116
Exclusive receipt of rents and profits,
11, 1115
Levy by creditor, 11, 1114
Ouster question for jury, 11, 1119
Purchase of outstanding title, 11,
1114
Refusal to allow co-tenant to occupy,
11, 1117
Unequivocal act of exclusion, 11,
1116
Where one co-tenant may oust his
fellow, 11, 1113
- Presumption as to, 11, 1080, 1081
Proving ouster, 11, 1119
Right of entry between co-tenants, 11,
1120
Statute as bar to co-tenants, 11, 1120
- Title by Adverse Possession, 11, 1120**
In general, 11, 1120
When statute of limitation begins to
run, 11, 1082, 1112, 1120
- What Constitutes Adverse Possession,**
1, 235; 11, 1112
Actual disseisin, 11, 1112
Actual ouster, 11, 1112
Exclusive possession, 11, 1113
Husband and wife, 11, 1113
Infant co-tenant, 11, 1113
In general, 11, 1112
Notice of hostile occupation, 11, 1112
Peaceable possession of co-tenant,
11, 1112
Silent possession of co-tenant, 11,
1112
Unequivocal act indicating an inten-
tion to hold adversely, 11, 1112
When statute of limitation begins to
run, 11, 1112, 1120
- Landlord and Tenant, 1, 238; 12, 707**
See generally ESTOPPEL.
Definition, 12, 707
Intention that possession should be
adverse, 12, 707
Notice to landlord, 12, 708
Possession of landlord, 12, 707
Possession of tenant, 12, 707
Tenant from year to year, 12, 708
Tenant holding over, 12, 708
- Lease, 12, 990
License, 13, 547
Life estate, 1, 237
Lost deed, 1, 283
- Mines and Mining Claims, 1, 296; 15, 558,**
559
Mistake, 1, 281
Mortgagor and mortgagee, 1, 245
- Municipal Corporations**
Adverse possession of an alley, 1, 302
Property of, 1, 300
States holding that title can be acquired
against, 1, 300
States holding that title cannot be
acquired against, 1, 301
- Notices, 1, 264
Occasional use, 1, 258
Offer to purchase superior title, 1, 272
- Ouster, 1, 233**
*See infra, JOINT TENANTS AND TEN-
ANTS IN COMMON.*
Evidence of co-tenants, 1, 235
Question of fact, 1, 305
- Partnership, 17, 1058
Pendente lite vendee, 1, 247
Permissive entry, 1, 251
- Possession Must Be Actual, 1, 252, 293;**
26, 24
Actual trustee with constructive posses-
sion, 1, 252
Burying ground, 1, 257

ADVERSE POSSESSION—Cont'd**Possession Must Be Actual—Cont'd**

Claim of right, 1, 25

Color of Title, 1, 253

As a substitute for fences, 1, 257

Continued claim of the party, 1, 257

Continued trespasses, 1, 258

Continuous dominion, 1, 256

Cultivation, 1, 255; 26, 24

Evidence of, 1, 259

Must be continuous, 1, 259

Cutting grass, 1, 258

Enclosure not necessarily a fence, 1, 260

Enclosure of substantial character,
1, 259

Enclosure required by statute, 1, 260

Erecting temporary structures, 1, 258

Facts in each as determining actual
possession, 1, 255

Fence, 1, 257

Erected without intention to claim
adversely, 1, 261

Must be substantial, 1, 260

On three sides, 1, 260

Flooding land with water, 1, 257

Improvement, 1, 255

Necessity of residence, 1, 259

Occasional use, 1, 258

Occupation, 1, 255; 26, 24

Possession by agent, 1, 256

Possession by wife, 1, 257

Public action of ownership, 1, 257

Taxes, 1, 261

Residence, 1, 255

Secret trusts, 1, 254

Situation and nature of the property,
1, 255Towns, cultivated lands, and wild lands,
1, 255Upon unequivocal acts of ownership,
1, 261What constitutes actual possession,
1, 254**Possession Must Be Continuous, 1, 265**Applications to proceedings in rem,
1, 267

Computation on time, 1, 267

Ejectment brought by owner, 1, 275

Entry by owner without intention to
interrupt, 1, 274

Entry of legal owner, 1, 274

Held adversely for a period, and for a
period under the owner, 1, 267

Interpretation of what is, 1, 272

Interruption, 1, 271

What is not, 1, 273

Offer to purchase superior title, 1, 273

Outstanding claims, purchase of, 1, 275

Premises vacant without intention to
abandon, 1, 274

Privty, 1, 269, 270, 271

Between tenant for life and remain-
derman, 1, 271

Of estate disseisins, 1, 269

Purchase by adverse holder, 1, 275

Recognition of owner's title, 1, 275

Subsequent entry, 1, 272

Tacking, 1, 269

Possession of mere trespassers, 1, 271

What does not constitute, 1, 271

Title in the United States, 1, 267

What creates privity between disseisors,
1, 269Whether continuous, question for jury,
1, 272

Possession, what constitutes, 1, 255

Presumption of title, 19, 41

Proof of, 1, 303

Burden of, 1, 303

As to ouster, 1, 305

Clear and positive, 1, 305

Declaration of admissibility of, 1, 304

Payment of taxes as evidence, 1, 304

Presumption as to nature of possession,
1, 303

Public Lands, 1, 298

Adverse possession as a bar, 1, 298

Limitation running from date of
patent, 1, 299

Purchase by adverse holder, 1, 275

Question for the court, 1, 225

Real Covenants, 19, 980

Covenants for seisin, 19, 980

Examples, 19, 980

In England, 19, 980

In United States, 19, 980

Whether a breach, 19, 980

Receivers, 20, 137

Religious societies, 20, 805

Reversion, 21, 348

Right of way, 1, 297

Specific Performance

Whether Title Sufficient, 22, 950

Examples, 22, 950

In general, 22, 950

Parol proof of, 22, 950

Reasonable doubt, 22, 950

Squatter claim, 26, 29

State, 13, 716

State lands, 1, 299

Tacking, 1, 269; 24, 1037

Tax deed, 1, 284, 286

Taxes, 1, 261

Payment of, 1, 284

Tenancy for life, 12, 681

Tenants in Common, see *infra*, JOIN1

TENANTS AND TENANTS IN COMMON.

Trove

Severed portions of realty, 26, 777

Whether adverse possessor may main-
tain trover, 26, 746

Trusts and Trustees, 1, 241; 27, 101

Between trustee and cestui que trust,
1, 243

Constructive trusts, 1, 242

Effect of repudiation, 27, 104

Excuse for failing to prosecute claim,
1, 243

Examples, 27, 103, 104

Ignorance of rights, 1, 243

Possession of beneficiary as possession
of trustee, 27, 101Possession of trustee is possession of
beneficiary, 27, 101

- Repudiation of trust by trustee, 27, 104
 Repudiation of trust must be clear, 27, 104
 Secret trusts, 1, 242
 What constitutes a repudiation of a trust, 27, 104
 When it exists between trustee and cestui que trust, 1, 241
 Under parol agreement, 1, 279
 United States, 13, 716
 Vendor and purchaser, 1, 217; 28, 140, 141
Visible, Notorious, and Exclusive, 1, 261
 Cutting timber on wild land, 1, 262
 Depends upon the character of the land, 1, 263
 Entry merely under a claim of right, 1, 262
 Entry under color of title, 1, 262
 Examples of notice, 1, 264, 265
 Notice to the owner, 1, 264
 Presumption of notice from owner of entirety, 1, 264
 Waste, 10, 824
 Water, 1, 206
Watercourses, see **PRESCRIPTION**
 When it transfers title, 26, 26
 Without color of title, 1, 292
ADVERTISEMENTS, 1, 306
 See **NEWSPAPERS**; **SHERIFF'S SALES**.
 As actual notice, 1, 306
 Copyright in, 4, 155
 Cut from a newspaper, as a hand bill, 1, 306
 Judicial sales, 1, 306
 Statement of time, persons, place, etc., 1, 306
ADVICE, 1, 307
 Letter of advice, 13, 237
ADVICE OF COUNSEL
 As to privilege, see **PRIVILEGED COMMUNICATIONS**.
 Affidavit of merits, 15, 372, 382
 As defense to bigamy, 2, 192
 Criminal law, acting under legal advice, 4, 693
 Executors and administrators, 7, 352
 Malicious prosecution, 14, 53
 Trust and trustees, 27, 150
ADWOWNSONS, 9, 360
 See **INCORPOREAL HEREDITAMENTS**.
 Whether included in term land, 12, 655
AEROLITE, 15, 388
AFFIANCED WIFE, 16, 63
AFFIDAVITS, 1, 307
 See **CHANGE OF VENUE**; **CONTINUANCES**; **PERJURY**.
 As to affidavits of merits, or defense, see **MERITS (AFFIDAVITS OF)**.
 Amendment, 1, 314; 16, 825
 Arrest in civil cases, 1, 721
 Attachments, 1, 901
 Bill of particulars, 2, 248
 Bill to take testimony de bene esse, 2, 287, 291
 Competency as evidence, 1, 314
 Construction, 1, 314
 Definition of, 1, 307
 Distinguished from deposition, 16, 770
 Evidence under, 7, 107
 Informs and believes, 10, 711
 Interlineation and erasure, 1, 314
 Interpretation, 1, 314
 Language, 1, 314
 Mechanics' liens, 15, 173
 Notary Public, 1, 310; 16, 768
 Affidavits distinguished from depositions, 16, 770
 Authority to take, 16, 768
 Capacity to act as affected by interest, 16, 774
 Oath, 16, 769
 Power to take it at common law, 1, 310
 Presumption as to regularity, 16, 769
 Proof of official character, 16, 769
 Questioning authority collaterally, 16, 769
 Signature to certificate, 16, 769
 Taken outside of jurisdiction of court, 16, 768
 United States courts, 16, 766
 Notice by publication, 16, 823
 Perjury, 18, 304, 305, 306
 Publication, 16, 824
 Affiant's connection with paper, 16, 824
 Amendment, 16, 825
 By whom made, 16, 823
 Contents of affidavit, 16, 824
 Date of, 16, 824
 Editor, publisher and printer, 16, 823
 Necessity of, 16, 823
 Notice by
 Affidavit of mailing, 16, 821
 Order of, 16, 811
 Action against foreign corporation, 16, 812
 Affidavit in language of statute, 16, 811, 812
 Affidavits that have been used in other actions, 16, 813
 Cause of action, 16, 812
 Collateral attack upon, 16, 813
 Consideration of affidavits by appellate court, 16, 813
 Construction, 16, 811
 Curing defect by, personal service, 16, 813
 Defect in affidavit, 16, 811
 Diligence in searching for party, 16, 812
 Fact insufficiently set forth, 16, 811
 Fact of non-residence, 16, 812
 General statement, 16, 811
 Omissions, 16, 811
 Proof of non-residence, 16, 812
 Return of sheriff, 16, 813
 Statutory requirements, 16, 811
 Verified complaint, 16, 812
 Time clause, 16, 825
 Receivers
 In application for appointment, 20, 96
 Removal of causes, 20, 1023

AFFIDAVITS—*Cont'd***Replevin**, 20, 1081

Affidavit by plaintiff, 20, 1082

Amendment, 20, 1086

As condition precedent, 20, 1081

At common law, 20, 1081

Authority to administer oaths, 20, 1086

By whom affidavit must be taken, 20, 1085

Effect of want of affidavit, 20, 1082

Form

In Connecticut, 20, 1084

In Illinois, 20, 1083

In Indiana, 20, 1083

In Kansas, 20, 1083

In Kentucky, 20, 1084

In Michigan, 20, 1084

In Minnesota, 20, 1084

In Nebraska, 20, 1085

In New Mexico, 20, 1084

In New York, 20, 1084

In Oregon, 20, 1083

In Wisconsin, 20, 1083

Objection on appeal, 20, 1082

Object of action to obtain delivery of goods, 20, 1081

Signing, 20, 1082

Statutory form, 20, 5082

Swearing to affidavit, 20, 1082

Under statutes, 20, 1081

Verifying complaint, 20, 1096

What facts must be set forth in affidavits, 20, 1083

When defendant may object, 20, 1082

Where immediate possession is not asked, 20, 1081

Whether writ must show that affidavit has been given, 20, 1087

Who may make affidavit, 20, 1082

Who may take advantage of want of affidavit, 20, 1082

Requisites, 1, 310; 2, 291; 3, 104, 105

Authentication, 1, 312

"Before me," 1, 309, 311

Definiteness, 1, 312

Interlineations and erasures, 1, 314

Jurat, 1, 311

Proof of, 1, 311

Omission of officer's title, 1, 311

Scandalous matter, 1, 314

Signature, 1, 310

Title, 1, 310

When notice that suit is abandoned, 1, 310

Variance, 1, 313

Venue, 1, 310

Scandalous matter, 1, 314

Stale affidavits, 1, 315

To chattel mortgages, 3, 182

To obtain production of documents, 2, 209

Use, 1, 314

What statements it should contain generally, 1, 310; 2, 291; 3, 104, 105

Who May Make, 1, 307

Agents, 1, 308

Attorney, 1, 308

Competent officer, 1, 309

Corporations, 1, 308

Crime, persons convicted of, 1, 308

Infants, 1, 308

Insane persons, 1, 308

Officer authorized to administer an oath, 1, 309

Officer out of the state, 1, 309

Parties, 1, 308

Party's attorney, 1, 309

Party's counsel who is not his attorney, 1, 310

Proceedings in federal courts, 1, 309

Third parties, 1, 308

AFFINITY, 1, 315

Consanguinity and affinity distinguished, 3, 661

AFFIRMATION, 16, 1023; 29, 765**AFFIRMATIVE PREGNANT**, see **PLEADING**.**AFFIRMATIVE STATUTES**, see **STATUTES**.**AFFRAY**, 1, 315See **ASSAULT**; **PRIZE FIGHT**; **RIOT**; **ROUT**; **UNLAWFUL ASSEMBLY**.

Accessories in, 1, 319

Breaking doors to take affrayer, 1, 748

Definition of, 1, 315

Indictment of several, conviction of one or more, 1, 316

Indictment of two, successful defense of one, 1, 319

Killing person interposing, 1, 755

What is Affray, 1, 318

Appearing armed in a public place, 1, 318

Fighting by mutual consent, 1, 318

Necessity of two or more persons, 1, 318

Quarrelsome or threatening words, 1, 318

When distinguished from assault, 1, 316

AFORESAID, 1, 319See **SAID**.

"Aforesaid county," 10, 592

As aforesaid, 1, 319, 777

Brought up as aforesaid, 1, 319

Convicted as aforesaid, 1, 319

County aforesaid, 1, 319

From the day and year aforesaid, 1, 320

In all the place aforesaid, 1, 320

AFORETHOUGHT, 1, 321Malice *aforethought*, see **MURDER**.**AFOUL**, 1, 321**AFTER**, 1, 321After *acquired property*, see **FUTURE ACQUIRED PROPERTY**.

After conviction, 1, 322

After date, 1, 323

After his decease, 1, 906

After judgment or verdict, 1, 322

After the fact committed, 1, 322

After the passing of an act, 1, 324

Computation of time, 1, 321

From and after, 8, 982

"Of" equivalent to after, 17, 34

Work, 1, 323

AFTERNOON, 1, 324

AFTERWARD, AFTERWARDS, 1, 324
 "As soon afterwards as it is practicable," 1, 324

Thereafterwards, 1, 324

AGAINST, 1, 325
 Against a former statute, 1, 325
 Against her will, 1, 325
 Against law, 1, 325
 Decided, 5, 348

AGE, 1, 326
See generally INFANTS, PEDIGREE.
For the age at which an infant becomes capable of committing crime, see INFANTS.

Capacity of child to commit rape, 1, 328

Computation of age, 1, 327

Evidence of, 1, 327

Hearsay evidence, 9, 329, 330

Identity, 15, 232

In Criminal Law, 1, 327

Burden of proof as to infant's crime, 2, 654

Juror, 12, 326

Marriage, 14, 487

Acknowledgment, 14, 488

At common law, 14, 487

Cohabitation, 14, 488

Consent of parents, 14, 488

Construction of statutes, 14, 488

Females, 14, 487

Guardian, 14, 489

How confirmed, 14, 488

Males, 14, 487

Nullity suit, 14, 489, 534

Parties over seven, 14, 488

Statutes, 14, 488

Validity of, 14, 488

Voidable, 14, 488

Want of age, 14, 487

When marriage must be avoided, 14, 489

Memorandum, 15, 276

Opinion of medical experts to prove, 4, 685

Public lands, 19, 312

AGENCY, 1, 330, 360

See ACCOUNT RENDER.

See ATTORNEY AND CLIENT; AUCTIONS AND AUCTIONEERS; BANKS AND BANKING; BROKERS; CARRIERS OF GOODS; CLERKS; COMMERCIAL TRAVELERS AND DRUMMERS; COMMISSION MERCHANTS; DEPUTY; INSURANCE AGENTS; MANUFACTURING CORPORATIONS.

See generally MASTER AND SERVANT.

See MERCANTILE AGENCIES; OFFICERS AND AGENTS OF PRIVATE CORPORATIONS.

See generally PARTNERSHIP.

See POWERS; POWERS OF ATTORNEY; PUBLIC OFFICERS; STOCK BROKERS.

Agent acting for his own interest, see *infra*, DUTIES.

Architect, see WORKING CONTRACTS.

As to execution of deeds by agents, under power of attorney, see DEEDS.

As to imprisonment of agent for debt, see IMPRISONMENT FOR DEBT.

Bank as collecting agent, see BANKS AND BANKING.

For county's liability for acts and negligence of its agents, see COUNTIES.

For representations of agents, see DECEIT.

Resulting Trusts

As to purchase by agent with principal's funds, see IMPLIED TRUST.

Ship's agent, see SHIPS AND SHIPPING.

Station agent, see STATIONS.

Usury, as to agent's commission, see USURY.

Accounts, see ACCOUNT RENDER.

Demand for, 1, 383

Of receipts and disbursements, 1, 382

Regular, 1, 383

Subagents, 1, 395

Where agency is denied, 1, 384

Where agent refuses to account, 1, 384

Acknowledgment of deed by agent, 1, 170

Acting for Both Parties, 1, 380; 12, 997

Bringing them together, 1, 380

Arbitrators, 1, 673

By consent, 1, 381

Actions

Description, 17, 495

A del credere commission, 1, 396

Admissions, 9, 348

After dissolution, 9, 348

Before agency commenced, 9, 348

Made after transaction took place, 9, 349

Not within scope of agency, 9, 348

Owner and crew, 9, 348

Proof of fact of agency, 9, 350

Adverse Interests, 1, 335

Duty to make disclosure, 1, 372

Adverse Possession

Of agent, 1, 244

Affidavit by agent, 1, 308

Affidavit of merits, 15, 372

Appointment, 1, 336

Benefits accepted by principal, 1, 340

By implication, 1, 340

By parol, 1, 339

By partnership, 1, 338

Corporations, 1, 338

Direct instructions, 1, 343

Former employment, 1, 342

Form of appointment, 1, 336

How made, 1, 1025

Infants, 1, 333

Of agent of corporation to convey land, 4, 239

Parties bound by implication, 1, 345

Scope of implication, 1, 341

To execute bills and notes, 2, 352

Usual course of business, 1, 347

When Not Under Seal

Contract of sale of real estate, 1, 338

Effect of deed in equity, 1, 338

When Under Seal, 1, 337

Appointment by corporation, 1, 338

AGENCY—Cont'd**Appointment—Cont'd**

Written authority to make contract for sale, 1, 338

Arbitration, 1, 673

Submission by agent, 1, 652

Attachment by agent, 1, 902

Authority, see *infra*, POWER.

Actual, 1, 1030

Admission of agent, 1, 1029

Appointment in Writing

As notice of scope of authority, 1, 1031

Construction of instrument conferring, 1, 1037

Custom and usage, 1, 1029

Declarations of agent as to, 1, 351, 1032

Definition of, 1, 1025

Delegation of, see *infra*, DELEGATION OF AUTHORITY.

Express, 1, 1027

Extension of agent's authority by his own statement, 1, 351

General, 1, 1032

How conferred, 1, 1025

Implied, 1, 1028

Liability of principal for acts of agent, 1, 1030

Liability of Principal to Third Parties

By secret instructions, 1, 1031

Where agent exceeds authority in his written appointment, 1, 1031

Limited to particular business, 1, 349

Limited to that expressly conferred, 1, 1026

Notice of scope of, 1, 1031

Of Agents

As to freight contracts, 8, 933

To borrow money, 1, 1037

To buy, 1, 1037

To collect, 1, 1036

To manage real property, see *infra*, POWER TO MANAGE.

To receive merchandise in payment, 1, 1028

To receive purchase-money, 1, 1028

To sell, see *infra*, POWER TO SELL.

To sell and convey land, 1, 1036

To sell and receive payment, see *infra*, POWER TO SELL AND COLLECT.

Of railroad agent to employ a physician, see PHYSICIANS AND SURGEONS.

Ostensible, 1, 1030

Parol evidence to vary written authority, 1, 1038

Power incident to the execution of the agency, 1, 1028

Revocation, 1, 1026

Secret Instructions, 1, 1031

Where third parties have notice of them, 1, 1031

Special authority, 1, 1032

Sudden emergency, 1, 1030

To execute deeds, 3, 829

Where determined by public records, 1, 355

Balliffs

Definition of, 2, 40

Benefits, effect of accepting, 1, 340

Betting agents, 8, 998

Bill of Lading

Executed by Agent, 2, 230

Of consignee, 1, 230

Bill quia timet against agent, 2, 260

Bills and Notes, 1, 362, 388

Acceptance by agent, 2, 374

Agent's liability to principal upon indorsement, 2, 355

Agent's personal liability, 2, 354

Appointment of agent, 2, 352

Authority inferred from the nature of agency, 2, 353

By several persons, 2, 352

Delegation of authority, 2, 352

Delivered in Blank

Liability to third party, 1, 516

Drawer agent of payee, 2, 355

Execution of bills and notes, 2, 333

Liability of third party to principal where agent is derelict, 2, 355

Notice of dishonor by, 2, 411

Payment to the one having possession, 1, 341

Personal liability of agent, 1, 388

Ratification of agent's act, 2, 354

Sufficiency of general parol authority, 2, 352

Taxation, 2, 147, 148

What amounts to ratification, 2, 354

Where agent draws on principal, 2, 354

Where delegation of power is to several persons, 2, 352

Where express written authority has been given, 2, 353

Whether note of principal or agent, 1, 388

Binding principal acting in his own name, 1, 368

Bona fide purchaser from agent, 1, 427

Bottomry, agents of owner loaning money on, 2, 489

Burden of proof, dealing with agent as principal, 2, 650

By act of agent, 1, 445

Charter-party by, 3, 148

Civil Damage Acts

Liability of dealer for sale by agents, 3, 258

Classes of agents, 1, 347

Compensation, 1, 396

A del credere commission, 1, 396

After termination of agency, 1, 397

Commissions

Transaction is incomplete through interference of principal, 1, 396

When due, 1, 396

Deprivation of

For unfaithful conduct, 1, 397

For violation of instructions, 1, 398

After failure to account, 1, 399

- ' Where agent acquires adverse interests, 1, 398
- Where agent acquires for both parties, 1, 399
- Extra allowance for extra work, 1, 396
- For illegal services, 1, 397
- Gratuitous agent, 1, 396
- Lien of agent for, 1, 428
- Salary continuing, 1, 396
- Salary or commissions, 1, 396
- When agency prematurely ended, 1, 399
- When not fixed by agreement, 1, 397
- Confederate money, 15, 706
- Confessions by agents, 3, 490
- Conspiracy by agent to defraud principal, 9, 912
- Construction of Written Instrument**
 - Conferring authority, 1, 1037
- Conversion**
 - Waiver of agent's lien, 1, 428
- Corporations**
 - Appointment of agent to convey real property, 4, 239
 - General authority of agent of corporation to convey its property, 4, 239
 - Necessity that agent affixing seal have authority under seal, 4, 243
 - Necessity that conveyance by agent be in name and under seal of corporation, 4, 240
 - Power of agent of, to make conveyances, 4, 238
 - Coupled with an interest, 1, 336, 446
 - Credit of principal, power to purchase, 1, 366
 - Death, 1, 446, 447, 1026; 3, 852; 5, 138; 7, 326
 - Death of Principal**
 - Acts done by agent after, 1, 447
 - Declaration of Agent**
 - Admissibility of, 1, 414
 - As to his authority, 1, 351, 1032
 - Made subsequent to his agency, 1, 415
 - Definition of, 1, 333; 6, 471
 - Delegation of Authority, 1, 368, 1030**
 - By municipal corporation, 1, 368
 - Custom of trade, 1, 369
 - Implied authority to delegate, 1, 369
 - Ministerial acts, 1, 1030
 - Municipal acts, 1, 369
 - Ratification by principal, 1, 369
 - To execute bills and notes, 2, 352
 - Where authorized by principal, 1, 369
 - Delivery of deed by agent, 5, 424**
 - Demand Against Agent**
 - In trover, 5, 528*
 - Demand by agent, 5, 528^f**
 - Demand for payment of bill or note, 5, 528^{108 105}**
 - Demand upon agent, 5, 528^d**
 - Deputy distinguished from agent, 5, 624**
 - Disavowal, 1, 439**
 - Full knowledge of facts, 1, 441
 - Necessity of, where there has been no appointment, 1, 442
 - Notice to another agent of unauthorized act, 1, 442
 - Reasonable time for, 1, 440
 - Duress of agent, 6, 80
 - Duties of Agents, 1, 368**
 - Accountable only to his principal, 1, 333
 - Accounts, 1, 383
 - Acquiring title to principal's land, 1, 374, 376; 10, 75
 - Agent**
 - Dealing with himself, 1, 372, 378
 - Making profits out of subject-matter of agency, 1, 379
 - Conformance to usage or recognized mode of dealing, 1, 370
 - Depositing principal's money with his own, 1, 384
 - Fiduciary relations, 1, 375
 - Implied trust when agent deals for his own benefit, 1, 374; 10, 75
 - Liability for interest, 1, 384
 - Liability for mistake of law, 1, 372
 - Obedience to Instructions, 1, 369**
 - Immaterial variance from, 1, 370
 - Immoral or illegal instructions, 1, 370
 - In lobbying contract, 1, 370
 - In unforeseen emergencies, 1, 370
 - Performance of duties undertaken, 1, 368
 - Profits belong to principal, 1, 378
 - Purchase by agent void or voidable, 1, 377
 - Purchase by selling-agent at auction, 1, 376
 - Purchase by selling-agent's partner, 1, 376
 - Purchase of principal's lands by agent's clerk, 1, 376
 - Purchase of principal's property after termination of agency, 1, 382
 - Purchase of principal's property at sheriff's sale, 1, 376
 - Purchase of tax title to principal's land, see infra, TAX TITLES.*
 - Purchasing-agent buying his own property, 1, 375; 8, 648
 - Purchasing Direct from Principal, 1, 376**
 - Agent must disclose his notice, 1, 377
 - Selling-agent buying from himself, 1, 375
 - To act in person, 1, 368
 - To give notice to principal, 1, 372
 - To keep principal's property separate from his own, 1, 384
 - To make full disclosure, 1, 372
 - To observe the terms of authority, 1, 369
 - To render full accounts, 1, 382
 - To use ordinary diligence, 1, 371
 - To use reasonable skill, 1, 371
 - Duties of Principal to Agent, 1, 394**
 - Compensation of agent generally, 1, 396
 - Compensation of gratuitous agent, 1, 396

AGENCY—Cont'd**Duties of Principal to Agent—Cont'd**

Compensation, when entitled to, 1, 396

Ejectment by agent, 6, 243

Election Cases

Effect of bribery by agent without knowledge of principal, 6, 370

How agency proven, 6, 371

With knowledge of principal, 6, 370

Embezzlement, 6, 472-474, 475-476

Casual employment, 6, 472

Commission agents, 6, 474

Express agents, 6, 476

Facts which must concur to constitute embezzlement, 6, 473

Intent, 6, 473

Possession of property, 6, 473

Railroad agents, 6, 476

Special services as agent, 6, 472

Stockbrokers, 6, 476

Termination of agency, 6, 472

What constitutes embezzlement by agents, 6, 473

Where relation of master and servant does not exist, 6, 472

Who are agents, 6, 471

Working on commissions, 6, 474

Endorsement of notes by agent, 1, 342

Escrow

Delivery to agent of grantee, 6, 861

Estoppel, 7, 30, 100

By act of agent, 7, 23

Of principal, 1, 353

Execution of bill of lading by agent, 2, 230

Executors and Administrators

Acting by agents, 7, 300

Liability

For acts of agents, 7, 341

Of agents de son tort, 7, 183

Express Companies, 7, 552

As agent of consignee, 7, 552

Embezzlement, 6, 476

Liability of agent, 7, 552

Railroad company, 7, 552

Whether a common carrier, 7, 552

Whether fellow-servant is, on train, 7, 552

Facts from which an appointment may be inferred, 1, 333

False imprisonment, 19, 516

False pretenses, 7, 721

Fiduciary relation, 1, 375

Fire Insurance, see **INSURANCE AGENTS**, 7, 1004

Adoption of strangers' act, 7, 1004

Ratification by principal, 7, 1004

Undisclosed principal, 7, 1004

Forcible Entry and Retainer

Action by agent, 8, 133

Possession by agent, 8, 122

Foreign corporations, 8, 340

Forgery, 8, 489

Former employment, 1, 342

Fraud by agent

Fraudulent Sales, 8, 804, 821

Action against agent, 8, 821

Action against principal, 8, 821

Innocent agent of defrauding principal, 8, 821

Principal's liability, 8, 821

Garnishment by agent, 8, 1158

General Agent, 1, 348, 1032; 10, 96

Authority as held out to the world, 1, 353

Bank cashiers, 1, 349

Binding principal for debt of third party, 1, 1033

Definition, 10, 97

Distinguished from universal agents, 1, 349

Duty to inquire into authority, 10, 97

Factors, 1, 349

Of corporation for service of process, 22, 119

Power to warrant, 1, 358

Secret instructions, 10, 97

Signing or indorsing notes, 1, 1033

To conduct business, 1, 363

To what extent is principal bound, 1, 350

Warranty by, 10, 96

Who are, 1, 349

Husband and Wife, 9, 837; 14, 575

Agency in law and fact, 9, 837

Agency of Husband for Wife, 9, 837; 14, 675

Agency at law, 9, 838

Agency question of fact, 9, 838

Appointment by conduct, 9, 838

Attempt to evade creditors, 9, 839; 14, 576

Authority by conduct, 9, 838

Authority by parol, 9, 838

Contract for services, 9, 839

Extent of authority, 9, 837

His authority, 9, 837

Husband dealing with property, 9, 838

Husband holding property wrongfully, 9, 838

Notice in respect to wife's separate property, 9, 838

Payment for services, 9, 839

Personal liability where he exceeds authority, 9, 839

Power of attorney, 9, 837, 838

Purposes of agency, 9, 838

Ratification, 9, 839

Revocation, 9, 837

Scope of authority, 9, 839

Wife entitled to benefits, 9, 838

Wife responsible for liabilities, 9, 838

Agency of Wife for Husband, 9, 839; 14, 681

Agency in fact, 9, 839

Appointment, 9, 839, 840

At law, 9, 839

Carrying on Business as Agent of Husband, 14, 671

Proof of agency, 14, 671

Cohabitation as ratification, 9, 830

Estoppel for denying authority, 9, 840

- Husband absent from home, 9, 840
- Presumption of agency, 9, 840
- Private directions as limitation upon authority, 9, 840
- Wife testifying, 9, 840
- Apparent or Pretended Agency**, 9, 839 ; 14, 576
- Apportionment in equity, 14, 578
- Claims of creditors, 14, 576
- Conducting business as his own, 14, 576, 577
- Examples, 14, 576, 577
- Fortune amassed by efforts of husband, 14, 578
- Fraud**, 14, 579
 - On creditors, 14, 576-578
- Illustrations, 14, 579
- Question of law or fact, 14, 579
- Remedy of creditors, 14, 578
- Statutes, 14, 579
- Where wife cannot trade alone, 14, 578
- Where wife has no power to trade, 14, 578
- Whether business is husband's or wife's, 14, 579
- Wife's rights, 14, 578
- Declarations, 9, 808
- Legality of agency, 9, 837
- Unity of husband and wife, 9, 836
- Wife as husband's agent, 9, 837
- Illegal contracts, 1, 370
- Implied from form of action, 1, 439
- Implied ratification, to what act it extends, 1, 437
- Implied trust where agent deals for his own benefit, 1, 374; 10, 75
- Implied Warranty by**, 10, 96
 - Agent within scope of authority, 10, 96
 - Customary warranty by special agent, 10, 98
 - General agent, 10, 96
 - General authority to sell including authority to warrant, 10, 98
 - General rule, 10, 96
 - Sales by samples, 10, 97
 - Special agent expressly forbidden to warrant, 10, 100
 - Special agent with limited powers, 10, 96
 - Unusual or extraordinary warranty, 10, 101
 - Where custom is not to warrant, 10, 100
 - With secret instructions, 10, 97
- Infant**
 - Appointment by, 10, 632, 633
 - Lease, 12, 990
- Infringement of patents by, 10, 750
- Insolvency, 11, 227
- Instructions**
 - Ambiguity in, 1, 1038
 - Examples of, 11, 267-269-271-274
- Insurable interests of agents, 11, 316
- Interest on advances by agent, 11, 396
- Interpleader, 11, 408
- Interpreter, 11, 525
- Intoxicating Liquors**, 11, 711
 - Delivery in another state, 11, 744
 - General authority to sell unlawfully, 11, 714
- Liability of agent**, 11, 714-716
 - Agent in general control personally present for only a short time, 11, 716
 - Both principal and agent liable, 11, 715
 - Carrying beer in saloons, 11, 716
 - Defense of agency, 11, 715
 - Drug clerks, 11, 717
 - Examples, 11, 714-716
 - Necessity of authority for sale, 11, 715
 - Participating in an unlawful purpose, 11, 716
 - Presence and supervision of employer, 11, 716
 - Whether necessary defendant should own the liquor, 11, 714
- Liability of Principal**, 11, 711-714, 718
 - Consent of principal, 11, 711
 - In general, 11, 711
 - Intent, 11, 712
 - Knowledge of principal, 11, 711
 - Michigan doctrine, 11, 713
 - Necessity of defendant's assent, 11, 712
 - Sale by agent prima facie sale by principal, 11, 711
 - Sunday, 11, 712
 - Unlawful sale by servant, 11, 712
- Presumption of jury, 11, 713
- Sale in disobedience to orders, 11, 713, 714
- Sale to habitual drunkards, 11, 720
- Sale to Minors**, 11, 718
 - Bartender's liability, 11, 719
 - Deception practiced by minors, 11, 719
 - In Arkansas, 11, 718
 - In Georgia, 11, 718
 - In Indiana, 11, 718
 - In Maryland, 11, 718
 - In Massachusetts, 11, 718
- Intent**, 11, 719
 - A question of fact for jury, 11, 719
 - Knowledge of minors, 11, 719
 - Liability of principal, 11, 718
 - Sale without license, 11, 714
- Joinder of parties, 17, 603
- Joint agents, 1, 335
- Joint executors and administrators, 11, 1028
- Judgments, 12, 93
- Judgment by confession, 12, 1497
- Knowledge of intrinsic facts, 11, 353
- Laches**, 12, 578
 - Accounts, 12, 579
 - Acquiescence by principal, 12, 578, 579
 - Breach of confidence by agent, 12, 578
 - Delay on part of agent, 12, 580
 - Evidence not sufficient to establish fraud, 12, 579

AGENCY—Cont'd

Lease, 12, 995

Acquiescence, 12, 997

Acting for both parties, 12, 997

Agent exceeding his authority, 12, 996

Agent's authority, 12, 995

Authority to collect rent, 12, 997

Execution, 12, 995

Infants, 12, 990

In name of agent, 12, 995

Manner of signature, 12, 995, 996

Ratification by Principal, 12, 996

Acquiescence, 12, 997

Acts by principal in ignorance of facts, 12, 996

Relating back to original transaction, 12, 996

When agent has no authority, 12, 996

Recording, 12, 997

Renewal, 12, 1010

Under seal, 12, 996

Whether agent's authority should be under seal, 12, 996

Whether binding upon principal, 12, 995

Letters**Evidence**, 13, 262

Written by agent, 13, 262

Written to agent, 13, 262

Liability of Agent, see *infra*, DUTIES.

Bill or note, 2, 354

For fraud, 8, 642

On contract in his own name, 1, 392

To principal for terminating agency, 1, 445

To Third Parties, 1, 401

Admissibility of parol evidence on part of agent, 1, 403

After a suit against principal, 1, 416

Agent acting in his own name, 1, 402, 406

Deceit, 1, 407

For acts done after termination of agency, 1, 448

For foreign principal, 1, 404

For fraud, 1, 407

For malicious acts, 1, 407

For money paid in satisfaction of illegal claims, 1, 405

For moneys paid to him by mistake, 1, 405

For Negligence, 1, 406

Where act is outside of scope of employment, 1, 401, 406

For undisclosed principal, 1, 402

Fraud committed in course of employment, 1, 418

Misfeasance, 1, 406

Pledging his own credit, 1, 403

Tort of subagents, 1, 408

When he exceeds his authority, 1, 401

When party knew agent had no authority, 1, 402

Where agent has full control of work, 1, 407

Whether states of the Union would be considered as foreign to each other, 1, 405

Liability of insane person committing a felony through intervention of agent, 4, 706

Liability of one committing a felony through intervention of innocent agent, 4, 706

Liability of Principal

For agent's frauds, 8, 642

To Third Parties, 1, 410

After a suit against agent, 1, 416

Agency's existence, 1, 415

Exclusive credit given to agent, 1, 416

For all acts within the scope of employment, 1, 410

For deceit of agent, 1, 417

For fraud of agent, 1, 417

For negligence of agent, 1, 419

Intoxicating liquors, sale of, 1, 412

Railroad companies liable for acts of their agents, 1, 412

When agent contracts in his own name, 1, 416

Where agent exceeds his authority, 1, 415

Where he receives benefit of tortious act of agent, 1, 408

Liability of undisclosed principal, 1, 402

Libel and Slander, 13, 451

Contribution from employer, 13, 452

Ignorance of servant, 13, 452

Instructions of master, 13, 452

Knowledge of master, 13, 453

Liability of servant, 13, 452

Master's liability, 13, 452

Privileged communications, 13, 416

Ratification, 13, 452

Knowledge of master, 13, 453

Liability of master, 13, 452

Slander of title, 13, 369

Suit by servant, 13, 451

When master may maintain an action, 13, 451

Lien of Agent, 1, 428

Waiver of, 1, 428

When entitled to, 1, 429

Limitation of Actions

New promise, 13, 760

Lobbying contract, 1, 370

Malicious prosecution, 14, 39

Managing agent of corporation for service of process, 22, 123

Married Women, 14, 681

As agent, 14, 681

As husband's agent, see *infra*, HUSBAND AND WIFE.

As to estate or principal, 14, 684

As to personal rights and obligations of wife, 14, 683

As to third parties, 14, 684

As to wife's coverture, 14, 683

Capacity to contract, 14, 620

Compensation, 14, 684

Contract Through Agent, 14, 606

See HUSBAND AND WIFE.

At common law, 14, 620

Capacity to make contracts herself, 14, 620

- Examples, 14, 620
- Under married women's statutes, 14, 620
- Effect of coverture, 14, 683
- Estoppel by contract, 14, 641
- Estoppel in pais, 14, 645
- Husband's Consent**, 14, 683
 - At common law, 14, 683
 - Examples, 14, 683
 - Necessity, 14, 683
- Husband's liability, 14, 684
- Husband's rights and obligations, 14, 684
- Personal liability, 14, 681, 684
- Rights of creditors, 14, 677
- Torts, 14, 647
- Trading, 14, 675
- Whether married women personally liable, 14, 674
- Master and servant, 14, 761, 961
- Master of a Vessel**
 - As general agent by parol, 14, 964
 - Authority to bind owners, 14, 961
 - Bills and notes, 14, 963
 - Binding master beyond value of ship, 14, 964
 - Case of necessity, 14, 961
 - Duty of person trading with, to inquire into authority, 14, 964
 - Examples, 14, 961
 - Hiring seamen, 14, 962
 - Master's authority, 14, 961
 - Purchase of cargo, 14, 963
 - Ratification, 14, 962
 - Receiving cargo, 14, 962
- Repairs**, 14, 963
 - In home port, 14, 963
 - Scope of his authority, 14, 961
 - Settlement of invalid claims, 14, 963
 - Settlement of prior claims, 14, 963
 - Whether special or general agent, 14, 961
- Mechanics' Liens**, 15, 64, 65
 - Admission of agents, 15, 190
 - Agency for wife implied, 15, 65
 - Agent of wife, 15, 65
 - Contractor for erection of building, 15, 64
 - Husband acting as wife's agent, 15, 15, 65
 - Parties to actions, 15, 167
 - Power to subject property to lien, 15, 70
 - Special agent, 15, 64
 - Whether agents may subject property to lien, 15, 64
- Merger, 15, 342
- Mutual insurance, 16, 22
- Negligence**
 - Failure to collect, 1, 372
 - Liability of principal for agent's negligence, 1, 419
 - Liability for acts outside of scope of employment, 1, 406
- Liability of Agent**
 - For attorney's neglect, 1, 394
 - For negligence of subagent, 1, 394
- To Third Parties**, 1, 406
- Where he has full control of work, 1, 407
- Liability of gratuitous agent, 1, 372
- Notice to Agent Is Notice to Principal**, 1, 419, 421
 - After the agency is terminated, 1, 420
 - Before agency is begun, 1, 420
 - In what transactions notice will bind principal, 1, 422
 - To whom it must be given, 1, 422
 - Within the scope of agent's employment, 1, 421
- Parent and Child**
 - Power of Child to Bind Parent as Agent**, 17, 356
 - Adult child, 17, 357
 - Burden of proof, 17, 358
 - Child leaving home through fear of violence, 17, 357
 - Circumstances sufficient to justify finding the authority of the child, 17, 356
 - Examples, 17, 356-358
 - General rule, 17, 356
 - Minor voluntarily leaving home, 17, 357
 - Necessity of express or implied contract, 17, 356
 - When parent cannot be held liable, 17, 356-358
 - Presumption of, existence of agency between, 1, 345
- Parol Evidence**
 - Admissibility of, on behalf of agent, 1, 403
 - As to whether signature binds agent, 1, 391
 - To vary written authority, 1, 1038
- Parties to actions, 17, 653
- Partnership**, 17, 831, 840
 - The firm as an agent, 17, 1083
- Patent law, 18, 137
- Payment**, 1, 355; 18, 191
 - Agent authorized to receive, 18, 191
 - Attorney, 18, 191
 - Authority to receive interest, 18, 193
 - Burden of proof, 18, 192, 193
 - Cash, 18, 194
 - Commutation, 18, 194
 - Death of creditor, 18, 193
 - Delivery of note to agent of holder for collection, 18, 191
 - Evidence of agent's authority to receive, 18, 191
 - Examples of payment to agents, 18, 191-195
 - In anything but money, 18, 194
 - In general, 18, 191-195
 - Medium of payment, 18, 194
 - Receiving note as, 18, 194
 - Receiving payment before it is due, 18, 194
 - Release of an agent's own debts, 18, 194
 - Revocation, 18, 193
- Personal responsibility of agents for coventants, 4, 490

AGENCY—Cont'd

Pledge and collateral security, 18, 660

Power of Agent, see **POWERS**; see *infra*, **AUTHORITY**.

In possession of goods to receive payment, 1, 356

Miscellaneous powers considered, 1, 362

To do what is necessary to carry out object of agency, 1, 355

Power to Collect, 1, 357

Extending time of payment, 1, 357

Including power to sue, 1, 358

Making a release, 1, 357

Receiving merchandise in payment, 1, 357

Receiving note in payment, 1, 357

Suit in agent's name, 1, 358

Power to Conduct Business, 1, 363

Authority

Co-extensive with scope of business, 1, 363

To bind principal for debt of another, 1, 364

To bring suits, 1, 363

To collect debts, 1, 363

To collect insurance, 1, 364

To give notes for purchases, 1, 363

To make notes, 1, 364

To pledge a mortgage, 1, 363

To sell principal's land, 1, 364

Scope of power, 1, 363

Power to control real estate, 1, 366

Power to draw, 1, 362

Power to Employ, 1, 364

Scope of authority, 1, 364

Power to execute sealed instruments, 1, 337

Power to fill in blanks in deed, 1, 337

Power to foreclose, 1, 367

Power to loan and borrow, 1, 366

Power to Manage, 1, 1037

Includes power to insure, 1, 366

Including power to rent, 1, 366

Including power to sell, 1, 366

Suit by agent in his own name, 1, 365

Power to mortgage, 1, 366

Power to perform contracts, 1, 367

Power to purchase, including power to purchase on credit, 1, 366

Power to receive payment, see *infra*, **PAYMENT**.

Power to Sell, 1, 346, 359, 1035

Authority in specifying particular property, 1, 360

Authority to borrow, 1, 360

Authority to execute instrument necessary to sell, 1, 360

Authority to sell in payment of agent's debt, 1, 360

Authority to sell on credit, 1, 360

Construction of, 1, 359

Including power to deduct, 1, 361

Including power to mortgage, 1, 360

Including power to warrant, 1, 358

Received by agent, 1, 359

Whether included in power to deduct business, 1, 364

Whether included in power to manage, 1, 366

Whether it includes power to collect, 1, 355

Power to Sell and to Collect, 1, 356, 1036

As including power to mortgage, 1, 356

Receiving cash in payment, 1, 356

Receiving merchandise, 1, 356

Power to settle an account, 1, 357

Power to settle suits, 1, 367

Power to ship, authority under, 1, 361

Principal's Liability for Crimes of Agent, 4, 703

Committed without his authority, 4, 703

Presumption as to agent's authority, 4, 703

Principal's prima facie liability for crime done by agent in general course of business, 4, 703

Privileged communications, 19, 156

Production of Documents

Where adverse party is agent of applicant, 19, 243

Where documents are in the hands of adverse party's agent, 19, 244

Profits belong to principal, 1, 379

Proof of

Fact that party acted as agent upon other occasions, 7, 64

Purchase by agent with principal's funds, see **IMPLIED TRUSTS**.

Purchases principal's property for himself, 1, 376; 8, 648

Purchasing-agent buying his own property, 1, 375

Purchasing direct from principal, 1, 376

Purchasing for himself, 1, 378, 864

Questions of law and fact, 19, 629

Railroad Agents, 1, 361

See generally **OFFICERS AND AGENTS OF PRIVATE CORPORATIONS**.

Scope of authority, 1, 361

Telegraph operator's authority, 1, 361

Ratification, 1, 429

Affirmance of a loan at usurious interest, 1, 435

After termination of agency, 1, 435

Bills and notes, 2, 354

By an agent having authority, 1, 433

By operation of law, 1, 446

By parol, where authority is under seal, 1, 444

Capacity of principal to ratify, 1, 433

Corporation having received benefit of an agreement made before incorporation, 1, 432

Disaffirmance, 1, 433

Disavowal as preventing, 1, 434

Effect of, 1, 429

Election, 6, 251

Evidence sufficient to show, 1, 442

Evidence to show, where principal has received proceeds, 1, 442

Express, where the act is that of a volunteer, 1, 442

- Failure to disavow, 1, 440
 Formal ratification, 1, 435
 Implied, 1, 437
 Intention to be shown, 1, 438
 Intervening right to third party, 1, 436
 In tort, 1, 434
 Naked power, 1, 445
 Necessity of act being done in principal's name, 1, 431
 Necessity of disavowal, 1, 439
 Necessity of existence of principal, 1, 432
 Necessity of principal's knowledge of all the facts, 1, 432
 Necessity of seal, 1, 436
 Of a forgery, 1, 431
 Of authority, 1, 444
 Of submission to arbitration, 1, 653
 Of torts, 1, 434
 Of unauthorized sale as a ratification of a warranty, 1, 435
 Payment of notes made by agent, 1, 438
 Principal retaining money in ignorance of the facts, 1, 433
 Principal's acceptance of proceeds, 1, 437
 Question for the jury, 1, 439
 Reference to precise act, 1, 436
 Restriction of, 1, 434
 Retaining proceeds of transaction, 1, 433
 Silence of the principal, 1, 440
 Silence where principal did not know of unauthorized act, 1, 441
 Subsequent extension of agent's power, 1, 436
 To what time it relates, 1, 430
 Verbal ratification of deed, 1, 386
 Voidable and void acts, 1, 430
 When conferred for a consideration, 1, 446
When Coupled with Interest, 1, 445
 Other than in the subject-matter of the agency, 1, 446
 Where agent is deceived about facts, 1, 433
 Reasonable skill, 1, 371
Receivers of Railroads
 Whether agent of receiver agent of company, 20, 359
 Whether receiver agent of company, 20, 359
Release, 20, 749
 Contingent liability, 20, 749
 Where no special authority, 20, 749
 Removal of causes, 20, 988
 Representations as to credit, 21, 7
Rescission
 Agent's fraud, 21, 33
 Undue influence, 21, 37
 Want of authority on part of agent, 21, 41
Res Gestæ
 Declarations of Agents and Employees
 Agent acting in scope of his agency, 21, 108
 Declarations made at a different place, 21, 109
 Examples, 21, 108-110
 Lapse of time, 21, 110
 Transactions not pending, 21, 109
 When declaration admissible, 12, 108
 Where agent's right to act has ceased, 21, 110
Res Judicata, 21, 157
 Examples, 21, 157-159
Exceptions
 The rule that there is no privity between principal and agent has many exceptions, 21, 157
 Privity between principal and agent, 21, 144
 Shipowner and master, 21, 158
 When judgment binding, 21, 157
Revocation, see *infra*, **TERMINATION**.
 Reward, 21, 402
Rights of Agent Against Principal, 1, 428, 429
 Right to indemnification from principal for acts done in pursuance of his authority, 1, 399
 Right to interest on advances, 1, 400
 Right to reimbursement for advances, 1, 399
 Right to reimbursement for expenses incurred in doing illegal acts, 1, 400
Rights of agent against third parties, 1, 408
Rights of Principal Against Third Parties, 1, 423
 Agent acting sometimes as principal and sometimes as agent, 1, 427
 Bona fide purchaser, 1, 427
 Conversation by agent, 1, 428
 Modified by acts, 1, 425
 Principal may follow his property into the hands of third parties, 1, 427
 Set-off claim against agent, 1, 425
 Subject to equities existing between agent and third party, 1, 425
 To recover money mistakenly paid by agent, 1, 427
 Torts, 1, 438
 When payment has been made to principal, 1, 426
Sales, 21, 455
 Acceptance by agent, 21, 455
 Procured by false representation of agent, 1, 417
Savings banks, 21, 720
Scope of Employment, 1, 341
 Determined by usage, 1, 354
 Fraud committed in, 1, 418
 How determined, 1, 411
 Instrument binding principal within, 1, 350
 Liability for negligence for acts outside, 1, 406
 Liability of principal for negligence of agent within, 1, 419
 Notice of another agent's unauthorized acts, 1, 442
 Notice to be binding must be within, 1, 421

AGENCY—Cont'd**Scope of Employment—Cont'd**

Principal liable for all acts of agent within, 1, 410

Seal

Lease, 12, 987

Necessity of authority under, to fill blank in deed, 1, 519

Necessity of, to ratification, 1, 436

Seal of principal, 1, 386

Unnecessary seal treated as surplusage, 1, 393

Secret Instructions, 1, 354, 1031; 10, 97**Effect of**

Generally, 1, 350

Where party has notice, 1, 351

Secret profit by agent, 1, 372**Selling-agent buying from himself, 1, 375****Servants and Clerks**

Where the relation of master and servant does not exist, 6, 472

Set-off, 1, 425; 22, 235, 320**Action Against Principal**

Set-off of claim due by plaintiff to agent, 22, 322

Action by Agent for Principal

Set-off of Debt Due by Principal, 22, 322

Auctioneer suing for price of goods, 22, 322

Examples, 22, 322

General rule, 22, 322

Where agent has an interest in the suit, 22, 322, 323

Where agent sues in his own name, 22, 322

Where purchaser has no notice of agent's interest, 22, 323

Action by Principal

Set-off a Claim Due by Agent, 22, 320

Belief that goods belong to agent, 22, 320

Broker selling goods in his own name, 22, 321

Examples, 22, 320

In general, 22, 320

Undisclosed principal, 22, 321

What sufficient notice of agency, 22, 320

Where agent has neither possession nor indicia of ownership, 22, 320

Where buyer has opportunity of knowing that seller is the agent, 22, 321

Counterclaim, 22, 409

In suits by, against, and between principal and agent, 22, 320

Mutuality in general, 22, 320-326

Right of Set-off Where Person Has Dealt with Agent Supposing Him to Be Sole Principal, 22, 323

Agent's claim against plaintiff, 22, 325

Debt due by plaintiff to undisclosed principal, 22, 325

Defendant's plea, 22, 324

Directions of principal, 22, 325

Examples, 22, 325, 326

Means of knowing agent's capacity, 22, 325

Set-off against agent, 22, 323

Setting off claims against agent, 22, 323

Suit in name of agent, 22, 323

Suit in name of principal, 22, 323

Suit against action for individual debt, 22, 323

Suit by agent in his own right, 22, 323

Settlement, 22, 489**Signature**

Agent signing his own name, 1, 386

Bills and notes, 1, 388

By attorney in his own name as equitable title, 1, 386

Corporate seal as, 1, 390

Effect of adding "agent" to the signature of the drawer of the bill, 1, 390

Endorsement by agent as treasurer, president, etc., 1, 389

"For or in behalf of," 8, 81

Form of words necessary, 1, 385

Instruments under seal, 1, 385

Intention appearing on the face of the instrument, 1, 387

Intention not appearing on the face of the instrument, 1, 387

Liability of agent upon contract in his own name, 1, 392

Necessity of signing his own name also, 1, 393

Officers and agents of private corporations, 17, 146, 154

Parol Evidence

To show character of party, 1, 391

To show that party signed as agent of another, 1, 391

To show that party to contract acted as agent, 1, 392

Personal liability of agent, 1, 387

Signature in presence and upon request of principal, 1, 394

Signed and sealed in name of principal, 1, 386

Special Agents, 1, 348

Authority as held out to the world, 1, 353

Disregard of principal's instructions, 1, 352

Effect of secret instructions, 1, 354

Implied Warranty by, 10, 98

Usages and customs, 10, 99

Of corporation for service of process, 22, 122

Power to warrant, 1, 359

To what extent it binds principal, 1, 351

Use of proper means to effect object of agency, 1, 353

Special authority, 1, 1032**Specific Performance**

Agent as a party, 22, 1066

Statement of account to agent, 1, 122

Statute of Frauds, 21, 7

- Execution by Agent, 8, 665**
 Authority of agent, 8, 665
 Instrument executed in blank, 8, 665
 Ratification, 8, 665
 Signature made by another in party's presence, 8, 665
 When agent's authority must be under seal, 8, 665
 When authority must be in writing, 8, 665
- Memorandum Made by Agents, 8, 719**
 Agent must be authorized to sign, 8, 721
 Attorney, 8, 721
 Auctioneer agent for both parties, 8, 720
 Auctioneer's clerk, 8, 720
 Auctioneers' nominal interest, 8, 719
 Brokers, 8, 720
 Broker's clerk, 8, 720
 Form of execution by agent, 8, 721
 Necessity that agent's authority be in writing, 8, 719
 One party as agent of another, 8, 719
 Partners, agents of the firm, 8, 720
 Person not a public officer, 8, 720
 Ratification by parol, 8, 719
 Same person as agent for both parties, 8, 719, 720
 Sheriffs, administrators, commissioners, etc., 8, 720
 Signature by agents, 8, 718
- Stock Exchange**
 Liability of members for debt, 23, 753
- Stoppage in Transitu**
 Delivery to agent of consignee, 23, 913
 Delivery to buyer's agent, 23, 921
 Exercise of the right by agent, 23, 905
 Ratification where one acts without authority, 23, 905
- Streets and Sidewalks**
 Dedication, 24, 8
- Subagent, 1, 395**
 Accountable to immediate principal, 1, 395
- Liability of Agent**
 For attorney's neglect, 1, 394
 For fraud of subagent, 1, 394
 For negligence of subagent, 1, 394
 For tort of subagent, 1, 408
 Liability of principal for his compensation, 1, 395
 Revocation of subagent's power by death of agent, 1, 447
 Suit by agent, 1, 394
 Where appointed without authority, 1, 395
- Succession Taxes**
 Property within the state, 24, 463
 Residence of agent, 24, 463
- Suits by Agent**
 Against principal for compensation, 1, 429
 For money mistakenly paid, 1, 427
 Negotiable bill endorsed in blank, 1, 409
- Right both of principal and agent to sue in doubtful case, 1, 410
 Under a del credere commission, 1, 410
 Upon policy of insurance issued in name of agent, 1, 409
 When acting in his own name, 1, 409
 When acting in principal's name, 1, 408
 When he has an interest in subject-matter, 1, 410
 Where doubtful whether contract was made with principal or agent, 1, 409
 Where principal is undisclosed, 1, 409
- Suits by Principal**
 For money mistakenly paid by the agent, 1, 427
 In contracts under seal, 1, 425
 Negotiable instruments signed by agent in his own name, 1, 425
 On agent's contract, 1, 423
- Supplementary Proceedings**
 Proceedings by contract, 24, 606
- Taxation, 25, 126**
 Assessment, 25, 214
 Bills and notes, 25, 147, 148
 Payment by agent, 25, 279
 Redemption, 25, 413
- Tax Titles**
Whether Agent May Acquire Tax Title,
 1, 378; 25, 711
 Agent engaged to bid, 25, 711
 Agent taking title in his own name, 25, 711
 Attorneys, 25, 711
 Failure of principal to furnish funds, 25, 711
 In general, 25, 711
 Renunciation of agency, 25, 711
- Termination of, 1, 443, 1020, 1026**
 Act of agent, 1, 445
 Acts done after death of principal, 1, 447
 Bankruptcy, 1, 448, 1027
 By act of principal, 1, 444
 Death, 1, 146, 446, 1026; 3, 852; 5, 138; 7, 326
 Implied, 1, 444
 Insanity of agent, 1, 448
 Insanity of principal, 1, 447, 1027
 Marriage of agent, 1, 448
 Marriage of principal, 1, 448
 Naked power revocable, 1, 445
 Of an agency to find a purchaser, 1, 443
 Operation of law, 1, 1026
 Partnership dissolution, 1, 448
 Ratification after, 1, 435
 Revocation, 1, 448
 Subagency, 1, 448
 Subagent's power terminated by death of agent, 1, 447
 War, 1, 448; 28, 605.
 When conferred for a consideration, 1, 446
 When coupled with interest other than in the subject-matter of agency, 1, 446
 Where authority is under seal, 1, 444

AGENCY—Cont'd**Termination of—Cont'd**

Where express agreement exists limiting period, 1, 443

Where power is coupled with an interest, 1, 445; 5, 138

Trespass, 26, 575

Contribution, 26, 579

Trespass on the case, 26, 705

Trover

Agent's Liability, 26, 782

Acting under direction of principal, 26, 779

Acting within scope of authority, 26, 784

Agent detaining goods of third party, 26, 779

Examples, 26, 782-784

How far agent's ignorance excuses him, 26, 720, 723, 779

Investing money in his own name, 26, 783

Misapplication of profits of sale, 26, 783

Misuse of authority, 26, 782, 783

Selling under fixed price, 26, 783

Conversion by detention, 26, 728

Dealing in goods at request of person, in the bona fide belief that custodian is true owner, 26, 722

Detention by agent, 26, 728

How far defendant's ignorance of plaintiff's rights a defense, 26, 720-722

Trusts and Trustees, 27, 144

Trustee purchasing as agent of another, 27, 209

Undisclosed Principal, 1, 402

Election to sue, 1, 403

Election to sue principal or agent, 1, 416

Equities between third parties and agent, 1, 425

Liability of, 1, 415

Payment to agent after notice, 1, 426

Payment to agent without notice of agency, 1, 426

Set-off of claim against agent, see infra, SET-OFF.

Suit by agent, 1, 409

Suits by, 1, 423

Undue Influence, 27, 477

Burden of establishing agency, 27, 480

Examples, 27, 477-480

Gifts, 27, 478

From principal to agent, 27, 480

Independent advice, 27, 480

In loco parentis, 27, 480

Presumptions, 27, 477

Principal and agent, 27, 477

Purchasing property, 27, 479

Sale of principal's land, 27, 478

Universal agents, 1, 349

Usages and Customs

Knowledge of usages, 27, 744

Reasonableness of Usage Between Principal and Agent, 27, 774

Commissions, 27, 775

Enlargement of agent's authority, 27, 774

Examples, 27, 774, 775

In general, 27, 774

Masters of vessels, 27, 775

To determine scope must not be repugnant, 1, 355

Usage Contrary to Common Law, 27, 786

Agent both vendor and vendee, 27, 788

Agent must act for benefit of principal, 27, 786

Agent's interests in conflict with the principal's, 27, 787

Examples, 27, 787-791

In general, 27, 786

Profits made by agent out of principal's property, 27, 788

Scope of agent's authority, 27, 789

Usages Between Principal and Agent, 27, 885

Agent's compensation, 27, 894

Authority of agents, 27, 888

Conduct of agents, 27, 887

Duty of principal to inform himself of usage, 27, 885

Employment of subagent, 27, 890

Obedience to principal's directions, 27, 891

Of a particular business, 27, 885

Of a particular place, 27, 885

Persons dealing with agent, 27, 886

Power to warrant, 27, 890

Remittances to principal, 27, 893

Sale on credit, 27, 889

Usage in contracts of agency, 27, 885

Usages to vary contracts, 27, 854

Usual course of business, 1, 347

Vendors and Purchasers, 28, 93

Authority, 28, 94

Compensation, 28, 95

Examples, 28, 94, 95

In general, 28, 95

Insolvency of party, 28, 95

Refusal of vendor to convey, 28, 95

Enforcement, 28, 94

Examples, 28, 93, 94

In general, 28, 93

Undisclosed principal, 28, 94

War, 1, 448; 28, 605

Warranty, see *infra*, IMPLIED WARRANTY.**Authority of Agent, 28, 779**

Agent's personal warranty, 28, 784

Auctioneers, 28, 783

Brokers, 28, 783

Burden to prove agent's authority, 28, 784

Character of agency, 28, 779

Commission merchants, 28, 783

Examples, 28, 779-785

Express warranty, 28, 779

General agent, 28, 779

Horses, 28, 780

Husband and wife, 28, 781

In general, 28, 779

- Knowledge of agent's authority, 28, 783
 Ratification, 28, 784
 Special agent, 28, 782
 Usage, 28, 780
 Usage of trade, 28, 779
 Warranty and delivery after sale, 28, 782
 By agent to sell, 1, 1035
 Notice of defects to agent, 28, 832, 833
 When agent and principal are bound after revocation, 1, 448
 When principal entitled to interest from agent, 5, 528²⁷
When Under Seal
 Parol authority to buy land, 1, 378
 Whether a question of law or fact, 27, 479
Who May Be Agents
 Adverse interests, 1, 335
 Husband as wife's agent, 1, 335
 Joint agent, 1, 335
 Joint agents to prosecute public business, 1, 335
 Wife as agent for husband, 1, 334
Who May Be Principal, 1, 333
 Corporations, 1, 334
 Disabilities, 1, 334
 General rule, 1, 333
 Infants, 1, 333
 Joint principals, 1, 334
 Married woman, 1, 333
Witnesses
Agent as, 29, 587
 Damage done to property, 29, 590
 Examples, 29, 587-589
 In general, 29, 587
 Misconduct of servant, 29, 589
 When liable to one of the parties, 29, 589
Wrongful Sale by Agent
Rights of Bona Fide Purchasers, 21, 572
 Exchange instead of sale, 21, 572
 Purchase without knowledge of factor's relation to the goods, 21, 572
 Sale in payment of agent's own debts, 21, 572
Statutes Protecting Purchasers, 21, 572
 Brokers, 21, 573
 In Canada, 21, 572
 In England, 21, 572
 In United States, 21, 572
 Indicia of title, 21, 573
 Person must be a factor or agent, 21, 572
 Possession of the goods, 21, 572
 Purchaser buying from factor without knowledge of his real character, 21, 572
 Warehousemen, 21, 574
 Wharfingers, 21, 573
 Where agent exceeds his authority, 21, 572
 Where purchaser acquires title, 21, 572
AGGREGATE, 1, 449
AGGREGATE PAYMENTS, 1, 449
AGGREGATION
In patent law, see INVENTION.
In patent law, 11, 796
AGGRIEVED, 1, 449
See PERSON AGGRIEVED; PARTY AGGRIEVED.
AGISTER, 1, 451
See LIVERY STABLE KEEPERS.
 Degree of care required of, 2, 54
 Liability of, 1, 589
 Lien on animal intrusted to his care, 1, 590
 Lien on horses, 9, 770
 Liens, 11, 40
AGREE, 1, 451, 452
AGREEABLE, 1, 451
AGREEABLY, 1, 451
AGREED, 1, 451
 "Dismissed agreed," 1, 451
 Freight agreed, 1, 451
 It is agreed, 1, 452
 Synonymous with contracted, 1, 451
AGREED CASE, 24, 141
 Admissions, 24, 156
 Affidavit, 24, 146
 Amendment, 24, 151
 Argument of counsel, 24, 152
 Competency of parties, 24, 150
 Consequence of defective case, 24, 149
Contents, 24, 143
 Examples, 24, 143-145
 In general, 24, 143
 Omission of material facts, 24, 144
 Specified contents, 24, 143
 Costs, 24, 152
Court, see infra, DUTY OF COURT.
 Court inferring facts, 24, 148-149
 Defective case, 24, 149
 Definition, 24, 142
Duty of Court, 24, 147
 Going beyond the issue, 24, 148
 In general, 24, 147
 Judgment, 24, 148
 Power to infer facts reserved to the court, 24, 149
Effect of Submission, 24, 153
 Finality, 24, 153
 On admissions, 24, 156
Waiver of Objections to Form of Action and Pleadings, 24, 154
 Cure of defects, 24, 155
 In general, 24, 154
 Pleadings referred to as part of case, 24, 156
 Writ of error, 24, 153
 Estoppel, 24, 156
 Examples, 24, 144
 Fictitious case, 24, 145
 Form, 24, 145
 Good faith, 24, 145
Judgment, 24, 148
 Finality, 24, 153
 Misstatement of facts, 24, 150

AGREED CASE—Cont'd

- Nature and purpose, 24, 142
- Nature of Controversy to Be Submitted, 24, 145
- Affidavit, 24, 146
- Controversy must be subject of a civil action, 24, 146
- Effectual judgment, 24, 146
- Fictitious controversy, 24, 145
- Good faith, 24, 145
- Matters proper for a plea in abatement, 24, 147
- Misconduct of attorney, 24, 146
- Omission of material facts, 24, 144
- Open and close, 24, 153
- Parties, 24, 150
- Requisites, 24, 143
- Rescission, 24, 152
- Right to open and close, 24, 153
- Setting forth evidence of fact instead of facts, 24, 149
- Signature, 24, 145
- The case, 24, 142
- Upon what submitted, 24, 141
- Venire facias de novo, 24, 149
- Waiver of jury, 24, 142
- Waiver of Objection to Form of Action and Pleading, 24, 154
- Cure of defects, 24, 155
- In general, 24, 154
- Pleadings referred to as part of case, 24, 155
- What may be submitted, see *infra* NATURE OF CONTROVERSY TO BE SUBMITTED.
- Writ of error, 24, 153

AGREEMENT

- Per agreement, 18, 297
- Terms of agreement, 25, 951

AGRICULTURAL, 1, 452

- Fixtures*, see *FIXTURES*.
- Employment, 1, 452
- Engaged in agriculture, 1, 452
- Ordinary agricultural crop, 17, 271

AID, 1, 452

- And abet, 1, 453, 454
- Or assistance, 1, 453
- Or comfort, 1, 453

AID BONDS, see MUNICIPAL AID BONDS

AIDERS AND ABETTERS, 1, 453

- Counsel or procure, 4, 331
- Counterfeiting, 4, 336
- Criminal conspiracy, 4, 619
- Escape, 6, 851
- Felony, 4, 653
- Homicide, indictment, 9, 644
- Instigation to commit crime, 4, 706
- Instruction, examples of, 11, 268-269-272-274

Intoxicating Liquors, 11, 724, 725

- Sale to minors, 11, 702, 704
- Liability of aider and abettor where act committed has no connection with common object, 4, 620

Murder, 9, 574

- Advising person to administer poison, 9, 575

- Aiding in a robbery, 9, 575
- Bystander participating, 9, 575
- Guilty as principal, 9, 574
- Loaning weapon, 9, 574
- Mere presence not sufficient, 9, 574
- Necessity of prior conspiracy, 9, 574
- Standing upon watch or keeping guard, 9, 575
- Prize fight, 19, 157
- Suicide, 24, 491
- Trespass, 26, 575

AIDER BY VERDICT, see VERDICT.

AIR, see EASEMENTS; ELEVATED RAILROADS.

- Fences obstructing, 26, 593
- Prescription, 19, 27

AIR-TIGHT, 1, 454

ALARM, 1, 454

- Giving a false alarm, 1, 454

ALCALDE, 1, 454

ALCOHOL, see INTOXICATING LIQUORS.

ALDERMEN

- Incompatible offices, 19, 562w

ALE, see INTOXICATING LIQUORS.

ALEATORY, 1, 454

- Aleatory contracts, 1, 454

ALIAS DICTUS, see MISNOMER.

ALIBI, 1, 454

- Burden of proof, 1, 455
- Homicide, sufficiency and weight of evidence, 9, 731
- Instruction, examples of, 1, 456; 11, 269-274
- Larceny, 12, 850
- Preponderance of evidence to sustain, 1, 454; 4, 860

Proof of

- Need not exclude possibility of being at place of crime, 1, 456
- Reasonable doubt, 1, 455
- Time when the offense was committed, 1, 456
- Suspicion attaching to evidence showing, 1, 456
- Unsuccessful attempt to prove, 1, 456

ALIEN, 1, 456

- See CHINESE; CITIZENSHIP; ESCHEAT; EXPATRIATION; TREATIES; WAR.

Public officers, see PUBLIC OFFICERS.

Agents, 1, 333

Alien Enemy, 1, 465

- As executor and administrator, 1, 463; 7, 172, 175
- Debts and mortgages between alien and citizen, 1, 465
- Instances of void contracts, 2, 366
- Partnership, 17, 921
- Who is, 1, 465

Alien Friend, 1, 458

- Alien married woman as feme sole, 1, 463; 14, 605
- Alien woman, right to dower, 1, 461
- As executor and administrator, 1, 463; 7, 172, 175
- As master of American vessel, 1, 464
- Construction trust, 1, 465
- Copyright, 1, 462

- Curtesy in wife's lands, 1, 464; 4, 958
 Holding land at common law, 1, 458
 Holding mining claims, 1, 460
 Holding political office, 1, 464
 Inheritance from, 1, 460
 Liability to military service, 1, 463;
 15, 400
 Partnership, 17, 921
 Power to vote, 1, 464
 Prosecution of claims against the gov-
 ernment, 1, 465
 Right to trade in labor, 1, 463
 Subject to criminal laws, 1, 463
 Bill in equity by, 6, 742
 Bills and notes, 2, 344
 Capacity of, to inherit, by what law gov-
 erned, 3, 643
 Children born without the jurisdiction of
 the United States, 1, 457
 Curtesy, 1, 464; 4, 958
 Definition, 1, 456
 Enlistment, 1, 463; 15, 400
 Executors or administrators, 1, 463; 7,
 172, 175
 Expatriated citizens, 1, 457
 Grand jury, 9, 10, 12; 10, 464
 Intermarriage of female alien with citi-
 zen, 1, 457
 Judicial sale, 17, 485
 Marine insurance, 14, 323
 Married women, 1, 463; 14, 605
 Marshaling assets, 14, 734
 Mines and mining claims, 15, 517
Mortgages
 Mortgagees, 15, 744
Ne exeat, 16, 381
Partnership, 17, 921
 Effect of breaking out of war where
 partner is an alien friend, 17, 921
 In real estate, 17, 921
 Whether an alien may be a partner,
 17, 921
 Poor and poor laws, settlement, 18, 797
 Public lands, preëmption, 19, 317
Real Property, 1, 458, 460; 3, 643; 5, 431;
 9, 19; 28, 82
 Alien enemy, 28, 83
 Contract of sale, 28, 83
 Necessity of office found, 1, 458; 28, 82
 Right to acquire, 1, 458; 5, 431; 9, 19;
 28, 82
 Right to take land converted into
 money, 6, 671
 Statutory right, 1, 458; 28, 82
Removal of Causes, 20, 992
 Prejudice and local influence, 20,
 1001
Settlement
 Poor and poor laws, 18, 797
 Specific performance, 22, 918
 State lands, power to acquire land, 23, 51
Suits
 Alien Enemy, 1, 465; 3, 877; 17, 484
 Pleading, 17, 484
 Sale of property under judicial proc-
 ess, 17, 485
 Waiver of objection, 17, 484
 Whether alien enemy at time cause
 of action accrued, 17, 484
 Whether alien enemy can be sued,
 17, 484
 Whether alien enemy may defend,
 17, 485
 Whether plea in bar, 17, 484
 Alien Friends, 1, 462; 17, 484
 Right to sue and be sued, 17, 484
 Taxation, 1, 464; 25, 118
Trade-Marks
 Aliens (as Plaintiffs), 1, 462; 26, 484
 Alien who has done business in the
 United States, 26, 485
 Alien who has never done business
 in the United States, 26, 485
 English rule, 26, 485
 Examples, 26, 484-486
 In general, 26, 484
 Necessity of registration in England,
 26, 486
 Recent cases in the United States,
 26, 484
 Treason, 26, 537
 Treaties, 1, 465
 Treaties of United States providing for
 rights and privileges of, 3, 255
 Treaties regulating property right, 26,
 541, 546
Trusts and Trustees
 Alien as Trustee, 27, 22
 In general, 27, 22
 Objection to appointment, 27, 22
 Pleading alienage, 27, 22
 Statute prohibiting, 27, 22
 Creation of trusts by, 1, 463; 27, 16
Under Contract to Labor, 9, 938
 Amended statute, 9, 939
 Domestic servants, 9, 940
 Exceptions, 9, 939
 Penalty, 9, 938
 Power of commissioners and collectors,
 9, 940
 Statutory inhibition, 9, 938
United States Courts, 27, 591
 Circuit courts, 27, 654
 Court of claims, 27, 678
 District courts, 27, 663
Vendor and Purchaser, 28, 82
 Alien enemy, 28, 83
 Alien's right to convey, 28, 82, 83
 At common law, 28, 82
 Conveyance before state takes action
 against alien, 28, 83
 War, 28, 607
 Who is, 1, 457
ALIENAGE
 Qualification of alien as juror, 12, 324
ALIENATE, 1, 466
ALIENATED, 1, 466
ALIENATION, 1, 466; 29, 486
 Conditions against, see RESTRAINTS ON
 ALIENATION; PERPETUITIES.
 Distinguished from descent, 1, 466
 In insurance policies, 1, 466
 In mortmain, 1, 467
 In various statutes, 1, 467

ALIMONY, 1, 467

Suits for maintenance, see HUSBAND AND WIFE.

Agreement by attorney, 14, 664

Annuity, apportionment of, when given for maintenance of wife, 1, 595

Ceases upon death of either party, 1, 484

Cohabitation and repute, 14, 530

Contempt, 1, 483; 9, 216

Costs, 4, 319

Death of either party, 1, 483

Decree for, 5, 376

Definition, 1, 467

Distinguished from debt, 1, 482

Dividing property, 1, 484

Enforcing the Decree, 1, 482

As to judgment, 1, 482

By appointing receiver, 1, 483

By execution, 1, 483

By judgment, 1, 483

By proceedings for contempt, 1, 483

By scire facias, 1, 483

By sequestration, 1, 483

By what courts enforced, 1, 482, 483

Charging it on land, 1, 483

In United States courts, 1, 483

Supplementary proceedings, 1, 483; 24, 644

Equity Courts

Power to grant, 1, 470

Final judgments, 12, 68

For What Granted

Abandonment as a cause for a grant, 1, 470

Causes sufficient for a divorce a mensa et thoro, 1, 471

Cruelty as a cause for grant, 1, 469

Desertion as a cause for grant, 1, 470

Necessity for husband and wife to be living apart, 1, 471

Where wife has separate property, 1, 471

Wife at fault, 1, 470

Grant of, at common law, 1, 469

Injunction against husband, 1, 483

Insane complainant, 5, 770

Jurisdiction, 1, 468

As an incident to the divorce, 1, 468

Defendant domiciled in another state, 1, 468

Divorce granted by legislature, 1, 469

In personam and in rem, 5, 751

Removal of husband after decree, to another state, 1, 468

Why granted by legislature, 1, 469

Lis pendens, 13, 880, 881

Maintenance, 1, 469

Suits for, see HUSBAND AND WIFE.

pendente lite, 1, 471

When granted, 1, 471

Ne Exeat, 1, 483; 16, 378

Before decree has been made, 16, 378

For what sum allowed, 16, 378

Where party would not be entitled to bill at law, 16, 378

Whether the writ will issue for, 16, 378

Nullity of marriage, 14, 537

Pendente Lite, 1, 472; 5, 777

Affidavits of husband, 1, 474

After verdict against wife, 1, 475

Amendment of decree, 1, 476

Amount allowed, 1, 476

Amount of Decree

At discretion of the court, 1, 476

Less permanent alimony, 1, 476

May be increased or diminished, 1, 477

One-eighth, 1, 476

One-fourth, 1, 476

One-half, 1, 476

One-third, 1, 476

Appeal from decree, 1, 476

Application, what it must show, 1, 473

At what time the application must be made, 1, 472

By what court it will be granted, 1, 475

Ceases upon a final decree, 1, 477

Counsel fees, 1, 477

Decree, how arrived at, 1, 476

Definition of, 1, 467

Discretion of the court, 1, 476

Finality of decree of lower court, 1, 476

For what purpose allowed, 1, 474

Husband must have been brought into court, 1, 472

Marriage must appear, 1, 475

Marriage, necessity of, 1, 472

Necessity of affidavit, 1, 474

Necessity of husband's appearance, 1, 475

Necessity of pending suit, 1, 472

Necessity that wife should be living apart, 1, 473

Nullity suits, 1, 472

Prayer for alimony, 5, 776

Ratification of decree, 1, 476

Regulated by statute, 1, 472

Suit-money, 1, 477; 4, 319

What amount will be granted, 1, 474

When it begins, 1, 472, 473

When it ceases, 1, 477

When the court will award it, 1, 475

When wife entitled to, 1, 472

Where bill is defective, 5, 777

Where husband is insane, 1, 475

Where husband is without means, 1, 473

Where marriage is denied, 1, 472

Where wife has to support husband, 1, 473

Where wife is in fault, 1, 475

Where wife is without means, 1, 473

Whether granted where there is a plea to the jurisdiction, 1, 475

Whether granted where there is a plea to the merits, 1, 475

Periodical allowance, 1, 471

Permanent Alimony, 1, 478

Amount of

Agreement of parties to, 1, 481

Appeal from decision diminishing, 1, 482

Illustrations of what have been allowed, 1, 481

Increasing or diminishing, 1, 481
In discretion of court, 1, 480
Power of court to diminish amount, 1, 481
Regulated by statute, 1, 480
What to be taken into consideration in arriving at, 1, 480
When court will diminish amount, 1, 481

Answer of defendant, 1, 479
At what time it begins, 1, 479
Definition of, 1, 467
Gross sum as, 1, 479
Periodical sum, 1, 479
Petition for, 1, 479
Prayer for, in bill, 1, 479
Regulated by statute, 1, 478
Specific property as, 1, 479
What time granted, 1, 479
When Granted, 1, 485
In case of adultery of husband, 1, 478
In case of adultery or misconduct of wife, 1, 478
In case of divorce absolute, 1, 478
In case of limited divorce, 1, 478
To husband, 1, 478
When not specifically prayed for, 1, 478
When it should be prayed for, 1, 479
Wife's estate, 1, 478

Receivers

Husband fraudulently disposing of his interest, 20, 56
Husband out of the jurisdiction of the court, 20, 56
Reconveyance of property settled by wife upon husband, 1, 485
Regulated by a statute, 1, 471
Restoration of wife's property, 1, 485
Security for, 1, 483
Specific property granted as, 1, 471
Specific property, in lieu of, 1, 484
Statutory changes in common law, 1, 469
Suit-money, 1, 477; 4, 319
Supplementary proceedings, 1, 483; 24, 644
Waiver of defect, 5, 777
Where defendant has not been summoned, 5, 762
Wife's means, 1, 485
Wife's right to support, 9, 816

ALIVE

Issue alive, 11, 903

ALL, 1, 489

All my effects, see **EFFECTS**.

All debts, 5, 157
All faults, 1, 489; 27, 814
All I am worth, 1, 488
All my estate, 1, 488
All my land, 1, 488
All my personal estate or property, 1, 478
All possible skill and care, 18, 842
All practicable speed, 19, 1
Arbitration and award, 1, 489

In wills, 1, 487

ALLEGATIONS, see **PLEADING**; **INDICTMENT**.

ALLEGIANCE, 1, 490

Change of allegiance, 26, 551

Natural allegiance, 3, 511

ALLOCUTOR, 1, 490

ALLODIAL, 1, 490

ALLONGE, 1, 491; 2, 317

ALLOTMENT, 1, 491

Allot and allow, 1, 492

Allotment of dower, 1, 492

Allotment under, 1, 492

Allotment with award, 1, 491

In treaties with Indians, 1, 492

ALLOW, 1, 492

Allot and allow, 1, 492

Allow or permit, 1, 492

Allow to give, 1, 493

Allowing people to pass and repass, 1, 493

Examine, settle, and allow accounts, 1, 492

Forty days shall be allowed, 1, 492

Verdict allowed and recorded, 1, 493

ALLOWANCE, 1, 493

Of executor's accounts, 1, 494

Of road, 1, 493

Of trustee, 1, 493

Salary and, 1, 494

To a son, 1, 493

To officers, 1, 493

To the wife, 1, 493

With, 1, 493

ALLUVION, see **ACCRETION**.

ALMANAC, 1, 494

ALMS, 1, 495

Trusts for almsgiving, 3, 127

ALMSHOUSES

Exemptions from taxation, 25, 169

ALONG, 1, 495

Along and adjoining equivalent, 1, 191

Along a river, 1, 495

Along a wall, 1, 495

Along the bank, 1, 495

Along the high-water mark, 1, 495

Along the line, 13, 843

Along the river, 1, 496

Along the street, 1, 496

Along the vein, 15, 506

ALREADY, 1, 496; 23, 327

Already agreed, 1, 496

When not already done, 1, 496

ALSO, 1, 496

ALTER, 1, 496

Alter or amend, 1, 496

ALTERATION, 1, 497

Alteration of a road, 1, 497

Erection, alteration or repair, 1, 497

Necessary alterations, 16, 368

ALTERATION OF INSTRUMENTS, 1, 152

See **REFORMATION OF INSTRUMENTS**.

Wills, see **WILLS**.

Admissibility in evidence of altered instrument, 1, 512

Affidavit, erasure and interlineation in, 1, 314

ALTERATION OF INSTRUMENTS—*Cont'd*

- Altering figure denoting year, 2, 22
- Benefit of purchaser for value, 1, 502
- Bills and Notes**, 1, 516; 2, 340
 - Alteration of date, 2, 321
 - Presumption as to time when alteration was made in, 1, 514
- Bonds**
 - Filling blanks in, 1, 520
- Burden of Proof**, 1, 512, 515; 5, 425
 - Common-law rule as to the, 1, 513
- Cancel, 2, 718
- Change of parties, 1, 506
- Changing amount of principal, 1, 508
- Checks**
 - Fraudulent alteration of, 3, 225
- Consideration, 1, 509
- Deeds**, 1, 502; 5, 424
 - After execution, by consent of parties, 1, 503
 - Alteration of covenants of deed, 5, 425
 - Alterations made at any time, 5, 424
 - Alterations made before delivery, 5, 424
 - Burden of proof as to time alteration was made, 1, 514; 5, 425
 - By stranger, 1, 505
 - Deed destroyed or mutilated by no fault of grantee, 5, 425
 - Effect of subsequent alteration upon title to property, 5, 425
 - Filling blanks in, 1, 519
 - In blank as conveyance for property, 1, 520
 - Necessity of authority under seal to fill blanks in, 1, 519
 - Presumption as to when alteration was made, 1, 514; 5, 424
 - Purpose of alteration question for jury, 5, 425
 - Time of alteration question for jury, 5, 425
 - Whether alterations or interlineations render deed invalid, 5, 424
- Depositions, 5, 602
- Description of property, 1, 509
- Discharge of contract by, 3, 928
- Effect of, 1, 497
- Effect upon the instrument in hands of the maker of the alteration, 1, 501
- Erasure of immaterial alteration, 1, 504
- Erasures of words, 1, 501
- Estoppel, 7, 30
- Filling up Blanks**, 1, 515
 - Additional stipulations, 1, 519
 - Changing character of instrument, 1, 518
 - Forgery, 8, 471
 - In any material part, 1, 518
 - In bonds, 1, 520
 - In deeds, 1, 519
 - Liability to original payee, 1, 518
- Forgery**, 8, 468, 475
 - Alteration of instrument after it has served its purpose, 8, 468
 - Alterations of promissory note, 8, 476

- By Fraudulently Filling Blanks, 8, 471
 - Checks, 8, 471
 - Filling blank with larger sum, 8, 471
 - When forgery, 8, 471
 - Where person filling honestly believes sum to be due him, 8, 471
- Changing receipt, 8, 476
- Changing vignettes or marginal emblems, 8, 476
- Detaching condition, 8, 476
- Erasing one signature and inserting another, 8, 475
- Erasure of indorsement, 8, 477
- Examples, 8, 475, 478
- Fraudulent addition, 8, 477
- Fraudulent alteration, 8, 475
- Fraudulent erasure, 8, 477
- Harmless alterations, 8, 476
- Inserting false address, 8, 475
- Material falsification, 8, 475
- Receipts, 8, 476
- Surplusage, 8, 468
 - When it constitutes forgery, 8, 468
- Writing note over signature, 8, 477
- Fraudulent alterations of bought or sold note, 2, 592
- Fraudulent intent, 1, 501, 520
- Guaranty, 9, 81
- Immaterial Alterations**, 1, 497
 - Adding the name of witness to the note, 1, 500
 - Addition of name of witness to note, 1, 507
 - Affixing seal to contract, 1, 499
 - Correction of mistakes, 1, 499
 - Effect of instrument when in the hands of the maker, 1, 501
 - Erasure of, 1, 504
 - Erasures of immaterial words, 1, 501
 - Insertion of words, 1, 499
 - Marginal figures in a note, 1, 498
 - Of deed by the grantee, 1, 502
 - Sense not changed, 1, 498
 - Unchanged meaning, 1, 498
 - What are, 1, 498
 - With fraudulent intent, 1, 501
 - Words omitted by mistake, 1, 500
- Insertion of words, 1, 499
- Instances, 5, 78
- Instruction, examples of, 11, 268-269-271-273
- Interest**
 - Changing rate of, 1, 509
 - Changing time when it should be paid, 1, 510
- Marginal figures in a note, 1, 498
- Material Alterations**, 1, 502
 - Acting as a reconveyance, 1, 503
 - Adding seal to signature of maker's note, 1, 508
 - Addition of name of maker, 1, 506
 - Addition of name of witness to a bond, 1, 507
 - Addition of name of witness to note, 1, 507
 - Addition of new sureties, 1, 506

- After execution by consent of parties,
1, 503
Attaching seal to bond, 1, 508
Before delivery, 1, 503
By consent of parties, 1, 503
By stranger, 1, 505
Change in maker's name, 1, 506
Change in payee's name, 1, 506
Change of parties, 1, 506
Changing amount of principal, 1, 508
Changing a note so as to charge separate estate, 1, 509
Changing character of instrument, 1, 507
Changing consideration, 1, 509
Changing date, 1, 510
Changing description of property, 1, 509
Changing rate of interest, 1, 509
Changing time of payment, 1, 508
Changing time when interest should be paid, 1, 510
Claim of future benefits by grantee of an altered deed, 1, 502
Definition of, 1, 497
Destruction of unrecorded deed, 1, 503
Detaching seal from bond, 1, 508
Effect of, generally, 1, 502
Erasing, adding, etc., memoranda, 1, 511
General rule, 1, 511
In deeds, 1, 502
In material part, 1, 505
Making negotiable note non-negotiable, 1, 507
Making non-negotiable note negotiable, 1, 507
Of deed by stranger, 1, 505
Place of payment, 1, 508
Substitution of obligee, 1, 506
Substitution of sureties, 1, 507
Time of payment, 1, 508
Title not divested by, 1, 503
- Memoranda**
Adding, erasing, etc., 1, 511
- Mutilation**
Definition of, 1, 497
- Presumption**, 7, 90
As to time when alteration in deed was made, 1, 514; 5, 425
As to time when alteration was made, 1, 513
Question of law or fact, 1, 510
Ratification implied, 1, 522
Ratification of alteration, 1, 521
- Recovery of Original Consideration**
Alteration with fraudulent intent, 1, 520
Alteration without fraudulent intent, 1, 520
Merger, 1, 521
Rights of third parties, 1, 520
Restoration of instrument, 1, 504
- Seal**
Adding to the note, 1, 508
By adding a seal, 2 1, 914
Detaching from bond, 1, 508
- Spollation**, 1, 497
Definition of, 1, 497
Effect of, 1, 505
Of deeds, 1, 505
Recovery of an instrument, 1, 505
- ALTERING**, 1, 523
Altering bills, 1, 523
Altering, building, repairing or ornamenting, 1, 523
- AMALGAMATE**, 1, 523
- AMALGAMATION**, 1, 523
- AMBASSADOR**, see CONSULS AND AMBASSADORS.
- AMBIGUITY**, 1, 525
See ABBREVIATIONS.
- Boundaries**
Descriptions of, 2, 496
Clerical errors, 1, 543
Definition of, 1, 525
In contracts, 1, 541
In conveyances, 1, 538
In negotiable instruments, 1, 542
Insurance, 1, 545
Intermediate class of, 1, 534
In wills, 1, 535
- Latent Ambiguity**
Definition of, 1, 530
Extrinsic evidence to explain, 1, 531
Kinds of, 1, 531
Mere mistake as, 1, 533
Parol Evidence, 1 1, 369
When admissible, 1, 533
Question for jury, 1, 526
- Parol Evidence**, 1, 526, 527; 1 1, 369, 509
To show the meaning of technical words, 1, 543
- Patent Ambiguity**
Definition of, 1, 527
Extrinsic evidence to explain, 1, 529
Parol evidence, 1, 527
Question for judge, 1, 526
- Patent and Latent Ambiguities**
Distinguished, 1, 526
- Pleading**, 1 8, 574
Action of court, 1 8, 574
Affirmative pregnant, 1 8, 575
Common bar, 1 8, 575
General rules, 1 8, 574
Negative Pregnant, 1 8, 574
Definition, 1 8, 574
- New Assignment**
Distinguished from replication, 1 8, 577
Examples, 1 8, 574-575
How objection is to be taken, 1 8, 575
Restatement of declaration, 1 8, 577-578
Statement of rule, 1 8, 577
Trespass, 1 8, 578
Trespass quare clausum fregit, 1 8, 578
Whether silence admits the truth of facts alleged, 1 8, 578
Susceptible of two meanings, 1 8, 574
Technical words, 1, 543
Question of law or fact, 1, 526

AMENDMENT, 1, 546

See APPEAL; INDICTMENT; PLEADING;
PROCESS; RECORD; STATUTES; VARI-
ANCE.

Cure by verdict, see VERDICT.

Agreed case, 24, 151

Allowance of, 1, 546

Allowance when party is prejudiced by,
1, 548

Allowed by auditors, 1, 1013

Altering the form of action, 1, 550

Amount in controversy, 12, 286, 289

As substitute for bill of revivor, 2, 275

Clerical mistakes, 1, 550; 3, 286

Commencement, 12, 433

Complaint

Before Justice of the Peace, 12, 408,
415

In appellate courts, 12, 414

Continuance by opposite party where
material amendment has been made, 3,
817

Construction of statutes, 23, 416

Costs, 1, 555

Declaration (in Pleading), 5, 352

Changing cause of action, 5, 352

Clerical errors, 5, 353

In general, 5, 352

Prejudice to proceedings already had,
5, 352

What is not a change in cause of action,
5, 353

Decree, 5, 380

Based upon matter of record, 5, 380

Clerical errors, 5, 380

Final, 5, 380

Laches on part of party seeking amend-
ments, 5, 380

Matter which would not have been
granted, as of course, upon hearing,
5, 380

Rights of third parties, 5, 380

Definition, 1, 546

Demurrer at law, costs, 5, 563

Discretion of courts, 1, 551

Divorce cases, 5, 765, 776

Effect of service of process, 22, 108

Ejectment, 6, 2457

Election cases, 6, 407

Eminent domain, 6, 612

Equity Pleadings, 6, 806

For bringing in proper parties, 6,
807

Liberality of court, 6, 806

Relation, 6, 807

To answer in equity, 1, 610

When amendments may be had, 6,
807

Executions, 7, 126

Absolutely void, 7, 127

Amendment after sale, 7, 126

As matter of course, 7, 126

Clerical mistakes and formal defects,
7, 126

Cure, 7, 126

Injuriouly affect rights of third parties,
7, 127

Forcible Entry and Detainer

Introduction of new party, 8, 164

Omission to enter judgment of restitu-
tion, 8, 164

Variance between allegation and proof,
8, 164

Variance between complaint and jus-
tice's indorsement, 8, 164

What amendments may be made, 8, 164

What amendments may not be made,
8, 164

Garnishment

Officer's Return, 8, 1126

Parol evidence, 8, 1125

Presumption that officer has per-
formed his duty, 8, 1125

Public offices, 8, 1126

Service of garnishment, 8, 1125

General principles, 1, 547

Habeas Corpus

Of writ, 9, 184

Return, 9, 187

In attachment proceedings, 1, 933

Infant, 10, 684

Infant's action, 10, 684

Information, 10, 709

At What Time Amendment May Be Made,
10, 709

At demurrer, 10, 709

Examples, 10, 709

Inherent power of courts, 1, 548

Joinder by, 11, 10157

Judgment

For *nunc pro tunc* entries, see JUDG-
MENTS.

Adding clause to give effect to judg-
ment, 12, 123

After execution satisfied, 12, 124

After judgment has been affirmed on
appeal, 12, 124

After Term, 12, 120

Clearly not the judgment of court,
12, 122

In general, 12, 120

Judgment as to cost, 12, 121

Judgment entered not one rendered,
12, 120

Judgment not authorized by law, 12,
121

Judgment not one attorney intended
to have entered, 12, 120

Power of court to make judgment
entry conform to judgment ren-
dered, 12, 121

Appeal pending, 12, 124

Application by motion, 12, 125

Clerical error, 12, 122

Computing amount due upon note, 12,
122

Directing amount of recovery or sen-
tence, 12, 121

Error in name, 12, 121

Ex parte application, 12, 124

Judgment entry clearly not correct
judgment, 12, 122

Mistake, 12, 122

Notice to adverse party, 12, 124

- Power of courts to make judgment entry conform to judgment rendered, 12, 121
- Principal and surety, 12, 124
- Prompt application, 12, 124
- Protecting third parties, 12, 124
- Replevin, 20, 1119
- To include matter which would have been granted as a matter of course, 12, 123
- Upon What Evidence Must Be Based**, 12, 123
 - English rule, 12, 123
 - Judge's notes, 12, 123
 - Necessity of record evidence, 12, 123
 - Satisfactory evidence, 12, 123
 - Writ of error pending, 12, 124
- Justice of the Peace**, 12, 40
 - Bond, 12, 488
 - Complaint, 12, 408, 414, 415
- Laches, 1, 554
- Leave to amend after judgment on demurrer, 5, 562
- Libel and Slander**, 13, 472, 783
 - Foreign language, 13, 471
 - Publication, 13, 472
- Limitation of actions, 13, 746
- Lis pendens, 13, 885, 886
- Made upon motion, 1, 555
- Mandamus**, 14, 224
 - Examples, 14, 224
 - Fatal defect in alternative, 14, 224
 - Return, 14, 237
 - Whether writ open to, 14, 224
- Master in chancery, 14, 949
- Mechanics' Liens**, 15, 177
 - After statutory period has elapsed, 15, 178
 - Amendment of process, 15, 124
 - Bill of exceptions, 15, 179
 - Complaint, 15, 178
 - Dismissal of parties, 15, 179
 - Enforcement by court, 15, 178
 - Examples, 15, 177-179
 - Failure to comply with statute, 15, 178
 - Insufficient notice, 15, 178
 - Notice, 15, 136
 - Parties, 15, 178
 - Recorded claim, 15, 154
 - Time to be made, 15, 179
 - What amendment allowed, 15, 178
 - When allowable, 15, 177
 - When privilege denied, 15, 178
- Merits (Affidavit of)**
 - Conditional amendment, 15, 381
- Mines and Mining Claims**
 - Certificate, 15, 545
 - Location, 15, 545
- Misjoinder**, see *infra*, PARTIES TO ACTIONS.
 - Joint tenants and tenants in common, 11, 1141
- Misnomer**, 16, 135
 - Plaintiff claiming mistake in own name, 16, 135
- What time amendment may be made, 26, 134
- Mittimus, 15, 696
- Motions, 15, 901
- Municipal records, 15, 1077-1079
- Name*, see *infra*, MISNOMER and PARTIES TO ACTIONS.
- Names of parties added or struck off, 1, 550
- New cause of action by, 1, 548
- New defense by amendment, 1, 550
- New Trial**, 16, 514, 661
 - Addition of new parties, 16, 661
 - Affidavit, 16, 661
 - New counts, 16, 661
 - New grounds, 16, 661
 - Showing reasonable cause, 16, 661
 - Statement of evidence, 16, 650, 661
 - Surprise to opposite party, 16, 661
- Notice**
 - Amendment of affidavit of publication, 16, 825
 - By publication, 16, 816
- Of affidavits, 1, 314
- Of bill of particulars, 2, 252
- Of Settled Case on Appeal**, 22, 479
 - Examples, 22, 479, 480
 - How made, 22, 480
 - In general, 22, 479
 - When amendments must be made, 22, 480
- Ordinances, 17, 244
- Parties to Actions**
 - Adding new parties, 17, 627
 - Change in capacity to sue or liability to be sued, pendente lite, 17, 626
- Code Provisions**, 17, 618
 - Amendments after verdict, 17, 619
 - Amendments at trial, 17, 618
 - Amendments before trial, 17, 618
 - Amendments on appeal, 17, 619
 - Construction of statutes, 17, 618
 - Entire change of parties, 17, 619
 - Limitations as to amendments, 17, 619
 - Substituting another for sole plaintiff, 17, 619
- Continuance, 17, 627
- Defendant's capacity, 17, 622
- Misjoinder, 17, 607
- Name of Defendant**, 17, 622
 - Christian name, 17, 622
 - Corporations, 17, 622
 - Examples, 17, 622
 - In general, 17, 622
 - Initials, 17, 622
- Name of Plaintiff**, 17, 619
 - Amendment as to character of plaintiff, 17, 621
 - Change of use plaintiff, 17, 620
 - Christian name, 17, 619
 - Error in stating plaintiff's capacity, 17, 621
 - Examples, 17, 619, 620
 - Guardian and next friend, 17, 622
 - Nominal plaintiff added, 17, 620

AMENDMENT—Cont'd**Parties to Actions—Cont'd****Name of Plaintiff—Cont'd**

Striking out nominal plaintiff, 17, 620

Striking out use plaintiff, 17, 620

Suing generally and declaring in a particular right, 17, 621

Suing in a particular character and declaring generally, 17, 621

Use plaintiff added, 17, 621

Non-joinder, 17, 611

Notice, 17, 627

Pleading, 17, 627

Right of defendant to compel plaintiff to amend, 17, 626

Statute of limitations, 17, 627

Statutory Provisions

Code provisions, 17, 618

Construction, 17, 618

In Alabama, 17, 616

In Arizona, 17, 616

In California, 17, 617

In Colorado, 17, 617

In Connecticut, 17, 616

In Dakota, 17, 617

In Florida, 17, 616

In Georgia, 17, 616

In Idaho, 17, 617

In Illinois, 17, 617

In Indiana, 17, 618

In Iowa, 17, 618

In Kansas, 17, 618

In Kentucky, 17, 618

In Louisiana, 17, 617

In Maine, 17, 617

In Maryland, 17, 617

In Massachusetts, 17, 617

In Mississippi, 17, 617

In Missouri, 17, 618

In Montana, 17, 618

In Nebraska, 17, 618

In Nevada, 17, 618

In New Hampshire, 17, 617

In New Jersey, 17, 617

In New York, 17, 618

In North Carolina, 17, 618

In Ohio, 17, 618

In Oregon, 17, 618

In Pennsylvania, 17, 617

In South Carolina, 17, 618

In Tennessee, 17, 617

In Texas, 17, 617

In Utah, 17, 618

In Virginia, 17, 618

In Washington, 17, 618

In West Virginia, 17, 617

In Wisconsin, 17, 618

In Wyoming, 17, 618

Substitution of defendant denied, 17, 626

Substitution of Party Entitled to Sue for**Incompetent Plaintiff, 17, 619, 623**

Examples, 17, 623, 625

In general, 17, 619, 623

Substitution denied, 17, 624

Substitution of party liable to be sued for one not liable, 17, 625

Partition, 17, 744

Partnership, 17, 1243-1246, 1307

Garnishment, 17, 1334

Patent Law, 18, 30**Answer, 18, 99**

Costs on amendment, 18, 100

Diligence, 18, 99

Effect of Amendment, 18, 100

On admissibility of testimony, 18, 100

Examples, 18, 100

Facts admitted, 18, 100

New defense depending upon parol evidence, 18, 100

Presenting new defense, 18, 99

Surprise, 18, 100

Whether defects may be cured by, 18, 99

Decree, 18, 116

Payment of costs, 1, 555

Perjury, 18, 320

Petition for opening highway, 9, 372

Power of courts to allow when existing rights would be affected, 1, 548

Quo warranto, 19, 683

Receivers, 20, 96

Record**Judicial Record, 20, 523**

After appeal and affirmation of judgment, 20, 524

After change of venue, 20, 524

After term, 20, 524

Approved method of making the amendment, 20, 526

At what time amendment may be made, 20, 523, 524, 526

Cause removed to superior court, 20, 524

Clerical error, 20, 523

During term, 20, 524

Erasures, 20, 526

Evidence from which amendment can be made, 20, 525

How alterations should be made, 20, 526

In collateral proceedings, 20, 526

In general, 20, 523

Interlineations, 20, 526

Motion, 20, 525

Notice to opposite parties, 20, 525

Nunc pro tunc, 20, 524

Petition, 20, 525

Power of court, 20, 523

Rights of third persons, 20, 525

Statute of jeofails, 20, 525

Public Record, 20, 526

Examples, 20, 526

In general, 20, 526

Recording Acts, 20, 567

By recording officer, 20, 567

Curative statutes, 20, 567

When amended record takes effect, 20, 567

Referees, 20, 696

Report, 20, 701

Relating back to date of matter amended,
1, 551

Removal of causes, 20, 1022

Replevin

Affidavits, 20, 1086

Judgment, 20, 1119

Verdict, 20, 1111

Return in attachment, 1, 922

School's record, 21, 799

Scire Facias, 21, 853, 869

Examples, 21, 853, 854

On plea of nul tiel record, 21, 853

Whether allowed, 21, 853

Sentence, 21, 1084

After term in which it was amended,
21, 1084

During term, 21, 1084

In appellate court, 21, 1084

Modification making sentence more
severe, 21, 1084

Power of court, 21, 1084

Punishment increased, 21, 1084

Where execution is begun, 21, 1084

Service of Process

Effect of amended return, 22, 195

Officer obtaining leave to amend, 22,
193

Return, 22, 200

Action for false return, 22, 204

After appeal has been taken, 22,
202

After assignment for the benefit of
creditors, 22, 202

After default, 22, 202

After expiration of officer's term, 22,
201

After hearing of a motion to reverse,
22, 202

After sale under judgment, 22, 202

Amendment of dates, 22, 202

Before return has been filed, 22, 200

By whom made, 22, 203

Change of venue, 22, 205

Compelling officer to amend, 22, 204

Court dictating what the terms shall
be, 22, 204

Discretion of court, 22, 200

Effect of amendment, 22, 194, 204

Errors that may be corrected, 22,
202, 203

How effected, 22, 203

In general, 22, 200

Limitation as to amendments, 22,
204

Matters of judicial discretion, 22, 201

Mistake in the name of a party, 22,
203

New and material fact, 22, 204

Notice to third parties whose interest
will be affected, 22, 204

Pending proceedings against officer
for false return, 22, 202

Prejudice to rights of third parties,
22, 204

Return amended years after being
made, 22, 201

Showing whole truth, 22, 205

Signature of officer, 22, 203

Takes place of original return, 22,
204

Time within which return may be
amended, 22, 201

To what extent, 22, 202

When allowable, 22, 201

When sheriff may amend, 22, 200

Whether consent of officer is neces-
sary to amendment, 22, 203

Sheriff's sales, 22, 622, 666

Statutory regulations, 1, 547

Streets and sidewalks, petition to estab-
lish street, 24, 22

Summons, 24, 525

Clerical error, 24, 526

Date, 24, 526

Defect in matter of form, 24, 525

Description of a party, 24, 526

Discretion of court, 24, 526

Error in notice of relief, 24, 526

Examples, 24, 525, 526

In general, 24, 525

Seal, 24, 522

Teste, 24, 526

What may be amended, 25, 526

Writ fundamentally defective, 24,
525

Supplementary Proceedings

Examples, 24, 674-675

Irregularity, 24, 674

Order before execution returned, 24,
624

Taxation

Judgment in action for taxes, 25, 328

Record of proceedings of boards of
equalization and review, 25, 264

Return, 25, 338

Terms upon which granted, 1, 555

Time Within Which Amendment Can Be

Made, 1, 553

After appellate proceedings have been
instituted, 1, 555

After issue joined, 1, 553

After judgment, 1, 553

Party guilty of laches, 1, 554

To affidavit in attachment proceeding, 1,
905

To attachment bond, 1, 907

To recognizance for bail, 2, 24

Trespass

Amendment of Declaration, 26, 630

Examples, 26, 630, 631

In general, 26, 630

Trespass quare clausum fregit, 26,
631

When allowed, 26, 631

Under the Codes, 18, 505

Discretion of court, 18, 505

In general, 18, 505

United States courts, 27, 604

Verdict, 28, 365

By Court, 28, 370

Affidavits of jurors, 28, 373

Alteration of facts found, 28, 371

Amending the record, 28, 372

Consent of jury, 28, 372

AMENDMENT—Cont'd

Verdict—Cont'd

By Court—Cont'd

Entry on one of several counts, 28, 372

Examples, 28*m*, 370-372

From what amended, 28, 373

How intention ascertained, 28, 371

In general, 28, 370

Judge's notes, 28, 373

Jury, 28, 370

Matters of substance, 28, 372

Misentry of verdict, 28, 372

Misnomer, 28, 371

Period Within Which Court May

Amend, 28, 373

After error brought, 28, 373

After judgment, 28, 373

After recording, 28, 373

Examples, 28, 373, 374

In general, 28, 373

Power, 28, 370

Replevin, 28, 371

Request of jury, 28, 372

By Jury, 28, 365

Allowing evidence to be heard, 28, 367

At request of jury, 28, 365, 366

By order of court, 28, 365

Calculation of interest, 28, 368

Court pointing out errors, 28, 365

Defects of substance, 28, 365

Defendant to plaintiff, 28, 366

Examples, 28, 365-370

Formal defects, 28, 366

In general, 28, 365

In presence of court, 28, 367

Jury retiring to their room for further deliberation, 28, 367

Period Within Which the Jury May

Amend, 28, 368

Discharge of jury, 28, 369

Dispersion of jury by consent of parties, 28, 370

Examples, 28, 368-370

In general, 28, 368

Certainty, 28, 294

Replevin, 20, 1111

Special Verdict, 28, 393

Examples, 28, 393-394

In general, 28, 393

Warrant of attorney to confess judgment, 28, 707

Writ of entry, 6, 653

Writ of error, 6, 829

AMERCEMENT, 1, 555

Of sheriff, see **SHERIFF'S SALES**.

Distinguished from fine, 7, 991

AMICABLE, 1, 556

AMICABLE ACTION, 1, 556

AMICABLE COMPOUNDERS, 1, 556

AMICABLE LAWSUIT, 1, 556

AMICUS CURIAE, 1, 556

AMNESTY, 1, 556; 17, 31

See **PARDON**.

Effect of, 17, 329

AMONG, 1, 556

Among the several states, in interstate commerce law, 11, 539

AMOTION, 1, 557

See **DISFRANCHISEMENT; OFFICERS OF PRIVATE CORPORATIONS; PUBLIC OFFICERS; SOCIETIES AND CLUBS; STOCKHOLDERS**.

By-laws

Prescribing mode in which a member may be expelled, 1, 562

Reasonableness of, 1, 563

Causes for Expulsion, 1, 559, 560

Breach of by-laws, 1, 560

From beneficial associations, 1, 560

From commercial societies, 1, 560

From religious societies, 1, 560

From social clubs, 1, 560

Infamous offense, 1, 559

Offense against breach of duty as a member of a corporation, 1, 559

Definition of, 1, 557

Distinguished from disfranchisement, 5, 684

Expulsion

At pleasure, 1, 558

Of members of benevolent associations, 1, 558

Of members of corporation, 1, 558

Of members of corporations where power is not conferred by charter, 1, 558

Illegal expulsion, 1, 562

Mandamus

For illegal expulsion, 1, 562

Practice in, 1, 562

To compel a corporation to recognize a person as a member, 4, 289

When corporation entitled to, 1, 562

Mode of expulsion, 1, 561

Remedy for Illegal Expulsion, 1, 562

Relief in equity, 1, 562

What court will consider, 1, 563

Where the offense is not specified by the by-laws, 1, 563

Right of Expulsion, 1, 557

Limitations upon, 1, 559

Trial, 1, 561

Who May Expel, 1, 561

A single officer, 1, 561

By-laws, delegate of power to committee, 1, 561

AMOUNT, 1, 563

AMOUNT IN CONTROVERSY, 1, 563; 4, 100; 12, 283

Amount finally recovered not being within jurisdictional sum, 12, 305

Appeal

Justice of the peace, 12, 483

Courts of Appellate Jurisdiction, 12, 287

See *infra*, **UNITED STATES COURTS**.

Admission of part of plaintiff's claim, 12, 289

Amendment, 12, 289

Conclusiveness of amount claimed in court below, 12, 288

How defendant's right determined, 12, 289

- How plaintiff's right to appeal determined, 12, 289
 How value determined, 12, 288
 Interest, 12, 289
 Interest of judgment, 12, 290
 Joint defendants, 12, 290
 Joint plaintiffs, 12, 290
 Libels in rem, 12, 290
 "Matter in dispute," 12, 288
 Pecuniary matter of value in dispute, 12, 288
 Prior claim, 12, 285
 Proving value, 12, 288
 Record showing value, 12, 288
 Separate creditors, 12, 290
 Set-off, 12, 289
 Value appearing on record, 12, 288
In Courts of Original Jurisdiction, 12, 283
See infra, UNITED STATES COURTS.
 Amendment, 12, 286
 Amendment in appellate courts, 12, 286
 Amount of plaintiff's claim, 12, 283
 Attorney's fee, 12, 284
 Bona fide claim, 12, 283
 Costs, 12, 284
 Court sitting as equity court, 12, 287
 Credit, 12, 284
 Different claims, 12, 285
 Division of claims, 12, 284
 General rule, 12, 283
How Amount Is Determined, 12, 285
 Action for statutory penalty, 12, 286
 Action for tort, 12, 286
 Action on bonds, 12, 286
 Book accounts, 12, 285
 Contest for office, 12, 286
 Equity, 12, 286
 Foreclosure proceedings, 12, 286
 In actions of debt, 12, 285
 In replevin, 12, 285
 In various actions, 12, 285, 286
 Money payable in installments, 12, 286
 Violation of revenue laws, 12, 285
Interest, 12, 284
 Accruing after suit brought, 12, 284
 Prior to bringing of suit, 12, 284
 Jurisdictional amount, 12, 285
 Plaintiff erroneously stating claim, 12, 283
 Principal sum, 12, 284
 Reduction by credits, 12, 284
 Reversal of judgment by appellate court, 12, 286
 Separate claims, 12, 285
 Set off, 12, 286
 Value actually in controversy, 12, 285
 Voluntary remission by plaintiff, 12, 284
Interest accruing subsequent to beginning of suit, 12, 305
Justice of the Peace
 Action under *ex contractu*, 12, 427
 Action under *ex delicto*, 12, 427
 Amount due when suit brought, 12, 427
 Appeal, 12, 483
 "Balance due in settlement," 12, 427
 Bill of particulars, 12, 448
 Credits, 12, 428
 Cost, 12, 429
 Distinction between conventional and legal interest, 12, 429
 Fixed by plaintiff's plea, 12, 426
 General rule, 12, 428
 Interest, 12, 429
 Joinder of causes of action, 12, 448
 Offset, 12, 428
 Remittitur, 12, 428
 Replevin, 12, 427
 Set-off, 12, 428
 Splitting demand, 12, 428
 Sum found to be due, 12, 427
 Matter in controversy, 14, 977
 Prohibition, 19, 272
Removal of Causes to United States Courts, 20, 978-982
 Prejudice and local influence, 20, 1001
Value of Matter in Dispute, 20, 990
 Act of March 3, 1887, 20, 990
 Appearing affirmatively in pleadings, 20, 991
 Examples, 20, 990, 992
 How amount in dispute is to be determined, 20, 991
 In an action of tort, 20, 991
 Release of part of claim, 20, 992
 Removal acts of 1789, 1866, 1867, 1875, 20, 990
 Where defendant files a counter-claim, 20, 991
 Whether matter in dispute must exceed sum named in state, 20, 990
 Replevin, 12, 492
 Set-off, 22, 273
 Trade-marks, 26, 481
United States Courts, 26, 481
Circuit Courts, 27, 651
 Examples, 27, 651, 652
 How determined, 27, 651
 Injunction, 27, 653
 United claims of several claimants, 27, 652
 Correction, 27, 627
 Supreme court, 12, 287; 27, 640
 United States court of claims, 12, 287
 Whole amount of capital stock, 1, 563
AMUSEMENTS, 1, 564
See THEATERS.
 Taxation, 25, 18
ANALOGOUS, 1, 564
ANARCHY
 Subjects of conspiracy, 4, 599
ANCESTOR, 1, 564
See SUCCESSION.
Ancestral Debts, 5, 163
Succession
 Action against heir for debts of ancestor, 5, 173
 Collateral, 3, 310

ANCHOR, 1, 564

Anchorage, 1, 565

Anchor-watch, 1, 564

Lying at anchor, 1, 565; 13, 626, 1193; 14, 332

ANCIENT DOCUMENTS, 1, 565

Authentication of, 1, 565

Comparison of handwriting, 1, 568; 9, 299

Custody, 1, 567, 569

Definition of, 1, 565

Evidence

Admissibility in, 1, 565

Handwriting, 1, 568; 9, 299

Possession, 1, 567

Necessity of proof of possession under, 1, 567

Possession under, at any time, 1, 568

Whether to their award or admissibility in, 1, 569

Presumption, 1, 566; 7, 90

Proof of boundaries, 1, 569

Proof of execution, 1, 566

Proof of ownership, 1, 568

Receipts, 19, 1130

ANCIENT LIGHTS, see EASEMENTS; **ELEVATED RAILROADS**.**Injunctions**, 10, 847

Doctrine in the United States, 10, 848

English doctrine, 10, 847

Examples, 10, 847, 848

Twenty years' quiet enjoyment, 10, 847

When injunction authorized, 10, 847

ANCILLARY ADMINISTRATION, see FOREIGN EXECUTORS AND ADMINISTRATORS.**ANCILLARY GUARDIANS**, see GUARDIAN AND WARD.**AND**, 1, 569

And elsewhere, 1, 570

And in addition to that, 1, 570

"And" construed "Or," 1, 569; 11, 366; 17, 223; 23, 370; 29, 378

Unmarried and without issue, 11, 910

"And" not read as "or," - 70; 17, 223

And so forth, or &c.

As a similitur, 1, 570

"Or" and "and," 23, 370

"Or" not read as "and," 17, 222

"Or" read as "and," 17, 221

Read as "or," 17, 223

ANIMALS, 1, 571

See ACCESSION; CARRIERS OF LIVE STOCK; CRUELTY TO ANIMALS; FENCES; FISH AND FISHERIES; HORSES; IMPOUNDING; LIVERY STABLE KEEPERS; MALICIOUS MISCHIEF; OYSTERS; STRAYS.

Abandonment of, for tort, 1, 3

Abandonment of wild, 1, 6

Action for Recovery, 1, 573

Wrongful branding, 1, 574

Actions for Injuries to, 1, 574

Defenses, 1, 575

Where animal is trespassing, 1, 574

Who may maintain, 1, 574

Ballots of Animals, 1, 589

Duty of owner to, 1, 589

Hiring horses, 1, 589

Liability of, to third party, 1, 589

Bees

Custom of hunters in regard to bee tree, 8, 1024

Larceny, 12, 782

Property in, 3, 169; 8, 1025

Whether they pass to personal representatives, 7, 241

Brand

Larceny, 12, 833

Cattle*Cattle upon railroad*, see FENCES.*Liability for damages by cattle*, see FENCES.

Chattel mortgage upon mare in foal, 1, 59

Contributory negligence, 1, 585

Cow, 4, 570

Crossings

Frightening animals on to a, 4, 926

Damages

Allowed for injuries by, 1, 583

What may be taken into account, 1, 585

Dead animals, municipal corporations, 15, 1181

Definition of beast, 2, 159

Diseased Animals

Expert and opinion evidence, 7, 503

Measure of damages for depreciation of animals sold, 5, 346

Diseased Cattle, 1, 585

Constitutionality of statutes forbidding importation, 1, 587

Statutes, 1, 587

Disfiguring animals, 5, 633

Distraining animals, *feræ naturæ*, 5, 709**Dogs**

At large, 1, 891

Contributory negligence, 1, 585

Destruction of animals under police power, 18, 755

Double damage, 23, 417

Injuries by, 1, 584

Action for, 1, 573

When owner liable, 1, 585

Innkeeper, 11, 35

Joinder of parties, 17, 603

Justification in killing, 1, 586

Killed by another, 1, 575

Killing, 1, 586

Killing unlicensed dogs, 1, 586

Larceny, 1, 573; 12, 782

Liability of carrier for injury, 2, 786

License, 13, 539

Malicious mischief, 14, 9

Municipal corporations, 15, 1189-1190

Necessity of scienter, 1, 584

Police power, 18, 755

Property in, 1, 573

Right to keep, to drive off trespassing animals, 1, 581

Scienter, 1, 584; 21, 850

Scienter of servant or agent, 1, 584

- Scienter, sufficient proof of, 1, 584
 Tax, 1, 573; 13, 539; 25, 489
 Trespass, 26, 606
 Vicious, 1, 581
 Who liable for injuries by, 1, 584
Domestic, 5, 856
 Mortgagee's right to increase, 1, 572
Property in, 1, 572
 Dogs, 1, 572
 Increase where bequest for life has been made, 1, 573
 Right to defend, 1, 583
Driving Animals on Land of Another
 Trespass, 2, 509
Duties and Liabilities of Bailee, 1, 589
 Injury to horse received during extra use, 1, 591
 Duty of railroad to signal for animals at crossing, 4, 925
 Embezzlement, 6, 459
 Express companies, 7, 555
Feræ Naturæ
 Fish, 8, 34
 Larceny, 12, 783
Fraudulent Sales
 Delivery, 8, 891
Injuries by Domestic
 Dog killed by another, 1, 575
 Scienter, 5, 53
 Joinder of parties, 17, 603
Knowingly Letting Loose a Dangerous Beast
 Homicide, 9, 534
Larceny, 1, 573; 12, 782
 Animals feræ naturæ, 12, 783
 Bees, 12, 782
 Brand, 12, 833
 Cattle, 12, 782
 Dogs, 1, 573; 12, 782
 Domestic animals, 12, 782
 General rule, 12, 782
 Indictment, 12, 812, 813
 Oysters, 12, 783
 Pigeons, 12, 782
 Wild animals, 12, 783
Liability for
 Inns and Innkeepers
 Death of animal, 11, 65
 Inevitable accident, 11, 64
 Without negligence of keeper, 11, 64
 Liability of owner for injuries by, 1, 578
 Lien upon a bailee, 1, 589
 Live animals, 13, 926
 Mortgages, 15, 752
 Municipal corporations, 15, 1189
Necessity of Inclosures
 Changes in common law, 1, 578
 Necessity of maintaining inclosures at common law, 1, 576
 Negligence, contributory to injury by, 1, 583
 Nuisances, 16, 990-992
Police Power
 Destruction of animals under, 18, 755
 Presumptions as to probable habits of, 19, 78
 Property in domestic, 1, 572
 Property in Wild, 1, 571; 3, 169
 Game, 8, 1024
 By custom of hunters, 8, 1024
 No ownership until reduced to possession, 8, 1024
 Ownership in the people, 8, 1024
 Qualified property, 8, 1025
 When property vests, 8, 1026
 Whether game belongs to hunter or owner of land, 8, 1024
 Right to kill dangerous animals, 16, 990-992
Running at Large, 12, 898-900
 Forfeiture, 17, 259
 Sale of animals having contagious disease, 5, 339
Scienter, 1, 578; 21, 850
 As to dogs, 1, 584
 Dispensed with as to dogs, 1, 584
 Of agents or servants, 1, 584
 Sufficient proof of, as to dogs, 1, 584
 What constitutes, 1, 582
 Taxation, 25, 139
 Trespass, 26, 606, 613-614
 Trespass for injuring tame animals, 3, 169
 Trespass on the case, 26, 706
Trespassing, 1, 576
 Diseased cattle, 1, 586
 Liability for killing or injuring, 1, 575
 Liability of agister, 1, 580
 Liability of one of several owners, 1, 580
 Liability of owner, 1, 580
 Liability of owner, carelessness of servants, 1, 580
 Liability of owner for injury by animals, 1, 578
 Liability where animal falls in unclosed pit, 1, 575
 Necessity of keeping animals within inclosures, 1, 576
 Necessity of inclosure at common law, 1, 576
 Rights of strangers in regard to, 1, 580
 Unclosed lands, injuries to, by, 1, 576
 What is a trespass, 1, 578
 Who liable for, 1, 580, 581
Vicious, 1, 581
 Amount of damages allowed, 1, 583
 Contributory negligence, 1, 583
 Degree of care exercised, question for jury, 1, 582
 Degree of care required by owner, 1, 582
 Duty of owner to keep securely, 1, 581
 Exemplary damages, 1, 583
 How many instances of viciousness are necessary, 1, 582
 Responsibility of owner, 1, 581
 Scienter, 1, 581, 582
 What are, 1, 582
 What constitutes scienter, 1, 582
 Warranty, 28, 772
 Whether they pass to executor or administrator, 7, 241

ANIMALS—Cont'd

Wild Animals, see **GAME AND GAME LAWS.**

Injuries by, 1, 582

Kept at owner's peril, 1, 582

Property in, 1, 571, 572

Qualified property in, 3, 169

What are, 571

Whether oysters are, 1, 571

Worrying animals, 29, 990

ANNEXATION, 1, 590**ANNEXED, 1, 590****ANNUALLY APPOINT, 1, 631****ANNUITY, 1, 592; 10, 360; 13, 62**

See generally **TONTINE INSURANCE.**

Abatement, 13, 68

Annuitant and residuary legatees, 13, 69

Annuities charged on land devised, 13, 145

Investment, 13, 69

Legacies, 13, 132, 134, 143

Mode of valuation, 13, 68

Payment of amount of valuation, 13, 68

Pro rata with general legacies, 13, 68

Valuation, 13, 68

When given to widow in lieu of dower, 1, 595

When granted by will, 1, 594

A Charge Upon What, 1, 593; 13, 64

Generally upon personalty, 1, 593; 13, 64

Upon rents and profits, 1, 594

When upon real estate, 1, 593; 13, 65

Apportionment, 1, 595; 7, 280

General rule, 1, 595

When given for maintenance of a wife living separate, 1, 595

When given for support of minors, 1, 596

When given in lieu of dower, 1, 596

Appropriation of Funds to Secure Annuities and Legacies Payable in Futuro, 13, 163

All persons bound by appropriation, 13, 164-165

Application to court of equity to have sum set apart, 13, 163

Appropriation without order of court, 13, 164

Charged upon whole of personal estate, 13, 165

Executor paying over a residue charged with an annuity, 13, 163

Residue charged with an annuity, 13, 163

Rise or fall of stock, 13, 164

As advancements, 1, 217**As a restriction upon marriage, 1, 596****As a species of legacy, 13, 63****Assignment of, 1, 596****Bequest arising out of land, 13, 27****Charge on land, 13, 65****Collateral inheritance tax, 24, 472****Consideration, 1, 596; 18, 256****Definition of, 1, 592****Demonstrative annuities, 13, 14****Determination, 1, 598**

Devise of all testator's property on trust, 13, 66

Directions to Purchase, 13, 66

Gift over or upon alienation, 13, 67

Restraint upon anticipation, 13, 67

Whether purchase-money vests in annuitant, 13, 66

Distinction between annuities given for a period and for an object, 13, 67

Distinguished from interest, 1, 598

Distinguished from rent charged, 1, 592

Dower in, 5, 891

"During their lives," 6, 99

Education and maintenance, 13, 65

Executors and administrators, 7, 256

False personation of annuitant, 7, 697

Foreclosure of mortgages by annuitant, 8, 215

For maintenance and education, 13, 68

Gift of rents and profits to parent during minority of child, 13, 67

Gift over upon bankruptcy, 13, 67

Granted by will, 1, 594

Implied covenants, 9, 966

Interest, 1, 598; 11, 387

Legacies and Devises, 13, 17, 62

See *infra*, **ABATEMENT; DIRECTIONS TO PURCHASE ANNUITIES.**

Annuity charge on land, 13, 65

Annuity for maintenance and education, 13, 68

Annuity to trustees for their trouble, 13, 67

As a species of legacy, 13, 63

Devise of all testator's property in trust, 13, 66

Distinction between annuities given for a period and for an object, 13, 67

Education and maintenance, 13, 65

Gift of rents and profits to parent during minority of child, 13, 67

Gift over upon bankruptcy, 13, 67

Legacies comprehending annuities, 13, 63

Legatee including annuitant, 13, 63

Nature of term, 13, 62

Part of income of particular fund, 13, 66

Passes to personal representative, 13, 63

Rent charge, 13, 65

Rule determining whether annuity is perpetual, 13, 65, 66

Time of payment, 13, 159

To A forever, 13, 65

Where annuity constitutes rent charge, 13, 63, 64

Whether an Annuity Is Charged Upon Land or on Rents and Profits Only, 13, 112

An unlimited, indefinite charge upon rents and profits, 13, 112

Examples, 13, 112, 113

Prima facie presumption, 13, 113

Whether legacy is an interest in lands, 13, 112

- Whether an annuity might be entailed, 13, 63
 Whether charged upon personal property, 13, 64
 Whether for life or perpetual, 13, 64
 Limitation of actions, 13, 724
 Nature of the term, 13, 62
 Novation, 16, 898
 Partnership, annuity to widow, 17, 908
 Part of income of particular fund, 13, 66
 Passes to personal representative, 13, 63
 Payment, 1, 597
 Pecuniary consideration, 1, 596; 18, 256
Real Estate
 When charged upon, 1, 593; 13, 65, 112
Receivers, 20, 79
 To protect annuitants, 20, 325
 Remedies, 1, 598
 Rent charge, 13, 63-65
 Rule determining whether annuity is perpetual, 13, 65, 66
 Succession taxes, 24, 472
Taxation, 13, 215
 Tax upon corpus from which annuity is derived, 13, 215
 To A forever, 13, 65
 To trustees for their trouble, 13, 67
 Uses, 19, 1062
Usury, 27, 1018
 Device to avoid statutes, 27, 1018, 1019
 Examples, 27, 1018, 1019
 In good faith, 27, 1018
 Secured by mortgage, 27, 1019
 Validity, 1, 599
 Vendor's lien, 28, 166
 When annuity becomes payable, 7, 318
 Where annuity constitutes rent charge, 13, 63, 64
Whether an Annuity Is Charged Upon Land or on Rents and Profits Only, 1, 593; 13, 65, 112
 An unlimited indefinite charge upon rents and profits, 13, 112
 Examples, 13, 112, 113
 Prima facie presumption, 13, 113
 Whether legacy is an interest in lands, 13, 112
 Whether an annuity might be entailed, 13, 63
 Whether charged with personal property, 1, 593; 13, 64
 Whether for life or perpetual, 13, 64
 Whether personal, 1, 592
ANNUL, 1, 598
ANSWER, 1, 599; 6, 797
 See INTERROGATORIES; SCANDAL AND IMPERTINENCE.
 Allegation charging the defendants with possession of documents, 1, 602
 Amendment, 1, 610
 Bona fide purchaser, 6, 801
 Defendants, 6, 798
 Defenses, 1, 605; 6, 798
 Inconsistent defenses, 1, 606
 Of statute of limitations, 1, 606
 Other than those appearing in answer, 1, 605
 Several to the bill, 1, 606
 Definition of, 1, 599
 Demurrers, pleas and, 6, 802
 Denial, 6, 799
Discovery, 1, 600; 6, 800
 See BILL OF DISCOVERY.
 Excepting the unsworn answer, 1, 604
Exception
 After amendment of the bill, 1, 604
 Failure to except for insufficiency, 1, 604
 For insufficient discovery, 1, 103
 In writing for insufficiency, 1, 604
 Must be specific, 1, 604
 Must set out what, 1, 604
 Referred to master in chancery, 1, 604
 Facts tending to criminate defendant, 1, 601
 How avoided, 1, 600
 How compelled, 1, 601
Irrelevant or scandalous allegation, see SCANDAL.
 Purposes of, 1, 600
 What must be made, 1, 600
 Where defendant's privilege, 1, 601
 Where several defendants are joined, 1, 608
 Dismissal of bill, 6, 799
 Documents, 1, 602
Evidence, see *infra*, SWORN ANSWER.
Form of, 1, 607; 6, 797
 General traverse, 1, 607
 Reservation of damages, 1, 607
 Substance of the answer, 1, 607
 Title, 1, 607
 Fraud, 6, 799
 Frivolous or sham answer, 1, 600
 General traverse, 1, 607
 Husband and wife answering jointly, 1, 609
 Infants, 10, 689
Information and Belief, 1, 605
 As evidence for defendant, 1, 609
 In general, 6, 798
Injunctions, 10, 1006
 Admission of facts in bill, 10, 1006
 Dismissal, 10, 1006
 Full denial, 10, 1006
 In support of pleas, 1, 606
 Joinder of parties, 1, 608
Mechanics' Liens, 15, 173
 In general, 15, 173
 Time of filing, 15, 174
 When received as evidence, 15, 174
Oath
 Necessity of, 1, 607
 Unsworn answer, 1, 604, 608
 Waiver of, 1, 607
 Overruling, 6, 799
 Parties, 1, 608
Patent Law, 18, 98
 Admissions, 18, 101
 Amendment, 18, 99, 101
 Costs on amendment, 18, 100
 Diligence, 18, 99

ANSWER—Cont'd**Patent Law—Cont'd****Amendment—Cont'd**

Effect of amendment on admissibility of testimony, 18, 100

Examples, 18, 100

Facts admitted, 18, 100

New defense depending upon parol evidence, 18, 100

Presenting new defense, 18, 99

Surprise, 18, 100

Whether defects may be cured by, 18, 99

Answer as evidence, 18, 98

As defense, 18, 98

Clearness of defense, 18, 98

Exceptions, 18, 99

Material allegations of the bill, 18, 98

Responsively, 18, 98

Plea overruled by answer, 1, 607

Positive knowledge, 1, 605

Pro Confesso, 1, 602

Effect of taking a bill *pro confesso*, 1, 602

Production of documents, 1, 603

Prohibition, 19, 281

Rebuttal, 6, 800

Receivers, 20, 98

Affidavit in reply to answer, 20, 98

Answer Aided by Affidavits, 20, 97

Examples, 20, 97

In general, 20, 97

Appointment before answer, 20, 27, 87, 91, 98, 99

Effect of oral answer, 20, 99

Reservation of advantages, 1, 607

Service of Process

Putting in as waiver of defense, 22, 170

Signature, 1, 608

Of counsel, 1, 608

Of party, 1, 608

Specific performance, 22, 1074

Substance of answer, 1, 607

Supplemental, 6, 802

Sworn Answer as Evidence for Defendant,

1, 609; 6, 800; 29, 551

Information and belief in, 1, 609

Testimony of two witnesses, 1, 609

When discredited upon some points, 1, 609

Title, 1, 607

To bill of revivor, 2, 274

To part of bill, 6, 797

Under the Code, 18, 498

By way of traverse of denial, 18, 498

Counterclaim, 18, 498

Between the same parties, 18, 498

In general, 18, 498, 499

Requisites, 18, 498

Effect of denial, 18, 498

General or special denial of each material allegation, 18, 498

In general, 18, 498

Partial defenses, 18, 499

Several defenses, 18, 499

Unsworn Answer, 1, 608

Exception to, 1, 604

When by infant, 1, 608

When by married woman, 1, 608

When defendant must, 6, 797

Whether demurrable, 1, 606

ANTECEDENT

Debt, 5, 163

ANTICHRESIS, 1, 610

Distinguished from pledge, 18, 589

ANY, 1, 611

Any child, 3, 233

Any place, 18, 463

Equivalent to either, 1, 611

In any manner, 14, 252

APART, 1, 167, 612

Apart from her husband, 1, 612

Living apart, 13, 971

Not equivalent to "out of hearing," 1, 167

APARTMENT, 1, 612

See **LODGINGS**.

In a lease, 1, 612

In indictment, 1, 612

Of a prison, 1, 612

What is, 1, 612

What is not, 1, 612

APEX, 1, 613; 15, 505

As to *apex* rule, see **MINES AND MINING**.

Definition of, 1, 613

APPARATUS, 1, 614

Necessary apparatus, 1, 615

Of gaming, 1, 614

APPARENT, 1, 615

Apparent possession in bills of sale acts, see **BILLS OF SALE**.

Apparent danger, 1, 615

Apparent easements, 1, 615

Apparent Good Order

In bills of lading, 1, 616

Apparent intention, 1, 615

APPEAL, 1, 616

See **AMOUNT IN CONTROVERSY**; **AUDITA QUERELA**; **BILL OF EXCEPTIONS**; **BILL OF REVIEW**; **CERTIORARI**; **EMINENT DOMAIN**; **ERROR**, **WRIT OF**; **FINAL JUDGMENT**; **GARNISHMENT**; **HABEAS CORPUS**; **MANDAMUS**; **RECORD**; **REPORT AND CASE MADE**.

See generally, **JUDGMENT**.

Appeal Bond, see **UNDERTAKING ON APPEAL**.

As to final judgment, see **FINAL JUDGMENT**.

From justice of peace, see **JUSTICE OF PEACE**.

Homicide cases, see **HOMICIDE**.

New Trial

Appeal from order granting or denying new trial, see **NEW TRIAL**.

Receivers, see **RECEIVERS**.

Settled case on appeal, see **SETTLED CASE ON APPEAL**.

Statement of the case, see **SETTLED CASE ON APPEAL**.

Streets and Sidewalks

As to appeals from order establishing,
see **STREETS**.

Tax proceedings, see **TAXATION**.

Undertakings on appeal, see **UNDERTAKINGS ON APPEAL**.

Agreement not to, 12, 305

Amendment upon, 1, 627

Amount, 1, 619

Bills of Exception

Judge, 12, 11

Approval of judge to statement of facts, 12, 11

Fraudulent signature, 12, 12

Having gone out of office, 12, 12

Judge pro tem, 12, 13

Other than judge who tried case signing bill, 12, 12

Signature of judge who tried case to bill of exception, 12, 12

Supreme court settles bill when judge has gone out of office, 12, 12

By whom taken, 1, 619

Case tried de novo in court above, 1, 627

Change of venue, review, motions for, 3, 108

Conditions, whether mandatory, 23, 468

Continuation of the old cause, 1, 623

Costs, 4, 324

Courts, appeal from settlement, 20, 198

Death, 5, 134, 135

Definition of, 1, 616

Dismissal, 1, 627; 5, 691

After escape, 6, 853j

Failure to file transcript, 1, 627

Irregularities, 1, 627

Permission to prosecute, 1, 627

Statements of grounds in motion, 1, 627

During the trial, 1, 624

Effect, 1, 623

As supersedeas, 1, 623; 11, 666; 24, 586

Jurisdiction of court below after appeal is perfected, 1, 623

Omissions after the appeal is perfected, 1, 623

Former suit pending, 8, 555

Habeas corpus as a substitute, 9, 164

In Bankruptcy

Under act of 1867, 2, 70

Increasing damages on appeal, 5, 62

In Criminal Cases, 4, 882

Burden of proof, 2, 9

Exclusion of evidence when cured, 4, 886

Proof is evident, 2, 9

Raising objections for first time on appeal, 4, 886

Reversal for failure to instruct, 4, 886

What considered on appeal, 4, 886

In criminal practice, 1, 628

Injunctions, 10, 1007

In legislation, 1, 629

Interlocutory appeal, 1, 618

Intoxicating Liquors

License, 11, 664

General rule, 11, 664

Issue, 11, 667

Jurisdiction, 11, 664

Nature and effect of appeal, 11, 666

Provision for appeal provided by statute, 11, 665

Remand, 11, 667

Right of appeal, 11, 664

Service of notice, 11, 666

Supersedeas, 11, 666; 24, 586

Virginia statute, 11, 665

What will be considered, 11, 667

Where record is without fault, 11, 664

Whether action reviewed on appeal, 11, 664, 665

Who May Appeal, 11, 666

Citizens, 11, 666

Party entitled to license, 11, 666

Signers of counter petition, 11, 666

Revocation of license, 11, 679

Judgments, 1, 627

By confession, 12, 480

Under control of court which renders them, 1, 627

Jurisdiction

Want of, 1, 627

Local assessments, 25, 571

Mechanics' liens, 15, 203

Motions, 15, 888

Nonsuit, Voluntary

Generally, 16, 731, 748

In North Carolina, 16, 732

Replevin, 16, 732

Notice

Actual notice, 1, 622

Explicitness, 1, 622

Surveys, 1, 622

Ordinances, 17, 270

Origin, 1, 616

Papers upon, 1, 627

Parties to actions, 17, 659

Partition, 17, 816

Discretion of lower court, 17, 816

Error at law, 17, 816

Interlocutory judgment, 17, 750, 817

New trial, 17, 816

Presumption in favor of regularity, 17, 816

Report of commissioners, 17, 816

Weight of evidence, 17, 816

When lower court will be overruled, 17, 816

Who may make application, 17, 817

Partnership, 18, 1246

Patent Law, 18, 32

Application, 18, 33

Bill in equity to compel issue of patent, 18, 33

In patent office, 18, 32

Interference cases, 18, 33

Practice on appeal, 18, 32

Supreme court of District of Columbia, 18, 32

What courts will inquire into, 18, 33

Power of legislature to grant, 3, 682

Practice, 1, 625

APPEAL—Cont'd

Presumption of, favor of judgment below, 1, 626

Remittitur, 1, 628

Res adjudicata, 1, 625

Salvage, 21, 711

Special judge, 12, 26

Statutes

Effect of Repeal, 23, 513

Connected with, but independent of, repealed statutes, 23, 514

In general, 23, 514

Stay of Proceedings, 23, 530

Appeal from order, 23, 538

Right to Appeal After Taking Statutory

Stay of Execution, 23, 543

Express prohibition, 23, 544

Implied prohibition, 23, 544

In general, 23, 543

Supersedes, 1, 623; 11, 666; 24, 586

Surrogates' courts, 24, 990

"Taken," 25, 2

Time, 1, 621

Allowed by statute, 1, 621; 20, 1033

Extension of, by agreement of parties, 1, 621

Extension of, by court, 1, 621

In criminal cases, 4, 884

Waiver of irregularities of perfecting, 1, 622

Within Which Appeal May Be Taken

Statute limiting time to certain period after "rendition" or "rendering" of judgment, 20, 1033

Trade-marks, 26, 523

Examples, 26, 523-526

In general, 26, 523

United States statutory provisions, 26, 523

United States Courts, 27, 613

Appeal dismissed for irregularity, 27, 614

Bonds, 27, 614

Circuit court of appeals, 27, 649

Citations, 27, 613, 614

Compliance with rules and regulations, 27, 614

Court of claims, 27, 676

Final judgment, 27, 614

In general, 27, 613

Open court, 27, 613

Provision of statute, 27, 614

Second appeal, 27, 614

Supreme Courts, 27, 645

Practice on appeal, 27, 645

Time for appeal, 27, 645

Whether matter of course, 27, 613

Waiver, 1, 622; 28, 592

What Is Open, 1, 624

All the facts of law and record, 1, 624

Facts not excepted to or presented during the trial, 1, 624

Objections first taken in court above, 1, 624

Objections which would have de-

stroyed the foundation of the action, 1, 625

Res adjudicata, 1, 625

Want of jurisdiction, 1, 625

When decree of lower court should be set aside, 1, 625

When It Lies, 1, 617

From final judgment, 1, 617

Further disposition of the cause, 1, 619

In criminal cases, 4, 885

Interlocutory judgments, 1, 618

Order of decree within discretion of the court, 1, 619

What are interlocutory judgments, 1, 618

What constitutes final decree, 1, 617

When Judgment Set Aside, 1, 626

Admission of improper evidence, 1, 626

Excessive damages, 1, 626

Exclusion of proper testimony, 1, 626

In favor of party for whom judgment has been rendered, 1, 626

APPEAL BOOK, see SETTLED CASE ON APPEAL.

APPEAL CLAUSE, 3, 279

APPEARANCE, 1, 628

See ACTIONS; ATTORNEY AND CLIENT; SERVICE OF PROCESS.

For judgments by default, see DEFAULT.

Waiver of irregularities by, see SERVICE OF PROCESS.

As conferring jurisdiction, 12, 299, 300

Effect of special appearance, 1, 184

General appearance, 1, 184

Special appearance, 1, 183

What is not an appearance, 1, 184

APPELLATE, 1, 629

Appellate and supervisory power, 1, 629

APPELLATE COURT, 1, 629

APPELLATE JURISDICTION, 1, 629

See also JURISDICTION, UNITED STATES COURTS.

APPENDAGE, 1, 629

Appendage to a saloon, 1, 630

Necessary appendages, 1, 629

Road with its appendages, 1, 629

APPENDANT, 1, 630

Appendant or appurtenant, 1, 630

APPERTAINING, 1, 630

APPLICABLE, 1, 631

APPLICATION, 1, 631

For continuance, 1, 631

For insurance policy, 1, 631

On application, 1, 631

Refusal of an application, 1, 631

Summary, 1, 631

Writ of, 12, 125

Reversal of judgment, 12, 125

APPLICATION OF PAYMENT, see PAYMENT.

APPLIED, 1, 631

Applied for, 1, 631

Resulting Trusts

Partnership, 17, 975

- APPLY**, 1, 631
 Apply to the use, 1, 631
- APPOINT**, 1, 631
 Annually appoint; 1, 631
 Equivalent to choose, 1, 631
 Equivalent to designate, 1, 631
 Equivalent to nominate, 1, 631
 Equivalent to select, 1, 631
- APPOINTMENT**, 1, 631
See also AGENCY; OFFICERS.
Public officers, see PUBLIC OFFICERS.
 Appointment to an office, 1, 631
 Assets, 1, 632
 Definition, 1, 631
 Exclusive, 1, 633
 Exclusive and illusory appointment, 1, 633
 Illusory, 1, 633
 Manner of execution, 1, 632
- Receivers**
 Procedure Concerning Appointment
 Prayer, 20, 96
 Under a power, 1, 632
- APPORTIONMENT**, 1, 633
See ANNUITY.
Salvage, see SALVAGE.
Of taxes, see TAXATION.
 Definition, 1, 633
 Of annuities, 1, 595
 Of liabilities, 1, 633
 Of rights, 1, 633
 Use of the term, 1, 633
- APPRAISE**, 1, 634
 Appraised value, 1, 634
- APPRAISEMENT**, 1, 634
See SHERIFF'S SALES; TAXATION.
 Admiralty cases, 1, 635
 Arbitration proceedings, 1, 635
 Certificate of, 3, 59
 Commission of, 1, 634
 Decedents' estate, 1, 634
 Definition, 1, 634
 Dutiable goods, 1, 635
 Eminent domain, 1, 635
 Executions, 1, 635
 Kinds of, 1, 634
 Leases, 1, 635
 Prize, 1, 635
 Revenue laws, 1, 635
- APPRAISERS**, 1, 634
 As arbitrators, 1, 659
- APPREHEND**, 1, 636
- APPRENTICES**, 1, 636; 4, 473
See generally MASTER AND SERVANT.
 Apprehension of truant apprentices, 1, 639
- Assignment**
 Consent of parent, 1, 639*b*
 Of indenture, 1, 639*b*
 Suit by master for services of apprentice, 1, 639*b*
- At common law, 1, 636
- Covenants**, 1, 639*b*; 4, 473
 By infant apprentice, 1, 639*b*
 By parent or guardian, 1, 639*b*
- Definition, 1, 636
 Demand in action for enticing away, 5, 528
- Dissolution of Apprenticeship**, 1, 639
 Cruelty of master, 1, 639*a*
 Death of apprentice, 1, 639*a*
 Death of master, 1, 639*a*
 Immoral conduct of master, 1, 639*a*
 Joint agreement of parties to indenture, 1, 639*a*
 Removal of master, 1, 639*a*
 Statutory provision for, 1, 639
- Duties of master to apprentice, 1, 638
- Executor or administrator, liability of, 7, 326
- False imprisonment, 7, 665
- Formalities, 1, 636
- Guardian's power to bind ward, 9, 104
- Habeas Corpus**, 1, 639*b*; 9, 177; 17, 348
 By whom application should be made, 9, 177
 Whether court will award custody to master, 9, 177
- Indenture, 1, 637
- Infant**
 Binding himself, 1, 638
 Binding upon infant, 10, 667
 Consent by one in loco parentis, 1, 638
 Injuries committed by infant, 10, 668
- Master's liability for breach of covenant, 1, 639*c*
- Master's right of action for enticing away, 1, 639*d*
- Master's right of action for jury, 1, 639*d*
- Master's right to earnings of apprentice, 1, 639*c*
- Master standing in loco parentis, 1, 638
- Misconduct or breach of duty, 1, 639
- Mutual and independent covenants, 1, 639*c*
- Necessity of seal, 1, 636
- Parent and Child**, 17, 347
 Assigning services for benefit of parent, 17, 347
 Father's right to bind out children, 17, 347
 Habeas corpus, 17, 348
 Informalities, 17, 348
 Mother's right, 17, 347
 Statutory regulations, 17, 348
- Parties, 1, 638
- Pauper apprentices, 1, 637
- Poor and Poor Laws**, 18, 820
 Settlement, 18, 786
- Premium, 1, 639*b*
- Recaption of apprentice, 19, 1094
- Removal as breach of covenant, 1, 639*c*
- Removal of master, 1, 639*a*
- Requisites of contract, 1, 636
- Right of master to punish, 1, 639
- Term of apprenticeship, 1, 639
- Wages, 1, 639*c*
- Who may be an apprentice, 1, 636
- Who may take an apprentice, 1, 636
- APPROPRIATE**, 1, 639*d*
- APPROPRIATION**, 1, 639*d*
 Limitations as to commissioner's powers to make, 4, 392
- APPROVAL**, 1, 640
 On approval, 17, 184

APPROVE, 1, 640**APPROVEMENT**

Witnesses, 29, 560

APPURTENANCE, 1, 641*See* EASEMENTS.

Out-house, 17, 291, 292

APPURTENANT, 1, 644**APT TIME, 1, 645****ARBITRARILY, 1, 645****ARBITRATION AND AWARD, 1, 646***See* ACCOUNT RENDER; AUDITORS;
REFEREES; STOCK EXCHANGE.

Absence of party, 1, 682

Accountants, appraisers, 1, 678

Action of ejectment upon, 1, 714

Adjournment, 1, 682

Cause shown by party asking, 1, 683

Illegal, as ground for setting aside, 1, 709

Agreement upon every question, 1, 685

"All controversies," 1, 660

"All matters, claims, and demands at law or equity," 1, 660

"All matters in dispute," 1, 489

"All other actions or causes of actions," 1, 660

Appraisalment, 1, 625

Appraisers as arbitrators, 1, 659

Arbitrators, 1, 670, 707

Adverse opinion, expressed by, 1, 673

Agents of both parties, 1, 673

As witnesses, 1, 691

Compensation of arbitrator who has misconducted himself, 1, 708

Corruption as ground for setting aside, 1, 707

Failure to take oath an irregularity, 1, 709

Fraud of

As ground for setting aside, 1, 707, 708

Interest in subject-matter, 1, 672

Interest, remote, 1, 672

Judge in a case pendente lite as, 1, 674

Liability of, 19, 487, 489

"Misbehavior" of, 15, 619

"Misconduct," 15, 619

Must act together, 1, 683

Oath, 1, 674, 709

Objections to, when raised, 1, 673

Power of, 1, 675

Public officers as, 1, 674

Reserving authority, 1, 701

Who May Be Chosen, 1, 670

Judge in case of pendente lite, 1, 674

Public officers, 1, 674

Assumpsit

Upon award, 1, 885

At common law, 1, 647

Attorney

Employment by arbitrator, 1, 678

Hearing, 1, 688

Submission by, 1, 957

Award, 1, 692**Apparent Mistake of Fact**

As ground for setting aside, 1, 710

As a judgment, 1, 711

As an estoppel, 1, 713

Attestation by witnesses, 1, 692

By majority, 1, 685

Certain as to subject-matter, 1, 698

Certainty about boundary lines, 1, 699

Certainty as to amount, 1, 700

Certainty as to persons, 1, 699

Certainty as to time, 1, 699

Compliance with statutory regulations, 1, 693

Construction of, 1, 706

Corruption of Arbitrators

As ground for setting aside, 1, 707

Decision of all questions, 1, 693

Decision only as to matters subjected, 1, 694

Delivery, 1, 705**Necessity of, 1, 705**

To both parties, 1, 705

On Sunday, 1, 705

Waiver of, 1, 705

Where not required by submission, 1, 705

Effect of, 1, 711

Death, 7, 417

Inadequate, 1, 714

In matters concerning real estate, 1, 712

Upon executors and administrators, 1, 715

Upon matters not submitted, 1, 712

Upon strangers, 1, 714

When not final, 1, 712

Enforcement of, 1, 715

Entirety of, 1, 703

Failure of arbitrator to take oath as ground for setting aside, 1, 709

Fixing boundary line as defense to trespass, 1, 714

Form of, 1, 692

Form of, waiver of parties as to, 1, 692

Form of words, 1, 693

Fraud of Parties

As ground for setting aside, 1, 708

Illegal Adjournment

As ground for setting aside, 1, 709

Impeachment of, 1, 706**Incompetent Evidence**

As ground for setting aside, 1, 709

Injury shown by party moving to set aside, 1, 706

Instruction in submission as to form of award, 1, 692

In the alternative, 1, 698

Irregularity in Proceedings

As ground for setting aside, 1, 708, 709

Made upon dies non juridicus, 5, 86

Merger, 1, 712

Misconduct of arbitrators as ground for setting aside, 1, 707

Mistake caused by negligence of losing party, 1, 710

Mistake of Fact

As ground for setting aside, 1, 709

Must be mutual, 1, 701

Necessity of demand, 1, 715

Necessity of performance by party claiming under, 1, 716
 Necessity that it should require parties to do the same thing, 1, 702
 Newly discovered evidence as ground for setting aside, 1, 707
Objection
 By stranger, 1, 707
 Must be apparent on face, 1, 707
 Must be specified, 1, 707
 Waiver of, 1, 707
 When it must be taken, 1, 707
 Of sum of money in costs, 1, 697
 Ordering a stranger to the submission to perform a certain act, 1, 704
 Ordering a thing which is illegal, to be published, 1, 704
 Ordering payment of certain sum of money, 1, 701
 Parol, 1, 692
 Part good and part bad, 1, 710
 Partiality of arbitrators as ground for setting aside, 1, 707
 Possibility of, 1, 704
 Power of court over objectionable, 1, 711
 Presumption in favor of validity, 1, 706
 Presumption that all matters submitted have been decided, 1, 694
 Publication of, 1, 704
 Publication on Sunday, 1, 705
 Publication, what is, 1, 705
 Ratification by concurrence and result, 1, 715
 Ratification of, 1, 714
 Recombitment, 1, 711
 Reference to extrinsic documents, 1, 703
Reformation in Equity, 15, 666
 Award not executed, 15, 667
 Error of judgment, 15, 667
 Mistake apparent on face of award, 15, 667
 Mistake in submitting demands, 15, 666
 Mistake of law, 15, 667
 Mistake upon a doubtful point, 15, 667
 When equity will interfere, 15, 666
 Review of, 1, 706
 Separate execution of, 1, 684
 Statutory, 1, 692
 Subject-matter, 1, 693
 Submission of all matters in difference, 1, 713
 Submission as evidence of account stated, 1, 116
 Tender equivalent to performance, 1, 716
 Title to real estate, 1, 698
 Under statutes, 1, 692
 When in writing, 1, 692
 When set aside, 1, 706
 When submission is in writing or under seal, 1, 692
 When under seal, 1, 692

Withdrawal of parties from submission, 1, 695
Building Contracts, 29, 974
 Conclusiveness of decision, 29, 974
 In general, 29, 974
 Interested arbitrator, 29, 974
 Submission a condition precedent, 29, 974
 Waiver of right, 29, 976
 Warranty of approval distinguished from award, 29, 943
 Closing case, 1, 681
Compensation of Arbitrators, 1, 686
 Costs, 1, 687
 Fees, 1, 688
 When entitled to, 1, 686
 Corporations submitting to, 4, 275
 Costs, 1, 687
Counsel
 Employment of, by arbitrators, 1, 678
 Criminal proceedings, as a stay to, 1, 658
 Death of party to submission, 1, 666
Debts of Decedents
 Compliance with statutes, 5, 224
 Omission to submit as admission, 5, 224
 Statutory power of administrators to submit, 5, 224
 Definition, 1, 647
Delegation of Power, 1, 677
 Assistance of accountants, appraisers, etc., 1, 678
 Employing legal counsel, 1, 678
 Ministerial acts, 1, 678
 To courts which appointed them, 1, 678
Demand
 Necessity of, 1, 715
 Dependence on extrinsic documents, 1, 704
 Disobedience to award of arbitrators as contempt, 3, 785
Duration of Arbitrator's Authority, 1, 688
 Extension of, 1, 688
 Making an award, 1, 689
 When submission is silent, 1, 688
 Eminent domain, 6, 634
Evidence, 1, 679
 Admission of, generally, 1, 679
 Admission of incompetent, in arbitrator as officer of, 1, 680
 De bene esse, 1, 682
 Hearing all offered, 1, 680
Incompetent
 As ground for setting aside, 1, 709
 Leaving admissibility to court, 1, 680
 Receiving without other parties' knowledge, 1, 685
 Refusal to hear, 1, 681
 Submission requires legal, 1, 680
 Examination of parties in each other's presence, 1, 685
Executors and Administrators
 Liability, 7, 341
 Submission by, 7, 285
 Ex parte examination, 1, 685
 Fees of arbitrators, 1, 688

ARBITRATION AND AWARD—Cont'd**Finality and Award**

Ordering payment of certain sum of interest, 1, 699

That one of the parties shall pay costs, 1, 701

Finality and Certainty

Award ordering one party to give security, 1, 699

General submissions, 1, 660

Hearing counsel, 1, 683

In Insurance, 11, 353

Binding effect, 11, 353

General stipulation, 11, 353

In stipulation, 11, 353

Provision made in act of incorporation, 11, 354

Ratification, 11, 354

Special matters, 11, 353

Waiver, 11, 354

What stipulations are upheld, 11, 353, 354

Joinder of Parties, 17, 573

Arbitrator's suit for fees, 17, 570

Laches, 12, 581

Delay in performance, 12, 581

Executory agreement, 12, 581

Loss of evidence through delay, 12, 582

Past transactions, 12, 581

Stranger to reference, 12, 581

Lis Pendens

Award of costs, 1, 688

Mandamus, 14, 141

Ministerial acts, 1, 701

Municipal corporations, 15, 1049

Mutuality, 1, 701

Incompetence of one party known to the other, 1, 702

Resting on outside circumstances, 1, 702

Submission by party and partner, and award binding partner, 1, 702

Necessity for reasons for award, 1, 699

Necessity of presence of all the arbitrators, 1, 683

Necessity of specifying all matters submitted, 1, 697

Non est inventus, 16, 717

Notice

Of hearing, 1, 685

Of what meetings, must be given, 1, 686

To party's attorney, 1, 686

Waiver of, 1, 686

What is reasonable, 1, 686

Number of arbitrators, 1, 655

Oath of arbitrator, 1, 674

"Of matters in dispute," 1, 659

Ousting

In courts of jurisdiction by, 1, 667

Parol evidence, 17, 422

Partition by, 17, 667

Defectiveness, 17, 667

Laches on part of complaint, 17, 667

Mistake by the arbitrators, 17, 667

Necessity of conveyance in accordance with award, 17, 667

Whether equity will compel transfer of legal title, 17, 667

Partnership, 1, 650; 17, 908

Agreement to that effect, 17, 908

Assumption of indebtedness, 17, 909

Dissolution, 17, 909

Effect, 1, 652; 17, 908, 909

Implied consent of partner, 1, 651

Payment of indebtedness, 17, 909

Power of Partner to Submit to, 17, 1048

Agreement to refer to third person, 17, 1050

In general, 17, 1048

Ratification, 17, 1049

Submissions not under seal, 17, 1048

Submissions under seal, 17, 1049

What is sufficient authorization, 17, 1049

Whether binding upon partner personally, 17, 1049, 1050

Revocation, 17, 909

Whether pendency is a defense in equity, 17, 909

Winding up, 17, 909

Pendente Lite

Acting as its discontinuance, 1, 662

Cases suspended, 1, 662

Judge in case as arbitrator, 1, 674

Submission of cases, 1, 661

Performance of award on void submission 1, 656

Perjury of witnesses, 1, 679

Power of Arbitrators, 1, 675

Adjournments, 1, 682

Administering oath to witnesses, 1, 678

Control over proceedings, 1, 682

Discretionary power to hear counsel, 1, 683

Duration of, 1, 688

Excess of authority, 1, 675

Hearing case in absence of party, 1, 682

Judges of law and fact, 1, 675

Matters of fact, 1, 676

Presumptions, 1, 677

Questions of pure law, 1, 676

Restricted power, 1, 675

To compel attendance of witnesses, 1, 679

Waiver, 1, 675

What may be considered, 1, 677

Presumption

As to excess of authority, 1, 677

As to validity, 1, 696

Private and public matters, 1, 684

Privileged Communications, 19, 124

Examples, 19, 124-126

General rule, 19, 124

Provision in insurance policy as condition precedent, 1, 669

Provisions to refer dispute to arbitration in insurance policies, 1, 668

Provisions to refer renewal of lease to arbitrators, 1, 668

Publication of

Necessity, 1, 704

What is a publication, 1, 704

Question of law and fact, 1, 676; 19, 651

Ratification of Award, 1, 714

By concurrence in, 1, 715

Receiving evidence without other parties' knowledge, 1, 685

Recommitment, 1, 711

Discretion of court to reject or recommit, 1, 711

For correction of acknowledged error, 1, 711

For correction of informality, 1, 711

For correction of substantial error, 1, 711

In discretion of court, 1, 711

Legality on its face question for judge, 1, 711

Reformation of Instruments, 15, 666

Award not executed, 15, 667

Error of judgment, 15, 667

Mistake apparent on face of award, 15, 667

Mistake in submitting demands, 15, 666

Mistake of law, 15, 667

Mistake upon a doubtful point, 15, 667

When equity will interfere, 15, 666

Reopening the case, 1, 681

Res judicata, 3, 881

Revocation of Submission, 1, 664

A revocation must conform to the submission, 1, 665

Before award, 1, 664

Damages

For illegal revocation, 1, 666

What may be included under, 1, 666

Death of one of the parties, 1, 666

Death of party where revocation is rule of court, 1, 666

Effect on parties, 1, 666

Form of revocation, 1, 665

Implied revocation, 1, 665

Refusal of one of the arbitrators to act, 1, 666

Submission under seal, 1, 665

Where submission ceases to be binding upon one party, 1, 666

Where submission is entered as rule of court, 1, 664

Where submission is joint, 1, 664

Where submission is under statute, 1, 665

Written submission, 1, 665

Schools, 21, 807

Separate execution of award, 1, 684

Specific Performance**Agreements to Arbitrate, 1, 667; 22, 1000**

Agreements partially executed, 22, 1000

Compelling arbitrators to render award, 22, 1000

Condition precedent, 1, 668

Examples, 22, 1000, 1001

General rule, 1, 667

What is condition precedent, 1, 669

When executory, 22, 1000

Whether they can be enforced, 22, 1000

Working contracts, 1, 670

Awards, 22, 1001

Award calling for payment of money, 22, 1001

Enforcement of award, 22, 1001

Examples, 22, 1001

In general, 22, 1001

Contract Providing that Price Should Be Arbitrated, 22, 1010*Submission, see infra, REVOCATION.***Submissions, 1, 654**

Acknowledgment, 1, 654

Adding foreign matter, 1, 663

At common law, 1, 655

Cases suspended, 1, 662

Claims barred by statute of limitations, 1, 661

Conditional, 1, 661

Construction

Liberal construction, 1, 657

Decision only as to matters submitted, 1, 694

Definiteness and mutuality required, 1, 657

Expression of intention to abide by award, 1, 656

Final and certain, 1, 695

Form of, 1, 656

General, 1, 660

Intendments and presumptions, 1, 696

Intent of parties, 1, 655

Necessity that the matter be doubtful, 1, 658

Of cases pendente lite, 1, 661

Parol evidence to vary terms of, 1, 657

Performance of award void, 1, 656

Real Estate

Matters regarding, 1, 659

Release of errors, 1, 663

Require legal evidence, 1, 680

Requiring appointment of umpire, 1, 689

Requiring witnesses to be sworn, 1, 679

Simultaneous, 1, 657

Specification in all matters submitted, 1, 697

Title to real estate affected by, 1, 655

To, as a bar to a subsequent suit, 3, 881

Uncertainty in, 1, 657

Under statute, 1, 647, 654; 23, 394

What is submitted, 1, 663

What matters excluded, 1, 661

What may be submitted, 1, 658

When submission may be made, 1, 657

When under seal, 1, 654, 655

Withdrawal of parties from submission, 1, 695

Sunday, 24, 574

To abide by, 1, 27

Trespass, 26, 635

Trusts and trustees, 27, 137

ARBITRATION AND AWARD—Cont'd

- Umpire and Third Arbitrator, 1, 689
 - Acting upon his own judgment, 1, 691
 - Choice by lot, 1, 690
 - Form of appointment, 1, 691
 - Mode of appointment, 1, 690
 - Power of umpire derived from submission, 1, 689
 - Rehearsing a case upon appointment, 1, 691
 - Umpire's signature to the award, 1, 691
 - Waiver of right to rehearsing, upon appointment of, 1, 691
 - When appointed, 1, 690

Waiver

- As to form of award, 1, 692
- Of arbitrator, with power to decide matters of law, 1, 675
- Of delivery, 1, 705
- Of notice, 1, 686
- Of objections to award, 1, 707
- Of obligation of swearing witnesses, 1, 679
- Of right to rehearsing, upon appointment of umpire, 1, 691

What award need state, 1, 698

What May Be Submitted

- Boundary line, questions as to, 1, 660
- Claim of dower, 1, 659
- Debts depending on a specialty, 1, 659
- Matters of a civil character, 1, 658
- Questions of measurement, 1, 659

Real Estate

- Matters regarding, 1, 659
- Single item of account, 1, 659

Who Can Be Parties, 1, 648

Effect of partner submitting to arbitration, see infra, PARTNERSHIP.

- Attorneys, 1, 652
- Bankrupts, 1, 648
- Common councils, 1, 653

Control

- Necessity of, 1, 648
- Corporations, 1, 649
- Executors and administrators, 1, 653
- Guardians, 1, 654
- Husband and wife, 1, 649
- Infants, 1, 648
- Municipal corporations, 1, 649
- Overseer of the poor, 1, 654
- Ratification of agent's submission, 1, 653
- Selectmen, 1, 653

Who may make, 1, 648

Witnesses

- Admission of incompetent, 1, 680
- Arbitrators as, 1, 692; 29, 605
- Oath, 1, 678
- Power to compel attendance of, 1, 679
- Privilege from arrest, 1, 725

ARBITRATORS, see ARBITRATION AND AWARD.

ARCHITECTS, see WORKING CONTRACTS.

ARDENT SPIRITS, 1, 716

ARE CHARGED, 1, 716

ARGUMENT, 1, 716

Before argument, 1, 716

ARGUMENTS OF COUNSEL, 12, 458; 16, 524

See ATTORNEY AND CLIENT; OPEN AND CLOSE.

Comment on defendant's failure to testify, see WITNESSES.

Appeal to prejudices of jurors, 16, 528

Arguments must be confined to law and evidence, 1, 949; 16, 524

Arguing to Jury Upon the Law, 1, 949; 19, 620

In general, 19, 620

Law and fact inseparable, 19, 620

Libel, 19, 620

Reading from Law Books, 19, 620

Counsel adopting views expressed in book as his own, 19, 622

Court's right to restrict counsel, 1, 949; 19, 624

Discretion of the trial court, 19, 624

Examples, 19, 622

In general, 19, 622

In Virginia, 19, 624

Measure of damages, 19, 623

Passages bearing upon questions of fact, 19, 622

Unnecessary consumption of time suffered, 19, 625

Where charge of judge precedes argument, 19, 623

Where passage as read has no application to the facts of the case, 19, 625

Where juries are judges of the law, 19, 620

Where juries are not judges of the law, 19, 620

Whether argument should be addressed to court alone, 19, 620

Attack upon character of opposite party, 16, 526

Caution to jury by court, 16, 526

Commenting upon change of venue, 16, 524

Commenting upon excluded testimony, 16, 525

Cure of error, 16, 526, 528

Discretion of trial court, 1, 949; 16, 527; 19, 624

Duty of court upon abuse of privilege, 16, 525

Effect of court's interference, 16, 526

Examples, 16, 524-529

Homicide, 9, 739

Examples, 9, 740

Limiting defendant's time for argument, 9, 740

Misconduct of state's attorney, 9, 739

Opening statements of state's attorney, 9, 739

Order of argument, 9, 741

Prejudice of defendant, 9, 739

Prosecuting attorney, 9, 739

When objection must be made, 9, 740

In criminal cases, see CRIMINAL PROCEDURE.

- In criminal conspiracies, 4, 639
 Injury to complainant, 16, 524
 Instructions to disregard improper remarks, 16, 526-528
 Judicial control of argument, 1, 949; 16, 527; 19, 624
 Justice of the peace, 12, 458, 465
 Misstatement of evidence, 16, 526
 Objection to remarks, 16, 527
 Reading extracts from newspapers, 16, 524
 Reading from books, 16, 527; 19, 620
 Referring to matters not in evidence, 16, 526
 Stating facts not proven, 16, 525
 When new trial should be granted, 16, 527
- ARISE**, 1, 717
When cause of action arises, see LIMITATION OF ACTIONS.
 Arise out of the same transaction, 1, 717
 Arising during course of trial, 1, 717
 Cases arising in a justice's court, 1, 717
 Cases arising in the land or naval force, 1, 717
 Cases arising under treaties, 1, 717
 Cause of action shall have arisen, 1, 717
 Crimes arising under the revenue laws, 1, 717
 Duties arising on goods imported, 1, 717
 Where the cause of action arose, 1, 717
- ARM**, 1, 717, 718
Right to bear arms, see CONCEALED WEAPONS.
 Arm of the sea, 1, 718
 Arm of this territory, 1, 718
 Arm of war, 3, 409
 Arm to aid his escape, 1, 718
 Carry arms, 3, 167
 Force and, 8, 99
 Loaded arms, 1, 718
- ARMED**, 1, 717
 Armed vessel, 1, 717
- ARMY**, see MILITARY LAW.
ARMY REGULATIONS, see MILITARY LAW.
- AROMATIC**, 1, 719
- ARRAIGNMENT**, 1, 719
See CRIMINAL PROCEDURE; HOMICIDE.
 Arraignment of the prisoner, 1, 719
 Jeopardy, 11, 932
- ARRANGEMENT**
 In interstate commerce law, 11, 561
- ARRAY**, see JURY AND JURY TRIAL.
- ARREARS**, 1, 719
 Arrears of rent, 1, 719
 Arrears of taxes, 1, 719
- ARREST**
 Take in the sense of, 25, 1
 Receivers, 20, 117
- ARREST (CIVIL CASES)**, 1, 719
See ARREST (CRIMINAL CASES); HABEAS CORPUS; IMPRISONMENT FOR DEBT; RECAPTURE; SUPPLEMENTARY PROCEEDINGS.
- Taxation**
Arrest for non-payment, see TAXATION.
Warrants, see WARRANTS.
- Affidavit**, 1, 721
 And bond, 1, 721
 Necessity of, in New York, 1, 722
 Upon information and belief, 1, 721
 Validity of, 1, 721
 Attorney's liability for unlawful arrest, 1, 952
- Bail**, 22, 535
 Examples, 22, 535
 In general, 22, 535
 Liability of sheriff for insolvent surety, 22, 535
 Number of sureties, 22, 535
 Running to sheriffs, 22, 535
 Sheriff's duty to accept bail, 22, 535
 Special, 22, 535
 Statute of 23 Henry VI., 22, 535
 Sureties becoming insolvent, 22, 535
 When sheriffs must admit to bail, 22, 535
- Bankruptcy**
 Effect of foreign bankruptcy discharge of person from, 3, 627
 Whether act of, 2, 84
- Bond**, 1, 721
- Breaking Doors**, 1, 722, 723
 Of barns, stores, etc., 1, 723
 To retake, 1, 722
 To take lodger, 1, 723
 Where goods of defendant are sought to be taken, 1, 723
 Where person of defendant is sought to be taken, 1, 723
 By statute, 1, 719
- Capias ad Respondendum**, 1, 720; 2, 723
 Definition, 2, 723
 In what cases allowed, 2, 724
 Irregularities in the writ, 2, 725
- Statutes**
 Abolishing, 2, 724
- Capias ad Satisfaciendum**, 1, 720; 2, 725
 Definition, 2, 725
- Conflict of Laws**
 Arrest on foreign contract, 3, 577
 Law determining the right, 1, 721
 Contempt, attachments for, 1, 730
 Debt, whether discharge of, 3, 929
 Discharge of bankrupt from, 1, 728; 2, 627
 Discharge on motion, 1, 729
 Execution of process, 1, 722
 Fees, 22, 562
 "Fiduciary capacity," 2, 722
- Habeas Corpus**
 Discharge by, 1, 728
- Insanity**
 Of sane person upon the pretense that he is insane, 11, 113, 114
 Justice of the peace, 12, 437
 Motion to quash indictment for illegal arrest of accused, 4, 767
 Motion to vacate an order, 1, 728
 Object of, 1, 720

ARREST (CIVIL CASES)—Cont'd**Privilege, 1, 724***See generally* SERVICE OF PROCESS.

Adjournment, 19, 485

As ground for abating the writ, 1, 729

Attorneys, 1, 725, 948; 10, 235

Bail, 10, 237

Bankrupt, 1, 724; 10, 237

Consuls and ambassadors, 1, 727; 3,

772; 10, 234

Coroner's privilege from, 4, 175; 10,

235

Defendant brought into jurisdiction

upon criminal charge, 1, 724

Defendant in criminal prosecution, 1,

724

Deviation, 1, 726

Discharge on motion, 1, 729

Duration of privilege, 1, 725

During adjournment, 1, 726

False imprisonment, 7, 694

Females, 10, 238

Abolition of right of arrest, 10, 239

Arrest of female for injury to prop-

erty, 19, 284

At common law, 10, 238

Bail, 10, 239

Discretion of court as to discharge,

10, 238

Husband's liability for wife's tort,

10, 240

Married women, 1, 727

Mesne process, 10, 239

New York statute, 10, 240

Separate estate, 10, 238

Statute of right to arrest, 10, 239

Household servants of the crown in

England, 10, 234

Infants, 10, 238

Judicial Officers, 1, 725; 10, 235

Attorneys, 1, 725, 948; 10, 235

Coroners, 4, 175; 10, 235

Judges, 1, 725; 10, 235

Jurors, 1, 725; 10, 235

Magistrates, 10, 235

Sheriffs, 1, 725; 10, 235

Lunatics, 10, 238

Members of the Legislature, 1, 727;

3, 692; 10, 233

Extent of privilege, 10, 233

Going and coming, 10, 234; 19, 485

How long privilege extends, 10, 233

Members of congress, 3, 707; 10,

233

Members of parliament, 10, 233

Members of state conventions, 10,

233

Members of state legislature, 10,

233

Militia, 1, 727; 15, 481

Of one discharged on habeas corpus, 1,

724

Of sheriff, 1, 725

Officer as trespasser, 1, 729

Officer taking notice of, 1, 729

Parties to Suit and Witnesses, 1, 724;

10, 236

Bail, 10, 237

Bankruptcy proceedings, 1, 724; 10,

237

Defendants in criminal proceedings,

10, 237

Deviation while returning from

court, 10, 236

Party brought in upon warrant of

jurisdiction, 10, 237

Privilege in favor of party, 10, 236

To whom privilege extends, 10, 236

Voluntary attendance, 10, 237

Witnesses, 1, 724; 10, 236

Police, 10, 234

Police Officers, 19, 485

Adjournment, 19, 485

Attendance at and in going to and

from session, 10, 234; 19, 485

Constitutional privilege, 19, 485

Liability of officer for arresting priv-

ileged person, 19, 485

Scope of privilege, 19, 485

Receivers, 20, 117

Sailors, 1, 727; 10, 234

Soldiers, 1, 727; 10, 234; 15, 428, 481

Voters, 1, 727; 10, 234

Waiver of, 1, 728; 10, 235

Witnesses, 1, 724; 10, 236

In arbitration and award, 1, 725

Witness voluntarily attending, 1, 724

Process, 1, 721

Execution of, 1, 722

Validity depending upon validity of

affidavit, 1, 721

Where grand jury has found a true

bill, 4, 760

Replevin, 20, 1089

Resistance, 1, 723

Second Arrest, 1, 729

When vexatious, 1, 730

Set-Off

Discharge of debtor by consent of

plaintiff, 22, 460

Escape of debtor, 22, 461

Execution against the person, 22, 460

Sheriffs, 22, 534

Exhibiting writ, 22, 534

Jurisdiction, 22, 525

Liability for wrongful arrest, 19, 485;

22, 534

Misnomer, 22, 534

Necessity of writ, 22, 534

Sunday, 1, 723; 24, 576, 578

Supersedeas, 24, 583

Time of Arrest, 1, 723

On Sunday, 1, 723; 24, 576, 578

Trick, 18, 832

Under final process, 1, 720

Under mesne process, 1, 719

Upon Dies Non Juridicus, 5, 86*See infra*, SUNDAY.

Upon information and belief, 1, 721

Waiver of illegality, 1, 728

What are outer and what are inner doors,

1, 723

Where debtor has been discharged in

another state, 1, 730

ARREST (CRIMINAL CASES), 1, 730

See ARREST (CIVIL CASES); ASSAULT;
BAIL; ESCAPE; FALSE IMPRISON-
MENT.

See generally PRISONS; HABEAS COR-
PUS; IMPRISONMENT; MITTIMUS; OB-
STRUCTING JUSTICE; POOR DEBTORS;
PRELIMINARY EXAMINATION; RE-
CAPTURE; WARRANT.

Assault and battery by officer making,
1, 745

Attempt to escape will not justify homi-
cide, 1, 746

Authority cannot be delegated, 1, 744

Breach of the peace in presence of officer,
1, 734

Breaking Doors, 1, 746

Necessity of, in demand to enter, 1, 747

Necessity of refusal, 1, 747

Necessity of warrant, 1, 747

Notification, 1, 747

Where criminal has escaped, 1, 749

Burden of proof, excessive force, 1, 745

Confession made when under, 3, 470

Crimes not felony at common law, 1, 743

Delay in preliminary examination, 1, 732

Discharge of prisoner upon failure to
indict, 10, 463

Elevated railroads, 23, 1088

Entering houses, 1, 738, 746

Excessive force, 1, 793

Felony, 1, 733

Committed in presence of private per-
son, 1, 740

Force that may be used, 1, 745

For cruelty to animals, 1, 737

For misdemeanor without a warrant, 1,
735

Fugitives from another state, 1, 734

Homicide by officer exceeding his duty,
9, 552

Homicide in Making, 1, 734, 745, 756; 9,
608; 17, 20

Manslaughter, 9, 587, 592

Homicide in Resisting, 1, 734, 751, 755; 9,
587, 609; 17, 20

Killing Officer in Discharge of Duty, 9,
552

Arrest without a warrant, 9, 552

General rule, 9, 552

Necessity of knowledge of official
character, 9, 552

Officer exceeding his authority, 9,
552

Void processes, 9, 552

Killing one assisting officer, 1, 755

Reasonable belief of danger, 9, 609

Right to resist unlawful arrest, 9, 609

Where officer is without jurisdiction,
1, 754

How made, 1, 732

Hue and Cry, 1, 748

By whom raised, 1, 748

Illegal Arrest, 1, 750

Upon void warrant, see WARRANTS.

Illegality of arrest or commitment as
justification of escape, 6, 852

Insanity, 1, 739; 11, 113

Interval of time after commission of
offense, 1, 737

Jurisdiction, 1, 754

Justice of the Peace

Arrest on view, 12, 407

Effect of setting aside order, 12, 437

Repeal of statute authority, 12, 438

When committed, 12, 437

Liability of person wantonly raising hue
and cry, 1, 750

Liability of private person arresting upon
suspicion, 1, 741

Manner of making, 1, 745

Night walker, 1, 735

Notice of Officer's Authority, 1, 739

What is sufficient, 1, 739

Where party is apprehended in com-
mission of offense, 1, 739

Obstructing Justice, 17, 16

Effect of Resistance, 17, 20

Death resulting from, 1, 734, 745; 9,
587, 608; 17, 20

Examples, 17, 21

In general, 17, 20

Examples, 17, 16, 17

Illegal resistance, 17, 16

Mittimus, 17, 17

Person not guilty of offense, 17, 17

Removal of person from court, 17, 16,
18

Resistance held justifiable, 17, 17

Threats, 17, 17

Of drunken persons, 1, 736

Of female for injury to property, 19,
284

Offense committed in presence of officer,
19, 562k

Offense not committed in presence of
officer, 19, 562k

Officer calling on private individuals, 1,
744; 22, 527

Persons Assisting Officer, 1, 744; 7, 677;
22, 527

Duty of person to assist when called
upon, 7, 677

Liability of person assisting officer, 1,
744

Officer's process void, 7, 677

Person absent but encouraging and
abetting, 7, 677

Private person indictable for refusing
to assist officer, 1, 744

Protection afforded to, 7, 677

Volunteers, 7, 677

Police, 19, 562j

Private Citizen Making, 1, 740, 743; 7, 677

After affray has terminated, 7, 678

Commission of felony, 7, 677

Felony must have actually been com-
mitted, 7, 678

Preventing breach of peace, 7, 677

Reasonable suspicion in mitigation of
damages, 7, 679

Right generally, 7, 677

Suspicion of felony, 7, 678

Reasonable grounds for, 1, 741

ARREST (CRIMINAL CASES)—*Cont'd*

Resisting Arrest, 1, 755

See infra, HOMICIDE IN RESISTING;
OBSTRUCTING JUSTICE.Arrest of one attempting to prevent
officer, 1, 758

Attempts at rescue, 1, 757

Party encouraging prisoner to resist,
1, 758Where ignorant of officer's official
character, 1, 757Sheriff of one county arresting in another,
1, 754Showing reasonable ground for, in miti-
gation of damages, 1, 741

Showing warrant, 1, 739

Special Deputy

Showing his authority, 1, 739

Showing warrant, 1, 740

Submission constituting, 1, 730

Suspicion of Felony, 1, 733

By a private person, 1, 740

Under municipal ordinance, 1, 735

Upon information, 1, 734

Upon verbal order of magistrate, 1, 738

Warrant, see WARRANTS.**What Constitutes, 1, 730**

Actual detention, 7, 663

Actual force, 7, 662

Civil process, 6, 847

Service of a writ, 7, 663

Threats, 7, 663

While offender is fleeing from scene of
crime, 1, 738

Who may make, 1, 754

Without a Warrant, 1, 732, 734, 754, 793;
19, 562*k*; 22, 566Breach of peace in officer's presence,
7, 675; 22, 566

By conservator of the peace, 1, 734

Cases holding arrest illegal, 7, 675

Demanding aid of third person, 22,
567

Felony, 22, 566

Illustrations, 7, 675

Immediate breach of the peace, 22, 566

In general, 22, 566

Officer must act in good faith, 7, 675

Police, 19, 562*k*

Suspicion of felony, 7, 675

Taking prisoner before magistrate,
22, 567Unreasonable detention after arrest,
7, 676What constitutes reasonable suspicion
of felony, 7, 676**With Process**

Court without jurisdiction, 7, 672

Examples of process void upon its face,
7, 674

Forged writ, 7, 672

Issued from proper court, 7, 671

Issued by unauthorized person, 7, 672

Jurisdiction appearing upon face of in-
strument, 7, 672Knowledge of defects in previous pro-
ceedings, 7, 674Necessity of process being valid on its
face, 7, 671

Officer bound to know law, 7, 673

Process issued under unconstitutional
law, 7, 674

Process of de facto officer, 7, 674

Process of inferior court, 7, 672

Requisites of process, 7, 671

Requisites of warrant, 7, 672

Validity of proceedings, 7, 673

Voidable authority, 7, 673

Void writ, 7, 671

Warrant, see WARRANTS.

Against person unknown, 7, 673

Grounds of issuance appearing on
face, 7, 673Name of person to be apprehended,
7, 673

When officer is protected, 7, 672

Writ defective upon its face, 7, 673

ARREST OF JUDGMENT, 12, 147*b*Abolition, 12, 147*b*After decision of motion for new trial,
12, 147*i*After demurrer for same cause has been
overruled, 12, 147*i*Application in civil cases, 12, 147*b*Another indictment for same offense
pending, 12, 147*g*At what time judgment may be arrested,
12, 147*i*

Costs, 4, 322

Courts arrest upon own motion, 12, 147*i*Date of offense left blank, 12, 147*c*Death of one of several plaintiffs, 12, 147*c*Declaration not stating complete cause of
action, 12, 147*c*Defects cured by verdict, 12, 147*d*Defects of parties, 12, 147*f*Definition, 12, 147*b*Duplicity, 12, 147*d***Error**Apparent on face of record, 12, 147*b*In preliminary examination, 12, 147*h*In process, 12, 147*h*In service of process, 12, 147*h*Failure to connect necessary averments,
12, 147*d*Formal defects in pleading, 12, 147*d*Formal defects in proceedings, 12, 147*d*Holding prisoner for prosecution, 12
147*i*, 147*j*Indictment not stating complete cause of
action, 12, 147*c*Informalities in returning indictment,
12, 147*g*Irregularity in summoning grand jury,
12, 147*g*Irregularity in summoning petit jury,
12, 147*g*

Jeopardy, 11, 964

Judgment for defendant when motion is
sustained, 12, 147*i***Larceny, 12, 893**

Description, 12, 893

Distinct crimes, 12, 893

Joinder, 12, 893

- Newly discovered evidence, 12, 893
 Value, 12, 894
 Variance, 12, 893, 894
 When motion lies, 12, 893
 Limitation of action, 12, 147^c
 Married women, 14, 656
 Matter which ought to be of record, 12, 147^c
 Misjoinder, 11, 1015^z, 1015^z³; 12, 147^f
 Misnomer of parties, 12, 147^f, 147^g
Motion, 15, 901
 By one of joint defendants, 12, 147ⁱ
 Of defendant, 12, 147ⁱ
 Non-residence, 12, 147^d
 Nunc pro tunc, 12, 80
 Offense barred by statute of limitation, 12, 147^c
 Omission of caption, 12, 147^d
 Omission to read indictment, 12, 147^g
 Patent law, 18, 115
 Substantial defect in declaration, 12, 147^c
 Substantial defect in indictment, 12, 147^c
 Statute limiting grounds for, 12, 147^h
 Variance between allegations and proof, 12, 147^h
 Variance between presentment and indictment, 12, 147^g
 Variance between writ and declaration, 12, 147^g
 Verdict not conforming to indictment, 12, 147^e
 Verdict not deciding all material facts, 12, 147^e
 Verdict not sufficient to support judgment, 12, 147^e
 Waiver of the right, new trial, 16, 636
 When judgment may be arrested, 12, 147^b
 Where courts did not have jurisdiction, 12, 147^e
 Where grand jury was illegally constituted, 12, 147^c
 Where it appears of record that defendant should be released, 12, 147^f
 Where petit jury was illegally constituted, 12, 147^e
 Whether new action may be maintained, 12, 147ⁱ
ARRIVAL, 14, 345-347
 Arrival within the limits of the United States, 1, 758
 Arrival in port, 18, 838
 My arrival, 16, 109
ARSON, 1, 758
 See **HOUSE**.
 A burning must be charged, 1, 759
 Accessories, 1, 774
 Admissibility of evidence of excessive insurance, 4, 848
 Apartment as dwelling house, 1, 764
 At common law, 1, 758
 Attempt to commit arson, 1, 759
 Barn, 1, 763, 766; 2, 126
 Building
 Meaning of the term, 2, 601, 603
 Burning a man's own house, 1, 761
 Burning the house of another, 1, 761
 Communicating fires, 1, 762
 Conspiracy to commit, 4, 597
 Corpus delicti, 4, 309
 Curtilage, 1, 768
 Description of building, 1, 770
 Description of possession, 1, 769
 Dwelling House
 Definition, 1, 758; 6, 101
 What is part of, 1, 765
 When house becomes a dwelling house, 1, 769
 House, 1, 764
 Meaning of, 1, 758
 Must be completed, 1, 769
 Must be occupied, 1, 769
 What is not a house, 1, 765
 Husband and wife, 9, 797
 Indictment
 Allegation of Ownership, 1, 769
 Of public buildings, 1, 771
 Description of dwelling house in, 1, 770
 For arson in first degree, conviction of lower degree, 15, 368
 Sufficiency of, 1, 764
 Intent
 As an element of, 1, 773
 Presumption as to, 1, 773
 To defraud insurers, 1, 774
 Jail, 1, 765; 4, 673; 19, 86
 Jeopardy, 11, 943, 945
 Lessee burning the property occupied by him, 1, 762
 Libel and slander, 13, 335, 387
 Malice presumed, 1, 773
 Malicious and willful, 1, 771
 Merger, 15, 368
 Necessity that building should be consumed, 1, 760
 Negligence amounting to, 1, 771
 Of a barrel house, 1, 763, 765
 Of a church, 1, 763
 Of a corncrib, 1, 763
 Of a cotton house, 1, 763
 Of a ginhouse, 1, 763
 Of a gristmill, 1, 763
 Of a schoolhouse, 1, 763, 766
 Of a stable, 1, 763
 Of a storehouse, 1, 763
 Of a warehouse, 1, 763
 Of other buildings than a dwelling house, 1, 763
 Of outbuildings, 1, 765
 Owner burning his house while occupied by a tenant, 1, 761
 Owner temporarily absent from house, 1, 769
 Party burning his own house in Louisiana, 1, 762
 Possession, 1, 769
 Presumption of malice, 1, 773
 Prisoner setting fire to jail, 1, 759
 Prisons, 1, 765; 4, 673; 19, 86
 Proof of setting fire, 1, 759
 Property set fire to, 1, 761
 Public buildings, 1, 771

ARSON—Cont'd

Setting Fire, 1, 760

To a jail with intent that prisoners should escape, 1, 765; 4, 673; 19, 86

To an outhouse with intent to burn the dwelling, 1, 763

To goods in a house, 1, 759

To one house with intent to burn another, 1, 762

Solicitation to commit, 4, 670

To find, 1, 758

What Constitutes

Providing that it shall be arson to burn other buildings than a dwelling house, 1, 763

Who may be guilty of, 1, 761

ART, 1, 775

In patent arts, 1, 775

ARTICLE, 1, 775

All other articles perishable in their own nature, 1, 776

Any article, 1, 775

Any other article or thing, 1, 775

Article forwarded, 1, 775

Article, goods or things, 1, 766

Article of food, 1, 776

Article of glass, 1, 776

Article of manufacture, 1, 775; 14, 260, 262

Article or part of any article, 1, 775

Articles and effects, 6, 194

Articles and necessities, 1, 776

Articles of comfort and support, 1, 776

Articles of gold and silver manufacture, 1, 776

Articles of war, 15, 392

Articles or objects, 1, 775

Other articles, 17, 283

Other valuable article, 1, 776

Valuable article, 28, 44

ARTIFICER, 1, 776

Merchant or, 1, 777

Or handicraftsman, 1, 776

Or laborer, 1, 776

ARTIFICIAL

Natural and artificial persons distinguished, 16, 220; 18, 404

ARTIST

Professional artist, 19, 257

AS, 1, 777; 17, 495

As aforesaid, 1, 777

As far as possible, 1, 778

As follows, 1, 777

As for, 1, 777

As is most convenient, 4, 102

As may be most convenient, 4, 102

As occasion shall require, 17, 28

As soon as conveniently may be, 4, 103

As soon as possible, 1, 777; 21, 534; 22, 839

See REASONABLE TIME.

As the crow flies, 1, 777

ASCENDANT, see DESCENT.**ASPHALTUM, 15, 501****ASSAULTATION, see LARCENY.****ASSAULT AND BATTERY, 1, 778***See* ACCESSORIES; AFFRAY; ARREST; FALSE IMPRISONMENT; HOMICIDE; MAYHEM; OBSTRUCTING JUSTICE; PRIZE FIGHTING; RECAPTION; SELF DEFENSE.

Ability to act concurring with intent, 1, 790

Acknowledgment of satisfaction for injury, 3, 401

Actions between husband and wife, 9, 796

Actual and grievous bodily harm, 1, 812

Administering drugs, 1, 804

Aggravated Assault, 1, 782*See* MAYHEM.

Disfigure, disable, 1, 812

Upon persons in official station, 1, 786

What constitutes, 1, 782

With dangerous or deadly weapon, 1, 816

With deadly weapon, 1, 813

With firearms, 1, 814

Aggravating circumstances, 1, 782

As a special case in the New York constitution, 3, 23

By Officer, 1, 792

Excessive force in making an arrest, 1, 793

Force that may be used, 1, 792

Making arrest, 1, 745

Officer defending himself against violence, 1, 792

By wife in presence of husband, 1, 800

Capacity of boy under fourteen years to commit, 4, 684

Character (in evidence), 1, 819; 3, 113

Chastisement of wife, 1, 800

Compromise

Criminal action, 3, 401

Consent, 1, 784

By a child, 1, 784

Effect of, 1, 784

Intercourse with married woman under pretense of being her husband, 1, 785

Of child to attempt at sexual connection, 1, 784

Practicing fraud or deception, 1, 805

Sexual intercourse, 1, 784

Constructive assault, 1, 805

Consuls and ambassadors, 3, 772

Contributory Negligence, 4, 18

As a defense, 1, 784

Corporations

Actions against, for assault and battery, 4, 279

Corporation's liability for, 1, 809; 4, 254, 255

Damages, 1, 819*See infra*, MITIGATION OF DAMAGES.

Actual malice, 1, 820

Excessive damages, 5, 60

Financial condition of defendant, 1, 821

Mitigation of, 1, 803, 821

Pregnant women, 1, 821

Suffering, 1, 820

Vindictive damages, 1, 819

- When excessive, 1, 822
 Wounded feelings, 1, 820
 Dangerous and deadly, 1, 817
 Defense of other persons, 1, 798
 Defense of personal property, 1, 790
 Defense of property, 1, 798
 Definition, 1, 778, 783
 Disable, 1, 812
 Disbarment of attorney for assault of judge, 1, 946
 Disfigure, 1, 812
 Distinguished from affray, 1, 316
 Distinguished from false imprisonment, 7, 663
Evidence
 Character of person assaulted, 1, 819; 3, 113
 Necessary to support indictment with intent to kill, 1, 818
 Proof of custom to use threatening gestures and words, 1, 803
 Threats by defendant, 1, 819
Felonious Assault
 Murder, 4, 649
 Force, 8, 99
Fraternalities
 Injuries inflicted during ceremonies, 1, 781
 Gun or pistol, pointing, 1, 781
Husband and Wife, 1, 800; 9, 796
 Husband in defense of wife, 1, 799
 Wife in defense of husband, 1, 799
 Witnesses, 9, 807
 Imprisonment for debt, 10, 216, 230
Indecent Assault, 1, 804
Attempt to commit rape, see *infra*, RAPE.
 By teacher, 1, 804
 Consent to, 1, 784
 Constructive assault, 1, 805
 Physician unnecessarily exposing person of female, 1, 805
 Practicing fraud and deception to obtain consent, 1, 804
 Upon child, 1, 327
 Venereal diseases, 1, 805
 Indemnity contracts, 10, 406
Indictment
 Description of weapon, 10, 594
 Assault with intent to kill, conviction of lower offense, 15, 366
 For maiming, conviction of assault, 15, 366
 For manslaughter, 15, 366
 For murder, conviction of assault, 9, 643
 For rape, conviction of assault, 15, 366
 For riot, conviction of assault, 4, 649
 Specifying nature of weapon used, 2, 813
 Infamous crime, 10, 608
 Innkeepers' liability, 11, 49, 50
 Instances of, 1, 784
 Instruction, examples of, 11, 267, 269, 271, 272, 274
 Insulting epithets as a justification, 4, 811
 Insulting words addressed to wife as justification, 1, 800
Intent, 4, 858
 Ability to act concurring with, 1, 790
 Act indicating an intention coupled with ability, 1, 787
 As an element, 1, 786
 Assault upon a house, 1, 790
 Firing into a crowd, 1, 789
 Indirect preparation towards violence, 1, 789
 Inferred from circumstances, 1, 789
 Necessity of actual attempt, 1, 788
 Necessity of present intent, 1, 790
 Present intent to do injury, 1, 804
 Purpose to do a particular injury, 1, 787
 Shooting one with intent to kill another, 1, 789
 To be ascertained from jury by circumstances, 1, 787
 Where the accused is intoxicated, 4, 806
 Involuntary manslaughter, 9, 591
Jeopardy, 11, 943
 Assaulted party dying after conviction for assault, 11, 946
 Conviction for, after acquittal of murder, 11, 937
 Examples, 11, 941
Murder
 Attempt to kill, 1, 813; 11, 941
 Robbery and assault, 11, 945
 Where same act constitutes several offenses, 11, 937
Joinder, 10, 599
 Libel and slander, 13, 458
 Of parties, 17, 601
Lawful Chastisement, 1, 794
 By jailer, 1, 794
 Husband and wife, 1, 796
 Lawful force, 1, 792
 Laying hands gently on a person in anger, 1, 810
 Married women, 14, 647
Master and Servant
Liability of Master, 1, 796; 14, 816, 820
 By command of master, 14, 824
 By conductor, 14, 816, 820
 Carriers of passengers, 14, 820
 Employee not in charge of car, 14, 819
 Wanton assault, 14, 820
Merger, 15, 364, 365
 Of assault in attempt to murder, 4, 648
 Rape, 15, 366
Mitigation of Damages, 1, 803; 15, 684
 Acts or declarations at a different time, 15, 685
 Antecedent facts, 15, 685
 Bad character, 15, 685
 Cooling time, 15, 685
 Examples, 15, 685
 Extent to which damages may be mitigated, 15, 686
 Fine, 15, 690
 Indecent assault, 15, 686

ASSAULT AND BATTERY—Cont'd**Mitigation of Damages—Cont'd**

Opprobrious language, 15, 685

Provocation, 1, 803; 15, 685

Truth, 15, 685

Municipal corporations, 15, 1191

Mutual Combat, 1, 807; 16, 15

See also PRIZE FIGHTING.

Assault in both, 1, 807

Scuffling, 1, 807

Striking first blow, 1, 807

Necessity that it should be immediate, 1, 791

On official persons, 1, 786

On peace officer, 1, 786

Open and close, 17, 198

Parent and Child, 1, 794; 17, 388, 400

By parties in loco parentis, 1, 794

By stepfather, 1, 796

Party injured may proceed in civil action, 1, 783

Party injured may proceed in criminal action, 1, 783

Passenger, removal from train, 1, 792; 14, 820

Pointing gun or pistol, 1, 802

Pointing loaded firearms, 1, 810, 814

Pointing unloaded firearms, 1, 811, 815

Poison, 15, 251

Prevention of unlawful acts, 1, 800

Procedure, 1, 814

Provocation, 1, 803

Provocation to Manslaughter

Examples, 9, 582

Passion the criterion, 9, 583

The cooling time, 9, 583

What assault sufficient, 9, 582

Whether assault by deceased reduces murder to manslaughter, 9, 582

Railway servants, 1, 809; 14, 820

Rape

Assault with Intent to Commit Rape, 1,

327, 806; 19, 968

Assault with intent to use utmost force, 19, 969

Boy under fourteen, 19, 947

Definition, 19, 968

Examples, 19, 968, 969

Indictment, 19, 969

Proof of rape, 19, 969

Reputation of prosecutrix, 19, 969

Utmost resistance, 19, 969

What constitutes, 19, 968, 969

Recaption, 1, 798

Defendant owner of horse, 19, 1097

Entry with violence, 19, 1110

When owner may resist with force, 19, 1109, 1110

Res Gestæ, 21, 117

Examples, 21, 117

In general, 21, 117

Schoolteachers, 1, 794; 17, 363

Scuffling, 1, 808

Seamen, 21, 944

Cruel or excessive punishment, 21, 945

Right to damages, 21, 944

Wanton, 21, 944

Sexual act with consent of woman may be so brutal as to amount to an assault, 3, 665

Shooting into a crowd, 1, 789

Shooting one with intent to kill another, 1, 789

Sleeping cars, 22, 798

Stations (Railroad), 23, 130

By Station Servants, 23, 137

Ejectment from premises, 23, 137

Examples, 23, 137, 138

Expulsion unnecessarily violent, 23, 137

Liability of company, 23, 137, 138

Right of company to expel, 23, 137

Duty to protect from, 23, 130

Liability of company, 23, 130

Waiting passengers injured by postal agents, 23, 131

Stopping a person by threats, 1, 811

Striking distance, 1, 791

Striking horse attached to wagon, 1, 811

Survival of actions for assault, 7, 265

Threatening Gestures, 1, 803

Accompanying threatening words, 1, 801

Gesture unaccompanied by act inducing reasonable fear of violence, 1, 803

Menacing with closed fists, 1, 811

Pointing unloaded firearm, 1, 811

Raising of arm to strike, 1, 810

Unaccompanied by present intention to do injury, 1, 804

Threatening Words, 1, 801

Ability to carry threat into execution, 1, 801

Accompanied by pointing gun or pistol, 1, 802

Accompanied by shaking of fist, 1, 802

Accompanied by threatening gesture, 1, 801

Proof of custom to use, 1, 803

Stopping of person by, 1, 811

Words of provocation, 1, 803; 15, 685

Words qualifying action, 1, 802

To murder, 1, 813

Trespass

Justification, 26, 639

Prevention of, 1, 800

Trespassers, 1, 798

Unlawful imprisonment, 1, 808

Upon several, 1, 790

Validity of agreement not to prosecute, 3, 402

Veneral diseases, 1, 805

Verdict

Responsiveness of verdict to issue, 28, 284

Violence applied to the person, 1, 811

Violence not strictly applied to person, 1, 811

What Constitutes, 1, 779, 783

Catching at one while falling, 1, 779

Driving negligently over one, 1, 782

Force and violence, 1, 780

Injuries inflicted during ceremonies of fraternities, 1, 781

Intentional attempt to do injury, 1, 779
 Intercourse with married woman by man pretending to be her husband, 1, 785
 Laying hands on another to attract attention, 1, 779
 Master chastising a minor servant, 1, 780
 Mere omission to do an act, 1, 783
 No degrees in, 1, 780
 Pointing gun or pistol, 1, 782
 Pointing loaded gun or pistol, 1, 781
 Pointing loaded weapon, 1, 814
 Pointing unloaded firearm, 1, 811
 Pointing unloaded weapon, 1, 815
 Pushing against another in a crowd, 1, 779
 Reasonable apprehension of jury, 1, 779
 Riding dangerously near to a person, 1, 780
 Stopping of person by threats in the street, 1, 811
 Violence applied to the person, 1, 811
 Violence not strictly applied to the person, 1, 811
 Without actual violence, 1, 810
 Whether transitory or local, 1, 184*f*
With Dangerous Weapon, 1, 816
See also WEAPON.
 Definition of dangerous weapon, 1, 816
With Deadly Weapon, 1, 813
See also WEAPON.
 A gun or pistol, 1, 817
 A knife, 1, 817
 An axe, 1, 817
 A weight, 1, 817
 Definition of, 1, 816
 Gravamen of offense, 1, 813
 Indictment specifying weapon, 1, 813
 Procedure, 1, 814
 Question of law and fact, 1, 816-818
 Statutes specifying danger to life, 1, 813
 What are not deadly weapons, 1, 817
 What weapons are deadly, 1, 817
With Firearms, 1, 814
 Pointing loaded weapon, 1, 814
 Pointing unloaded firearms, 1, 815
 What necessary to convict of shooting with intent to kill, 1, 816
 With intent to commit higher crime, 4, 660
With intent to commit rape, see *infra*.
 RAPE.
With Intent to Kill, 1, 813; 11, 941
 Assaulting one and wounding another, 4, 675
 What evidence will support an indictment, 1, 818
 What necessary to convict, 1, 816
 Without actual violence, 1, 810
 Words of justification, 1, 803; 15, 685
Words of Provocation, 1, 803
 As mitigation of damages, 1, 803
 Words qualifying action, 1, 802
Wounding, 1, 812
 Definition of, 1, 812

ASSEMBLE, 1, 822
See AFFRAY; RIOT; ROUT; UNLAWFUL ASSEMBLY.
ASSEMBLY, 1, 823
 Popular assembly, 1, 823
ASSENT, 1, 823
See CONSENT.
 Implied, 1, 824
 In writing, 1, 824
 Mutual assent, 16, 15
ASSESSMENTS, 1, 824
See STOCKHOLDERS.
Assessment in insurance, see *INSURANCE*.
Assessment of damages, see *DAMAGES*.
Assessment of taxes, see *TAXATION*.
Assessments for benefits, see *LOCAL ASSESSMENTS*.
Mutual Insurance
 Notice, 16, 73
ASSETS, 1, 824
See MARSHALING ASSETS.
 At common law, 1, 824
 By descent, 1, 824
 Equitable, 1, 825
 Kinds of property that have been held, 1, 825
 Legal, 1, 825
 Marshaling, 1, 826
 New assets, 16, 489
 Order of liability of, 1, 826
 Order of priority of debts, 1, 826
 Real, 1, 824
 What are, 1, 825
ASSIGNEE, see *ASSIGNMENT*.
In insolvency, see *INSOLVENCY*.
ASSIGNMENTS, 1, 826; 21, 983
See ASSIGNMENTS FOR BENEFIT OF CREDITORS; FOREIGN ASSIGNMENTS; FRAUD, STATUTE OF; INSOLVENCY.
As to assignment of officer's salary, see *PUBLIC OFFICERS*.
As to effect of assignment upon garnishment proceedings, see *GARNISHMENT*.
Of Stock, see *STOCK*.
 Action of assignee suing in assignor's name, 1, 844
 Action of assignee suing in his own name, 1, 844
 Annuities, 1, 596
Assignees
 Amendment of parties, 17, 627, 629
Creditors, 2, 71
 Attaching debtor's property, 1, 878
 Powers of, 1, 878
 Rights of, 1, 878
 Duties of, 1, 874
 Fraudulent assignment, 1, 878
 Joinder, 11, 1015*v*
 Lease, effect on rent, privity between landlord and assignee, 12, 744
 Powers of, 1, 874
 Rights of, 1, 874
Bill in Equity, 2, 217
 Assignor and assignee as parties, 6, 752
 Bona fide purchaser without notice, 1, 840
 Certificate of sheriff's sales, 22, 622

ASSIGNMENTS—Cont'd

Choses in Action, 1, 841; 8, 1322

See infra, SET-OFF.

Attachment, 6, 656

By what law governed, 3, 571

Direct action by assignee, 1, 827

Equitable Lien

Assent of debtor, 13, 609, 610

Firm assets, 13, 610

Part of choses in action assigned,
13, 609

Claim for damages for personal torts, 3, 85

Corporations, see *infra*, OFFICERS.**Counterclaim, 22, 409**Claim for unliquidated damages, 22,
411Debts not due and payable at the same
time, 22, 411Demand accruing after assignment,
22, 410Demand existing at time of assign-
ment, 22, 410Demand which could not be allowed
against assignor, 22, 410In dealings between original parties,
22, 410**In Equity, 22, 420**Insolvent assigning before opposite
demand becomes mature, 22, 419

In general, 22, 409

Notice, 22, 409

Promissory notes and bills of exchange,
22, 409

Unliquidated claim in equity, 22, 411

Covenants to RenewWhether assignment carries right to
renew, 12, 1035

Definition, 1, 826, 845

Duress

Life insurance policy, 14, 583

Effect of, 1, 842*See infra*, COUNTERCLAIM; SET-OFF.Assignee's rights to remedies, liens, etc.,
of assignor, 1, 844Assignee suing in his own name, 1,
844Assignee suing in name of assignor, 1,
844Defenses arising after debtor has notice,
1, 842

Remedy of assignee in equity, 1, 844

Right of assignee of debt secured by
mortgage, 1, 844

Secret trusts, 1, 843

Taking subject to defenses against
assignor, 1, 842

Where debtor misleads assignee, 1, 843

Equitable, 6, 656*Mortgages*, see *infra*, MORTGAGES.

A debt not in existence, 6, 659

After arising equities, 6, 662

Appropriation, 6, 657

Bills and Notes

By what law governed, 3, 588

Chose in action, 6, 656, 662

Claims against the United States, 6,
660

Collateral transactions, 6, 663

Commission of an officer, 6, 660

Debtor misleading assignee, 6, 663

Definition, 6, 656

Demands that would survive, 6, 658

Diligence in perfecting title, 6, 662

Draft not accepted, 6, 657

Draft not drawn upon designated
funds, 6, 658

Draft on designated funds, 6, 657

Effect of notice upon debtor, 6, 662

Equities of assignee, 6, 662

Expectancies and future interests, 6,
658

Form, 6, 656, 657

Gifts *causa mortis*, 8, 1342

Gifts of choses in action, 8, 1322

Implied assignment, 6, 657

Instances of invalid assignment, 6, 658

Instances of valid assignment, 6, 657

License to shoot or fish, 6, 660

Lien of vendor upon purchase-money,
6, 660

Necessity of writing, 6, 657

Notice by Assignee, 6, 661

As against assignor, 6, 661

As against bona fide purchasers, 6,
661

As against debtor, 6, 661

Formal notice, 6, 661

Necessity of, 6, 661

Express notice, 6, 661

Oral or written declaration, 6, 657

Parol assignment of debt, 6, 657

Pendente lite, 17, 555

Possession of personal chattel, 6, 662

Power of attorney to collect debt, 6, 657

Remedy of assignee, 6, 663

Right of action for tort, 6, 660

Right of entry, 6, 660

Rights of assignee, 6, 663

Rights under executory contracts, 6, 659

Secret agreement, 6, 662

Secret trusts, 6, 663

Subject to equities existing between
original parties, 6, 662

Symbolical delivery, 6, 657

Test, 6, 657

Things held assignable in equity, 6,
658, 659

What constitutes, 6, 656

Whether for part of a fund, 6, 660

Whether within bills of sale acts, 8, 865

Executory Interests, 20, 968

Assignable inter vivos, 20, 968

Assignments before the person to take
is ascertained, 20, 970

At common law, 20, 969

Bare possibilities, 20, 969

Contingent on account of person, 20,
969Determinable by death of the parties,
20, 969

In equity, 20, 969

In real property, 20, 969

Possibility coupled with an interest,
20, 968

- Statutes, 20, 970
 When transmissible, 20, 969
 Whether devisable, 20, 969
 Existing attachments, 11, 180
 Expectancies, 1, 830; 3, 237
 For property in transitu, by what laws governed, 3, 616
Future Earnings, 1, 828; 3, 237; 6, 659, 660
 General doctrine, 8, 991
 Insurable interests, 11, 315
Insurance, see *infra*, LIFE INSURANCE; TONTINE POLICY.
 Intervention, 17, 643
Landlord and Tenant
 Tenancy at will, 12, 715
Lease, 12, 685, 1029; 13, 801, 802
 Assignee's Right to Renew
 Whether assignment carries right to renew, see *infra*, COVENANTS TO RENEW.
 Attornment, see *infra*, LEASE.
 Acceptance of rent, 12, 1032
 Assignee liable for rent, 12, 738, 744, 1033
 Assignee's Right to Sue, 12, 1034
 Administrator as assignee, 12, 1034
 Liability of general assignee, 12, 1034
 Mortgagee of a term, 12, 1034
 Privity between lessor and lessee, 12, 717, 1034
Assignment Contrary to Terms of Lease
 Acceptance of rent, 12, 1031, 1032
 Acquiescence of landlord, 12, 717, 744, 1031
 Assigns, 12, 1032
 Contracts, 12, 1032
 Executors of lessee, 12, 1032
 General rule, 12, 1031
By Tenant, 12, 717
 Acceptance of rent, 12, 717
 At common law, 12, 717
 Conveyance of entire unexpired term, 12, 717
 Improvement, 12, 717
 Privity of estate, 12, 717, 1034
 Verbal consent of landlord, 12, 717
 Waiver of restriction by landlord, 12, 717
 When there is no restraining clause, 12, 717
 Covenant against, 12, 685
 Covenant strictly construed, 12, 685
Effect on Rent, 12, 744, 1033
 Assent of landlord, 12, 744
 Transfer of entire interest of tenant's term, 12, 744
 From what time liable, 12, 1033
 How breach of covenant can be taken advantage of, 12, 685
 Landlord's assignment, 12, 685
 Lease at will, 12, 1029
 Parol assignment, 12, 1030
Rent, 12, 736, 744
 Due before assignment made, 12, 1033
 To become due, 12, 1033
 Reservation in assignment as to accruing rent, 12, 1033
 Right to assign, 12, 685
 Seals, 12, 685, 1030
 Subletting, 12, 1032
 Tenancy from year to year, 12, 685
 Tenant at will, 12, 1030
 Tenant's assignment, 12, 685
 Validity, 12, 744
 Waiver of covenant against assignment, 12, 685
 What interest passes, 12, 1030
 What may be assigned, 12, 1029
 When assignment must be in writing, 12, 1030
 Whether lessee released by, 12, 1032
 Written assignment, 12, 1030
License, see *infra*, PATENT LICENSE.
 Logs and lumber, 13, 1031
Liens, 13, 624
 Debt secured by mortgage, see MORTGAGES.
 Subrogation, see SUBROGATION.
 At common law, 13, 624
 Attorney's lien, 13, 626
 Equitable liens, 13, 625
 Maritime liens, 14, 433
Mechanic's Lien, 15, 6, 102
 Assignment of lien before action, 15, 116
 Assignor as party to action, 15, 169
 Examples, 15, 102, 104
 How assignments made, 15, 103
 General rule, 15, 102
 Particular words, 15, 103
 Whether assignment, 15, 102
 Of logger, 13, 1043
 Possession of property, 13, 625
 Statutory liens, 13, 625
 Whether assignable, 13, 624
Life Insurance, see *infra*, PARTIES TO ACTIONS.
Life Insurance Policy, 13, 646, 647; 26, 68
 Action by assignee, 13, 650
 Assignment by sons to secure debts of father, 13, 647
 Assignment of wife's policy to secure husband's debts, 13, 647
 Beneficiaries, 14, 583, 648
 Delivery of policy, 13, 649
 Duress, 14, 583
 Endowment policy, 13, 646
 Enforcement in equity, 13, 647
Execution of Assignment, 13, 649
 Consent of company, 13, 649
 Delivery of policy to assignee, 13, 649
 Notice to company, 13, 649
 Verbal assignment, 13, 649
 Whether assignment must be in toto, 13, 649
 Fraud, 13, 647
 Husband and wife, 13, 647; 14, 583
 In absence of statute, 13, 646
 Insurable interests of assignee, 13, 650
 Insured not the beneficiary, 13, 648
 In the absence of prohibition by company, 13, 646

ASSIGNMENTS—Cont'd**Life Insurance Policy—Cont'd****Notice and Consent of Company, 13, 649**

Necessity, 13, 649

Time of notice, 13, 649

Verbal notice, 13, 649

Waiver, 13, 649

Payment of debt, 13, 648

Policy reached by creditors, 13, 648

Reversion, 13, 648

Suicide, 13, 645

Surplus, 13, 648

To Secure Creditor, 13, 647, 648

Assignment by son to secure debt of father, 13, 647

Wife's policy to secure husband's debts, 13, 647

Wager policy, 13, 650

When not forbidden, 13, 646

Mortgages, 15, 842

Absolute in form as a loan, 15, 862

Assignee's right to foreclose in his own name, 15, 843

Assignment of debt, 15, 844

By what law governed, 15, 851

Consideration, 15, 843

Construction, 15, 849

Conveyance of land with warranty, 15, 843

Debt as incident of mortgage, 15, 844

Deed, 15, 842, 846

Delivery

Necessity of, 15, 843

Of bond or note secured by the mortgage, 15, 843

Of mortgage itself, 15, 843

Equitable Assignments, 15, 844

Assignee may maintain an action in his own name, 15, 847

Assignment of debts as between parties, 15, 846

Assignment not under seal, 15, 846

Conveyance of part of mortgage estate, 15, 848

Delivery of note without indorsement, 15, 846

Ineffectual sale under a power, 15, 848

Mortgagee holding mortgage as trustee for assignee, 15, 845, 847

Mortgagee retaining mortgage in his own hands, 15, 845

Mortgage following debt, 15, 844

Mortgage is incident of the debt, 15, 844

Sale under irregular foreclosure, 15, 848

Third persons without notice of assignment, 15, 846

Warranty deed, 15, 846

What constitutes, 15, 844-848

Who may enforce mortgage, 15, 846, 847

False representations, 15, 863

Indorsement upon, 15, 842

Married women, 15, 850

Miscellaneous, 15, 861

Mortgage fraudulent on its inception, 15, 862

Necessity of transfer of debt, 15, 849

Notes Protected by, 15, 855

Bond secured by mortgage, 15, 859

Conflict of opinion, 15, 855-861

Doctrine in general, 15, 855-861

Effect of, 15, 855

Equities arising between mortgagor and mortgagee, 15, 855

In Illinois, 15, 857

In Louisiana, 15, 858

In Minnesota, 15, 858

In Ohio, 15, 857

Notice to mortgagor, 15, 844

Parties to Assignments, 15, 848

Attorney, 15, 849

Executors and administrators, 15, 849

Heirs, 15, 849

Indemnity, 15, 849

In general, 15, 848

Joint tenants, 15, 849

Legatee, 15, 849

Married women, 15, 849

Mortgagee disseised, 15, 849

Mortgage by mortgagee, 15, 849

Mortgage for support, 15, 850

Officers of corporations, 15, 849

Partnership, 15, 849

Trustees of unincorporated associations, 15, 849

Quitclaim deed, 15, 843

Recording, 15, 844

Requisites to Legal Assignments, 15, 842

Assignee's right to foreclose in his own name, 15, 843

Consideration, 15, 843

Conveyance of land with warranty, 15, 843

Delivery

Necessity of, 15, 843

Of bond or note secured by the mortgage, 15, 843

Of mortgage itself, 15, 843

Indorsement upon mortgages, 15, 842

Notice to mortgagor, 15, 844

Quitclaim deed, 15, 843

Recording, 15, 844

Separate instrument, 15, 842

Rights and Duties of Assignee, 15, 843, 844, 847, 854, 859

Diligence of assignee, 15, 860

Equities between original parties, 15, 855, 860, 861

Miscellaneous, 15, 861

Non-negotiable securities, 15, 860

To maintain action in his own name, 15, 843, 847

When Negotiable Instruments Protected by Mortgage Are Assigned, 15, 855

Bond secured by mortgage, 15, 859

Conflict of opinion, 15, 855-861

Doctrine in general, 15, 855-861

- Effect of, 15, 855
- Equities arising between mortgagor and mortgagee, 15, 855
- In Iowa, 15, 857
- In Louisiana, 15, 858
- In Ohio, 15, 857
- Assignor fixing priorities, 15, 855
- Equities arising between mortgagor and mortgagee, 15, 855
- Mortgage bonds and notes, 15, 855
- Negotiable notes, 15, 855
- Priority between several assignees, 15, 854
- Right to foreclose in his own name, 15, 843
- Several notes assigned to different persons, 15, 854
- Rights and Liabilities of Assignor, 15, 852**
 - Examples, 15, 852-854
 - In general, 15, 852
 - Warranty, 15, 853
- Separate instrument, 15, 842
- Transfer of Mortgage Without Assignment of Debt, 15, 849**
 - Action by assignee of mortgage without debt, 15, 851
 - Adequate consideration, 15, 850
 - Assignee as trustee for mortgagee, 15, 849, 850
 - Assignment of mortgage given without bond, 15, 850
 - Conveyance of premises by mortgagee, 15, 851
 - Deed of a mortgagee in possession, 15, 851
 - In general, 15, 849, 850
 - Mere delivery of mortgage, 15, 850
 - Presumption that assignment of debt was meant, 15, 850
- Usury, 15, 863
- What constitutes an assignment, 15, 844
- Where mortgagee has other interest in premises, 15, 852
- Whether assignments pass securities, 15, 853
- Notice of**
 - Bona fide purchase without, 1, 840
 - Effect, 1, 840
 - Effect of failure to give, 1, 841
 - Necessity of, to custodian of debtor, 1, 840; 3, 571
 - Priority between assignees, 1, 840
 - Release given subsequently, 1, 840
 - Set-off by debtor after, 1, 840
 - Sufficiency of parol, 1, 842
 - To one of several joint debtors, 1, 842
 - To one of several trustees, 1, 842
 - Written, 1, 842
- Of claims for unliquidated damages, 3, 85
- Of expectancies, necessity of valuable considerations, 1, 831
- Of expectancies or future interests, 1, 830; 3, 237
- Officers and Agents of Private Corporations, 17, 155**
 - Examples, 17, 155
 - General managing agent, 17, 155
 - Non-negotiable instruments, 17, 155
 - Who may make, 17, 155
- Of Judgment, 12, 149m**
 - Assignee suing in own name, 12, 149n, 149o
 - Assignment of cause of action, 12, 149m
 - Assignment of judgment as assignment of cause of action, 12, 149n
 - Assignment of part, 12, 149n
 - Effect as to assignee, 12, 93
 - Equities existing between parties, 12, 149o
 - Equity existing in favor of third person, 12, 149o
 - Intent to assign, 12, 149m
 - Judgment founded upon tort, 12, 149n
 - Jurisdiction, 12, 149n
 - Necessity of seal, 12, 149m
 - Necessity of writing, 12, 149m
 - Notice of assignment, 12, 149p
 - Payment, 12, 149p, 149y
 - Power of attorney to assign, 12, 149y
 - Right of judgment creditor to enforce satisfaction, 12, 149n
 - Set-off, see *infra*, SET-OFF.
 - Statute governing name in which suit should be brought, 12, 149o
 - Statutory method, 12, 149m
 - Suit in name of assignor, 12, 149o
 - Two or more assignees, 12, 149y
 - Waiver of execution, 12, 149n
 - Whether one of several joint judgment debtors may take assignment, 12, 150b
- Of part of debt, 3, 237
- Of salary and wages, 1, 828; 3, 237; 6, 659, 660
- Of Ships at Sea**
 - By what law governed, 3, 616
- Of valid agreement in restraint of trade, 3, 885
- Orders, 17, 226**
 - Assignment, 17, 232**
 - Defenses which may be made against indorsee, 17, 232
 - Equities existing between payee and drawer, 17, 232
 - Indorsee suing in his own name, 17, 232
 - Indorsee's Rights, 17, 232**
 - Against immediate indorser, 17, 233
 - Indorser's liability, 17, 233
 - Money payable out of a particular fund, 17, 232
 - Whether indorsement renders order negotiable, 17, 232
 - Liability for acceptance, 17, 230
 - Parol evidence, 17, 425
 - Partial assignment of a claim, 1, 833; 3, 237; 17, 534

ASSIGNMENTS—Cont'd

Parties to Actions, 17, 508, 531

As to the effect of a provision requiring suit to be brought in the name of a real party in interest, see PARTIES TO ACTIONS.

Assignee in bankruptcy, 17, 533

Assignee in insolvency, 17, 533

Assignee of a lease, 17, 532

Assignee of a non-negotiable obligation, 17, 531

Assignee of fee farm rents, 17, 531, 532

Assignee of ground rent, 17, 532

Assignment by contractor, 17, 536

Assignment by employee, 17, 536

Assignment of chose in action, 17, 508

Conveyance of realty, 17, 509

Death of assignor, 17, 509

Employee doing work jointly with another, 17, 537

Generally, 17, 508

Indemnification against costs, 17, 508

In equity, 17, 530, 535

In Louisiana, 17, 554

Insurance Policy, 17, 525

See infra, LIFE INSURANCE.

Assent of company, 17, 525

Codes and statutes, 17, 525

Partial assignment, 17, 525

Whether assignee may sue in his own name, 17, 525

In Texas, 17, 554

Lottery ticket, 17, 532

Negotiable paper, 17, 533

Partial Assignments, 17, 534

Absolute assignment, 17, 536

Assignor merely retaining a part interest, 17, 536

Codes, 17, 535

Joinder of assignor and assignee, 17, 535

Power of assignor, 17, 535

Real party in interest, 17, 536

Whether assignee may sue thereon in equity, 17, 534, 535

Whether assignor still controls claim, 17, 535

Pendente Lite, 17, 554

Abatement, 17, 555

Discretion of court, 17, 556

Effect at common law, 17, 554

In equity, 17, 555

In general, 17, 554-558

Notice, 17, 557

Plaintiff ceasing to exist, 17, 556

Pleadings, 17, 558

Power of original plaintiff, 17, 558

Proof of assignment, 17, 557

Requisites of assignment, 17, 556

Statutory provisions, 17, 555

Substitution, 17, 558

Discretionary, 17, 556

To what actions statute applies, 17, 555

When statutes apply, 17, 555, 556

When substitution will be denied, 17, 556

Whether defendant can move, 17, 558

Personal representative of assignor, 17, 509

Statutory Modifications, 17, 537

Actions ex delicto, 17, 540

Assignee unable to sue, 17, 540

Assignment by delivery, 17, 540

Assignors made defendants, 17, 542

Choses in action construed, 17, 539

Defendant's rights, 17, 541

Effect of the statutes, 17, 540

Generally, 17, 537

In Connecticut, 17, 537

In Dakota, 17, 537

In Delaware, 17, 537

In England, 17, 537

In Georgia, 17, 537

In Illinois, 17, 537

In Indiana, 17, 537

In Iowa, 17, 537

In Maine, 17, 537

In Maryland, 17, 538

In Massachusetts, 17, 538

In Michigan, 17, 538

In Mississippi, 17, 538

In Nebraska, 17, 538

In New Jersey, 17, 538

In Pennsylvania, 17, 537

In Virginia, 17, 538

In Washington, 17, 538

In West Virginia, 17, 539

Necessity of plaintiff averring assignment, 17, 541

Negotiable instruments, 17, 541

Pleading, 17, 540

Proof of assignment, 17, 541

Statute requiring an assignment in writing, 17, 540

Statutes authorizing assignments of choses in action, 17, 537

Subsequent assignees, 17, 540

Suit in name of assignor notwithstanding statute, 17, 540

Torts, 17, 540

When assignor must be a party, 17, 541, 542

Whether assignor may sue, 17, 537

Whether defendant may deny assignment, 17, 541

Testing validity of assignment, 17, 509

Torts, 17, 540

Use of name of state, 17, 510

Where obligor has promised to pay assignee, 17, 531

Whether assignee can sue in his own name, 17, 531

Whether assignee is a necessary or proper party, 17, 652

Whether assignee must consent to bringing of the suit, 17, 510

Whether assignor is a necessary or proper party, 17, 652

Whether new partnership can sue on obligation due old partnership, 17, 533

- Patent Law**, 18, 130
 Acknowledgment, 18, 131
Assignors, 18, 132
 Agent, 18, 132
 Executors and administrators, 18, 133
 Infants, 18, 133
 Married women, 18, 133
 Claims arising out of patented invention prior to assignment, 18, 143
 Condition, 18, 133
 Construction, 18, 132
 Definition, 18, 130
 Definition of grant, 18, 130
 Designation of parties, 18, 132
 Designation of subject-matter, 18, 131
 Distinguished from license, 18, 130
 Execution, 18, 133
 Formal requisites of assignment or grant, 18, 131
 Implied warranty, 18, 134
 Intention of parties, 18, 132
 Necessity of writing, 18, 131
 Oral testimony, 18, 132
 Proof of assignment, 18, 133
 Prosecution of infringers, 18, 133
Recording Contracts, 18, 135
 Agreement for future assignment, 18, 135
 Conveyance of different interest, 18, 135
 Duty to see what rights assignor has, 18, 136
 Effect of recording, 18, 136
 Protection afforded by, 18, 136
 Trespassers, 18, 136
 Unrecorded assignment, 18, 136
 What is notice of prior contract, 18, 136
 What may be recorded, 18, 136
 Requisites of assignment, 18, 130
 Rescission of contract, 18, 140
 Rights and liabilities of territorial grantee, 18, 130
 Royalty, 18, 138, 139
 Seal, 18, 131
 Specific performance, 18, 139
Unpatented Invention, 18, 134
 Employee hired to invent, 18, 135
 Equitable title, 18, 134
 Estoppel, 18, 135
 Examples, 18, 134, 135
 When assignment can be made, 18, 134
 What may be referred to in interpreting an assignment, 18, 132
Patent License, 13, 568
 Assignability transferred, 13, 569
Estoppel of Licensee to Deny Patent, 13, 570
 Admission as to validity, 13, 570
 Admissions in pais, 13, 570
 Federal courts, 13, 570
 General rule, 13, 570
 License contract, 13, 570
 Patent legally void, 13, 571
 State courts, 13, 570
 Termination of license, 13, 571
 Examples of licenses held assignable, 13, 569
 Firm's right to take new partners, 13, 568
 In general, 13, 568
 Intention that license should be assignable, 13, 568
 Partnership, 13, 568
 Restrictions upon assignee, 13, 569
 Rights of assignee of assignable license, 13, 569
 Rights of assignee under unassignable license, 13, 569
 Right to subdivide license, 13, 570
 What licenses are unassignable, 13, 568
 When license is assignable, 13, 568
 Pension, 18, 293
Pledge and Collateral Security, 18, 595, 661
 Assignment of debt, 18, 663
 Conversion, 18, 663
 Release of portion of goods pledged, 18, 662
 Right of pledgee to assign, 18, 661
 Right of pledgee to sell his interest, 18, 661
 Whether lien can be separated from debt, 18, 662
 Whether lien can be separated from pledge, 18, 662
 Whether original contract is put an end to by assignment, 18, 663
 Whether pledgee must keep possession, 18, 664
 Priority between assignees, 1, 840
Privity
 As to the fact, 17, 542
Public Lands
 Preemption Right, 19, 322
 Examples, 19, 322, 323
 In general, 19, 322
 Prior to issue of patent, 19, 322
 Relinquishment of possessory right, 19, 323
 Public officers' salaries, 1, 828; 3, 237; 6, 659, 660; 19, 535
Receiver, 20, 128
 Choses in action, 20, 129
 Examples, 20, 128, 129
 What passes, 20, 129
 When necessary, 20, 129
 Release to debtor after notice of assignment, 1, 840
Relief in Equity
 Of assignee of chose in action, 1, 828
Reversion
 Rent, 12, 754
 Anticipation of rent, 12, 755
 Assignee suing in own name, 12, 755
 In absence of severance, 12, 754
 Mortgagee, 12, 755
 Paid before notice of sale, 12, 755
 Purchase at sheriff's sale, 12, 754
 Purchaser of equity of redemption, 12, 755
 Rent in arrears, 12, 755
 Rent payable in advance, 12, 755

ASSIGNMENTS—Cont'd**Reversion—Cont'd****Rent—Cont'd**

When rent severed by reversion, 12, 754

Sales distinguished from, 21, 520

Set-off, 22, 297

See *infra*, COUNTERCLAIM.

Assigned Judgments, 12, 1490; 22, 456

Assignee has no rights which assignor has not, 22, 457

Assignee mere trustee for another, 22, 457

Assignee's right, 22, 456

Assignee takes judgment subject to rights of set-off, 22, 457

Assignment before judgment is rendered, 22, 460

Assignment previous to entry of judgment, 22, 459

Assignment to attorney, 22, 458

Assignment to attorney where plaintiff is insolvent, 22, 459

Bona fide, 22, 457

Bona fide assignee without notice, 22, 458

Conditional purchase, 22, 457

Fraudulent assignments, 22, 459

In general, 22, 456

Judgment held against judgment creditor where creditor is assigned to attorney, 22, 458

Judgment not owned absolutely, 22, 457

Purchasing judgment to set-off, 22, 457

Assignee for valuable consideration, 22, 297

Assignee to take subject to any existing set-offs, 22, 297

Bills and Notes, 22, 304

Bill or note obtained without valuable consideration, 22, 308

English rule as to taking overdue note, 22, 306

Instrument indorsed overdue, 22, 304

Set-off existing between intermediate assignee, 22, 305

What claims will be allowed against indorsee on overdue note, 22, 307

When assignee may set off bill or note, 22, 304

When assignee takes instrument free from any set-off, 22, 305

Where assignee takes note overdue, 22, 305

By and Against Assignees of Choses in Action Not Negotiable, 22, 297

Assignee must be able to sue in his own name, 22, 298, 299

Assignee Takes Subject to All Set-offs, 22, 299

Assignor insolvent, 22, 304

Assignor removing from the state, 22, 304

Burden of proof, 22, 301

Examples, 22, 299, 300

Excess above the assignee's demand, 22, 304

Fraud, 22, 301

In general, 22, 299

Set-off must be due defendant, 22, 302

Set-off obtained by defendant prior to assignment, 22, 302

Subject to assign must be due and payable, 22, 302

Waiver of right to set-off against assignee, 22, 304

Where set-off consists of negotiable paper, 22, 303

Assignment before suit against assignee was brought, 22, 298

Borrowed set-off, 22, 298

Examples of assignee using chose as set-off, 22, 298

Set-off must be due and payable, 22, 299

Subsisting cause of action in the assignor, 22, 297

Title of assignee, 22, 298

When assignee may use chose as set-off, 22, 297

Execution assigned, 22, 461

General rule, 22, 297

In Arkansas, 22, 351

In Kentucky, 22, 347

Protection of bona fide assignee of judgment, 22, 462

Recoupment in Arkansas, 22, 351

Specific Performance, 22, 935

Laches of assignor, 22, 937

Liability of assignee with notice, 22, 935

Notice, 22, 936

Personal representative, 22, 937

Purchaser without notice, 22, 936

Rights of assignee, 22, 936

Suit by assignee in equity, 1, 844

Taxation, 25, 14

Test of assignability, 17, 560

Tontine Policy, 26, 68

Policy payable to insured's estate, 26, 68

Right of beneficiary, 26, 68

Right of the insured generally, 26, 68

Whether beneficiary pays premium, 26, 68

Torts, 17, 559, 560

Trespass, 26, 608

Valuable consideration, 1, 832

Vendor's Lien, see **VENDOR'S LIEN**.

Verbal, 1, 835

What Constitutes, 1, 834

Delivery of written evidence of debt, 1, 840

Future earnings, 1, 828

Mere promise to pay out of a particular fund, 1, 838

Necessity of written instrument, 1, 835

Order for delivery of instrument for which he is secured, 1, 835

Order for the amount due, 1, 835

Vol. I.

- Order from principal to agent to collect money, and hand over to third party, 1, 839
- Order payable out of a particular fund, 1, 835
- Unaccepted bill or draft payable generally, 1, 836
- Unaccepted check, 1, 837
- Verbal assignment, 1, 835
- What words sufficient, 1, 835
- When order will operate as a valid assignment, 1, 839
- What is Assignable, 1, 827**
- Action of Assignee Against Debtor**
 - Upon a chose in action, 1, 827
- Causes of Action, 1, 832**
 - For injury to property, 1, 833
 - For personal tort, 1, 832
 - Which die with the party, 1, 832
- Choses in Action**
 - At common law, 1, 827
 - In equity, 1, 827
- Contingent interests, 1, 830
- Contract for personal service, 1, 832
- Deceit, cause of action for, 1, 833
- Expectancy of future interests, 1, 830
- Future acquisitions, 1, 831
- Money to become due, 1, 831
- Mortgages of railroad and rolling stock, 1, 831
- Partial assignment of a claim, 1, 833
- Pensions, 1, 829
- Potential existence necessary, 1, 830
- Right to file a bill in equity for fraud, 1, 833
- Right to insurance money before loss, 1, 832
- That which can be transmitted to personal representative, 1, 832
- Wages to be earned in future, 1, 828
- Where damages have been fixed by judgment of court, 3, 85
- Who May Assign**
 - Corporations, 1, 846
 - Infants, 1, 846
 - Personal property of a partnership, 1, 847
- ASSIGNMENTS FOR BENEFIT OF CREDITORS, 1, 845; 10, 201; 13, 833**
- See* ASSIGNMENTS.
- See generally* INSOLVENCY.
- See* TRUSTS AND TRUSTEES.
- Application of the property, 1, 865
- As an act of bankruptcy, 2, 84
- Assent of Creditors, 8, 857**
 - Not Ordinarily Necessary at Time of Assignment, 8, 857
 - Presumption of assent, 8, 857
 - Secret preferences, 8, 858
- Assignee**
 - See infra*, GARNISHMENT.
 - Acceptance by, 1, 850, 860
 - Account, 1, 878
 - As party to instrument of assignment, 1, 858
 - Compelling to make account, 1, 878
 - Compensation of, 1, 865
- Creditor of assignor, 1, 851
- Death of sole, 1, 877
- Death, removal, or resignation of, 1, 874
- Delegating his powers, 1, 877
- Direction as to mode of paying claims, 1, 869
- Discharge of, 1, 878
- Discretion as to mode and terms of sale, 1, 867
- Discretion to sell, 1, 876
- Duty**
 - To convert assigned property into money, 1, 876
 - To give notice of sale to creditors, 1, 876
 - To keep accurate accounts, 1, 877
 - To keep down incumbrances of real estate, 1, 876
 - When a creditor, 1, 877
- Empowered to employ agents, 1, 868
- Estate vests in, 1, 871
- Filing inventory, 1, 875
- Judicial settlement of his accounts, 1, 878
- Must be named in deed of assignment, 1, 850
- Number of, 1, 850
- Oath of, 1, 875
- Performance of contract of, to deliver goods, 1, 876
- Personal liability of, for misfeasance or neglect, 1, 877
- Physical and mental qualifications, 1, 851
- Power of**
 - Over the estate, 1, 875
 - To appoint substitutes, 1, 851
 - To declare future preferences, 1, 862
 - To defend suits, 1, 876
 - To sell on credit, 1, 867
- Producing assignor's books, 1, 877
- Purchasing at his own sale, 1, 876
- Sale of property, 1, 876
- Selection by debtor, 1, 851
- Suit by assignee in his own name, 1, 875
- Taking only rights of assignor, 1, 854
- Taking place of assignor as defendant, 1, 876
- Using discretion arbitrarily, 1, 877
- Who may be, 1, 850
- Assignment Exacting Release, 1, 863; 8, 858**
 - Exacting release as conditional to assignment, 8, 858
 - Not necessarily fraudulent, 8, 858
 - Qualifications, 8, 858
 - Tending to delay and defraud creditors, 8, 858
- At common law, 8, 857
- Attachment, 1, 878
- Bond of, 1, 874
- By several instruments, 1, 856
- Condition for payment of money to assignor for support of family, 1, 863
- Conflict of Laws, 3, 571, 574, 613**
 - Assignment of real estate, 3, 616

ASSIGNMENTS FOR BENEFIT OF CREDITORS—Cont'd**Conflict of Laws—Cont'd**

Assignments giving preferences, 3, 617
 Assignments which contravene the law of the situs, 3, 616

Attachment of personal property in another state, made with notice of the assignment, 3, 620

Choses in action, 3, 616

Extraterritorial effect of state law prescribing the effect of an assignment for the benefit of creditors, 3, 615

Foreign assignments for benefit of creditors, 3, 571

Statutes which regulate mode of executing and administering assignments, 3, 617

Where assignment is repugnant to the policy of *lex rei sitæ*, 8, 287

Consideration, 1, 864

Contingent debts provided for, 1, 866

Corporations, 4, 220; 17, 123

By majority of directors, 17, 124

Effect of, 17, 123

Power of directors, 17, 124

Court's jurisdiction over property assigned, 1, 872

Creditors

Assent presumed, 1, 858

Compelling proper management of trust, 1, 880

Presenting their claims on receiving notice, 1, 879

Proceeding against property of debtor not assigned, 1, 880

Proceeding by execution, 1, 879

Proceeding in equity, 1, 879

What creditors may attack to assignment, 1, 879

Creditor's bill, 1, 879

Crops, 1, 852; 4, 888

Description of property assigned, 1, 865

Directors, 17, 123

By majority of, 17, 124

Effect of, 17, 123

Power of, 17, 124

Direct to creditors, 1, 846

Effect, 1, 871

Exempt property from taxation, 1, 873

Of general assignment by partners, 1, 874

Of invalid assignment, 1, 872

Of resignation, removal, or death of assignee, 1, 874

Of statute of bankruptcy, 8, 857

Placing property under jurisdiction of the court, 1, 872

Property vests in assignee, 1, 871

Upon assignor, 1, 871

Upon creditors, 1, 871

Voidable assignment, 1, 872

Voluntary assignment passing personality in another state, 1, 873

With creditors as secured by liens, 1, 871

Exceptions from assignment, 1, 853

Fictitious debt inserted, 1, 866, 869

Foreign Assignments, 8, 284

Involuntary Assignments, 8, 284

Assignee or receiver taking possession of property in foreign jurisdiction, 8, 284

Domestic creditors, 8, 285

English rule, 8, 286

Extraterritorial effect of, 8, 284

Foreign creditors, 8, 285

Suit by assignee, 8, 284

Voluntary Assignments, 8, 286

Assignment contrary to policy of *lex rei sitæ*, 8, 287

Exceptions as to real estate, 8, 287

Rule as to validity, 8, 286

What is a voluntary assignment, 8, 286

Where possession has changed, 8, 288

Formal Requisites, 1, 855

Acceptance by assignee, 1, 850, 860

Acknowledgment, 1, 859

Assignee as party to instrument, 1, 858

Assignment by several instruments, 1, 856

Assignment made by attorney, 1, 859

Attestation, 1, 859

Delivery, 1, 860

Informal writings, 1, 856

Recordation, 1, 859

Schedule of assets, 1, 857

When creditors may be parties, 1, 858

Words necessary, 1, 855

Fraudulent Assignments, 1, 868; 8, 639; 11, 208

Acts of the parties, 1, 870

Avoiding the whole instrument, 1, 869

Calculated to hinder and delay or defraud creditors, 1, 870

Evidence by the instrument itself, 1, 870

False statements in the assignment of schedules, 1, 870

Fictitious debts, 1, 869

Validity against the assignor, 1, 869

When fraud must have entered into the assignment, 1, 869

Fraudulent Conveyances, 8, 774; 11, 208

Impeachment by assignee, 8, 774

Void Assignments, 11, 209

Assignment to prevent sacrifice of property, 11, 210

Creditors debarred from benefit, 11, 210

Examples, 11, 209, 210

In California, 11, 210

Indefinite postponement of time of closing trust, 11, 209

Indefinite postponement of time of collection, 11, 209

Indefinite postponement of time of sale, 11, 209

Proceeds used to defend suits, 11, 210

Reservations, 11, 210

For benefit of debtor, 11, 210

Of surplus, 11, 211

- Selling on credit, 11, 210
Void Conveyances and Sales, 11, 211
 Examples, 11, 211
 What complainant must prove, 11, 211
Who Can Set Aside, 11, 211
 Assignee, 11, 211
 In general, 11, 211
Fraudulent Mortgages, 15, 773
Articles Consumable in the Use, 15, 775
 Examples, 15, 775, 776
 Not necessarily consumable, 15, 776
 Provision that mortgagor shall retain possession, 15, 775
 Where mortgagor does not use the articles, 15, 775
 Benefits reserved to mortgagor, 15, 775
 Burden of proof, 15, 774
 Election of the creditors, 15, 777
 Examples, 15, 773-775
 Fraudulent intent, 15, 774
 Fraudulent preferences, 15, 777
 Mortgagee's participation, 15, 774
 Setting aside, 15, 774
 Validity of mortgages in fraud of creditors, 15, 773
 When not void, 15, 776
 Where creditors do not intervene, 15, 777
Fraudulent Sales
 Bona fide holder, 8, 843
 Future liabilities provided for, 1, 866
Future Preferences
 To be declared by assignee, 1, 862
Garnishment of Assignee, 8, 1146
 In general, 8, 1146
 Void assignment, 8, 1192
 Where assignment is void, 8, 1146
General Assignment, 1, 845
 By partners, 1, 874
 Necessity of writing, 1, 855
 Imprisonment for debt, 10, 228
 Incurred debts, 1, 866
 Infant, 10, 636
 Injury to particular creditor, 8, 857
 Insurable interests, 11, 315
 Inventory, 11, 812
Jointure of Wife
 To bar dower, 1, 856
 "Just and fair," 12, 385
Life Insurance Policy, 13, 647
 In general, 13, 647
 Son's policy to secure father's debts, 13, 647
 Wife's policy to secure husband's debts, 13, 647
Limitation of Actions
 New promise, 13, 764
 Limited partnership, 13, 833
 Manufacturing corporations, 14, 275
Mechanics' Liens
 Subcontractor, 15, 116
 Modes and terms of sale, 1, 867
Necessity
 Of actual insolvency, 1, 850
 Of writing, 1, 855
Partial Assignments, 1, 845, 861
 Necessity of writing, 1, 855
 Parties to actions, 17, 548
Partnership, 1, 850; 17, 975
 After dissolution, 17, 1145
 Agreement, 17, 904
 Assignment by members of individual interests, 1, 850; 17, 1097
 Assignment to pay individual debts where firm is insolvent, 17, 1092
By One Partner, 1, 850; 17, 1045
 Absconding partner, 17, 1047
 Application for proceedings in bankruptcy, 17, 1046
 Expressly conferred on a partner, 17, 1045
 In general, 17, 1045
 Necessity that all the parties consent to assignment, 17, 1045
 Partner absent, 17, 1047
 Partner believed to have absconded, 17, 1047
 Preferences, 17, 1048
 Ratification, 17, 1047
 Real estate, 17, 1048
 Temporary absence, 17, 1048
 To prevent involuntary preferences, 17, 1048
 Whether ratification relates back, 17, 1047
Dissolution, 17, 1093
 Assignment of firm, 17, 1103
 Assignment of partner, 17, 1104
 Execution, 17, 1090
 General assignment, 1, 874
 Individual debts, 17, 1093
 Individual property of partners, 17, 1090
 In general, 17, 1090
 Limited, 13, 833
 Payment of non-partnership debts for which all partners are bound, 17, 1093
Personal Property of Partnership
 Joint act of partners, 1, 847
 Where it is important to consult all the partners, 1, 848
 With consent of all the partners, 1, 847
 Without consent of all the partners, 1, 847
 Preference of individual creditors, 17, 1092
 Preference of partnership creditors to individual ones, 17, 1093
 Real estate, 1, 850; 17, 1048
Surviving Partner, 17, 1160
 Power to make, 17, 1160
 Preferences, 17, 1160
 To a partner, 1, 851
 Validity of assignment where appropriation is void, 17, 1092
Where Both Firm and Individual Properties are Assigned, 17, 1091
 Application of individual funds to the payment of individual debts, 17, 1092

ASSIGNMENTS FOR BENEFIT OF CREDITORS—Cont'd**Partnership—Cont'd**

Where Both Firm and Individual Properties are Assigned—*Cont'd*

Application of partnership assets to firm debts, 17, 1091

Whether all members must acknowledge, 17, 1090

Whether all members must execute, 17, 1090

Payment of debts after, 18, 190

Power to sell and convey implied, 1, 865

Preferences, 1, 860; 8, 855

See FRAUDULENT ASSIGNMENTS; FRAUDULENT CONVEYANCES.

Allowance of, 1, 860

At common law, 8, 857

Conditioned on giving a release, 1, 863

Corporations, 4, 220

Illegal contracts, 9, 912

Necessity that order of payment be fixed, 1, 882

Necessity that they be distinctly declared, 1, 862

Partial assignments giving preferences, 1, 861

Secret preferences, 8, 858

Under statutes, 8, 857

Validity of future, 1, 862

What are not, 1, 861

Priority of the United States, 1, 879; 27, 540

Property exceeding indebtedness provided for, 1, 855

Receivers, 1, 878; 20, 133

Recitals of losses in business, 1, 864

Recitals of reasons for, 1, 864

Release of debtor, 1, 863; 8, 858

Religious Societies, 20, 816

In absence of statute provisions, 20, 816

In general, 20, 816

Necessity of leave of court, 20, 816

Reservations and Stipulations, 1, 863

For a release of debtor, 1, 863; 8, 858

For retention and possession of property, 1, 863

That assignee shall continue business, 1, 863

That surplus shall be returned to assignor, 1, 864

Revocation

Right of Assignor to Revoke, 27, 319, 320

Acceptance by assignee, 27, 320

Acceptance by creditor, 27, 320

After creditors have been notified, 27, 321

Examples, 27, 320, 321

In England, 27, 320

In general, 27, 320

Sale by assignee, 1, 876

Sales on credit, 1, 867

Schedules

False statements in, 1, 870

Of assets, 1, 857, 865

Special assignments, 1, 846

Stock

Call of corporation for stock by assignee, 23, 808

Stockholders

Action for subscription by assignee, 23, 827

Submission of schedule, 1, 858

Sureties, 24, 874

Protection of, 1, 866

Sureties of Assignee

Discharge of, 1, 878

Surviving partners making assignment, 1, 850

Taxation

Payment of taxes by assignee, 25, 282

Time within which creditors may assent, 1, 867

Time within which trust is to be administered, 1, 867

Trade-marks, 1, 852; 26, 394

Trusts are for what, 1, 865

United States, 1, 879; 27, 540

Validity, 3, 615

Vesting property in assignee, 1, 874

What Passes, 1, 852

Crops, 1, 852; 4, 888

Land bound by liens of judgments, 1, 852

Lessee's evidence, 1, 852

Only Right of Assignor

Time of assignment, 1, 854

Personal property, 1, 852

Property described in deed, 1, 854

Property especially exempted, 1, 852

Purchaser's right to conveyance of land, 1, 852

Real estate, 1, 852

Trade-mark, 1, 852; 26, 394

Whether breach of covenants, 8, 444

Whether within bills of sale acts, 8, 864

Who may assign, 1, 846

ASSIGNS

Mutual insurance, 16, 64

ASSIZE, 1, 881**ASSIZES OF NUISANCES, 16, 978****ASSOCIATE, 1, 881****ASSOCIATIONS**

See BENEVOLENT ASSOCIATIONS; SOCIETIES AND CLUBS.

Building and loan associations, see BUILDING AND LOAN ASSOCIATIONS.

ASSUMPSIT, 1, 882

See BILL OF PARTICULARS.

See generally, PLEADING.

See TRESPASS ON THE CASE.

Counts, see DECLARATION (IN PLEADING).

Action of, as special case in New York constitution, 3, 25

Against a corporation, 1, 887; 4, 277

Against members of building and loan associations for dues, 2, 619

Allegation of damages, 5, 357

Allegation of general damages, 5, 357

Allegation of special damages, 5, 357

Alleging contract, 5, 356

- A substitute for account render in Massachusetts, 1, 129
- Averments**, 5, 356
- In special action of assumpsit, 5, 356
- Meaning of term, 5, 356
- Notice of performance, 1, 889; 5, 356
- Of condition precedent, 5, 356
- Of non-performance, 5, 356
- Of performance, 5, 356
- Request of defendant to perform, 5, 357
- Bailee refusing to restore goods, 2, 58
- Breach**, 5, 357
- Necessity of stating in declaration, 5, 357
- Particularity in statement, 5, 357
- Statement of breach conforming to contract, 5, 357
- Whether omission to aver is cured by verdict, 5, 357
- By member of building and loan association, 2, 625
- Common accounts, 1, 882
- Consideration, 5, 355
- Contract Under Seal**, 1, 887, 888
- Collateral to the principal debt, 1, 888
- In place of simple contract, 1, 888
- Contribution, 4, 2
- Decree in equity, 5, 390
- Definition of, 1, 882
- Distinguished from debt, 5, 166, 167
- Effect of judgment by default, 5, 462
- Election**
- Trover*, see *TROVER*.
- Between assumpsit and tort, 1, 888; 7, 334; 28, 569
- Equitable Defenses**
- Under the general issue, 1, 890
- Evidence**
- Under the general issue, 1, 889
- Forms of action, 1, 882
- "For or on account of," 8, 79
- For penalties, 2, 711
- Gas companies, 8, 1289
- General Issue**, 1, 889; 18, 522, 540
- After Hilary Rules**, 18, 541
- Action for money had and received, 18, 542
- Declaration against a common carrier, 18, 543
- Denying the breach, 18, 545
- Denying the contract, 18, 543
- Examples of what may be shown, 18, 542
- General and special assumpsit, 18, 541
- Goods sold on credit, 18, 541
- Implied contract, 18, 541
- Making the contract, 18, 545
- Non assumpsit, 18, 545
- Refusing to accept goods, 18, 542
- Special assumpsit, 18, 543
- Statement of account, 18, 542
- Use and occupation, 18, 543
- Work done, goods furnished, 18, 542
- Circumstances giving rise to implication, 18, 540
- Drunkenness, 18, 540
- General assumpsit, 18, 540
- Implied promise, 18, 540
- Infancy and coverture, 18, 540
- Matters in discharge, 18, 540
- Non compos, 18, 540
- Objections to the consideration, 18, 540
- Release and performance, 18, 540
- Scope, 18, 540
- Showing that plaintiff never had any cause of action, 18, 541
- History of, 1, 882
- Implied warranty, 10, 176
- Indebitatus Assumpsit**, 1, 882
- Between holder and other parties to a bill or note, 3, 588
- Contract to be performed in future, 1, 883
- For money had and received, 1, 883
- For money received tortiously, 1, 883
- For services, 1, 884
- Goods bargained and sold, 1, 883
- Money paid to the use of, or lent, 1, 883
- Promise expressed or implied to pay a debt, 1, 882
- Sale of lands, 1, 883
- Use and occupation of house and lands, 1, 883
- Inducement, 5, 355
- In simul computassent, 1, 884
- Joinder of different causes of action, 11, 991
- Joinder with**, 11, 993
- Case, 11, 993
- Covenant, 11, 993
- Debt, 11, 994
- Trespass, 11, 994
- Trover*, 11, 994
- Joint tenants and tenants in common, 11, 1128
- Judgment**, 1, 890
- To recover money paid on erroneous judgment, 1, 887
- To recover money paid under duress, 1, 887
- Justice of the peace, 12, 447
- Legacies and devises, 1, 888; 13, 189
- Liability Assumpsit**, 1, 885
- Contribution to party walls, 1, 885
- In foreign judgment, 1, 885
- In legacy charged upon land, 1, 885
- Upon banker's draft, 1, 885
- Upon bill of exchange, 1, 885
- Upon tolls, 1, 885
- Local assessments, 25, 565
- Merger, 1, 887, 888
- Money due under statute, 1, 887
- Money obtained by duress, 6, 95
- Mutual promises, 1, 885
- New Agreement**
- Where contract is under seal, 1, 888
- Non assumpsit*, see *infra*, **GENERAL ISSUE**.
- Partner**
- Against his co-partner, 1, 884

ASSUMPSIT—Cont'd*Pleading*, see generally PLEADING.*Declaration*, see *infra*, AVERMENTS, and see DECLARATION.*General issue*, see *infra*, GENERAL ISSUE.

Pleas, 1, 889

Pledge, 18, 728

Proof sustaining allegation of damages, 5, 357

Quantum Meruit, 1, 884; 19, 593

Attorney recovering on, where client settles suit without his consent, 1, 969

For attorney's services, 1, 966

Measure of recovery for attorney's services, 1, 967

Or *valebant*, 1, 884

Professional standing of attorney, 1, 967

Where agreement with client is champertous, 3, 86

Where partial performance of entire contract is accepted, 3, 921

Quantum Valebant, 1, 884

Where partial performance of entire contract is accepted, 3, 921

Requisites, 1, 886

Implied promises, 1, 886

Promise made for benefit of plaintiff, 1, 886

What promise will sustain, 1, 886

Security of a higher nature, 1, 887

Set-off, 22, 244

Settlement of accounts, 1, 109

Special Assumpsit, 1, 885

Against attorneys and solicitors, 1, 886

Against bailees, 1, 886

Against innkeepers, 1, 886

For not accepting or delivering goods, 1, 885

Neglected or breach of professional duty, 1, 886

Upon bailments, 1, 885

Stock

Preferred dividends, 23, 610

Suretyship, 24, 778

Taxation, 25, 316

By taxpayer, 25, 472

Collector in default, 25, 351

To Recover Money Paid

On an erroneous judgment, 1, 886

Under a mistake of fact, 1, 887

Under duress, 1, 886

Under fraudulent misrepresentation, 1, 887

Under illegal contracts, 1, 887

Under rescinded contracts, 1, 887

Where consideration has failed, 1, 887

Trespass on the case, 26, 706

United States, 27, 533

Upon agreement to leave property by will, 5, 315

Upon an award, 1, 885

Upon judgment, 1, 885

Vendor and purchaser, 28, 155

Verdict, 1, 890; 28, 304

Waiving Tort and Suing in Assumpsit, 1,

888; 7, 334; 28, 569

Election of remedies, 28, 570

In general, 28, 569

Instances of waiver of tort, 28, 571, 572

Meaning of the phrase, 28, 569

When right exists, 28, 569

Where action will not lie, 1, 887

Where contract under seal is invalid, 1, 887

Whether concurrent with covenant, 4, 464

ASSURANCE, see INSURANCE.

Collateral assurance, 3, 310

Common assurances, 3, 347

Usury, 27, 933

ASTRAY, see ESTRAY; IMPOUNDING; STRAY.

What are, 1, 588

AT, 1, 890; 13, 843

At and from, 14, 343

At and from a port, 1, 890

At his decease, 11, 906

"At," in a bill of exchange, 1, 893

At large, 1, 890

At law, 1, 892

At least, 1, 892; 13, 1, 230

At merchant's risk, 1, 892

At once, 1, 892; 17, 189

At or near, 1, 892; 16, 336

At or upon, 1, 892

At sea, 1, 893

At that time, 1, 893

At the dwelling house, 1, 893

At the end of one year, 1, 893

At their death, 1, 892

At the office, 1, 893

At the pit's mouth, 1, 893

At the trial, 1, 892

At the warehouse, 1, 893

At this date, 1, 893

Equivalent to in, 1, 890

Equivalent to inner, 1, 890

Near, at or near, 1, 892

"Of" equivalent to "at," 17, 34

Running at large, 12, 898-900

ATTACHMENT, 1, 894

See AFFIDAVIT; CONTEMPT; EXECUTION; FOREIGN ATTACHMENT; FORTHCOMING BOND; GARNISHMENT.

See generally, SEQUESTRATION; SERVICE OF PROCESS.

See HOMESTEAD.

Of Stock, see STOCK.

Sheriff's powers, duties and liabilities, see SHERIFFS.

Abatement, executors and administrators, 7, 416

Absconding debtor, 1, 34; 8, 785.

Affidavit, 1, 312, 901

Averment that demand is just, 1, 903

By whom made, 1, 902

Certified that it was made, 1, 902

Condition precedent to the issue of the writ, 1, 901

Contents, 1, 902

Disjunctive statement of grounds, 1, 904

- Information or belief, 1, 904
- Manner of stating, 1, 904
- Motion to quash or dissolve, 1, 905
- Nature of demand to be shown, 1, 902
- Necessity of, 1, 901
- Omission of, in essential fact, 1, 901
- Plea of abatement to sustain, 1, 908
- Right of amendment, 1, 905
- Signature of attorney, 1, 902
- Surplusage, 1, 904
- Uncertainty of, 1, 904
- Where there are several modes for application, 1, 904
- Against Whom the Process May Issue, 1,**
 - 896; 8, 1108
 - Abscinding debtors, 1, 897; 8, 1109
 - Absence, casual, 1, 896
 - Absent debtor, 1, 896
 - An attempt to delay or defraud creditors, 1, 897
 - Concealment, 1, 897; 8, 1109
 - Corporations, 1, 898; 4, 278
 - Debtors removing their property, 1, 899; 8, 1109
- Amendment**
 - Of affidavit, 1, 905
 - Of bond, 1, 907
 - Of complaint, 2, 933
 - Of return, 1, 922
 - Of writ, 1, 911
- Animus manendi, 1, 897
- Assignment for benefit of creditors, 1, 899
- Attachment Bonds, 1, 905; 2, 466r**
 - Action upon, before original suit has been determined, 2, 466s
 - Amendment, 1, 907
 - As prerequisite to jurisdiction, 1, 905
 - Attorney as surety, 24, 726
 - Conformity to statutory requirement, 1, 905
 - Joinder, 11, 1015l
 - Joint action by several obligees, 2, 466r
 - Cure of defects, 1, 907
 - Damages, 1, 909
 - Form, 1, 900
 - How conditioned, 1, 905
 - Liabilities, 1, 908
- Measure of Damages**
 - In action upon, 2, 466r
 - Name of obligor, 1, 906
 - Necessity of, 1, 905
 - Object of the bond, 1, 905
 - Right to sue where there is a writ of error, 1, 908
- Suretyship, 24, 858**
 - Attachment void for want of jurisdiction, 24, 858
 - Claim increased after bond is given, 24, 859
 - Examples, 24, 858-860
 - In general, 24, 858
 - New defendant brought in, 24, 859
 - Liability of sureties, 24, 858
 - Liability where attachment is dissolved, 24, 858
 - Sureties, wealth of, 1, 907
 - Surplusage, 1, 907
 - To whose benefit they inure, 2, 466r
 - Vindictive damages, 1, 909
- Bail bonds, 1, 923
- Bills and notes, 8, 1172
- Bonds to Dissolve, 1, 923**
 - Availability of bail bond, 1, 925
 - Definition of bail bonds, 1, 923
- Delivery Bonds, 1, 925**
 - Distinguished from bail bond, 1, 925
 - Not as large as law requires, 1, 926
 - Delivery of property by surety, 1, 925
 - Exception to bail bond after time of execution, 1, 924
 - Form of delivery bond, 1, 925
 - Kinds of, 1, 923
 - Measure of recovery of delivery bond, 1, 926
 - Nature of delivery bond, 1, 925
 - New sureties in bail bonds, 1, 924
 - Proceeding in rem and in personam, 1, 924
 - Right to give bail bond, 1, 924
 - Where bond is not authorized by statute, 1, 925
 - Words necessary in delivery bond, 1, 925
- By attorney, 1, 956
- Carriers of Goods, 2, 854**
 - When goods in carrier's custody are attachable, 2, 854
- Character of the debt, 1, 896
- Claim before due, 1, 898
- Claim of third party to the property, 1, 928
- Conclusiveness of judgment, 12, 149w
- Confusion of goods, 1, 921
- Contingent liability, 1, 896
- Corporations, 1, 898; 4, 278**
 - See *infra*, FOREIGN CORPORATIONS.
- Costs, personal attachment for, 4, 329
- Creditor, definition of, 1, 895
- Debtors removing their property, 1, 899
- Defects taken advantage of, 1, 896
- Definition of, 1, 894
- Delivery bond, 1, 925
- Delivery of the Property by Surety**
 - In delivery bond, 1, 925
- Dies non juridicus, 5, 86; 22, 112; 24, 578
- Dissolution, 1, 931**
 - Amendment, 2, 933
 - By traverse of acts alleged in the affidavit, 1, 931
 - By whom the motion should be made, 1, 932
 - Death of defendant, 1, 934; 5, 134
 - Destruction of bond or affidavit, 2, 933
 - Effect of lien, 1, 934
 - Effect of, upon intervenors, 1, 932
 - General grounds of, 1, 931
 - Grounds for, 1, 931
 - Motion to quash for irregularity in procedure, 1, 931
 - Notice of, 1, 934

ATTACHMENT—Cont'd**Dissolution—Cont'd**

Technical irregularities upon face of papers, 1, 931

Duty of officer to execute writ promptly, 1, 920

Effect of death of defendant, 1, 934; 5, 134

Effectual, 6, 195

Election

Between contract and tort, 1, 895

Evidence of assignee in, 12, 103

Executors and administrators, 7, 393

Exemptions, 1, 914

See EXECUTION.

Defendant's books of accounts, 1, 915

Defendant's wearing apparel, 1, 915

Property in custodia legis, 1, 915

Property in process of manufacture, 1, 915

Property of public corporations, 1, 916

Property of public officers, 1, 916

Statutory, 1, 917

Tools and implements of a man's trade, 1, 917

Wagon, 28, 521-523

Final Judgment, 12, 67

Examples, 12, 67

Judgment dissolved, 12, 67

Order overruling motion to dissolve, 12, 67

Foreign Corporations, 8, 393

Consolidated corporations, 8, 396

Distinguished from domestic, 8, 289

Exemptions, 8, 396

Generally, 8, 393

In Alabama, 8, 394

In Georgia, 8, 395

In Illinois, 8, 395

In Iowa, 8, 395

In Kansas, 8, 395

In Kentucky, 8, 394

In Maryland, 8, 394

In Massachusetts, 8, 393

In Missouri, 8, 395

In New Hampshire, 8, 394

In New York, 8, 393, 394

In Ohio, 8, 395

In Pennsylvania, 8, 395

In Rhode Island, 8, 394

In Vermont, 8, 395

In Wisconsin, 8, 395

National corporations, 8, 396

Personal property of debtor in hands of foreign corporation, 8, 394

Pleading, 8, 396

Practice, 8, 396

Protection of home creditors after dissolution, 8, 406

Shares of stock of non-resident, 8, 393

Under statutes regulating appointment of agents for service of process, 8, 395

Validity, 8, 393

For tort, 1, 895

Fraud, 1, 899

Fraudulent Attachments, 1, 926

Creditor alters or changes his writ, 1, 927

Mere irregularities in conduct of suit, 1, 928

Fraudulent Conveyances

Impeachment by attaching creditors, 8, 774

Fraudulent Sales

Bona fide holder, 8, 843

Delivery of possession, 8, 894

"Goods," 8, 1364

Grounds for, 1, 896; 8, 1108

Absconding debtor, 1, 897; 8, 1109

Concealed debtor, 1, 897; 8, 1109

Defendant about to dispose of property, 8, 1110

Defendant contemplating removal, 8, 1109

Defendant contemplating removal of property, 8, 1109

Defendant who has disposed of his property, 1, 899; 8, 1109, 1110

Non-resident debtor, 8, 1109

What constitutes an absconding debtor, 8, 1109

"Inhabitant," 10, 770

Injunctions, 10, 890

Attachment in another state, 10, 910

Injury to the Creditor

Without fraudulent intent, 1, 899

Insolvency, 11, 180

Effect of foreign assignments, 11, 182

Effect of local assignment, 11, 180

Intervention

Actions against officers for property attached, 17, 635, 645

In general, 17, 636

Lien creditors, 17, 643

Of third parties, 17, 636

Party disputing validity, 17, 636

Sheriffs, 17, 635

Simple creditors, 17, 643

Subsequent purchasers, 17, 643

In whose favor the process will lie, 1, 894

Irregularities in the conduct of the suit, 1, 928

Issue of the Writ, 1, 909

Attestation of officer, 1, 910

Effect of, 1, 909

From whom the writ may issue, 1, 910

Prerequisites to, 1, 910

Signature of officer, 1, 910

Judgments of sister states, 12, 148w

Justice of the Peace

Amount, 12, 439

Appeal, 12, 482

Claim not due, 12, 439

Definition, 12, 439

Proceedings strictly construed, 12, 439

Provisions in general, 12, 439

Publication of summons, 12, 438

Record, 12, 439

Trial of right of property before, 12, 498

Levy accomplished through fraud or violence, 1, 920

- Levy upon perishable goods, 1, 921
- Levy upon personality, 1, 911
- Levy upon property of tenants in common, 1, 921
- Levy upon realty, 1, 911
- Liabilities, 1, 908
- Liability of Officer**, 1, 920, 929; 19, 518
 - When liable to defendant, 1, 929
 - When liable to plaintiff, 1, 929
 - When liable to third parties, 1, 929
- Lien**, 1, 930
 - Binding upon the interest of the heirs, 1, 930
 - Effect of dissolution upon, 1, 934
 - Effect of forthcoming bond, 8, 568
 - Interest of debtor in property at time of levy, 1, 930
 - Lis pendens, 13, 904
 - Priority of, 1, 930
 - Upon what property, 1, 928
 - When created, 1, 919
 - Where provisions of statute are not complied with, 1, 919
- Liens of Attorney**, 13, 621
 - Assignment prior to commencement of suit, 13, 621
 - Equity and law, 13, 621
- Malicious Prosecution**, 14, 36
 - Measure of damages, 14, 74
- Mandamus**
 - Reinstating, 14, 117
- Mandatory or directory provisions, 23, 460
- Mechanics' liens, 15, 92, 124
- Money in hands of stake-holder, 8, 1000
- Motion to quash, 1, 905
- National Banks**, 16, 216
 - Against, 16, 216
 - Bank in another state, 16, 154
 - By national banks, 16, 216
 - In general, 16, 216
 - Insolvency, 16, 212
 - Shares, 16, 195
- Ne exeat, 16, 375
- Non-residence, 1, 897
- Notice by Publication**, 1, 934; 16, 816
 - See generally PUBLICATION OF NOTICE.
 - Failure to publish, 1, 934
 - Impeaching judgment for want of, collaterally, 1, 935
 - Sufficiency of, 1, 934
 - Validity of judgment based upon, 1, 936
 - Where notice is abridged, 1, 935
- Notice of Assignment**
 - Notice to assignor of non-payment of debt, 1, 842
- Notice of dissolution, 1, 934
- Officer levying upon property of third party, 1, 920
- Officer's abuse of duty, 1, 920
- Of principal's goods for factor's debts, 3, 334
- Operates on interest of owner at time it is made, 1, 911, 914
- Origin and general nature, 1, 894
- Partnership**, 17, 1329
 - Action between partners, 17, 1329
 - Against the Firm**, 17, 1330
 - Against surviving partner, 17, 1332
 - Misnomer, 17, 1332
 - Non-residence of co-partner, 17, 1332
 - Non-resident, 17, 1330
 - Separate property of absconding partner, 17, 1330
 - Separate property of non-resident partner, 17, 1330
 - Statute changing joint debt into joint and several one, 17, 1331
 - When all have absconded, 17, 1322, 1330
 - Where some of the members of the firm are not within the provisions of the statute, 17, 1331
 - Whether separate property of absentee may be attached, 17, 1331
 - Exemption, 17, 1335
 - Interest of One Partner**, 17, 1336
 - Creditor's interest in property levied upon, 17, 1338
 - Levy upon less than the whole, 17, 1338
 - Levy upon whole of partnership property, 17, 1337
 - Partnership creditor, 17, 1338
 - Sheriff's duty, 17, 1337
 - Where there are dormant partners, 17, 1337
 - Whether subject to, 17, 1336
- Levy and Sale**
 - Interest of Partner**, 17, 1340
 - Buyer's interest, 17, 1343
 - Claim of co-partner for balances, 17, 1343
 - Exclusive possession, 17, 1340
 - In general, 17, 1340
 - Insolvent partnership, 17, 1343, 1344
 - Joint levy and sale, 17, 1343
 - Liability for joint debts, 17, 1345
 - Possession of sheriff, 17, 1340
 - Replevin, 17, 1344
 - Sheriff as trespasser, 17, 1342-1345
 - Trespass against officer for taking exclusive possession, 17, 1340
 - Statutes, 17, 1329
 - When attachment may be maintained, 17, 1330
- Pews, 18, 423
- Plea in abatement, 1, 906
- Pledge**, 18, 653
 - After pledgee has surrendered possession, 18, 654
 - At common law, 18, 653
 - Garnishment, 18, 654
 - Pledgee waiving his lien and attaching, 18, 667
 - Pledgor's interest, 18, 653
 - Power of sale, 18, 672
 - Statute providing that pledgor's interest may be attached, 18, 655
 - Waiver of lien, 18, 727
- Possession of Officer**
 - Constructive possession, 1, 920

ATTACHMENT—Cont'd**Possession of Officer—Cont'd**

- Necessity of actual possession, 1, 919
- Necessity of manual possession, 1, 920
- What is sufficient, 1, 920

Presumption as to jurisdiction, 12, 282

Presumption as to regularity, 12, 282

Priority

- Between attachments of state court and United States court, 3, 527
- Between successive attachments, 1, 926
- How determined, 1, 930

Property under garnishment, 8, 1201

Public Officers

- Moneys in the hands of government due public officer 19, 535
- Property held by officer as agent of the law, 19, 535

Receiptors, see *RECEIPTORS*.

Receivers

- Property in hands of receivers, 20, 139
- Recording acts, 20, 544

Record Showing Conformity to Statute, 12, 280, 281

Affidavit, 12, 282

State courts, 12, 281

United States courts, 12, 280

Redemption of Mortgages

Attachment creditor, 20, 616

Relation, 20, 734

Removal of causes, 20, 985

Replevin, 20, 1065

To try the right of third parties, 1, 928

Whether Property in Custodia Legis Can Be Retaken in, 20, 1065

At common law, 20, 1065

Attachment debtor, 20, 1070

Contempt, 20, 1065

Defendant, 20, 1067

Examples, 20, 1065-1071

From vendee at execution sale, 20, 1067

Generally, 20, 1065-1071

In Arkansas, 20, 1067

In Connecticut, 20, 1066

In Mississippi, 20, 1068

In Nebraska, 20, 1067

In New Hampshire, 20, 1067

In Pennsylvania, 20, 1068

In Wisconsin, 20, 1068

Official character, 20, 1068

Person other than defendant, 20, 1065

Plaintiff in attachment, 20, 1070

Privilege confined to residents, 20, 1069

Property alleged to have been stolen, 20, 1070

Property exempt, 20, 1068

Unconstitutional process, 20, 1065

Valid process, 20, 1065

Void judgment, 20, 1065

Residence, test of, 1, 897

Resistance of Process Against Property, 17, 18

Attaching goods of third person, 17, 18

Destroying officer's notice, 17, 20

Examples, 17, 18, 19

Interfering with goods, 17, 19

Obstructing coroners, 17, 20

Passive resistance, 17, 19

Receiving possession, 17, 19

Revenue officers, 17, 20

Res judicata, 21, 131, 188

Return of Writ, 1, 921

Amendment of return, 1, 922

Conclusiveness of return, 1, 922

Description of property attached, 1, 922

What it should state, 1, 921

Rights of Action in Mortgagees

Where goods attached are covered by chattel mortgage, 3, 203

Salary of state officer, 23, 84

Service of Process, 1, 918

Dies non juridicus, 5, 86; 22, 112; 24, 578

On corporation, 4, 284

Set-Off

Whether damages for illegal attachment may be set off in trial of principal cause, 22, 276

Signature, necessity of, 1, 902

Simultaneous Attachments, 1, 926

How they share, 1, 926

Spendthrift trusts, 23, 9, 10

Stock Exchange

Seats, 23, 755

Stoppage in Transitu, 2, 856; 23, 925, 930

Attachment by creditor of vendee, 2, 856

Attachment by seller, 23, 931

Before delivery, 23, 930

Creditor of buyer, 23, 930

Duty of carrier in case of attachment, 23, 931

Examples, 23, 930, 931

In general, 2, 856; 23, 930, 931

Vendor's right, 2, 856

Successive Attachments, 1, 926

Invalid levy, 1, 927

Order of priority, 1, 927

Where filed on the same day, 1, 927

Sunday, 5, 86; 22, 112; 24, 578

Taxation

Money in hands of collector, 25, 343

To whose benefit an attachment bond inures, 2, 466r

Trespass, 26, 603

Authority, 26, 604

Consent of wife, 26, 603

Exempt goods, 26, 603

In general, 26, 603

Parties directing, 26, 604

Possession obtained by fraud, 26, 604

Withdrawal of consent to levy, 26, 603

Trusts and trustees, 27, 157

United States Courts, 27, 604

Examples, 27, 604, 605

Garnishment, 27, 604

In general, 27, 604

Removal of causes, 27, 604

Vindictive Damages

For wrongful attachment, 1, 909

- What Property Is Subject to**, 1, 911; 8, 1201; 19, 535
 Dower and curtesy, 1, 912
 Intangible interests in real estate, 1, 912
 Money, 1, 913
 Personality, 1, 913
 Property of defendant out of his possession, 1, 913
 Property of partnership, 1, 914
 Real estate, 1, 911
When constituting a cloud upon title, 2, 301
Writ
 Amendment of, 1, 911
 Direction of, 1, 918
 Stating amount for which levy is made, 1, 910
Wrongful Attachment
 Action for, 1, 909
 Without probable cause, 1, 909
ATTAINER, 3, 516, 537
 Conviction and attainder distinguished, 4, 145
 Extraterritorial force of, 3, 516, 537
ATTAINING
 On attaining, 17, 184
ATTEMPT, 1, 936, 937; 4, 659
For assault with attempt to commit rape, see ASSAULT.
To murder, see HOMICIDE.
 Abandonment of, 4, 661
 Act attempted must be indictable if done, 4, 659
 Act must be apparently adapted to produce result intended, 4, 659
 All participants in an attempt to commit a misdemeanor as principals, 4, 662
 Approximate act, 4, 661
 Assault with intent to commit higher crime, 4, 660
 Attempt to commit a misdemeanor itself a misdemeanor, 4, 662
 Buying a gun as an attempt to commit murder, 4, 664
 Conflict of laws, 3, 538
 Definition, 4, 659
 Indictment for the crime and conviction of attempt, 15, 362
 Intent, 4, 662, 858
Larceny, 4, 660, 663
 Indictment, 12, 816
 Merely purchasing liquor with intention of introducing it into prohibited territory, 4, 664
 Mere preparations, 4, 664
 Merger, 15, 362
 Necessity of intent, 4, 662, 858
 On unsuitable objects, 4, 667
 Overt act necessary to constitute an attempt to commit larceny, 4, 663
 Physical ability to commit crime, 4, 662
 Preparation, 1, 937
 Punishment for, 4, 724
 Sodomy, 4, 664; 22, 833
 Soliciting another to commit a crime, 4, 662, 669
Suicide, 4, 660; 24, 491, 492
 Accidental killing of another, 24, 491
 Suitable means, 4, 665
 To bribe, 4, 660, 663
 To commit abortion, 4, 663
 To commit a crime which it is impossible to commit, 4, 666
 To commit a felony as a misdemeanor, 4, 660
 To commit a misdemeanor, 4, 662
 To commit burglary, 4, 663
 To commit minor offenses, 4, 668
 To commit murder in territory under exclusive jurisdiction of United States, 4, 662
To Commit Rape, 4, 663
 By a boy under the age of puberty, 4, 662
 To commit specific offenses, 4, 663
 To enter, 1, 937
 To escape, 4, 663
 To forge, though paper could not defraud, 4, 667
 To obtain property by false pretenses, 4, 664
 To personate a person who is dead, 4, 667
 To poison with a non-poisonous substance, 4, 668
To Produce a Miscarriage, 4, 663
 See ABORTION.
 Where woman is not pregnant, 4, 663
 To sell, 3, 205
 To shoot with firearms not capable of doing harm, 4, 668
 To steal where there is nothing to be stolen, 4, 667
 Unsuitable means, 4, 665
 Venue, 28, 234
 What constitutes an attempt, 4, 659
 Whatever is punishable in its consummation as punishable in its attempt, 4, 660
 What preparation will constitute, 4, 665
ATTENDANCE, 1, 937
ATTENDANT
 Medical attendant, 18, 428
ATTENDING PHYSICIAN, 1, 938
ATTESTATION, 1, 938
 See ACKNOWLEDGMENT; AUTHENTICATION; WILLS.
For attestation of deeds, see DEEDS.
 Acknowledgment, defective as, 1, 152
 Admission of execution, 1, 941
Bills of Sale, 8, 868
 Effect of want of attestation, 8, 869
 Grantee as attesting witness, 8, 869
 Provisions concerning, 8, 868
 Rulings concerning, 8, 869
 Solicitor acting is competent attesting witness, 8, 869
 What the attestation must state, 8, 869
 Definition of, 1, 938
 Justice of the peace, 1, 1024
 Powers, 18, 928

ATTESTATION—*Cont'd*

- Production of Subscribing Witness**, 7, 86
 - Interested in the suit, 1, 942
 - Where he cannot be found without diligent search, 1, 941
 - Where he is blind, 7, 86
 - Where he is dangerously sick, 1, 942
 - Where he is dead, 1, 941; 7, 86
 - Where he is out of the jurisdiction, 1, 941
- Proof of attested writings**, 1, 941
- Proof of Document Required to Be Attested**
 - Admission of party executing document, 7, 86
 - Cases in which attesting witness need not be called, 1, 941; 7, 86
 - Cases in which documents have been burned or canceled, 7, 86
 - Document not required to be by law, 7, 87
 - When attesting witness denies execution, 7, 87
- Proof of handwriting**, 1, 942
- Public Records**, 20, 514
 - By whom attested, 20, 515
 - How identified, 20, 515
 - In general, 20, 514
 - Parol evidence, 20, 515
 - Signature, 20, 515
 - Signature of deputy, 20, 515
- To a bill or note, 2, 319

ATTORNEY AND CLIENT, 1, 942

See **ADVICE OF COUNSEL**; **ARGUMENT OF COUNSEL**; **CHAMPERTY**; **DISTRICT ATTORNEY**.

See *generally*, **AGENCY**.

See **POWER OF ATTORNEY**; **PRIVILEGED COMMUNICATIONS**; **STIPULATIONS**.

Absence of attorney as ground for continuance, see **CONTINUANCES**.

As to purchase by attorney with client's money, see **IMPLIED TRUST**.

Attorney disqualified to act as judge, see **JUDGE**.

Lobbying contract, see **ILLEGAL CONTRACT**.

Partnership**Liability on Contracts**

Liability of partners, see **PARTNERSHIP**, subhead *Powers and Rights of*.

Resulting Trusts

As to purchase by attorney with client's funds, see **IMPLIED TRUST**.

Account render between, 1, 130

Acknowledgment of deed by attorney, 1, 170

Acting as an attorney, 1, 178

Acting for both parties, 1, 949, 959

Action for attorney's fees, 1, 965

Admission, 1, 943, 955

Judicial and ministerial acts, 1, 944

Mandamus, 14, 130

Requisites, 1, 943

Supreme court of the United States, 1, 943

Whether application for admission to bar is a remedy, 20, 973

Admissions of attorney, 9, 350

Adverse possession, 1, 245

Adverse title of attorney to client, 1, 960

Affidavit by attorney, 1, 308

Affidavit of client taken by attorney, 1, 309

Appeal bond executed by attorney, 1, 957

Appearance, 1, 952

Authority for, 1, 952

By attorney, 1, 184, 953; 3, 7, 893; 10, 679; 11, 1479; 17, 475

Collateral attack upon judgment, 12, 1479

Disputed authority of attorney, 12, 1472

Foreign attachment, 8, 324

Foreign corporations, 8, 380

Compulsory where retainer has been accepted, 1, 953

Entry of, 1, 952

Of minor by attorney, 9, 154

Right to Appear by Attorney, 17, 475

In contempt proceedings, 3, 793

Striking out after it has been entered, 1, 953

Unauthorized, 1, 954

Whether compelled in civil cases, 1, 953

Appointment, 1, 952

See *infra*, **MARRIED WOMEN**.

Infants, void or voidable, 10, 632, 633

In criminal cases, 4, 842

Arbitration

Submission by attorney, 1, 652, 956

Arrest, freedom from, 1, 725, 948; 2, 235; 10, 235

Assignment for Benefit of Creditors

Made by attorney, 1, 859

Assignment of judgment to attorney by client, 1, 972

Assumpsit against attorney, 1, 886

Attachment by attorney, 1, 902, 956

Attendance at taxation of costs, 10, 236

Attorney

As agent or auctioneer, 1, 949

As an expert in handwriting, 9, 292

As one holding office, 1, 944

Control over execution, 7, 119

Discharge in insolvency, 11, 227

Liability, see *infra*, **LIABILITY**.

For unlawful arrest, 1, 952

On his undertaking, 1, 951

Persons other than his clients, 17, 520

Privity, 17, 520

Purchasing at sheriff's sale, 12, 222

Purchasing chose in action, 1, 950

Using information received by him against client, 1, 961

Authority of Attorney, 1, 954

To accept service for his client, 1, 954

To receive payment of client's debts, 1, 955

Bad advice by attorney, 1, 954

Bail, attorney as, 1, 950
 Bankruptcy, creditor's right to appear by attorney, 2, 74
 Barratry, 2, 127
 Bill in equity signed by counsel, 2, 215
Binding Client to Indemnify Officer
 Levy and execution, 1, 957
 Charging liens, 1, 970
 Clerk of court, 19, 562j
 Clients acting under legal advice as defense to crime, 4, 693
 Collusive settlement of case, 1, 972
Compensation, 1, 963
 See infra, **MARRIED WOMAN; RECEIVERS.**
 Actions for, 1, 965
 Contract for greater compensation while relation exists, 1, 969
 Dismissal by client, 1, 965
 English rule as to barrister, 1, 964
 Foreclosure of mortgages, 8, 271
 For useless work, 1, 965
 Honorarium, 1, 964
 Illegal services, 1, 964
 Immoral services, 1, 964
 Measure of, 1, 967
 Member of partnership charging firm, 1, 967
 Of attorney appointed by court to defend criminal, 1, 943
 Quantum meruit, 1, 966
 Receivers of railroads, 20, 411
 Receiving from adversaries in same cause, 1, 950
 Services rendered in good faith, 1, 964
 What must be established in actions for compensation, 1, 966
 Where attorney acts in bad faith or is negligent, 1, 964
 Where attorney calls himself as witness, 1, 949
 Withdrawal from case with client's consent, 1, 965
Compromise, 19, 141
 Offer of, should be communicated to client, 1, 966
 Of suits, 1, 956
 Confession of judgment by attorney, 1, 957
 Conflicting interests of attorney with clients, 1, 960
Contempt by Attorney, 1, 945
 Acts which have been held contempt, 3, 782
 Disrespectful language, 3, 782
 Filing indecent petitions for divorce, 3, 782
 Malpractice of attorneys, 3, 782
 Procuring bail, 3, 782
 Publishing strictures on opinion of the court, 3, 782
Contingent Fees, 1, 968
 See **CHAMPERTY AND MAINTENANCE.**
 Settlement of suit without attorney's consent, 1, 969

Contract
 Attorney taking assignment of debt, 1, 968
 Contracts by attorney with client, 1, 967
 Express, 1, 967
 In restraint of trade, 9, 891; 10, 946
 Conveyances by client to attorney, 1, 960
Costs, 1, 951
 Liability of Attorney
 For costs on a sham plea, 1, 951
 Motions, 15, 930
 Right of attorney to recover when a party to the suit, 1, 949
 Scandal and impertinence, 1, 951; 21, 747
 Counsel distinguished from attorney, 15, 378
 County commissioner's power to employ counsel, 4, 383
 Dealings between attorney and client, 1, 959
Definition, 1, 942
 Attorney at law, 1, 943
 Attorney in fact, 1, 942
 Delegation of attorney's authority, 1, 369, 965
 Demand by attorney, 5, 528d
 Demand for money collected by attorney not necessary to support an action, 1, 182
Depositions
 Presence of attorney, 5, 596
 Right of party to appear by attorney, 5, 596
 Taken by attorney, 5, 587
 Disabilities, 1, 949, 950
Disbarment, 1, 946
 Act connected with official character of attorney, 1, 946
 Acts for which an attorney may be disbarred, 1, 946, 947, 948
 Acts must be alleged against attorney, 1, 948
 Breach of the oath of fidelity to the court, 1, 947
 False oath taken by attorney, 1, 947
 For assaulting or threatening assault of judge, 1, 946
 For contempt, 1, 946
 For offense committed out of court, 1, 946
 Fraud and deceit towards client, 1, 948
 Full notice to attorney, 1, 948
 Gross violation of confidence of client, 1, 947
 Grounds for, 1, 946
Mandamus to Restore, 1, 948; 14, 131
 Where attorney was disbarred for contempt, 1, 948
 Perjury or subornation of perjury, 1, 947
 Practice, 1, 948
 Unfitness to practice in the courts, 1, 947
 Withholding client's money, 1, 948
 Discharge of debtor by attorney, 1, 957
 Duration of authority, 1, 958
 Duress by, 6, 76

ATTORNEY AND CLIENT—Cont'd**Duties of Attorney, 1, 958**

Care, skill, diligence and integrity, 1, 958

Disclosures to client, 1, 958

Investigation of legal requisites of title, 1, 959

Notification of money collected, 1, 958

Payment over of money collected, 1, 958

To communicate offer of compromise to client, 1, 966

To determine whether his instructions are genuine, 1, 952

Towards client, 1, 959

Embezzlement, 6, 481

Instances, 6, 481

Using money received, 6, 481

Equitable cognizance of fraud, 1, 963**Executors and Administrators**

Attorney's claims for helping to settle estate, 7, 299

Extortion by attorney, 7, 587**False Imprisonment***See infra*, MALICIOUS PROSECUTION.**Liability, 1, 952**

For arrest on void process, 7, 683

For laying facts before committing magistrate, 7, 683

For maliciously or illegally obtaining execution of void process, 7, 683

For suing out void process, 7, 683

Of client, 7, 682

On void process, 7, 683

False personation of attorney, 7, 696**False pretenses by attorney, 7, 756****Fees, see *infra*, COMPENSATION.****Frauds, Statute of**

Attorney undertaking to pay his client's costs, 8, 660

Memorandum of attorney, 8, 721

Garnishment

Demand upon client, 8, 1137

Privileged, 8, 1137

Whether exempt as public officer, 8, 1137

General retainer, 8, 1292**Gifts, 1, 960; 8, 1310****Imprisonment of attorney for debt, 10, 229****Judgment**

By confession, 12, 1497

Equitable relief against, 12, 147

Judicial sales, 12, 222, 224**Justice of the Peace**

Office, 12, 405

Laches, 12, 559**Lawyer**

Definition, 12, 964

Liability, *see infra*, ATTORNEY.

Of county for attorney's services when appointed by court to defend a prisoner, 4, 367

To Client, 1, 961

Blunders in process, 1, 962

Court compelling the strictest good faith, 1, 945

Defective papers, 1, 962

Disobedience to instructions, 1, 961

Failure to bring suit, 1, 961

For loss of valuable papers, 1, 961

In case of reasonable doubt, 1, 962

Legal knowledge required, 1, 962

Omitting to procure evidence, 1, 962

Ordinary skill and care, 1, 961

To third parties, 1, 951

Libel and Slander, 13, 313

Liability for, 1, 948

Privileged communications, 13, 409

Slander, 13, 356

Examples, 13, 357

General rule, 13, 356

What is actionable, 13, 356

License, 13, 521**Liens, 1, 969; 13, 614**

Assignment, 13, 626

Attachment of Judgment and Insolvency of Client, 13, 621

Assignment prior to commencement of suit, 13, 621

Equity and law, 13, 621

Priority of attorney's lien, 13, 621

Attorney's right against opposite parties, 1, 971

Charging Liens, 1, 970

Definition of, 1, 970

Commensurate with rights of client in the papers, 1, 969

Equitable lien on amount recovered, 13, 609

Executors and administrators, 7, 309

General or Retaining, 13, 614

At common law, 13, 614

Attorney's remedy, 13, 616

Character of lien, 13, 614

Collusion of parties, 13, 616

Detention of papers, 13, 615

Disputed fee, 13, 615

Distinguished from special charge in lien, 13, 615

Extent of attorney's retaining lien, 13, 615

Money collected, 13, 615

Money paid for specific purpose, 13, 616

Money paid to discharge mortgage, 13, 616

Money paid to settle suit, 13, 616

Payment into court of funds detained, 13, 616

Power of court, 13, 616

Right of sale, 13, 615

To what the lien is confined, 13, 615

To whom the lien extends, 13, 615

When no lien attaches, 13, 616

Lis Pendens, 13, 903

Chancery, 13, 904

Fee fixed by contract, 13, 903

Lien established by state law, 13, 904

Materiality of the object with which the papers came into attorney's hands, 1, 969

- Notice by attorney to opposite party, 1, 971
 On funds in his hands, 1, 970
 Priority of attorney's lien, 13, 621
 Remedies for enforcing an attorney's lien, 13, 621
 Right over execution, 7, 119
Set-off, 1, 972; 13, 620; 22, 462
 Adverse judgments in same cause, 22, 463
 Adverse judgments in same transaction, 22, 463
 Attorney's right where mutual executions are set off, 22, 461
Bill in Equity or Action at Law, 22, 464
 Upon motion, 22, 464
 When lien will be regarded, 22, 464
 By judgment debtor, 13, 620
 Conflict of authority, 13, 620
 Court sustaining lien of attorney, 22, 462
 Discretion of court, 22, 463
Judgment for Costs, 22, 455
 Costs in separate actions, 22, 455
 Settlement of attorney's claim, 22, 455
 When set-off will be denied, 22, 455
 Where claims arise in course of the suit, 22, 455
Lien for costs and disbursements, 22, 462
 Right of parties to set off judgment, 22, 462
 States in which set-off is allowed, 13, 620; 22, 463
 States in which set-off is not allowed, 13, 620; 22, 463
 Statutes, 13, 620; 22, 463
 Unliquidated claim of opposite party, 22, 464
 When lien not paramount, 22, 463
 Where judgment creditor assigns judgment to attorney, 13, 621
 Whether equitable or legal rules apply, 22, 463
Special or Charging, 1, 970; 13, 616
 Cost, 13, 616
 Counsel fees, 13, 617
 Disbursements, 13, 617
 General balance for services, 13, 617
 Judgment, 13, 616
 Nature of the lien, 13, 616
Statutory Liens of Attorneys, 13, 617
 Collusive settlement, 13, 619
 Distinguished from general lien, 13, 615
 In Arkansas, 13, 617
 In Colorado, 13, 617
 In Dakota, 13, 617
 In Georgia, 13, 617
 In Indiana, 13, 618
 In Iowa, 13, 618
 In Kansas, 13, 618
 In Kentucky, 13, 618
 In Massachusetts, 13, 618
 In Michigan, 13, 618
 In Minnesota, 13, 618
 In Montana, 13, 618
 In Nebraska, 13, 619
 In New York, 13, 619
 In Oregon, 13, 619
 In Virginia, 13, 619
 In Washington, 13, 619
 Parties defeating attorney's lien, 13, 619
 When lien attaches, 13, 619
 Upon all papers and documents of client, 1, 969
 Waiver, 1, 973
 When his agreement with client is champertous, 3, 86
 Where deeds are delivered for a specific purpose, 1, 969
Limitation of Actions
 New promise, 13, 760
 Limiting number of counsel, 4, 842
Malicious Prosecution, 1, 952; 7, 683; 14, 39
See infra, FALSE IMPRISONMENT.
Advice of Counsel, 14, 53-58
 Advice of justice of the peace, 14, 57
 Good faith of plaintiff, 14, 56
 Knowledge of plaintiff, 14, 56, 57
 Question of law and fact, 14, 58
 Showing probable cause, 14, 55
 What sufficient, 14, 57
 Whether a defense, 14, 53
 Whether a fair statement was made to counsel, 14, 58
Mandamus, 14, 130
 Admission, 14, 130
 Improperly debarred, 14, 131
 To compel recognition of district attorney, 14, 130
 To restore debarred attorney, 14, 131
Married Women, 14, 663
Appointment by
 At Common Law, 14, 664
 Agreement for alimony, 14, 664
 Antenuptial appointment, 14, 664
 Appearance by attorney, 14, 664
 In Equity, 14, 664
 In general, 14, 664
 Separate property, 14, 664
 Under Statutes
 Statute expressly authorizing appointment, 14, 665
 Statutes authorizing to sue independently, 14, 665
Compensation, 14, 665
 Equitable separate estate, 14, 667
 Husband's Liability, 14, 665
 Bringing and defending suit, 14, 666
 In general, 14, 665
 Legal expenses as necessities, 14, 665
 Proceedings against husband, 14, 665
 Suit for maintenance, 14, 665
 Money collected, 14, 666

ATTORNEY AND CLIENT—Cont'd**Married Women—Cont'd****Compensation—Cont'd**

- Next friend's liability, 14, 666
- Personal liability, 14, 666
- Statute authorizing suit, 14, 667
- To contract, 14, 667
- Trustee's liability, 14, 666
- Under statutes, 14, 666-667
- Where she may employ counsel, 14, 667

When married women bound by attorney's acts, 14, 665

Measure of damages for injury to client, 1, 963

Merits, Affidavit of

- Advice of counsel, 15, 372, 382
- Contents when made by attorney, 15, 382

Misconduct, see *infra*, NEW TRIAL.

"Misconduct" of attorney, 15, 619

Mistake, 15, 644

Mortgages

Assignments, 15, 849

Municipal Corporations

Contract with, 15, 1118

Additional salary to regular attorney, 15, 1122

Compensation, 15, 1120

Duty of corporation to pay compensation, 15, 1120

Examples, 15, 1120-1122

Examples of employment, 15, 1119

In general, 15, 1118

Injunction against employing, 15, 1120

Mayor of city, 15, 1119

Necessity of express authority, 15, 1118

Ratification of contract for compensation, 15, 1121

To defend city officer, 15, 1120

Unreasonable fee, 15, 1121

Where charter provided for city attorney, 15, 1119

Limitation of municipal indebtedness, 15, 1133

Negligence, 1, 962; 12, 147; 16, 420, 534

Burden of proof, 1, 963

Compensation where attorney is negligent, 1, 964

New Trial

Absence of Counsel, 16, 538

Absence on other professional business, 16, 539

Because not paid, 16, 540

Discretion of trial court, 16, 540

Ignorance of time of meeting of court, 16, 539

Illness of counsel, 16, 539

Inexcusable absence, 16, 538

In general, 16, 538

Knowledge of day on which case will be called, 16, 539

Merits of cause, 16, 540

Misunderstanding between attorneys, 16, 539

Negligence of counsel as negligence of party, 16, 539

Party absent because relying upon attorney, 16, 537

Counsel's misapprehension of law, 16, 532

Illness of counsel, 16, 532

Improper remarks of judge to counsel, 16, 522

Judge bringing an attorney into contempt, 16, 522

Misconduct of Counsel, 16, 524

Appeal to prejudices of jurors, 16, 528

Arguments must be confined to law and evidence, 16, 524

Attack upon character of opposite party, 16, 526

Caution to jury by court, 16, 526

Commenting upon change of venue, 16, 524

Commenting upon excluded testimony, 16, 525

Cure of error, 16, 526, 528

Discretion of trial court, 16, 527

Duty of court upon abuse of privilege, 16, 525

Effect of court's interference, 16, 526

Examples, 16, 524-529

Improper remarks to jury, 16, 524

In Conduct of Trial, 16, 528

Assailing character of opposite party, 16, 528

Communications between juror and counsel, 16, 528

Excluded evidence, 16, 528

Getting excluded evidence before jury, 16, 528

Intoxication of counsel, 16, 528

Violation of a stipulation, 16, 529

Injury to complainant, 16, 524

Instructions to disregard improper remarks, 16, 526, 528

Misstatement of evidence, 16, 526

Objection to remarks, 16, 527

Reading extract from newspaper, 16, 524

Reading from books, 16, 527

Referring to matters not in evidence, 16, 526

Stating facts not proven, 16, 525

When new trial should be granted, 16, 527

Negligence of counsel, 16, 534

Refusal to allow argument, 16, 521

Surprise Arising from Mistake of Counsel, 16, 550

Competency of witness, 16, 551

In general, 16, 550

Relevancy or materiality of evidence, 16, 551

When new trial granted, 16, 551

Notice to Attorney, 1, 686; 16, 805

In general, 16, 805

Knowledge acquired in business of another client, 16, 805

Notice to produce papers, 16, 844

Officers of Private Corporations, 17, 151

Examples, 17, 151

Implied power, 17, 151

Power to employ, 17, 151

Ordinary skill and care, 1, 961

Party settling suit without attorney's consent, 1, 971

PaymentAttorney authorized to receive, 1, 954;
18, 191**Pensions, 18, 291**

Arrears of pension, 18, 292

Evasion of statute, 18, 292

Expenses incurred, 18, 292

Penalty for receiving greater fee, 18, 291

Provision in pension laws, 18, 291

Recovery of excessive fee, 18, 292

What is violation of the statute, 18, 292

Police powers, 18, 759

Power, assignment of judgment, 12, 1499

Power of attorney to accept payment of judgment, 12, 1499, 1492

Powers implied by retainer, 1, 954

Presumption as to fraud in dealings between attorney and client, 8, 648

Privileged Communications, 19, 127

Acts done in counsel's presence, 19, 140

Address of client, 19, 143

Admissions, 19, 135

Agreements, 19, 141

Asking counsel if he has been retained, 19, 140

Attorney Acting for Several Clients, 19, 130, 134, 138, 139

Examples, 19, 134, 135

In general, 19, 134

Waiver, 19, 134

Attorney a stranger to the suit, 19, 136

Attorney for two or more, 19, 130

Attorney not actually employed, 19, 130

Attorney's Representative, 19, 131

Assistant attorney, 19, 132

Clerk, 19, 132

Conveyancer, 19, 132

In general, 19, 131

Law student, 19, 133

Lawyer's executor, 19, 132

Ordinary business agent, 19, 132

Scrivener, 19, 132

Civil cases, 19, 130

Clerk, 19, 132

Client not a party to the cause, 19, 130, 136

Client's consent, 19, 133

Client's witnesses, 19, 130

Collateral matters, 19, 143

Common attorney, 19, 134, 138

Common-law rule, 19, 128

Communications by persons other than client, 19, 139

Communications for an unlawful purpose, 19, 140

Communications not privileged, 19, 136

I-D-7

Communications not relating to subject-matter of consultation, 19, 138

Communications not within scope of lawyer's duty or profession, 19, 136

Communications relating to contracts, 19, 137

Communications through a third person, 19, 131

Communications to be communicated to adverse party, 19, 139

Communications voluntarily made, 19, 136

Communications with third persons, 19, 142

Compromises, 19, 141

Consent of client, 19, 133

Criminal cases, 19, 130

Cross-examination of attorneys, 19, 142

Declarations in presence of attorney, 19, 139

Deeds, 19, 137

Defective memory of witness, 19, 136

Disclosures for protection of attorney, 19, 142

Documents, 19, 144, 246

Appearance of paper, 19, 144

Correspondence between attorney and client, 19, 146

Criminal cases, 19, 144

Dates, 19, 145

Existence of paper, 19, 144

Information derived from, 19, 144

In general, 19, 144

In hands of third persons, 19, 146

Instruments held on behalf of clients, 19, 144

Letters, 19, 131, 146, 246

Names, 19, 145

Not relating to the particular suit, 19, 145

Papers which client could be compelled to produce, 19, 145

Possession of the paper, 19, 144

Question in regard to nature of documents, 19, 145

Secondary evidence, 19, 144, 146

Situation of the paper, 19, 144

Telegrams, 19, 146

Where attorney and client are co-defendants, 19, 147

Whether person with equal interest in papers with client can compel production, 19, 145

Element of confidence lacking, 19, 137

Existence of the relationship, 19, 129, 136

Facts communicated by client, 19, 129

Handwriting of client, 19, 141

Importance of the communication, 19, 131

In general, 19, 127

Interrogatories, 19, 138

Letters, 19, 131, 146

"In confidence," 19, 246

Matter subject to professional advice, 19, 129

ATTORNEY AND CLIENT—Cont'd**Privileged Communications—Cont'd**

- Matters which occurred in open court, 19, 140
- Mutual attorney, 19, 138
- Necessity of retainer, 19, 130
- Negotiations respecting mortgaging of property, 19, 135
- Negotiations respecting sale of property, 19, 135
- No injunction of secrecy, 19, 131
- Not relating to litigation, 19, 129
- Production of documents, 19, 144, 246
- Professional advice or assistance, 19, 127
- Privilege of client and not of attorney, 19, 133
- Questions which an attorney may be asked, 19, 141
- Secondary evidence, 19, 141
- Statutes affirming common-law rule, 19, 128
- Suit between joint clients, 19, 130
- Suit contemplated, 19, 128
- Suit pending, 19, 128
- Testamentary communications, 19, 142
- Waiver of Privilege, 19, 133**
 - Agreement or compromise, 19, 134
 - Calling on attorney to testify, 19, 134
 - Client testifying in his own behalf, 19, 134
 - Necessity of distinct and unconditional waiver, 19, 133
 - Not claiming the privilege, 19, 134
 - Right of client, 19, 133
 - What amounts to a waiver, 19, 133, 134
- What communications privileged in general, 19, 128
- When privileged, 19, 246
- Where both parties were present, 19, 139
- Where no legal advice is given, 19, 138
- Whether limited to advice, 19, 129
- Whether limited to opinion stated, 19, 129
- Who may claim the privilege, 19, 133
- Willingness to testify, 19, 131
- Wills, 19, 142
- Witnesses, 19, 130
- Privilege from Arrest, 1, 725, 948; 2, 235**
 - Exemption from arrest, 1, 948
 - Liability for slander, 1, 948
 - Nature of attorney's privilege, 1, 944
 - Termination, 10, 235
 - Termination of attendance upon court, 10, 236
 - Wanton libel, 1, 948
 - When attendance upon court, 10, 235
- Professional Standing of Attorney**
 - In action for services, 1, 967
 - Proof of handwriting, 9, 274
 - Public duties of attorneys, 1, 944

Public Officers

- Whether attorney is a public officer, 1, 943; 19, 383
- "Public trust," 19, 303
- Purchase by attorney where he has been consulted professionally regarding the title to lands by client, 10, 83
- Qualifications**
 - Educational, 19, 405
 - Sex, 19, 404
- Railroad contract, 19, 820
- Reasonable care, 1, 961, 962
- Reasonable expenses of attorney, 1, 963
- Receivers, 20, 75, 178
- Allowance for Counsel Fees, 20, 178, 189, 371**
 - Charging counsel fees of parties in interest upon receivership fund, 20, 191
 - Employment not sanctioned by court, 20, 189
 - Examples, 20, 189-192
 - Incurred in the exercise of sound discretion, 20, 189
 - In general, 20, 189
 - Interests not adverse, 20, 191
 - Overpayment of attorney, 20, 190
 - Party assenting to employment, 20, 191
 - Receiver acting as his own attorney, 20, 189
- Employment of counsel, 20, 231
- Examples, 20, 178
- In general, 20, 231
- Motion for removal, 20, 178
- Receiver acting as counsel, 20, 178
- Receiver's right to employ counsel, 20, 117
- Removal of receiver for employing counsel of one of the parties, 20, 211
- When employment is necessary, 20, 8, 178
- Recoupment, 22, 362
- Referees**
 - Affidavit upon motion, 20, 680
- Compulsory References**
 - Attorneys' Bills, 20, 679**
 - Conflict of opinion, 20, 679
 - Discretion of trial court, 20, 680
 - Expert testimony, 20, 679
 - In general, 20, 679
 - Referee accepting law business from one of the parties, 20, 682
 - Stipulation by attorney to pay increased fees, 20, 711
 - Whether attorney liable for fees, 20, 711
 - Whether attorney who has appeared as counsel, may be referee, 20, 682
 - Whether referee must be attorney, 20, 681
- Rehearing in equity on account of attorney's bad advice, 1, 954
- Relationship terminated by death of client, 1, 953
- Release, 20, 749**
 - Claim or judgment, 20, 749
 - Indorser on note, 20, 749

- In general, 20, 749
- Satisfaction, 20, 749
- Special authority, 20, 749
- Without consent of counsel, 20, 762
- Religious societies, 20, 819
- Removal of causes, 20, 988
- Restraint of trade, 9, 891; 10, 946
- Retainer**, 1, 952; 21, 296
 - By corporation, 1, 953
 - Definition, 1, 952
 - Implied promise to pay all costs, 1, 953
 - Inferred, 1, 953
 - Power implied by, 1, 954
 - Scope of authority given by, 1, 953
 - Verbal, 1, 952
- Retraxit by attorney, 1, 957; 21, 298
- Scandal and Impertinence**
 - Attorney's liability, 21, 747
- Security demanded of client by attorney when money paid over is claimed by third party, 1, 959
- Service of notice to take depositions on attorney, 5, 594
- Service of Process**, 22, 158
 - Acknowledgment of service, 22, 173
 - How agency must appear, 22, 158
 - Presumption as to authority to accept service, 22, 159
 - When service may be upon attorney, 22, 158
 - Where defendant cannot be reached, 22, 158
 - Where there is no evidence to connect attorney with principal, 22, 158
 - Whether attorney exempted from service, 22, 163
- Set-Off**
 - Assignment of Judgment to Attorney**, 22, 458
 - Where plaintiff is insolvent, 22, 459
 - Attorney's Lien**, 22, 455, 462
 - Adverse judgments in the same cause, 22, 463
 - Adverse judgments in the same transaction, 22, 463
 - Bill in Equity or Action at Law**, 22, 464
 - Upon motion, 22, 464
 - When lien will be regarded, 22, 464
 - Court sustaining lien of attorney, 22, 462
 - Discretion of court, 22, 463
 - Judgment for Costs**, 22, 455
 - Costs in separate actions, 22, 455
 - Settlement of attorney's claim, 22, 455
 - When set-off will be denied, 22, 455
 - Where claims arise in the course of the suit, 22, 455
 - Lien for costs and disbursements, 22, 462
 - Right of parties to set off judgment, 22, 462
 - Statutes, 22, 463
 - Unliquidated claim of opposite party, 22, 464
 - When lien not paramount, 22, 463
 - Where executions are set off against each other, 22, 461
 - Whether equitable or legal rules apply, 22, 463
- Recoupment**, 22, 362
 - Where judgment debtor holds judgment against creditor and there has been an assignment to attorney, 22, 458
- Sheriff's Sales**
 - Attorney as purchaser, 22, 599
- Signature of attorney to bill of divorce, 5, 774
- Signature of counsel to answer in equity, 1, 608
- Signature to deed by attorney in his own name, 1, 386
- Slander of title, 13, 369
- Stenographers, 23, 559
- Submitting cause to arbitration, 1, 652, 956
- Summary Jurisdiction of Courts Over Attorneys**, 1, 944
 - Cases of negligence or misconduct of attorney, 1, 963
 - Compelling an attorney to finish his undertakings, 1, 945
 - Compelling attorneys to observe strictest good faith, 1, 945
 - Compelling delivery of documents, 1, 945
 - Contempt of court, 1, 945
 - Disbarment, 1, 946
 - Fraud of attorney towards client, 1, 963
 - Jurisdiction inherent, 1, 944
 - Striking from the rolls, 1, 946
 - Suspension, 1, 946
 - When jurisdiction exists, 1, 944
 - Where attorney is agent or auctioneer, 1, 949
- Summons signed by attorney, 24, 521, 522
- Supplementary Proceedings**
 - Proceedings by, 24, 606
 - Right to advice of counsel, 24, 638
 - Whether receiver may appoint, 24, 701
- Suretyship**, 24, 726
 - Appeal bond, 24, 726
 - Attachment bond, 24, 726
 - Bail bond, 24, 726
 - Statute prohibiting attorneys becoming sureties, 24, 726
 - Whether attorneys may be sureties, 24, 726
 - Suspension, 1, 946
 - Taxation of attorney, 25, 486
 - Tax titles, 25, 711
- Termination of Relationship**
 - By final judgment, 1, 958
 - Death of client, etc., 1, 958
 - Permanent incapacity of attorney, 1, 958
 - Reasonable notice, 1, 966

ATTORNEY AND CLIENT—Cont'd

Undue Influence, 27, 465

Contracts, 27, 465

Agreements as to compensation, 27, 467

Agreements in reference to matters of litigation, 27, 467

Assignment of judgments, 27, 467

Assignment of mortgages, 27, 467

Communication of facts in knowledge of attorney, 27, 467

Concealment as badge of fraud, 27, 467, 468

Good faith of attorney, 27, 465, 466

Independent advice, 27, 466

In general, 27, 465

Presumption, 27, 465

Proof required, 27, 465

Purchase by client from attorney, 27, 466

Purchase of subject-matter of litigation, 27, 467

Gifts, 27, 468

Age, position and intelligence of client, 27, 469

General rule, 27, 468

Presumed to be voidable, 27, 469

Rebutting presumption, 27, 469

Whether void, 27, 468

Whether voidable, 27, 468

Who Is an Attorney, 27, 470

Clerk of attorney, 27, 470

Continuation of relationship, 27, 471

Lawyer not admitted to the bar, 27, 470

Nature of the employment, 27, 471

Presumption of continuance, 27, 471

Prior relationship, 27, 471

Relationship subsequently arising, 27, 471

Technical significance of the word, 27, 470

Termination of relationship, 27, 471

Where the relationship does not exist, 27, 470

Wills, 27, 510

Advice of outside party, 27, 511

Examples, 27, 510, 511

In general, 27, 510

United States Courts, 27, 578*Attorney-general*, see **ATTORNEY-GENERAL**.*District attorneys*, see **DISTRICT ATTORNEYS**.

Admission to circuit court of appeals, 27, 647

Attorney not a member of the bar, 27, 578

Authority of attorney, 27, 578

District Attorneys, 27, 579

Accounting to the government, 27, 580

Compensation, 27, 579

In general, 27, 579

Special counsel of the government, 27, 580

Fees of attorneys, 27, 578

In general, 27, 578

Party pleading for himself, 27, 578

Usury, 27, 1012

Cost of attorney's fees to be paid by debtor, 27, 1012

Examples, 27, 1012, 1013

In general, 27, 1012

Mortgages, 27, 1012

Stipulation that debtor shall pay attorney's fees, 27, 1012

Trust deeds, 27, 1012

Utmost good faith required of attorney, 1, 959

Vacation of Judgment

Neglect of, 12, 134

Sickness of attorney, 12, 134

Validity of proceedings taken by licensed practitioner, 1, 944

Waiver of trial by jury in criminal case, 1, 958

Warrant of AttorneySee **WARRANT OF ATTORNEY**.**To Bring or Defend an Action, 28, 707**

Burden of proof, 28, 709

Demand, 28, 707

Examples, 28, 707-709

In general, 28, 707

Necessity, 28, 707

Whether plea of guilty can be uttered by attorney, 4, 774

Witnesses, 29, 600See *infra*, **PRIVILEGED COMMUNICATIONS**.

At common law, 29, 600

Confidential matters, 29, 601

Employer's client, 29, 600

In general, 29, 600

Percentage fees, 29, 600

Witness Fees

When attorney offers himself as witness, 1, 967

Women as attorneys, 19, 404

ATTORNEY-GENERAL, 1, 974See **DISTRICT ATTORNEY**.

Bill in equity by, 6, 742

Definition, 1, 974

Discretion as to mandamus against corporations, 8, 617

Duties, 1, 974, 976

Legislative power over, 1, 97

Nolle prosequi, 16, 714

Of United States, 1, 975

Right to employ associate counsel, 1, 977

Powers, 1, 974

Quo Warranto, 19, 662, 675

At common law, 19, 675

Criminal form of the action, 19, 675

Motive, 19, 675, 676

Suit by, in Behalf of State, 23, 81

Erection of nuisance in a bay or navigable river, 23, 81

When attorney-general necessary party, 23, 81

ATTRIBUTED NEGLIGENCE, see CARRIERS OF PASSENGERS.

AUCTIONS AND AUCTIONEERS, 1, 977

See AGENCY; COMMISSION MERCHANTS;
TRUST DEEDS AND POWER OF SALE
MORTGAGES.

Acceptance of all biddings, 1, 989

Accepted bid constituting a contract, 3, 849

Account for money received, 1, 980

Action against stranger for goods intrusted to auctioneer, 1, 981

Action for price of goods in his own name, 1, 981

Agreement by several that one shall bid on behalf of all, 1, 998; 3, 886; 8, 831

Agreement not to bid, 1, 997; 8, 646

Agreement to unite in a bid, 1, 998; 3, 886

Ambiguity or illegality in terms of sale, 1, 985

Appeal by purchaser upon sympathy of those present, 1, 997

Appointment of auctioneer, 1, 979

Auction, 1, 984

Auctioneer, 1, 978

As Agent for Both Parties, 1, 347, 381; 9, 760

Sale of horses, 9, 760

Authority, 1, 979, 981, 1034

How conferred, 1, 979

To prescribe rules of bidding, 1, 1034

To sell land, 1, 978

Buying for himself, 1, 981

Discretion to refuse bids, 1, 985; 8, 815

Disputing his principal's title, 1, 981

Entering a bid himself for third party, 1, 382

Fraudulent Action, 8, 815

Bad faith, 8, 815

Examples, 8, 815

Private arrangement with the bidder, 8, 815

Liable for Negligence, 1, 980

Sale of horses, 9, 760

Warranting quality of goods, 1, 1034

Bidders using improper influence, 1, 997

Bidding for a third party, 1, 382, 981

Bonds, 1, 978

Care of property, 1, 980

Chilling the sale, 1, 997

Combination of Bidders, 1, 998; 3, 886; 8, 831

Association formed for an honest purpose, 8, 832

Effect of, 8, 831

Magnitude of the sale, 8, 832

When rule inapplicable, 8, 832

Where the purpose is not to depress price, 8, 832

Compensation of auctioneer, 1, 982

Compensation where sale is set aside, 1, 983

Competition

Attempt to prevent or avoid sale, 1, 998

Must be fair, 1, 988

Stifling, 1, 997; 3, 886; 8, 831

Completion of contract, 1, 999

Conditions of Sale, 1, 984

Alteration of printed by auctioneer, 1, 985

Ambiguity or illegality in terms of sale, 1, 985

Announced by auctioneer, 1, 984

Discretion of auctioneers, 1, 985; 8, 815

Duty of auctioneer to see, complied with, 1, 985

Presumption as to title when no conditions are stated, 1, 985

What, may be attached, 1, 985

When binding, 1, 984

Constructive Trusts

Parties fraudulently kept from attending sale, 10, 68

Where purchaser represents that he is purchasing for another, 10, 66

Contract Not to Bid, 9, 897

Bidding at public sale, 9, 898

Bidding for public jobs, 9, 897

Judicial sales, 9, 898

Definition, 1, 977

Delegation of auctioneer's authority, 1, 980, 1034

Deposit, 1, 998

As part of purchase-money, 1, 998

Duty of auctioneer to pay over, 1, 999

Lien for, 1, 1000

When purchaser entitled to, 1, 999

When vendor entitled to, 1, 999

Description of Property, 1, 986

Appraised confirmations of value, 1, 988

Certainty required, 1, 987

Contradiction or addition to, by auctioneer at time of sale, 1, 986

Indefinite expressions, 1, 987

Misdescription should be disclosed if discovered before sale, 1, 988

Misdescription where there is no fraud or deception, 1, 987

Mistake by which a purchaser is not prejudiced, 1, 988

More or less, 1, 988

Necessity that purchaser shall be deceived, 1, 988

Qualifying expressions, 1, 988

Thereabouts, 1, 988

Trifling variances, 1, 987

Fraud

Necessity of signature of auctioneer where interested in contract, 1, 1002

Of purchaser, 1, 997

Fraud, Statute of, 1, 1000; 8, 720

Auctioneer's clerk, 8, 720

Auctioneer's clerk suing on memorandum, 8, 719

Clerk's signature, 1, 1002

Memorandum containing several papers, 1, 1002

Memorandum must be made at time of sale, 8, 715

What memorandum must contain, 1, 1001

Who may take advantage of defects in memorandum, 1, 1003

AUCTIONS AND AUCTIONEERS—*Cont'd*

Horses, 9, 760

Imprisonment for debt, 10, 228

Inadequate price, 10, 331

Instructions

Not to sell under a certain price, 1, 979

Obedience to, 1, 979

To sell for cash, 1, 980

Interpleader, 11, 502

Judicial sales, 12, 209

"Knock down," 6, 1

Liability for gross negligence, 1, 980

Liability for money received, 1, 980

Liability for selling stolen goods, 1, 983

Liability of auctioneer where principal is undisclosed, 1, 983

Liability of principal for auctioneer's acts and representations, 1, 983

Liability of purchaser, 1, 999

Liability upon an auctioneer's personal warranty, 1, 981

Libel and slander, 13, 357

License, 1, 978; 13, 521

Limiting authority to a particular place, 1, 978

Lien of auctioneer, 1, 983

Limiting Bids, 8, 814

Responsibility of auctioneers for allowing goods to go below the limit, 8, 815

Manner of bidding, 1, 998

Measure of Damages

Where purchaser refuses to complete sale, 1, 1000

Memorandum, 1, 1001

Containing several papers, 1, 1002

Mistake in

Corrected in equity, 1, 1002

Of auctioneer, 1, 984

Of sale, 15, 278

Signature by clerk, 1, 1002

Signature of Auctioneer

Where he is interested in contract, 1, 1002

What it must contain, 1, 1001

Who may take advantage of defects in, 1, 1003

Municipal corporations, 15, 1188

Negligence

Liability for, 1, 980

Obedience to instructions, 1, 979

Particulars of sale, 1, 986

Personal liability of auctioneers, 1, 402

Power to collect, 1, 981

Power to warrant, 1, 359, 981, 983, 1034; 28, 783

Puffers, 1, 989; 8, 813

Allowing one puffer to prevent sacrifice, 8, 815

Definition of, 1, 989

Employment as vitiating contract, 1, 989

Employment fraudulent, 8, 813

English chancery practice, 8, 815

Exceptions, 8, 814

Good faith as criterion, 8, 814

Limiting bids, 8, 814

Next preceding bid genuine, 8, 814

Number of, 8, 815

Purchaser must object, 1, 997

Purchaser must show that he was prejudiced, 1, 997

Purchaser not induced to bid more by the puffing, 8, 814

Relief against purchase, 8, 813

Reservation of the right to bid, 8, 814

Sales under order of court, 8, 813

Sale without reserve, 1, 989; 8, 814

Sheriff's sale, 8, 813

Refusal to accept biddings, 1, 989

Relation of auctioneer to seller, 1, 979

Retraction of bids, 1, 998

Revocation of authority, 1, 979

Sale of Real Property

Statute of frauds, 8, 695

Sale without reserve, 1, 989; 8, 814

Secret sign between bidder and auctioneer, 1, 998

Set-off, 22, 322

Sheriff's Sales, 22, 597

Auctioneer sheriff's agent, 22, 597

Expense of auctioneer, 22, 597

In general, 22, 597

Whether sheriff may employ an auctioneer, 22, 597

Specific performance where there is a

variance from description, 1, 986

Stakeholder for both parties, 1, 980

Stifling Competition, 1, 997; 8, 831

Agreements not to bid, 3, 886

Buyer pretending that he had been wronged by seller, 8, 831

Buyer representing himself as looking out for the interests of his owners, 8, 831

Whether it renders auction sale fraudulent, 8, 831

Sureties on auctioneer's bond, 1, 978

Termination of authority, 1, 982

Trover

Liability of auctioneer, 26, 780

Unconditional sales, 1, 989

Undisclosed principal, 1, 983

Variance from description, 1, 986

Vendor Bidding

Where sale is not without reserve, 1, 989

Where sale is without reserve, 1, 989

Warranty, 1, 359, 981, 983, 1034; 28, 783

When agent of purchaser, 1, 984

AUDITA QUERELA, 1, 1003; 15, 889

Against a state, 1, 1004

As a common right, 1, 1003

As a stay of proceedings, 1, 1005

As a suit, 1, 1003

As supersedeas, 1, 1005

Cases Where Writ Will Lie, 1, 1007

For irregular execution, 1, 1006

For wrongful levy, 1, 1006

Judgment after discontinuance, 1, 1006

When he had opportunity to avail himself of the matter of defense, 1, 1007

- Where alias execution has been issued, 1, 1006
 Where bill has been wrongfully denied, 1, 1007
 Where injury arises from parties' own neglect, 1, 1007
Where Judgment Has Been Rendered Against Non-Residents
 Without personal service, 1, 1006
 Where original judgment has been set aside, 1, 1007
 Where writ of error would lie, 1, 1008
Cases Where the Writ Will Not Lie
 Equitable defense, 1, 1008
 Erroneous taxation at cost, 1, 1008
 Irregularities, 1, 1008
 Judgment against infant not represented by guardian, 1, 1006
 Motion as a substitute for, 1, 1008
 Substitutes for the writ, 1, 1008
 Concurrent remedies, 1, 1009
 Costs, 1, 1005
 Definition, 1, 1003
 Evidence, 1, 1004
 Judgment, 1, 1005
 Judgment on unauthorized appearance of attorney, 12, 127
 Nature of the proceedings, 1, 1003
 Parties' neglect, 12, 131
 Parties to action, 1, 1004
 Pleadings, 1, 1004
 Plea of not guilty, 1, 1005
 Res adjudicata, 1, 1005
 Service of, 1, 1004
 Survival of, 1, 1004
 To whom directed, 1, 1003
 Vacation of judgments, 12, 127
 Verification of, 1, 1004
 What grounds will sustain the action, 1, 1005
AUDITING, see **MANDAMUS**.
AUDITORS, 1, 1009
 See **ARBITRATION AND AWARD**; **MASTER IN CHANCERY**; **REFEREES**.
 Action of majority, 1, 1011
 Adjournments, 1, 1013
 Amendment of report, 1, 1015
 Amendments, 1, 1013
 Appointment, 1, 1010
 Cases that may be referred to auditors, 1, 1011
 Compensation, 1, 1020
 Conclusiveness of report, 1, 1016
 Definition, 1, 1009
 Effect of report in evidence, 1, 1016
 Estoppel by acquiescence in order of reference, 1, 1013
 Evidence, 1, 1012, 1015
 In account render, 1, 131
 Incompatible offices, 19, 562*w*
 Interest or relationship as a disqualification, 1, 1010
 Introduction of report in evidence, 1, 1017
 Majority report, 1, 1012
 Necessity of oath, 1, 1010
 Notice of meeting, 1, 1011
 Parties as witnesses, 1, 1013
 Power to allow amendments, 1, 1013
 Qualifications, 1, 1010
Report, 1, 1014
 Amendment of, 1, 1015, 1016
 Appeal from recommitment, 1, 1019
 Award concerning costs, 1, 1015
 Award of any appellate court, 1, 1017
 Certainty required, 1, 1014
 "Conclusions of law," 1, 1015
 Contents, 1, 1014
 Correction and confirmation, 1, 1016
 Error on face of, 1, 1015
 "Evidence not to be set out," 1, 1015
 Exceptions to, 1, 1015
 Evidence to sustain, 1, 1016
 When they must be taken, 1, 1015
 Form of, 1, 1014
 Impeaching and setting aside, 1, 1017
 Impeachment for fraud, 1, 1018
 Recommitment, 1, 1019
 Set aside on ground of newly discovered evidence, 1, 1018
 Set aside when not supported by the evidence, 1, 1018
 Specifications of items, 1, 1014
 Time at which it must be made, 1, 1014
 Trial upon recommitment, 1, 1019
 Waiver of notice by appearance, 1, 1011
 Waiver of oath, 1, 1010
 Waiver of objection where case is not one for reference, 1, 1011
 What cases may be referred to auditors, 1, 1011
 What matters may be examined, 1, 1012
 What may be pleaded before, 1, 1013
 Witnesses, 1, 1012
AUSTRALIAN BALLOT LAW, see **SECRET VOTING**.
AUTHENTICATION, 1, 1020
 See **ATTESTATION**; **BOOKS AS EVIDENCE**; **EXEMPLIFICATION**.
 Authentication of tax roll, see **TAXATION**.
 Act of congress as to, 1, 1022
 Attestation, 1, 1023
 Authenticated copy of foreign register as proof of bigamy, 2, 197
 Books of foreign laws, 1, 1022; 8, 437
 Certified copy, 1, 1020
 Deeds, 1, 1024
 Definition, 1, 1020
 Exemplification, 1, 1021
Extradition
 Documentary evidence, 7, 626
Foreign Laws, 1, 1022; 8, 437
 How authenticated, 8, 438
 Necessity of, 8, 437
 Judge's certificate, 1, 1023
Judgment of Sister State, 1, 1022; 12, 148*s*, 149*e*, 149*f*
 Attestation, 12, 148*t*
 Certificate, 12, 148*t*
 Lost papers, 12, 148*t*
 Parol evidence, 12, 148*t*
 Provisional revised statutes, 12, 148*s*
 Records of justice's court, 12, 148*u*
 Vol. I.

AUTHENTICATION—*Cont'd*

Judgment of Sister State—*Cont'd*

Uncertified records, 12, 148u

Judicial records of other states, 1, 1022

Justices' judgments, 1, 1023

Modes of authentication, 1, 1020.

Non-judicial records, 1, 1023

Notarial protest, 1, 1024

Of affidavits, 1, 312

Of foreign records, 1, 1021

Private documents, 1, 1024

Public documents or records, 1, 1020

Records

In criminal cases, 4, 851, 852

Seal, 1, 1024

Taxation

Return, 25, 337, 338

Transcript of justice of the peace, 12, 504, 505

AUTHORITY, see AGENCY.

AUTRE FOIS CONVICT, see JEOPARDY.

AVAILABLE, 1, 1038

Available means, 1, 1039

Capital, 1, 1038

AVAILS, 1, 1039

AVERAGE, see GENERAL AVERAGE.

Free from average unless general, 14, 408

Particular Average, 17, 469

See MARINE INSURANCE.

AVERMENT, see DECLARATION; INDICTMENT; PLEADING.

AVOCATION, 1, 1039

AVOIDANCE OF INFANT CONTRACTS, see INFANTS.

AVOWRY

See REPLEVIN.

Making cognizance rather than avowry, 3, 307

AVULSION, see ACCRETION.

AWARD, see ARBITRATION.

Municipal Corporations

Advertising and letting contract to lowest bidder, see MUNICIPAL CORPORATIONS.

AWAY

Carry away, 3, 161

BACK, 1, 1039

Back lands, 1, 1039

BACKGAMMON, see GAMING.

BACKING, 1, 1039

BACKWARDATION, 23, 701

BACKWARDS, 1, 1039

BAD, 1, 1040

Bad character, 1, 1040

Bad English, 1, 1041

Bad faith, 7, 660

Upon its face, 1, 1041

BADGE, 1, 1041

BAGATELLE, see GAMING.

BAGGAGE, 1, 1042, 1043; 2, 225; 22, 767

Baggage and effects, 6, 193

Checks, 19, 918

Definition, 1, 1042; 19, 912

Duty of passenger to call for, 1, 1043

Examples, 19, 912

Garnishment, 8, 1159

Inns and Innkeepers, 11, 68

Liability where baggage is transported to and from hotel, 11, 74

Instruction, examples of, 11, 273

Jewelry, 1, 1043, 1044: 22, 767, 768

Liability of Warehouseman, 19, 917; 28, 661

Examples, 28, 661-663

Reasonable time for removal, 19, 917; 28, 662, 663

Storage in a safe place, 28, 661

When liability as common carrier ends, 28, 661

Lien of carrier, 13, 585

Luggage, 13, 1193; 19, 913

Obligation to carry, 1, 1043

Questions of law and fact, 19, 646

Railroad's Liability for Loss of, 19, 912

Authority of baggage master, 19, 914

Baggage not entrusted to carrier's keeping, 19, 916

Baggage retained by passenger, 19, 916

Carrier limiting amount which it will carry as baggage, 19, 914

Carrier limiting its liability as insurer, 19, 915

Checks for baggage, 19, 918

Competency of witnesses, 19, 918

Connecting Lines, 19, 918, 919

Burden of proof to show delivery to connecting carrier, 19, 919

Conflict of authority, 19, 920

Connecting but independent lines, 19, 919

Examples, 19, 919, 920

In Georgia, 19, 920

In Kansas, 19, 920

In Ohio, 19, 920

In Tennessee, 19, 920

In Wisconsin, 19, 920

Joint liability, 19, 919

Line on which loss occurred, 19, 919

Contracts limiting liability for negligence, 19, 915

Contractual liability, 19, 913

Damages, 19, 918

Definition of baggage, 19, 912

Duty as Carrier or Warehouseman, 19, 917

Baggage delivered with instructions to forward, 19, 917

Baggage stored for passenger's convenience, 19, 918

Liability as a common carrier, 19, 917

What is a reasonable time, 19, 917

Duty to store, 19, 917

Evidence, 19, 918

Examples of baggage, 19, 912

Fraud or misrepresentation, 19, 914

Full value of property lost, 19, 915

General notice limiting liability, 19, 916

Knowledge of contents of trunk, 19, 915

Liability as insurer, 19, 913

- Liability for excess over limited baggage, 19, 914
- Luggage, 13, 1193; 19, 913
- Necessity of special contract to limit liability, 19, 916
- Other property than baggage, 19, 913
- Owner traveling on a free pass, 19, 913
- Passenger signing ticket containing limitation, 19, 916
- Presumption that man handling baggage is authorized agent, 19, 914
- Proof that passenger had assumed custody of lost article, 19, 917
- Property of other persons, 19, 913
- Tender or demand, 19, 914
- Traveling bag dropped out of window, 19, 917
- What amounts to an acceptance of conditions of contract, 19, 916
- When liability attaches, 19, 914
- Where goods are not called for, 1, 1045
- Reasonable time, 19, 1092
- Ships and Shipping**, 22, 767
 - Baggage not delivered to carrier, 22, 767
 - Delivery to carrier's servant, 22, 767
 - Money, 22, 768
 - Property stolen, 22, 768
 - Responsibility for loss of baggage, 22, 767
 - Wearing apparel, 22, 767
 - What is baggage, 1, 1042, 1043; 22, 767
- Theaters, 25, 1053
- Transfers, 26, 529
- What Constitutes**, 1, 1042, 1043; 22, 767
 - A question for jury, 1, 1045
 - Bedding, 1, 1043
 - Books and manuscripts, 1, 1043
 - Carpets, 1, 1043
 - Cloth, 1, 1043
 - Clothing, 1, 1043
 - Dressing case, 1, 1043
 - Merchandise, 1, 1043
 - Money for expenses, 1, 1043
 - Opera glass, 1, 1043
 - Pistols, rifles, guns, etc., 1, 1043
 - Price-book, 1, 1043
 - Surgical instruments, 1, 1043
 - Tools, 1, 1043
 - Watches and jewelry, 1, 1043; 22, 767, 768
- What Does Not Constitute**, 1, 1044
 - Bedding, 1, 1044
 - Bullion, plate, watches, jewelry, etc., 1, 1044
 - Merchandise, 1, 1044
 - Money, 1, 1044
 - Papers of value, 1, 1045
 - Pencil sketches, 1, 1045
 - Property of other persons, 1, 1045
 - Samples of traveling salesman, 1, 1044
 - Witnesses, 29, 643
- BAIL**, 2, 1
 - See generally, PRISONS; SURETYSHIP.
 - See SPECIAL BAIL.
- Scire Facias**
 - On forfeited recognizance, see SCIRE FACIAS.
- After Conviction**, 2, 10; 9, 212, 648
 - After sentence, 9, 212
 - As a matter of right, 9, 212
 - At common law, 9, 212
 - Before final judgment, 9, 212
 - Commitment for contempt, 9, 212
 - Discretion of court, 9, 212
 - Erroneous conviction, 9, 212
 - Felonies, 9, 212
 - Minor offense, 9, 212
 - Pending appeal or error, 9, 212
- After Indictment**, 9, 206
 - Examination of evidence, 2, 12
 - Where jury has disagreed, 2, 8
 - Where statute has been repealed giving jurisdiction, 2, 9
 - Where trial is unreasonably delayed, 2, 8
- After sentence of commitment, 2, 11
- Attorney as, 1, 950; 24, 726
- Bailable offenses, 9, 204
- Bail Bonds**
 - Attorney as surety, 1, 950; 24, 726
 - Effect on surety of judgment against principal, 12, 98
 - Forgery, 8, 484
 - Necessity of signature, 2, 14
 - Signed in blank, 2, 19
 - Single bond, 2, 31
 - To dissolve attachment, 1, 923
- Before Indictment**, 9, 204
 - Appeals, 9, 205
 - Discretion of court, 9, 204
 - Evidence to determine whether criminal act has been committed, 9, 206
 - Excessive bail, 9, 205
 - Guilt of prisoner, 9, 205
 - No discharge after bail, 9, 206
 - Reduction of bail by habeas corpus proceedings, 9, 205
 - Rules for bail, 9, 206
 - When granted, 9, 205
- Capital offenses, 9, 204, 646; 12, 417
- Defenses**
 - Liability upon bond where a person out upon bail is surrendered to another state, 7, 643
- Dies non juridicus, 2, 19, 32; 5, 87
- Discretion of court, 9, 204
- Excepted crimes, 9, 204
- Excessive, 7, 114; 9, 204
- False imprisonment by, 7, 666
- False personation of bail, 7, 698
- Homicide**, 2, 7; 9, 645
 - Affidavits of defendant, 9, 648
 - After conviction, 9, 648
 - Appeal, 9, 648
 - At common law, 9, 645
 - Burden of proof, 9, 648
 - Defendant suffering from dangerous disease, 9, 647
 - Delay in bringing prisoner to trial, 9, 647
 - Discretion of court, 9, 645

BAIL—Cont'd**Homicide—Cont'd**

- Discretion of judge, 9, 647
- Habeas corpus, 9, 647
- Indictable for capital crimes, 9, 647
- Manslaughter, 2, 7
- What appellate court will consider, 9, 648
- What defendant must show, 9, 648
- When person indictable for homicide bailable, 9, 646
- Where offense is capital, 9, 204, 646; 12, 417
- Whether indictment raises presumption of guilt, 9, 647

Householder, 9, 784**In Civil Cases**

- Abiding the event, 2, 35
- Actions for libel and slander, 2, 36
- Bail below, 2, 35
- Civil action, 2, 35
- Common bail, 2, 35
- Death of principal, 2, 38
- Definition, 2, 35
- Delegation of power to arrest principal, 2, 37
- Discharged, 2, 39**
 - By act of God, 2, 39
- In actions ex delicto, 2, 36
- In actions for criminal conversation, 2, 36
- In actions for malicious prosecution, 2, 36
- In actions for trespass, 2, 36
- In actions for trover, 2, 36
- In what actions required, 2, 36
- Liability of Bail, 2, 37**
 - Regularity of proceedings, 2, 38

Poor Debtor, 1, 833

- Action upon the recognizance, 18, 836
- Breach, 18, 835
- Defenses, 18, 835
- Jail limits, 18, 834
- Jail limits bonds, 18, 836
- Nature and requisites of, 18, 833
- Performance, 18, 835
- Statutory provisions, 18, 833
- Validity, 18, 833

Recognizance

- Alterations, 2, 38
- Material variation, 2, 38
- Rights of civil and criminal cases, 2, 38
- Who may give, 2, 6

In Criminal Cases, 2, 1

- Adjournment of court, 2, 19, 33
- Ambiguity, 2, 23
- Amendment, 2, 24
- Amount, 2, 12**
 - Liability of magistrate for requiring unreasonable bail, 2, 14
 - Pecuniary circumstances of defendant to be considered, 2, 12
 - Probability, how tested, 2, 14
 - Probability of accused appearing, 2, 13

Reduction of bail, 2, 13**Unreasonable bail, 2, 12****Appearance of principal, 2, 32****Authority to Take, 2, 4**

- Power of court to deputize clerk, 2, 5
- Capital offenses, 2, 6
- Change of terms, 2, 18
- Character of persons offered as bail, 2, 14
- Definition, 2, 1
- Delay of bail by magistrate, 2, 3
- Departure of defendant without leave of court, 2, 33
- Deposit of money in lieu of, 2, 14
- Description of court, 2, 19
- Disagreement of jury, 2, 10
- Discharge of, 26, 27
- Enlistment of principal, 2, 29
- Examination of evidence, 2, 12
- Execution, 2, 20
- Failure to convict, 2, 10
- Failure to try, 2, 10
- Given under duress, 2, 32
- Identity of persons, 2, 23

Indictment

- Failure to find, 2, 31
- Failure to present at next term of court, 2, 31
- For homicide, 2, 8
- When bad as defense for sureties, 2, 31

Infant's liability upon recognizance, 2, 15**Jurisdiction, 2, 4**

- Setting forth particular facts required to give, 2, 23
- Magistrate's duty judicially, 2, 3
- Misdemeanor, 2, 33
- Necessity of signature and seal of bail bond, 2, 14
- Offenses that are bailable, 2, 3
- Officer's duty to arrest principal at request of bail, 2, 25
- Official character of magistrate, questioned in collateral proceedings, 2, 6
- Omissions, 2, 22
- Other than capital cases, 2, 6

Recognizance, 2, 2

- Amendment to, 2, 24
- Date on which prisoner is to appear, 2, 33
- Description of court in, 2, 19
- Distinguished from bond, 2, 2
- Extorted from accused upon illegal compulsion, 2, 25
- Imposing condition not required by law, 2, 23
- Mention of court at which person is to appear, 2, 33
- Necessity of describing offense in detail, 2, 15
- Offense substantially but not technically set forth, 2, 16
- Postponement of trial without knowledge of sureties, 2, 19
- Signatures, 2, 24
- Sureties, liability upon, 2, 25

- Taken by court without jurisdiction, 2, 4
- Taken by officer without authority, 2, 31
- When void, 2, 15
- Wrong return day named, 2, 18
- Reduction of bail, 2, 13
- Release**
 - By subsequent arrest and escape of principal, 2, 27
 - Return day, 2, 17
 - Rights and liabilities of bail, 2, 25
 - Seal of judge, 2, 20
 - Sheriff's authority to take bail, 2, 4
 - Sickness as a ground for bail, 2, 10
- Signatures**, 2, 20
 - To recognizance, 2, 24
- Statutory regulations, 2, 3
- Sunday**
 - Entered in upon, 2, 19, 32
- Sureties**, 24, 874
 - Defenses, 2, 26, 30
 - Duty to produce principal, 2, 32
- Liability**, 2, 25
 - Joint or several, 2, 25
 - Upon another's bail, 2, 25
 - Upon new indictment, 2, 24
- Postponement of trial without knowledge, 2, 19
- Release of**, 2, 25, 26
 - Arrest by federal authorities, 2, 28
 - Arrest of principal in another state, 2, 28
 - By second arrest, 2, 26
 - Commencement of trial, 2, 33
 - Death, 2, 29
 - Enlistment of principal, 2, 29
 - Insanity, 2, 30
 - Nolle prosequi, 2, 30
 - Quashing indictment, 2, 30
 - Sickness, 2, 29
 - Verdict of acquittal, 2, 30
 - When deprived of right to surrender principal, 2, 30
 - Where performance is rendered impossible by act of God, 2, 29
 - Where principal appears, 2, 33
 - Where principal obtains change of venue, 2, 29
- Signature of, 2, 20
- Surplusage**, 2, 21
- Signatures, 2, 24
- Term, 2, 19
- To be taken where crime is committed, 2, 5
- United States commissioner's authority to take, 2, 4
- Unreasonable Bail**, 2, 12
 - Left at discretion of officer, 2, 12
 - Liability of magistrate for requiring, 2, 14
- Validity**, 2, 14, 21
 - Alteration in instruments in bail bond, 2, 21
 - Alteration of figure denoting year, 2, 22
 - Ambiguity, 2, 23
- Bond signed in blank, 2, 19
- Clerical errors, 2, 21
- Compliance with statute, 2, 14
- Description of court, 2, 19
- Effect of adjournment upon, 2, 19
- Execution, 2, 20
- Given under duress, 2, 32
- Identity of persons, 2, 23
- Initials only of principal's name, 2, 21
- Meeting condition prescribed by statute, 2, 15
- Necessity of describing offense in detail, 2, 15
- Necessity of offense named in recognizance being one charged against principal, 2, 16
- Offense substantially though not typically set forth, 2, 16
- Offense to be mentioned, 2, 15
- Omissions, 2, 22
- Recognizance**
 - Imposing condition not required by law, 2, 23
 - Stating ground upon which it was taken, 2, 15
- Signatures, 2, 20
- Slight inaccuracy, 2, 15
- Surplusage, 2, 21
- When taken upon Sunday, 2, 19
- Where bond recites no crime, 2, 31
- Where offense is not a crime, 2, 15
- Variance**
 - Between offense named in recognizance and that charged against principal, 2, 16
- Waiver, 2, 23
- When indictment for murder has been returned, 2, 7
- Where presiding judges acted, 2, 6
- Who may take, 2, 4
- Indemnities to**, 10, 409
 - Failure of contract by person to indemnify his bail, 10, 409
 - Indemnity for costs, 10, 410
 - When contract executed, 10, 409
- Larceny, 12, 831
- Power to Bail**, 9, 204
 - Bail for capital offenses, 6, 46; 9, 204; 12, 417
- Preliminary examination, 12, 417
- Prison Bounds, Bond for**, 19, 93
 - Breach of bond, 19, 93
 - Indemnity to sheriff, 19, 94
 - Invalid statutory bond as good as common-law bond, 19, 95
 - Joint bond, 19, 94
 - Overstepping the limits, 19, 93
 - Precept from court, 19, 93
 - Proof of breach, 19, 94
 - Sheriff's duty, 19, 93
 - Strictness of proof required, 19, 95
 - Unauthorized condition, 19, 94
 - What is equivalent to an escape, 19, 93
 - When bond is good for, 19, 94
 - Where bounds have not been defined, 19, 93

BAIL—Cont'd

Privilege from arrest, 10, 237
Recognizance, see *infra*, IN CRIMINAL CASES.

Sheriffs, 22, 535

Bail running to deputy, 22, 535
 Examples, 22, 535
 In general, 22, 535
 Liability of sheriff for insolvent surety, 22, 535
 Number of sureties, 22, 535
 Sheriff's duty to accept bail, 22, 535
 Special bail, 22, 535
 Statute of 23 Henry VI., 22, 535
 Sureties becoming insolvent, 22, 535
 When sheriffs must admit to bail, 22, 535

Straw bail, 23, 939

Subrogation, 24, 245-247

Sunday, 2, 19, 32; 5, 87

Surrender by, 24, 970

After default, 2, 38; 24, 973
 Civil cases, 2, 37; 24, 970
 Criminal cases, 2, 26; 24, 970
 Definition, 24, 970
 Extent of right, 24, 970
 Personal representative's right, 24, 972
 Pleading, 24, 973
 Right to break open doors, 24, 972
 Right to command assistance of officers, 24, 972
 Right to surrender, 24, 970
 To court, 24, 973
 To deputy sheriff, 24, 973
 To sheriff or jailer, 24, 973
 To whom made, 24, 973
 When surrender is prevented by operation of law, 24, 973

Taking recognizance of bail as special case in the New York constitution act, 3, 25

United States commissioners, 27, 551

When a matter of right, 9, 204

Witnesses

Bail and Surety as, 29, 591
 Administration bonds, 29, 592
 Attachment bonds, 29, 592
 Examples, 29, 591-593
 Injunction bonds, 29, 591-593
 In general, 29, 591
 Replevin bonds, 29, 591
 Usury, 29, 591

BAILIFF, 2, 39; 22, 564

See CONSTABLES; SHERIFF.

Special, 2, 39

BAILMENT, 2, 40

See AUCTIONS AND AUCTIONEERS; BANKS AND BANKING; CARRIERS OF GOODS; CARRIERS OF LIVE STOCK; CARRIERS OF PASSENGERS; CHATTEL MORTGAGES; DEPOSIT; EXPRESS COMPANIES; FINDER OF PROPERTY; FORWARDING MERCHANTS; HORSES; INNS AND INNKEEPERS; LIVERY STABLE KEEPER; LOANS; MANDATE; PLEDGE AND COLLATERAL SECURI-

TY; RECEIPTORS; WAREHOUSEMEN; WHARFINGER.

As to sheriff's duty as bailee, see SHERIFF'S SALES.

Wharves, see WHARVES.

Action by Bailee

Against third person, 2, 61

Action by Bailor

Against bailee, 2, 59
 Against third person, 2, 60

Alienation, 2, 59

Animals, 1, 589

Duties and liabilities of bailees, 1, 589
 Property in issue of, 1, 572

As a contract, 2, 51

Assumpsit

Against bailees, 1, 886
 Where bailee refused to restore, 2, 58

Bailees

Are not factors within the factors' acts, 3, 323
 Liability, 2, 59
 Must account for profits, 2, 56
 Refusing to return goods where bailor is not owner, 2, 62
 Setting up title in third person, 2, 62
 Unauthorized use of goods, 2, 59

Boom Companies

Liability as bailees for hire, 2, 475

Burden of proof, 2, 59

Care required from bailee of horse, 1, 590

Conversion by bailee, 2, 58

Definition, 2, 40

Degree of Care Required, 2, 51

Bailment solely for the benefit of bailor, 2, 52

Liability for theft, 2, 52

Nature of article bailed as affecting, 2, 55

Of agister, 2, 54

Of hirer, 2, 54

Seizure by military forces of government, 2, 52

Where bailment for mutual benefit, 2, 54

Degrees of negligence, 16, 427

Delivery of goods for manufacture, 2, 41

Demand by bailor, 2, 58

Detinue, 2, 57, 59

Against bailee, 5, 655

Distinguished from conditional sales, 21, 630

Duty to restore bailed goods, 2, 56

Embezzlement, 6, 481

Indictment, 6, 498b

Coin, 6, 498c

What bailees are within statute, 6, 481

Enemy, 6, 640

Estoppel

Of bailee, 7, 28, 100

Executors and Administrators

Whether bailee's interest passes to, 7, 247

For Hire

Bailee's right to possession, 2, 57

Fraudulent Sales

- Bailee as bona fide holder, 8, 841
- Goods delivered to be paid for in future, 2, 42
- Grain in elevator, 2, 41

Gratuitous Loan

- Bailee's right to possession, 2, 57
- Indorsement of amount upon mittimus, 15, 695
- Injury after time when goods should have been returned, 2, 59

Interpleader

- Where third person claims title to goods, 2, 62
- Judgment against bailor, 12, 93
- Jus tertii, 2, 62

Kinds of

- Commodatum, 2, 44
- Deposits, 2, 43
- For hire, 2, 44
- Gratuitous loan, 2, 44
- Loans, 2, 43
- Mandates, 2, 43
- Pledge, 2, 45

Lien, 2, 50

- On bailee of animals, 1, 589

Measure of Damages

- In action by bailee against third person, 2, 61
- Necessity of demand in trover against bailee of goods, 5, 528r
- Negligence, 2, 59; 3, 374; 16, 427
- Degrees of, 16, 427
- Presumption of, 2, 59
- Ordinary care, 3, 374; 16, 399, 427
- Property returned in damaged condition, 2, 59
- Recoupment, 22, 354

Replevin

- By bailor, 2, 60
- For bailee's wrongful conversion, 2, 58
- Necessity of demand, 5, 528j

Res Judicata

- Examples, 21, 159
- In general, 21, 159
- In suits between bailor and bailee, 21, 159
- Privity between bailor and bailee, 21, 145
- Whether suit by bailor or bailee is bar to action by the other, 21, 159

Restitution

- Detinue to compel, 2, 57
- How made, 2, 56
- To whom made, 2, 56
- Where bailor sold goods, 2, 56

Sale

- Distinguished from, 2, 41; 21, 514**
 - Article to be returned in an altered form, 21, 514
 - Examples, 21, 514-517
 - Grain in warehouse or elevator, 21, 516
 - Grain sent to a mill, 21, 514
 - In general, 21, 514
 - Possession alone transferred, 21, 514
 - Transfer of possession and ownership, 21, 514

- Usages and customs to show intent, 21, 517

- Where warehouseman may at his option return grain or pay money, 21, 517

Rights of Bona Fide Purchasers

- Where Bailee Sells Wrongfully, 21, 570**
 - Agreement that title shall not pass until purchase-money is paid, 21, 571
 - Commodatum, 21, 570
 - Conditional sales, 21, 571
 - Depositum, 21, 570
 - Expenditure of work on property bailed, 21, 570
 - Hire, 21, 570
 - Loan, 21, 570
 - Right of purchase added to the bailment, 21, 570
 - Transportation, 21, 570
 - Whether purchaser takes title against debtor, 21, 570

Set-off

- Recoupment, 22, 354
- Slight, ordinary, and gross negligence, 3, 374; 16, 399, 427
- Termination of, by conversion, 2, 58
- Term of, 2, 56
- Third person not certain to title of goods, 2, 62

Trespass, 26, 609

- By bailor against third person, 2, 61
- Upon a case of initiatory title against third person, 2, 61

Trover, 2, 59; 25, 761; 26, 754

- Action by bailee, 2, 61; 25, 761, 762; 26, 754
- Against third person, 2, 61
- Bailee's right in general, 26, 754
- By bailor against third person, 2, 60
- Carrier, 26, 755
- Delivery by bailee to bailor after notice of claim of real owner, 2, 62
- Either bailee or bailor, 26, 755
- Entitled to possession against bailor, 2, 61
- For wrongful conversion by bailee, 2, 58
- Gratuitous bailment, 26, 754, 755
- Judgment by one as bar to action by another, 26, 755
- Warehousemen, 26, 755
- Where owner has parted with his right to possession, 26, 755

Ultra Vires

- Whether corporation liable, 27, 395, 396
- Upon a case by bailee against third person, 2, 61
- Use of bailed article, 2, 56
- Witnesses, 29, 601

BAITING, 2, 63**BALANCE, 2, 63**

- Balanced, 2, 64
- Net balance, 16, 487
- Of probabilities, 2, 63
- Under balance, 2, 63

- BALE**, 2, 64
BALLAST, 2, 64
See DUNNAGE.
 Dunnage and, 6, 55
BALLET, 2, 64
BALL GAMES
 Sunday, 24, 539
BALLOTS, *see* ELECTION; SECRET VOTING.
BALL-ROOM, 2, 66
BALUSTRADE, 2, 66
BANK BOOKS, *see* BANKS AND BANKING; NATIONAL BANKS; SAVINGS BANKS.
 As evidence, 2, 467*2*
 Receipt as, 2, 102
BANK NOTES, *see* MONEY.
 As "cash," 3, 34
 Handwriting, 9, 275
BANKRUPTCY, 2, 67
See CONFLICT OF LAWS as to the Extraterritorial Effect of Bankrupt Laws.
See generally, ASSIGNMENT FOR BENEFIT OF CREDITORS; INSOLVENCY.
 Act of 1800, 2, 68
 Act of 1841, 2, 69
 Act of 1867, 2, 69
 Succeeding to rights of creditors, 2, 71
 Agreement of creditors, 2, 86
Appeals
 Under act of 1867, 2, 70
 Applicable only to traders and merchants, 11, 169
 Applicable to all persons under United States law of 1841, 11, 170
Assignee, 2, 71
 Garnishment, 8, 1145
 Parties to actions, 17, 632
 Recording acts, 20, 570
 Res judicata, 21, 160
 Under the Act of 1867
 Appointment presumed, 2, 72
 Claims suspended until election, 2, 74
 Power of, 2, 72
 To sell property of bankrupt, 2, 72
 Removal of assignee, 2, 73
 Resignation of assignee, 2, 73
 Right to defend and prosecute suits, 2, 72
 To individual partner, 2, 82
 What estate does he take, 2, 71
 What he may recover from preferred creditor, 2, 79
 Assignment for benefit of creditors, 8, 857
Attorney
 Creditor's right to, 2, 74
 Barring dower, 5, 923
Bill in the Nature of a Bill of Revivor
 For assignee, 2, 272
 Bona fide purchaser, 2, 80
Burden of Proof
 Where one demands to set off bankrupt's notes against the assignee, 2, 653
Business Corporation
 Meaning of term, 2, 701
 Choses in action of bankrupt, 7, 263
Commission Merchants
 Whether fiduciary debtor, 3, 339
 Conflict of jurisdiction, 3, 524
Conflict of Laws
 Discharge in bankruptcy, 3, 581, 582
 Involuntary assignments, 3, 572
 Constitutionality of law applying to all persons, 11, 170
 Construction of statute, 2, 82
 Contemplation of bankruptcy, 3, 776
Contempt
 Bankrupt fined for, 2, 75
Corporations, 2, 81
 Applicability
 Under the act of 1867, 2, 81
 Voluntary petition, 2, 81
 Creditors sharing pro rata, 2, 75
Criminal Liability, 2, 86
 Fraudulent disposal of goods bought on credit, 2, 87
 Mutilation or destruction of property, 2, 87
 Secreting property, 2, 87
 Declaration of bankruptcy, 5, 368
 Definition, 2, 67
Discharge
 Government, 23, 366
 Of bankrupt from arrest, 1, 728
 Promise to pay a debt barred by a discharge in bankruptcy, 3, 840
 Under Act of 1867, 2, 75
 As affecting sureties, 2, 77
 Assent of creditor procured by pecuniary consideration, 2, 76
 Contest by creditors, 2, 77
 Effect of, 2, 77
 Fraudulent preferences, 2, 76
 New promise, 2, 77
 Partnership, 2, 82
 Plea of, 2, 78
 Voidable contracts to forbear on part of creditors, 2, 81
 Distinguished from insolvency, 11, 169
 Distinguishing features, 11, 169
 Effect upon judgment, 2, 77
Effect Upon State Laws, 2, 87; 3, 629
 Relating to insolvency of deceased persons, 2, 88
 Relating to insolvency of lunatics, 2, 88
 Relating to insolvency of spendthrifts, 2, 88
 Revival upon repeal of federal law, 2, 87
 Suits between bankrupt and his assignee and third persons, 2, 88
 Where state court has acquired jurisdiction, 2, 87
Election
 To defeat discharge in bankruptcy, 6, 249
Embezzlement by assignee in, 6, 493
Estoppel
 Grantor estopped from asserting after-acquired title, 7, 10
Exemptions, 2, 72
 Power of congress as to, 2, 68
 "Failure," 7, 659

- Fiduciary capacity, 7, 958
Foreign Corporation
 Protection of home creditors, 8, 405
 Foreign discharge in, 5, 204
Fraudulent Conveyances, 2, 83
 Impeachment by assignee, 8, 774
Fraudulent Sales
 Bona fide holder, 8, 843
Garnishment
 Assignee, 8, 1145
Infants, 10, 641, 642
 Filing a petition, 2, 70
Injunction
 To prevent transfer by debtor, 2, 86
Involuntary, 2, 82
 Absconding debtor, 2, 83
 Assignment with intent to defraud creditor, 2, 83
 Banker, 2, 85
 Broker, 2, 85
 Fraudulent conveyance, 2, 83
 Merchant, 2, 85
 Removing property, 2, 83
 Under Act of 1867, 2, 82, 84
 Preferences as constituting, 2, 84
 Trader, 2, 84
 Who is a manufacturer, 2, 85
 Who is a trader, 2, 85
Judgment
 Collateral attack, 12, 147v
Jurisdiction
 Under the act of 1867, 2, 69
Laches, 12, 556
Limitation of actions, 13, 737
Malicious prosecution, 14, 35
Manufacturer, 14, 265
Meaning of term debt, 5, 153
"Merchant," 15, 306
Merger, 15, 350
 Claim not barred by discharge, 15, 350
 Discharge in foreign countries, 15, 350
 In general, 15, 350
 Judgment after filing a debtor's petition, 15, 350
New Promise, 2, 77
 Clearness, 2, 77
 Necessity of writing, 2, 77
 Unconstitutional and absolute, 2, 77
 Words necessary, 2, 77
Notary public, 16, 766
Oath, examination under, 2, 74
Of broker, 2, 85
Of manufacturer, 2, 85
Of merchant, 2, 85
Of miner, 2, 85
Of trader, 2, 85
Partnership, 2, 81
 Assent of individual partner, 2, 82
 Creditor having judgment against one partner, 2, 82
 Discharge, 2, 82
Dissolution, 17, 1103
 Assignment for Benefit of Creditors
 By one partner, 17, 1103
 By the firm, 17, 1103
 Attachment, 17, 1104
 Bankruptcy of a partner, 17, 1103
 Insolvency of firm, 17, 1103
 Levy of execution upon interest of partner, 17, 1104
 Mere insolvency of a partner, 17, 1103
 Notice of, 17, 1119
 Power of Partner After, 17, 1151
 Allowing assignee to wind up, 17, 1153
 Assignee in possession of assets, 17, 1152
 Assignment of power to wind up, 17, 1153
 Joining solvent partner with assignee, 17, 1152
 Making new contracts, 17, 1153
 Payment of debts, 17, 1153
 Power of court, 17, 1152
 Powers of assignee in bankruptcy, 17, 1151
 Powers of insolvent partners, 17, 1151
 Powers of solvent partners, 17, 1153
 Sale of effects, 17, 1153
 Tenants in common, 17, 1152
 Distribution of assets, 2, 82
Patent law, 18, 144
Power of congress to pass bankrupt laws, 2, 67; 11, 173
Power of states to pass bankrupt laws, 2, 88; 3, 623
Powers of congress over, 3, 704
Preferences, 8, 855
 Bona fide purchaser, 2, 80
 Definition of, 2, 84
 Facts required, 2, 78
 Fraudulent, 2, 78
 Intent to prefer, 2, 78, 84
 Involuntary bankruptcy, 2, 84
 Payment made knowingly within six months of bankruptcy, 2, 79
 Permitting creditors to obtain judgment, 2, 79
 Reasonable cause, 2, 80
 Voidable transfer, 2, 80
 Warrant of attorney for permitting entry of judgment, 2, 79
 What assignee may recover, 2, 79
Presumption of jurisdiction, 12, 279
Privilege from arrest, 10, 237
Proceeding by arrangement, 2, 86
Puis darrein continuance, 18, 518
Railroads, 19, 774
 Examples, 19, 774
 In general, 19, 774
 Involuntary bankruptcy, 19, 774
 Service, 19, 744
 Whether bankrupt laws apply to railroads, 19, 774
Real Covenants, 19, 1012
 Effect of discharge in, 19, 1012
 Estoppel, 19, 1026
 Reasonable cause, 2, 80
Recording Acts
 Protection of purchaser at bankrupt sale, 20, 580

BANKRUPTCY—Cont'd**Register in**

Under act of 1867, 2, 70

Relation, 20, 737

Removal of causes, 20, 1001

Rents

Apportioned and approved, 2, 73

Res Judicata, 21, 160, 278

Foreign judgments, 21, 281

Set-off, 22, 257

Between debtor and bankrupt, 2, 73

Mutual Credits, 22, 257

Claims not yet payable, 22, 260

Credits having a natural tendency to terminate debts, 22, 264

Credits which would terminate in debts, 22, 262

Debt due and payable after bankruptcy, 22, 259

Debt not due and payable, 22, 259

Debt originating in a mutual credit before bankruptcy, 22, 259

Deposit in bank, 22, 263

Deposit of property, 22, 262, 263

Distinguished from ordinary statutes, 22, 257

Examples, 22, 259-265

Intention to raise cross-demand, 22, 261

Intention to trust each other, 22, 261

Liability which may not become a debt, 22, 264

Test, 22, 262

What credits within the term, 22, 262

Whether larger import than mutual debts, 22, 259

Mutual dealings, 22, 265

Mutuality, 22, 281, 283

Stay of Execution

After discharge, 23, 535

Stay of Proceedings**Upon Discharge**, 23, 526

Delay in making motion for stay, 23, 526

In general, 23, 526

Necessity of application, 23, 526

Pendency of proceedings in bankruptcy, 23, 526

Plea in bar, 23, 526

Stock Exchange**Seats**, 23, 756

After discharge, 23, 757

As an asset of bankrupt's estate, 23, 756

Whether it passes to assignee, 23, 757

Strict construction of laws, 23, 400

Suing

Right to sue and be sued, 17, 483

Supplementary proceedings, 24, 611

Suspension of actions, 2, 73

Taxation, 25, 14

Time of Filing Petition

Under the act of 1867, 2, 73

Trover

Whether bankrupt may maintain trover, 26, 760

Trusts and Trustees**Bankrupt as Trustee**, 27, 21

Assignees, 27, 21

Certificate of discharge, 27, 21

In general, 27, 21

Creation of Trust by Bankrupt, 27, 15

Examples, 27, 15

In England, 27, 15

In United States, 27, 15

Property exempt from execution, 27, 15

Ground for removal, 27, 86

Under Act of 1867

Fraud or negligence in delivery of property to assignee, 2, 75

Of bankruptcy, 2, 84

When bankrupt might apply, 2, 75

Where bankrupt has removed his property, 2, 76

Where bankrupt has sworn falsely, 2, 75

United States bankruptcy laws, 2, 67

Unliquidated Damages

Assessed, 2, 73

Usages and customs, 27, 906

Verification of claim, 2, 74

Voidable transfer, 2, 80

Voluntary

Definition of, 2, 67

Power of congress to pass laws, 2, 68

Under act of 1867, 2, 70

Waiver, 28, 582

Whether breach of covenants, 8, 444

Whether proceedings under bankrupt acts dissolve a corporation, 4, 302

Witnesses**Bankrupts and Their Creditors as Witnesses**, 29, 570

Action against sureties, 29, 571

After certificate of release is obtained, 29, 571

Creditor who has disposed of his claim, 29, 572

Creditors, 29, 572

Examples, 29, 570-572

In general, 29, 570

No interest in result, 29, 571

Wrongful seizure of plaintiff's goods, 19, 518

BANKS AND BANKING, 2, 89*See* CHECKS; CLEARING HOUSE; DAYS OF GRACE; DEPOSITS; NATIONAL BANKS; NOTARY PUBLIC; OFFICERS OF PRIVATE CORPORATIONS; SAVINGS BANKS.*As to certified checks*, *see* CHECKS.*Official bonds of officers*, *see* OFFICERS OF PRIVATE CORPORATIONS.*Savings banks*, *see* SAVINGS BANKS.*Transformation of state into national banks*, *see* NATIONAL BANKS.*Usury*, *see* USURY.

Authority to discount includes authority to buy, 5, 679

- Authority to pay customer bills and notes, 2, 102
- Bank Books**, 2, 102
See SAVINGS BANK.
 As account stated, 1, 117
 By-law requiring production of, 2, 110
 Conclusiveness of, 2, 103
 Correction, 2, 103
 Pledge, 18, 639
 Written up, a bar on lawful interest, 1, 127
- Bank buying and selling stock, 2, 90
- Banker disclosing balance of customer, 2, 101
- Banking hours, 2, 92
- Bank Officers**, 2, 114; 14, 245, 246
See OFFICERS OF PRIVATE.
 As expert in handwriting, 9, 292
 Authority of, 2, 114
- Cashier**, 2, 118; 14, 245
 Acts within scope of his duty binding upon the bank, 2, 118
 Admissions of, 2, 120
 As general agents, 1, 349
 Authority of, generally, 1, 349; 2, 118
 Duty to exercise reasonable skill and diligence, 2, 120
 Liabilities of, 2, 120
 Liabilities of cashier's sureties, 2, 120
 Notice of dishonor to, 2, 413
- Power**
 Bills and notes, 2, 119, 353; 17, 148, 158
 Over estates of bank, 2, 119
 To borrow money, 2, 119; 17, 58, 144
 To certify checks, 2, 119
 To collect debts, 2, 118
 To draw checks or drafts upon funds of bank, 2, 119
 To transfer shares of stock, 2, 119
- Directors**, 2, 114; 17, 58
See DIRECTORS.
 Act of majority as binding the bank, 2, 114
 Delegating authority to committee of their own number, 2, 114
 Exercise of ordinary skill and diligence, 2, 115
 General control of, 2, 114
 Liability for error of judgment, 2, 116
 Liability for losses resulting from mismanagement, 2, 115
 Liability of, generally, 2, 115, 116
 Relationship between directors and stockholders, 2, 115
- President**, 2, 117
 Authority to employ counsel, 2, 117
 Authority to take charge of litigation, 2, 117
 Compensation of, 2, 117
 Liability of, 2, 117
 Powers, 2, 117; 17, 58
- Teller**, 2, 120; 25, 893
 Paying teller's authority, 2, 120
 Receiving teller's authority, 2, 120
- Base coin, 2, 100
- Bequest of money as carrying deposit, 2, 94
- Bills and notes, 2, 102, 119, 353; 17, 148, 158
See infra, NOTES.
- Borrowing money distinguished from receiving deposits, 2, 481
- By-laws**
 Affecting rights of third parties, 2, 110
 Requiring production of original pass book, 2, 110
- Certificate of Deposit**, 2, 104; 16, 480
 As equivalent to promissory note, 2, 104, 322
 Definition, 2, 104
 Demand, 5, 528²⁸⁶
 Necessity of demand upon, 5, 534
 Pledge, 18, 640
 Receipt, 19, 1112
- Collections**, 2, 111; 16, 207
See infra, USAGES AND CUSTOMS.
 Consideration for, 2, 111
 Duty of bank to exercise reasonable care, 2, 111
Duty to Use Due Diligence
 In demand, 2, 112
 In presentment, 2, 112
 In protest, 2, 112
 Liability for default of correspondent, 2, 112
 Liability for default of their notary, 2, 113
 Liability for money collected, 2, 112
 Measure of damages for negligence, 2, 111
 Power to make, 2, 111
 Suit upon paper left for collection, 2, 114
- Consideration for collections, 2, 111
- Constitutionality of a provision that embezzlement by officers of a certain bank shall be felony, 4, 652
- Construction of charter, provision that banks shall not deal in articles of goods, wares and merchandise, 5, 122
- Correspondents, liability for default of, 2, 112
- Default of correspondent, 2, 112
- Default of notary, 2, 113
- Definition, 2, 89; 5, 528²⁸⁶
- Demand**, 2, 101
 Negligence of bank in making, 2, 111
 Of payment before suit, 2, 106
 Waiver of, 2, 102
- Depositor's right to inspect books, 2, 100
- Deposits**, 2, 93
See DEPOSITS.
 Action for, 2, 101
 Amounts to a loan, 5, 575
 As a claim in choses in action, 2, 94
 As collateral, 2, 97
 Base coin, 2, 100
- Books**
 Pledge, 18, 639
- Certificate of**, 2, 104; 16, 480; 18, 640; 19, 1112
 Indorsee's liability upon, 2, 104

BANKS AND BANKING—Cont'd**Deposits—Cont'd****Certificate of—Cont'd**

Subject to the rules and control of
other negotiable paper, 2, 105

When negotiable, 2, 105

Forged bills, 2, 100

General and special, 2, 93

Liability of banker for special, 2, 95

Presumption in favor of general de-
posit, 2, 93

Relation Between Banker and Customer

In case of general deposit, 2, 93

In case of special deposit, 2, 94

Right to be paid in legal tender, 2, 99

Ticket, 2, 104

Title in case of general deposit, 2, 93

Depreciation of Funds Deposited, 2, 99

Liability of third bank, 2, 99

Discount, 5, 678

Discounting, 2, 92

Discounts

Usury, 27, 989

Embezzlement, 6, 483

By cashier, 6, 484

By clerk, 6, 484

By officers of banks generally, 6, 483

Larceny at common law, 6, 484

Managers, 6, 484

Private bankers, 6, 484

What constitutes the offense, 6, 483

Examination of payments at the time
they are made, 2, 110

Exchange, 2, 93

Forgery

False entries by clerks in books, 8, 473

Forged bills, 2, 100

Franchises, 2, 89

Giving check on bank where maker has
no funds, 5, 337

Husband and Wife, 14, 572

Agency of wife, 14, 572

Delivery, 14, 573

Deposit, 14, 572

By husband in name of himself and
wife, 14, 572

For support of family, 14, 573

In name of wife alone, 14, 573

Gift, 14, 572, 573

Incorporation of bank, 2, 90

Inspection of books, 2, 100

Judicial Notice

Of usages of bank, 2, 110

Larceny by bank cashier, 6, 484

Legislative restrictions, 2, 90

Liability of Bank

For default of their correspondents, 2,
112

For default of their notary, 2, 113; 14,
245

For fraud of its agent, 4, 262

License, 13, 516, 528

Liens, 2, 97; 5, 188; 13, 578

Account as "agent," 13, 579

Account as executor and administra-
tor, 13, 579

Account as trustee, 13, 579

Check upon money on deposit, 5, 188

Debts not due, 13, 578

For a general balance, 2, 97

For balance of depositor's account, 13,
578

How lost, 2, 99

Identity of individual, 13, 578

Individual in trust capacity, 2, 98; 13,
579

Indorsement "for collection," 13, 579

In general, 13, 578

Judicial notice, 13, 577

Paper received for collection, 13,
579

Property not known as trust property,
13, 579

Quasi bankers, 13, 578

Securities deposited for a special pur-
pose, 2, 98; 13, 578

**Securities Deposited to Cover a Particu-
lar Loan**

Surplus, 13, 579

Several accounts by same individual,
13, 579

Special lien, 5, 188

Upon plate deposited, 2, 98

What it covers, 13, 578

When the lien will attach, 2, 99

Limitations of Actions, 2, 102

Deposits, 13, 721

When statute begins to run, 2, 102

Location, 2, 92

Mandate, 14, 245

Negligence, 2, 95

In making demand, protest, etc., 2,
112

Measure of damages in neglecting duty,
2, 111

Notes, see FALSE PRETENSES.

**Notes and Other Securities Made Payable
at a Particular Bank, 18, 199**

Examples, 18, 199

Funds lost through subsequent failure
of bank, 18, 199

Whether payable absolutely, 18, 199

Notice to director is notice to bank, 1,
422

Overdraw, 17, 295

Partner's right to draw checks on firm's
deposit, 17, 1033

Payment

Applying bank deposit, 18, 196

Power

Charging exchange, 2, 93

Of insurance corporations to engage in
banking, 4, 248

To borrow money, 2, 91; 4, 222

To buy and sell stock, 2, 90

To deal in checks, 2, 92

To discount does not include power to
purchase, 2, 90

To hold real estate, 2, 92

To make collections, 2, 111

To purchase negotiable instruments, 2,
90

Where it may carry on business, 2, 92

Repayment of deposits, 2, 101

Rule that mistake will not be corrected unless noticed at the time, 2, 110

Set-off against deposit, 2, 98

Solvency of bank, 22, 838

Special Deposits

Embezzlement by bank cashier, 5, 574

Not presumed, 5, 575

Stockholder's power to subscribe, 23, 799

Suit upon paper left for collection, 2, 114

Suretyship

Failure of bank, 24, 887

Whether bank may become surety, 24, 729

Taxation

Deposits, 25, 104

Occupation, business and privilege taxes, 25, 488

Place of taxation of deposits, 25, 146

Trusts and Trustees

Creation of Trust in Bank Deposit, 27, 58

Deposit accompanied by a declaration of trust, 27, 59

Deposit without any declaration of trust, 27, 59

Evidence aliunde, 27, 60

Examples, 27, 58-62

Gift or trust, 27, 59

In general, 27, 58

Intention of party depositing money in another's name, 27, 58

Pass book delivered to beneficiary, 27, 60

Question one of fact, 27, 61

Retention of pass book by depositor, 27, 60

Ultra Vires, 27, 382

Illegal interest, 27, 382

Officer borrowing money from bank, 27, 382

Purchase of lands, 27, 362

Unlawful interest, 1, 127

Usages and Customs, 2, 106; 27, 871

Acquiescence, 2, 108

As to demand, 2, 108; 27, 868

As to notice, 2, 108

Between bank and its customers, 27, 871

Cashier's authority derived from, 2, 118

Constitute a part of contract, 2, 106

Customer entitled to rely upon the usage, 27, 871

Demand and notice, 2, 108; 27, 868

Duties as Collecting Agent, 27, 869

Demand, 27, 871

Examples, 27, 869-871

In general, 27, 869

Notice, 27, 871

Examples, 27, 868, 869, 871, 872

In general, 27, 868, 871

Judicial notice of particular and local, 2, 110

Knowledge of, 2, 107

Miscellaneous cases, 27, 872

Notoriety, 2, 108

Of Bank

Constituting a part of contract, 2, 107

Powers of officers, 27, 871

Reasonableness, 27, 768

Examples, 27, 768

Honoring overdrafts, 27, 768

Surrender of drafts at maturity, 27, 768

Usage contrary to common law, 27, 785

Usages to explain contracts, 27, 816

Waiver of demand, 2, 102

Who may engage in banking, 2, 89

BAR, 2, 120

See ATTORNEY AND CLIENT.

Bar-iron, 2, 122

Crossing the bar, 2, 121

Saloon and bar, 2, 121

BARBERS

Sunday, 24, 544

BARE, 2, 122

Bare trustee, 2, 122

Naked lie, 2, 122

BARGAIN, 2, 122

Bargain for, 2, 124

Close the bargain, 2, 124

Contracts, bargains and agreements, 2, 124

Corrupt bargain, 2, 123

Grant, bargain, sell and convey, 4, 130

BARGAIN AND SALE, see REAL PROPERTY; SALE.

BARGE, 2, 124, 438

BARKEEPER, 2, 121

BARLEY, 2, 125

Prime barley, 2, 125

Seed barley, 2, 125

BARN, 2, 126

Arson of

At common law, 1, 766

Contained in a barn, 2, 127

Demise of a barn, 2, 127

BARRATRY, 2, 127; 14, 378

Cumulative offense, 2, 128

Definition, 2, 127

Exemption

In bill of lading, 2, 239

Infamous crime, 10, 603, 605

In Shipping

Definition, 2, 128

Marine insurance, 14, 377, 378

BARTER, 2, 129

Barter and sale, 2, 129

Commission merchant's or factor's authority to barter, 3, 321

Sales distinguished from, 21, 464

BASE-BALL, see GAMING; BALL GAME.

BASE FEE, 2, 129; 6, 878; 19, 1055

BASIN, 2, 129

BASTARDY, 2, 129

See generally, FORNICATION; LEGITIMACY.

Concealment of birth of a bastard child, see CONCEALMENT OF BIRTH.

Period of gestation, see PERIOD.

Privileged communications, see PRIVILEGED COMMUNICATIONS.

BASTARDY—Cont'd**Abatement of Action**, 2, 144

Death of mother, 2, 144

Marriage of prosecutrix with another man, 2, 144

Where child is born dead, 2, 144

Action, civil proceeding, 2, 144

Admissions of the putative father, 2, 153

Bonds, 2, 450

By what law determined, 2, 129

Child

Born after divorce, 2, 141

Born on high seas, 2, 136

Of void marriages, 2, 142

Whether bastards are children, 3, 231

Collateral inheritance tax, 24, 448

Competency of bastard to take by legacy or devise, 2, 142

Compounding offenses, 3, 401

Conflict of laws, 2, 129

Corroboration of mother, 2, 145

Custody of Bastard, 2, 142; 9, 248

Father's right as against third party, 9, 248

Illustrations, 9, 248

Mother's right, 2, 142; 9, 248

Putative father's right, 2, 142

Respective rights of parents, 9, 248

Where child has discretion to choose for itself, 9, 248

Definition, 2, 129

Descent and distribution, see *infra*, SUCCESSION.

Distinguished from fornication, 8, 556

Domicile, law of, 2, 129

Duty to support bastards at common law, 2, 142

Evidence, 2, 144

Admission of relatrix, 2, 145

Child, 9, 867

Competence of the putative father, 2, 153

Contradicting mother's statement, 2, 152

Corroboration of mother, 2, 145; 29, 834

Death of bastard child, 2, 154

Declarations made at time of travail, 2, 153

Declarations made before birth of child, 2, 152

Declarations of deceased mother, 2, 152

Declarations of the putative father that the child is illegitimate, 2, 153

Entry in baptismal register, 2, 154

Impotence of putative father, 2, 154

Mother's reputation for chastity, 2, 149

Of woman as to who is father where she has had connection with several, 3, 420

Preponderance of, 2, 145

Proof of intercourse with other men, 2, 151

Questioning woman as to intercourse with other men, 2, 151

Reasonable doubt, 2, 149

Rumors, 2, 145

Testamentary recognition of a child as legitimate, 2, 154

Testimony of wife to prove that a man other than her husband is the father, 2, 149

Wife's competency to prove her own adultery, 2, 149

Father's duty to support illegitimate child, 17, 345

Fornication, 8, 556

Impotence of husband, 2, 139

Imprisonment for debt, 2, 145

Incompetence of Husband

Must be clearly shown, 2, 140

Infants, 10, 699

Inheritance, see *infra*, SUCCESSION.

Justice of the peace, 12, 423

Legitimacy, see LEGITIMACY.

By subsequent marriage and recognition, 2, 129, 144; 24, 420, 422

By what law determined, 3, 566, 642

Of children of negro marriage, 2, 137

Presumption of

Rebuttal of, 2, 138

Where child is born in wedlock, 2, 136

Where woman is pregnant at time of marriage, 2, 137

Libel and slander, 13, 301, 305, 336

Mother's right to earnings of child, 14, 759

Name, 16, 117

Natural guardian, 9, 86

Non-access, 2, 149; 7, 97

Evidence required to prove, 2, 140

Incompetency of husband or wife to prove, 2, 137, 139, 140, 149

Necessity that access should be impossible, 2, 140

Presumption as to sexual intercourse, 2, 140

Presumption where there is a possibility of access, 2, 141

Proof of, 2, 138

Where husband and wife live in different cities, 2, 140

Paternity, 15, 215

Pedigree, 18, 260

Period of gestation, 2, 155

Practice, 2, 156

Presumption of Legitimacy, 2, 129, 141, 150

How rebutted, 2, 139

When child is born in wedlock, 2, 136

Where question is one of fact, 2, 139

Proceedings

Imprisonment for debt, 10, 219

Proof that child born during marriage is a bastard, 2, 139

Reasonable doubt, 2, 145; 19, 1087

Resemblance to the putative father, 15, 215

Settlement, 18, 791

Emancipation, 18, 792

Examples, 18, 792

Of mother at time of birth, 18, 791

Vol. I.

- Retaining mother's settlement, 18, 791
 Statutes, 18, 792
 Slaves and slavery, 22, 794
Statutes
 Legitimizing children of void marriage, 2, 142; 24, 414
Succession, 2, 142; 24, 412, 427
 At common law, 24, 412
 "Children" excludes bastards, 24, 413
 Civil law, 24, 412
 Examples, 24, 412-424
 Extraterritorial effect of statutes, 24, 427
 Heirs, 24, 412
 In general, 24, 412
 "Kindred" excludes bastards, 24, 414
 "Next of kin" excludes bastards, 24, 414
Statutes, 24, 414
 Bastard inheriting from his father, 24, 420
 Bastards and legitimate children as heirs to each other, 24, 416, 417
 Brothers and sisters by the same mother, 24, 418
 Collateral inheritance, 24, 416, 417
 Construction of, 24, 414
 Effect of statutes legitimizing bastards, 24, 423
 Father's estate, 24, 420
 Husband or wife of deceased bastard, 24, 421
 In United States, 24, 414
 Issue of marriages deemed null in law, 24, 422
 Legitimate and illegitimate children of the same mother, 24, 417, 418
 Legitimation by act of legislature, 24, 414, 420, 421
 Mother inheriting from bastard, 24, 415
Mother's Estate, 24, 414
 Bastard's children succeeding to, 2, 143; 24, 414, 415
 Mother's collateral relatives, 24, 415
 "On the part of the mother," 2, 143; 24, 416
 Recognition of bastard by father, 2, 129, 144; 24, 420
 Representation, 24, 420
 Retroactive statutes of legitimation, 24, 421
 Subsequent marriage of parent, 2, 129, 144; 24, 420, 422
Taxes
 Exemption from taxation, 24, 448
 To estates of ascendants or collaterals, 24, 412
 Whether civil law was adopted in the United States, 24, 413
 Whether common-law disabilities obtain in the United States, 24, 413
Support
 Under pauper law, 18, 812
Validity of Marriage of Putative Father
 While under arrest, 6, 63
 Whether insolvency proceedings apply to, 11, 224
 Wife's open cohabitation with another man, 2, 139
Wills, 29, 247
 Child in esse, 29, 247
 Examples, 29, 247-249
 Future illegitimate children, 29, 247
 Ventre sa mere, 29, 247
BATTERY, see ASSAULT AND BATTERY.
BATTURE, 2, 157
 See ACCRETION.
BAWD, 2, 157
BAWDY-HOUSE, see DISORDERLY HOUSE.
BAY, 2, 157
 Bay and inlet, 2, 158
 Bay or harbor, 2, 157
 Bay-window, 2, 158
BE, 2, 158
 Being, 2, 158
 Being at one-half the expense, 2, 158
 Being in advance, 2, 158
 Being married, 2, 158
 Being of sound mind and limb, and free from all disease, 2, 158
 Being surveyors, 2, 158
 May be, 14, 984
 Not to be, 16, 752
BEACH, 2, 159; 22, 779; 26, 1
 See SEASHORE; SHORE.
 Bounded by the cliff or beach, 2, 159
BEACON, 2, 159
BEACONAGE, 2, 159
BEAR, 23, 700
 See ARMS; CONCEALED WEAPONS.
BEARER, 2, 159
 Synonymous with holder, 9, 418
BEARING, 2, 159
 See ARMS.
 Bearing interest, 2, 159
 Bearing the surname, 2, 159
BEAST, 2, 159; 4, 570
 See generally, ANIMALS; CATTLE.
BEAT, 2, 160
 Maim, beat or torture, 2, 160
BECOME, 2, 160
 At the time he becomes bankrupt, 2, 161
 Become Due, 6, 38
 Synonymous with grow due, 6, 39
 Rent to become due, 2, 160
 Shall become an habitual drunkard, 2, 160
BED, 2, 160
 Public right of navigation, 16, 260
BEEF, 2, 161
BEER, 2, 161
 See INTOXICATING LIQUORS.
 Definition of, 2, 161
 Dutch beer, 2, 161
 Lager beer, 2, 161
BEER-HOUSE, 2, 161
BEER-SHOP, 2, 161
BEEES, 3, 169; 7, 241; 8, 1024; 12, 782
 Property in, 3, 169
 Trespass, 26, 607

BEFORE, 2, 162

- At least fourteen days before first day of the court, 2, 162
- Before conviction, 2, 162
- Before me, 2, 162
- Before said court, 2, 162
- "Before the argument," 1, 716
- Before the sheriff and suitors, 2, 162
- Before trial, 2, 162
- Next before, 16, 701
- On or before, 10, 582; 17, 184
- On or before a certain day, 2, 162
- Ten days before the first day of the term, 2, 162

BEG, 2, 163**BEGGING, 2, 163**

- Begging alms or soliciting charity, 1, 495

BEGGING LETTERS, see FALSE PRETENSES.**BEGIN, 2, 163****BEGINNING, 2, 163**

- Beginning at, 19, 834

BEGOTTEN, 2, 163; 29, 416

- Shall be begotten, 2, 163

BEHALF, 2, 164

- For or in behalf of, 8, 81

- On behalf, 17, 185

BEHAVIOR, 2, 164

- For lewd and lascivious behavior, see LEWD AND LASCIVIOUS.

BEHIND, 2, 164**BEING, 2, 158**

- For the time, 8, 93

BELIEF, 2, 164

- Best of his belief, 2, 165
- Informs and believes, 10, 711
- Knowledge and Belief, 12, 526
- Distinguished, 2, 164

BELIEVE, 2, 164

- Find and believe, 2, 165
- Suppose and believe, 2, 165
- Suspect and believe, 2, 165

BELLIGERENT, 2, 165**BELLIGERENT RIGHTS, see WAR.****BELONG, 2, 166**

- Belonging to, 17, 34

BELOW, 2, 169

- Below high-water mark, 2, 169

BENCH, 2, 169

- Bench warrant, 2, 169

BENCH AND BAR, 2, 169**BENCHERS, 2, 169****BENCH WARRANT, 28, 734****BENEFICIAL, 2, 170**

- Beneficial devisee, 2, 170
- Beneficial enjoyment, 2, 170
- Beneficial owner, 2, 170
- Beneficial powers, 2, 170
- Beneficially, 2, 171
- Beneficially interested, 2, 171

BENEFICIAL ASSOCIATION, 2, 171; 16, 16

- See INSURANCE; MUTUAL INSURANCE; SOCIETIES AND CLUBS.

- As to concealment, see INSURANCE.

- As to insurable interests, see INSURANCE.

- As to premiums, see INSURANCE.

As to reinsurance, see INSURANCE.

As to remedies, see INSURANCE.

As to reputation, see INSURANCE.

As to the policy, see INSURANCE.

As to waiver of estoppel, see INSURANCE.

As to warranty, see INSURANCE.

Definition, 22, 802

Embezzlement

By officers of, 6, 477, 479

Indictment of officers, 6, 498a

Expulsion from

Causes for, 1, 560

Of members, 1, 558

Partnership or Company

Established for any purposes of profit, 19, 258

Sickness

Whether insanity is sickness, 22, 780

Taxation

Exemptions, 25, 168, 169

Whether policy holders are partners, 26, 63

BENEFICIALLY, 15, 598**BENEFICIARY, 2, 179****BENEFIT, 2, 179,**

See EMINENT DOMAIN.

Benefit of children, 2, 179

Benefit of exemption, 2, 182

Benefit of herself, her family and her estate, 2, 181

Benefit of law, 2, 181

Benefit of survivorship, 2, 180

Benefit of wife, 2, 180

Person for whose immediate, 2, 181

Public use or, 2, 181

BENEVOLENCE, 2, 182; 15, 624**BENEVOLENT, 2, 182**

See CHARITIES.

Moral or benevolent objects, 15, 716

BENZINE, 17, 179**BEQUEATH, 2, 183; 5, 422**

Give and bequeath, 8, 1356

BEQUEST, 11, 374; 29, 349

See BEQUEATH.

BERRIES, 2, 183**BESOT, 2, 183****BEST, 2, 183**

Best of his belief, see BELIEF.

Best endeavors, 2, 183

Best evidence, 2, 183

Best information, 2, 183

Best of his ability, 2, 184

Best oil, 2, 184

Best picture, 2, 184

Best rent, 2, 184

Best you can, 2, 184

For the best, 2, 184

If it is deemed best, 2, 184

Seem best, 2, 184

Think best, 2, 184

BESTIALITY, 2, 185

See SODOMY.

BET—BETTING, 2, 186; 28, 511

See GAMING; GAMBLING CONTRACTS; WAGER.

Bet distinguished from premium, 2, 185

Betting of money, 2, 185

- Betting on Elections**, 2, 186; 6, 443
As to the validity of a bet, see **ILLEGAL CONTRACTS**.
 Evidence, 6, 437
 Synonymous with wager, 2, 185
- BETTER EQUITY**, 2, 186
- BETTERMENT**, 2, 186
See IMPROVEMENTS.
- "BETTERMENT LAWS"**
 Due process of law, 3, 718
- BETWEEN**, 2, 186; 19, 834
 Account between two persons, 2, 189.
 Between certain periods, 2, 187
 Between points within the state, 2, 188
 Between two cities, 2, 186, 188
 Between two counties, 2, 188
 Between two days, 2, 187, 188
 Between two rivers, 2, 188
 Equally to be divided between them, 2, 188
 Line between two objects, 2, 501
- BEVERAGE**, 2, 189
- BEYOND THE SEAS**, 2, 189
 Beyond the Cape of Good Hope, 2, 190
 Beyond the life of the offender, 2, 190
 Limitation of actions, 13, 741
- BIAS**, 2, 190; 12, 352
- BIBLE**, 7, 809
See SCHOOLS.
Family Bible, 7, 809
 Admissibility in evidence, 7, 809
 Definition, 7, 809
- Pedigree**
 Entries made by parent or relation, 18, 265
 Proof that entries were made by relative, 18, 266
- BICYCLE**, 2, 191
See CARRIAGE.
 As a carriage, 2, 736; 6, 31
 Law of the road, 12, 958
 Streets and sidewalks, 24, 119
 Whether a vehicle, 28, 63
- BIDDER**, see **WORKING CONTRACTS**.
 Highest bidder, 25, 396
- BIDS**
Municipal Corporations
 Advertising and letting to lowest bidder, 15, 1099
- BIENNIAL**, 2, 191
- BIG**, 2, 191
Big with Child
 Distinguished from pregnant, 2, 191
 Quick with child, 2, 191
- BIGAMY**, 2, 192
For the meaning of the term cohabit—cohabitation, see **COHABIT—COHABITATION**.
 Absence of consort, 2, 194
 Accessories, 2, 192
 Admissions, 2, 196, 197; 3, 492
 Adultery and bigamy as ground for divorce, 5, 781
 Advice of counsel that there is no impediment to second marriage, 2, 192
 Belief that there has been a divorce, 2, 193; 14, 502
- Conspiracy to commit, 4, 597
 Definition, 2, 192
 Diligence in seeking information as to death of consort, 2, 195
 English law, 14, 501
- Evidence**, 2, 198
 Admissions of defendant, 2, 196, 197; 3, 492
 Authenticated copy of foreign register, 2, 197; 3, 492
 Certificate of marriage, 2, 197
 Cohabitation, 2, 197
 Marriage, 2, 198; 4, 852; 14, 530
 Necessity of proof of cohabitation, 2, 198
 Proof of marriage by persons present, 2, 198
 Proof that first marriage was valid, 2, 197
 Testimony of legal wife, 2, 198
- Good faith, 2, 193; 14, 502–503
 Ignorance of law, 14, 502
 Immediate separation without cohabitation, 2, 192
 Jurisdiction, 2, 198; 14, 502
 Knowledge that consort was alive after the statutory absence, 2, 195
- Legality of Marriage**
 After statutory period of absence, 2, 196
 Libel and slander, 13, 301, 336
- Marriage**, 2, 193
 After divorce, 2, 193
 After supposed death of legal wife, 2, 194
 First, 14, 502
 In another state, 2, 192
Second, 14, 502
 Between persons forbidden by statute to intermarry, 2, 193
 Mistake, 14, 502
 Place where first marriage took place, 14, 502
 Place where second marriage took place, 14, 502
 Proof after statutory absence, 2, 195
 Proof of marriage, 4, 852; 14, 530
 Religious rites in polygamous marriage, 2, 192
 Statutory crime, 14, 501
 Statutory period of absence, 2, 198
 Validity of first marriage, 14, 502
 Validity of second marriage, 14, 502
 Voidable marriage, 2, 193
 Void marriage, 2, 193; 14, 484
 When considered criminal, 14, 501
- Witnesses**
Wife, 29, 634, 638
 First wife, 14, 526; 29, 635
 Second wife, 14, 526; 29, 635
- BIJOU**, see **JEWELRY**.
- BILAN**, 2, 199
- BILATERAL**, 2, 198
- BILATERAL CONTRACTS**, see **CONTRACTS**.
- BILL**, see **STATUTES; LAW**.
True bill, see **INDICTMENT**.

BILL—Cont'd

Action of debt on recognizance, 5, 167

English, 6, 645

Notice of introduction, 23, 163

Quia timet, 6, 723, 766

BILLIARDS, 2, 421; 5, 702

See GAMING.

Billiard table, 2, 422

Erects and keeps a, 2, 422

BILL IN EQUITY, 2, 210

See BILL OF DISCOVERY; BILL OF PEACE; BILL OF REVIEW; BILL OF REVIVOR; BILL QUIA TIMET; BILL TO PERPETUATE TESTIMONY; BILL TO REMOVE CLOUDS; BILL TO TAKE TESTIMONY DE BENE ESSE; CREDITOR'S BILL; DEMURRER; EQUITY PLEADINGS.

Bill in divorce suit, see DIVORCE.*Informations*, see INFORMATION.*Patent law*, see PATENT LAW.*Scandal and impertinence*, see SCANDAL AND IMPERTINENCE.*Specific Performance*, see SPECIFIC PERFORMANCE.

Actions, discontinuance, 1, 184g

Bill of discovery containing prayer for relief, 2, 200

Charges, 2, 212; 6, 761

Charging part of a bill, 3, 119

Definition, 6, 761

To avoid a surprise, 2, 212

To meet the defense by matters in avoidance, 2, 212

Use of discovery, 6, 761

Component Parts of, 2, 211; 6, 730

Address, 6, 731

Introductory part, 6, 731

Compound bill, 6, 780

Confederacy Clause, 6, 761

Denial, 6, 761

Cross-bill, 4, 905; 6, 769, 771

Affirmative relief, 6, 770

Averments, 6, 771

Court ordering defendant to file, 6, 770

Definition, 6, 769

Demurrer to, 5, 558

Discovery, 6, 769

Inconsistent with answer, 6, 770

Inconsistent with original, 6, 771

Pleas, 6, 796

Subject-matter, 6, 771

To demurrer, 6, 791

When to be filed, 6, 771

Definition, 2, 210; 6, 727

Different Kinds of Bills, 2, 216; 6, 729

Not original, 6, 729

Original, 6, 729

Discovery distinguished from relief, 2, 199

Dismissal, 5, 692

For relief defined, 6, 729

General nature of, 2, 211; 6, 728

Interrogatories, 2, 213; 6, 762

Definition, 2, 213; 6, 762

Founded on matters contained in bill, 2, 213

United States equity rules, 6, 762

Joinder of distinct and independent causes of action, 2, 214

Jurisdiction Clause, 6, 762; 12, 317

Definition, 6, 762

What must appear from, 6, 762

Language, 6, 728

Multifariousness, 2, 214; 15, 947

General rule, 6, 758

What Constitutes, 6, 758

Alleging two distinct and separate causes for relief, 6, 758

Parties having common interest, 6, 760

Plaintiffs claiming by virtue of one general right, 6, 760

Original Bills**Not Praying for Relief**

Bill to perpetuate testimony, 6, 774

Praying for Relief, 6, 765

See BILLS FOR PARTITION; BILLS OF PEACE; BILL OF REVIEW; BILLS QUIA TIMET; CERTIORARI; FORECLOSURE OF MORTGAGES.

See *infra*, CROSS-BILL.

See INJUNCTION; INTERPLEADER; NE EXEAT; REDEMPTION OF MORTGAGES; SPECIFIC PERFORMANCE.

Bills in the nature of bills of revivor, see BILLS OF REVIVOR.

Bills in the nature of supplemental bills, see SUPPLEMENTAL BILLS.

Bills of discovery, see BILLS OF DISCOVERY.

Bills to carry decree into execution, see DECREE.

Bills to perpetuate testimony, see BILLS TO PERPETUATE TESTIMONY.

Bills to suspend or avoid the execution of a decree, see DECREE.

Parties, 2, 216; 4, 578; 6, 731

Joinder of parties, see *infra*, MULTIFARIOUSNESS.

Assignor in judgment, 2, 217

Assignor of a chose in action, 2, 217

Committee for lunatics, 6, 739

Co-tenants of land, 2, 216

Creditors, 6, 736

Definition of, necessary, 6, 738

Demurrer for want of proper parties, 6, 785

Dismissals for want of parties, 6, 786

Exceptions to rule when all persons interested should be made, 6, 733

General rule as to, 2, 216

Infants, 6, 739

In general, 6, 731

Joinder of

Demurrer for misjoinder, 6, 786

Joint legatees, 6, 736

Legatees, 6, 736

Lunatics, 6, 739

Nature of relief not necessitating joinder of all interested, 6, 737

One creditor in behalf of all, 6, 736

- One in behalf of all, 6, 735
 One legatee in behalf of all, 6, 736
 One stockholder in behalf of others, 6, 737
 Personal representative, 6, 734
 Persons affected by decree, 6, 732
 Persons having concurrent claims with plaintiff, 2, 217
Persons Interested
 In subject-matter, 2, 216; 6, 731
 Not within jurisdiction of the court, 2, 217
 Unknown, 6, 734
 Plaintiff, 6, 739
 Plaintiff showing they are not necessary, 6, 738
 Prochien ami, 6, 739
 Refusal to grant decree until all are made, 6, 732
 Residuary legatees, 6, 736
 Rule of convenience, 6, 733
 Several plaintiffs' claims must be consistent, 2, 211
 Suits for prize money, 6, 737
 Sureties to, 2, 217
 Trustees, 2, 217
 Unconnected parties with a common interest in point at issue, 2, 212
 Voluntary associations, 6, 737
 When all persons interested need not be made, 4, 578; 6, 733, 737
 Where persons interested are too numerous or indefinite, 2, 217
 Where very numerous, 6, 734
 Who are necessary, 6, 738
 Without jurisdiction of the court, 6, 734
 Wrongly placed as plaintiff or defendant, 6, 732
 Perjury, 18, 304, 305
Pleas
 To jurisdiction, 6, 795
 Positive averments, 2, 211
 Prayer for process, 2, 215; 6, 765
Prayer for Relief, 2, 213; 6, 763
 Agreement with case made by bill, 2, 213
 Claim distinct from that made by bill, 6, 764
 Defective prayer for special relief, 6, 764
 Defense, 2, 213
 Definition, 6, 763
 General, 2, 213; 6, 763
 Misjoinder of distinct and independent causes of action, 2, 214
 Obtaining jurisdiction until full relief is given, 6, 764
 Special prayer, 2, 213
 Special relief, 6, 763
 What may be granted under, 6, 763
 When special relief is not allowed, 6, 764
 With a double aspect, 2, 214
 Signing, 2, 215; 6, 765
Statement, 2, 211; 6, 753
 Multifariousness, see *infra*, **MULTIFARIOUSNESS**.
- Argument, 6, 755
 Certainty required, 2, 211; 6, 754
 Citizenship, 6, 755
 Definition, 6, 753
 Equitable estoppel, 6, 756
 Every material fact, 6, 754
 Facts, 6, 756
 Facts that must be averred, 2, 212
 Fraud, accident, or mistake, 6, 756
 Fraud specifically charged, 2, 211
 How the fact should be stated, 6, 753
 Implications, 6, 755
 In alternative, 6, 755
 Matters of evidence, 6, 756
 Matters of which the court takes judicial notice, 2, 212
 Minuteness and particularity of detail, 6, 755
 Setting out an instrument, 6, 756
 Splitting causes of action, 6, 755
 Strictness required, 6, 754
 What must contain, 2, 211
 Where statute of limitations would be a bar, 2, 212
 Where there are several plaintiffs, 2, 211
 Stoppage in transitu, 23, 855
 Subdivisions of, for relief, 6, 729, 730
Supplemental Bills
 Demurrer, 6, 790
 Pleas, 6, 796
 To compel payment of dividend, 5, 732
To Enforce Decree, 5, 390
 Foreign, 5, 392
Trustees and Cestuis Que Trustent
 As parties, 6, 750
 What must be stated in, 2, 211
BILL OF ATTAINDER
 Disqualification from office, 19, 569
BILL OF COSTS, see **COSTS**.
BILL OF CREDIT, see **CONSTITUTIONAL LAW; MONEY**.
BILL OF DELIVERY
 Stay of proceedings, 23, 529
BILL OF DISCOVERY, 2, 199; 6, 723-775
 Parties to, see **BILL IN EQUITY**.
 See generally, **BILL IN EQUITY; INTERROGATORIES; PRODUCTION OF DOCUMENTS**.
 Abolished in some states, 2, 209
 Abolition where statute enables party to call adverse party as witness, 2, 209
 Abrogation of, by statutory provisions, 2, 209
Answer
 As admission of defendant, 2, 202
 Need not be used in evidence, 2, 202
 Bills not original, 6, 776
 Costs, 2, 202; 4, 323
 Court of equity assuming jurisdiction over legal cause of action, 2, 199
 Cross-bill, 2, 201
 When answer may be compelled to, 2, 204
 Decree, 2, 202

BILL OF DISCOVERY—Cont'd

Defendant obtaining information necessary to the discovery, 2, 202

Defendant's answer under oath, 2, 202

Defenses, 2, 204

Answer, 2, 206

Tending to criminate defendant, 2, 205

Approval of court, 2, 205

How taken, 2, 205

Incompetency of a witness, 2, 205

Plea, 2, 205

Plea of purchaser for value without notice, 2, 204

Definition, 2, 199; 6, 775

Demurrer, 2, 205; 5, 557; 6, 788

Discovery causing defendant to criminate himself, 6, 789

Discovery subject to forfeiture, 6, 789

Immaterial discovery, 6, 789

Plaintiff showing no title, 6, 789

Sustained to prayer of relief in, 2, 201

To avoid discovery, 6, 788

To relief alone, 6, 788

When it lies, 6, 788

Where plaintiff is entitled to part of discovery, 6, 788

Discovery as

To all facts stated in, 2, 203

To all interrogatories, 2, 203

To defendant's case, 2, 203

Distinguished from bill of relief, 2, 199

Essential parts of, 2, 202

Executors and administrators, 7, 394, 400, 420

Extent of Discovery Obtainable

Parties to action, 2, 203

Facts sought to be discovered, 6, 775

For discovery and relief, 2, 199

Frame of, 6, 775

How discovery is obtained, 2, 202

Immaterial matters, 2, 203

In Aid of Action at Law, 2, 201

When bill must be filed, 2, 201

Who may file bill, 2, 201

In aid of answer to bill in equity, 2, 201

In aid of legal title to real estate, 2, 203

In aid of negative case, 2, 201

Inspection of documents, 2, 206

Nature and scope of, 2, 199

Nature of defense, 6, 776

Necessary Averments, 2, 202

In aid of legal title to real estate, 2, 203

Indispensability of the discovery, 2, 203

Of good case at law, 2, 202

Plaintiff will be unable to prove his case, 2, 203

Non-joinder of parties, 2, 204

Object of, 2, 202

Parties, 2, 203

Corporations, 2, 203

Defendant, 6, 746

Non-joinder, 2, 204

Under disabilities, 2, 204

Plea, 2, 205; 6, 795

Affirmative, 2, 205

Anomalous, 2, 205

Discovery subjecting to penalty or forfeiture, 6, 795

In bar, 6, 795

Negative, 2, 205

Purchaser for valuable consideration, 6, 795

Release or compromise, 6, 795

Statute of limitations, 6, 795

To jurisdiction, 6, 795

To person, 6, 795

What may be taken advantage of by, 2, 205

Prayer for injunction, 2, 200

Prayer that defendant abide by decree, 2, 200

Pro confesso, 2, 206

Production of documents, 2, 209

Showing that defendant's answer is necessary, 6, 775

Statute of frauds, 8, 747

Statutory Provisions on the Subject of Discovery, 2, 206

In England, 2, 206

In United States, 2, 206

Principles of discovery by bill applicable to discovery under statutes, 2, 210

To obtain production of documents, 2, 209

When bill is abrogated by, 2, 209

Supplemental Bills, 6, 776

Allegation, 6, 778

Considered as part of original bill, 6, 778

Filed by leave of court, 6, 778, 779

For injunction, 6, 779

New parties, 6, 778

Repeating statements in original bill, 6, 778

Subsequent events, 6, 777

When amendments may be made, 6, 777

When they will lie, 6, 776

Time When Obtainable, 2, 204

After judgment, 2, 204

Answer to a cross-bill, 2, 204

Before or after action is brought, 2, 204

When Bill Will Not Lie, 2, 201

In aid of criminal proceedings, 2, 201

In aid of foreign jurisdiction, 2, 202

In aid of proceedings in ecclesiastical court, 2, 201

Issue directed by a court of bankruptcy, 2, 201

Where discovery should be otherwise compelled, 2, 201

Whole answer must be read, 2, 202

BILL OF EXCEPTIONS, 2, 218; 6, 823

See generally, STATED CASE ON APPEAL. *See* INSTRUCTIONS; MASTER IN CHANCERY.

Conclusive evidence as between the parties, 2, 222

Construction, 2, 222

- Favorable to validity of judgment, 2, 222
 Most strongly against party taking, 2, 222
 Definition, 2, 218
 Effect of, 2, 222
 Error appearing affirmatively, 2, 222
 Formal requisites, 2, 221
 Garnishment, 8, 1262
 History, 2, 218
In Criminal Cases, 2, 222; 6, 823
 At common law, 6, 823
 Under statutes, 6, 823
Judge, 12, 11; 14, 126
 Approval of judge to statement of facts, 12, 11
 Fraudulent signature, 12, 12
 Having gone out of office, 12, 12
 Other than judge who tried case signing bill, 12, 12
 Pro tem., 12, 12
 Signature, 2, 221; 12, 12; 14, 122, 129
 Judicial notice, 12, 191; 14, 122, 129
 Justice of the peace, 14, 127
Larceny, 12, 894
 Authentication, 12, 894
 Duty of higher court, 12, 895
 Necessity, 12, 894
 Time to prepare, 12, 894
 When exceptions may be taken, 12, 894
Mandamus, 14, 122
 After term of office has expired, 14, 126
Answer
 Duty, 14, 126
 Of judge, 14, 126
 Positive allegation of fact, 14, 127
 Setting forth cause of refusal, 14, 126
 Case tried before judge's predecessor, 14, 125
 Chancery courts, 14, 127
 Charge to jury, 14, 127
 Conclusiveness of judge's instructions as to what occurred at trial, 14, 123, 124
 Correction of bill, 14, 123
 Delay, 14, 125
 Demand and refusal, 14, 124
 Determination as to incidents of trial, 14, 123
 Discretion of judge, 14, 123
 Judge who tried case, 14, 125
 Justice courts, 14, 127
 Knowledge and recollection of judge, 14, 124
 Laches, 14, 124
 Referee, 14, 127
 Refusal by judge, 14, 126
 To compel judge's signature or seal, 2, 221; 14, 122, 129
 To compel judge to settle, 14, 122
 When judge has already signed one bill, 14, 124
Mechanics' liens, 15, 179
 Necessity of, 6, 823
 Nonsuit, 16, 743
 On part of state in criminal cases, 2, 222
 Operating as a stay of proceedings, 2, 222
 Party's subsequent course inconsistent with the exceptions, 2, 222
Record, 20, 485
 Whether bill of exception forms part of record, 20, 486
 Refusal to seal as contempt, 3, 781
 Remedy of facts omitted from record, 2, 222
 Seal by trial judge, 2, 221
Signature
 By trial judge, 2, 221; 12, 12; 14, 122, 129
 Time within which it should be made, 2, 221
Signing Bill, 6, 823
 When it must be signed, 6, 824
 Special judge, 12, 26
 To prove testimony given at former trial, 9, 337
Waiver, 2, 221
 Motion for new trial, 2, 221
What It Should Contain, 2, 220
 Documents that should be annexed to bill, 2, 220
 Error must appear to be prejudicial, 2, 220
 Exception to judge's charge generally, 2, 220
 Facts on which the adjudication to be reviewed is founded, 2, 220
 The whole evidence, 2, 220
When It Must Be Taken, 2, 220
 After adjournment, 2, 221
 Any time during trial term, 2, 221
 At the time of decision excepted to, 2, 221
 In practice, 2, 221
Where It Does Not Lie, 2, 219
 Continuances, 2, 219
 Findings on questions of fact, 2, 219
 Matter discretionary with the court, 2, 219
 Where record shows the matter, 2, 219
Where It Lies, 2, 218
 Accepting or rejecting witnesses, 2, 219
 Decision on motion for new trial, 2, 219
 Errors in admitting testimony, 2, 219
 Instruction to jury, 2, 219
 Nonsuits, 2, 219
 Orders, 2, 219
 Upon errors of law, 2, 218
 Where proceedings excepted to took place by request of party excepting, 2, 222
BILL OF EXCHANGE, 2, 222
 See **BILLS AND NOTES**.
Acceptance
 Letter of credit as, 3, 849
 Distinction from letter of credit, 13, 239
 Interstate commerce, 11, 544
BILL OF INFORMATION, see **INDICTMENT; INFORMATION**.
BILL OF INTERPLEADER, 2, 222
 See **INTERPLEADER**.
 Bill in the nature of a, 11, 506

BILL OF LADING, 2, 223

See CHARTER-PARTY; DEMURRAGE;
FORWARDING MERCHANTS; FREIGHT;
SALES.

Act of God, see ACT OF GOD.

*As to clause in bills of lading relieving
carrier from liability for negligence*,
see CARRIERS OF GOODS.

Stoppage in transitu, see STOPPAGE IN
TRANSITU.

Accidents to machinery, 2, 239

Agent issuing where he has not received
goods, 2, 240, 311

"Apparent good order" in, 1, 616

As a contract, 2, 228

As a muniment of title to goods, 2, 240

As a Receipt, 2, 224; 19, 1112

Conclusiveness as to quantity and
weight, 2, 225

Conclusiveness of statement as to con-
dition, 2, 226

Conclusiveness of value stated, 2, 225

"Contents unknown," 2, 227

Effect in hands of assignee for value,
2, 227

Evidence of actual delivery, 2, 224

Goods of specified value, 2, 225

"In good order and condition," 2, 226

Misdescription of goods, 2, 224

"More or less," 2, 225

Parol evidence to explain, 2, 224

Prima facie evidence, 2, 224

Showing that goods receipted for were
not delivered, 2, 224

Showing that shipper had no such
goods, 2, 224

Specific quantity and weight, 2, 225

As Collateral Security, 2, 243

Delivery of bill with intention to pass
title, 2, 243

Indorsement, 2, 243

Pledgee's right thereunder, 2, 243

**As evidence of title in consignee, 2,
242**

Assent of shipper, 2, 229

Barratry, 2, 239

Bills issued in sets, 2, 241

Breakage, 2, 236; 22, 757

Negligence, 22, 759

Burden of proof, 22, 762, 764

Collision, 2, 235

Concealment by shipper as to value, 2,
225

Conditions and Exceptions, 2, 232

Act of God, see ACT OF GOD.

Accidents to machinery, 2, 239

Barratry, 2, 239

Breakage, 2, 236; 22, 757

Collision, 2, 235

Constraint by legal process, 2, 233

Dangers of the roads, 2, 233

Decay, 2, 236

Deterioration, 2, 236

Escapes, 2, 237

Fermentation, 2, 237

Fire, 2, 234; 22, 757

Freezing, 2, 236

Goods carried on deck solely at ship-
per's risk, 2, 240

Heat, 2, 237

Inherent defect, 2, 236

Injuries to animals, 2, 237

Jettison, 2, 235

Leakage, 2, 236; 22, 757

Loading, 2, 238

Obliteration of marks, 2, 240

Perils of the sea, 2, 233, 234, 240; 22,
756

Perishable goods, 2, 236

Pirates and rovers, 2, 238

Rats, 2, 240

Restraint of princes, 2, 232

Riots, 2, 229

Risk of boats, 2, 239

Robbers and thieves, 2, 238; 22, 757

Rust, 2, 236; 22, 757

Stoppages of labor, 2, 239

Strikes, 2, 239

Suffocation, 2, 237

Sweat, 2, 235

The public enemy, 2, 232

Unloading, 2, 238

Vermin, 2, 240

Viciousness, 2, 237

Construction, 2, 228

Contemporaneous negotiations and
agreements, 2, 228

Contract gathered from whole instru-
ment, 2, 229

General rules, 2, 228

Where bill refers in terms to a charter-
party, 2, 229

Written and printed clauses at vari-
ance with each other, 2, 229

"Contents unknown," 2, 227

Days

Usages and customs, 27, 817

Decay, 2, 236

Deck Cargo, 2, 240; 11, 977

Estoppel, 11, 978

Implied agreement to ship under deck,
11, 977

Liability for articles jettisoned, 11, 977

Definition, 2, 223

Deterioration, 2, 236

Dock warrants, 5, 852

Escape, 2, 237

Estoppel, 7, 31, 101

Execution, 2, 229

By agent of carrier by land, 2, 230

By agent of consignee, 2, 230

By agent of shipper, 2, 230

By master of a vessel, 2, 231

Signatures, 2, 229

Express Companies, 7, 557

As a contract, 7, 557

As evidence of transaction, 7, 557

As receipt, 7, 557

As title to goods, 7, 558

By parol, 7, 557

Definition, 7, 557

Notice of conditions therein, 7, 557

Transfer, 7, 558

Fermentation, 2, 237

- Fire, 2, 234; 22, 757
- Freezing, 2, 236
- Good order and condition, 2, 226
- Goods carried on deck solely at shipper's risk, 2, 240
- Heat, 2, 237
- Inherent defect, 2, 236
- Interstate commerce, 11, 544
- Jettison, 2, 235
 - General average, 2, 235
- Leakage, 2, 236; 22, 757
 - Negligence, 22, 759
- Liability of railroad companies for fictitious bill issued by their agent, 1, 412
- Limiting carrier's liability, 2, 230
- Loading, 2, 238
- Misleading answer in, 2, 225
- Negligence**
 - Breakage and leakage, 22, 759
 - Whether exceptions excuse, 22, 757
- Negotiability of**, 2, 241; 18, 627, 629
 - Bill as collateral security, 2, 243
 - Bill as evidence of title in consignee, 2, 242
 - Bills issued in sets, 2, 241
 - Priority where advances are made upon bills issued in sets, 2, 241
 - Rights transferred by indorsement, 2, 241
 - Transfer of the bill, 2, 242
- Obliteration of marks, 2, 240
- Parol Evidence**, 2, 224, 228; 17, 434
 - Acknowledgment that goods are in good order, 17, 434
 - Partaking of the nature of a contract, 17, 434
 - Partaking of the nature of a receipt, 17, 434
- Perils of the sea, 2, 233, 234, 240; 22, 756
- Perishable goods, 2, 236
- Pirates and rovers, 2, 238
- Pledge**, 18, 627
 - Act of pledge, 18, 628
 - Bills of lading drawn to order of certain person, 18, 628
 - Bills of lading in blank, 18, 628
- By Consignor**, 18, 636
 - Acceptance of draft, 18, 636
 - As security for draft, 18, 636
 - In general, 18, 636
 - Remedy of pledgee for misappropriation of goods, 18, 638
 - Right of consignor on non-acceptance of draft, 18, 638
 - Title of pledgee when consignor is pledgor, 18, 637
 - When consignee has title, 18, 636
 - Whether title passes to consignee, 18, 636
- Delivery of bill as delivery of goods, 18, 627
- Duplicate bill of lading, 18, 630-632
- Indorsement, 18, 628
- In general, 18, 627
- Protection to bona fide pledgee, 18, 628
- Quasi negotiable character of bill of lading, 18, 627
- Title and Rights of Pledgee**, 18, 629, 637
 - Against Carrier**, 18, 631
 - Amount of recovery, 18, 632
 - Bill of lading first presented, 18, 632
 - Carrier's liability for damages, 18, 631
 - Carrier's responsibility for statement in bill of lading, 18, 632
 - Duplicate bills, 18, 632
 - Estoppel from denying statement in bill, 18, 632, 633
 - Goods which never came into carrier's possession, 18, 633
 - In general, 18, 631
 - Notice to carrier, 18, 632
 - When goods have been delivered to carrier by consignor, 18, 631
 - Where carrier has delivered goods to another, 18, 631
 - Against pledgor**, 18, 630
 - Against third persons**, 18, 631
 - Antecedent debt**, 18, 630
 - Aside from statutory enactment**, 18, 629
 - Carrier's charges for freight**, 18, 630
 - Duplicate bill pledged to different persons**, 18, 630
 - Estoppel**, 18, 629
 - In general**, 18, 629
- Misappropriated Bills of Lading**, 18, 634
 - Agent pledging without authority**, 18, 635
 - Indorsement procured by fraudulent representations**, 18, 635
 - Notice upon face of bill**, 18, 635
 - Pledgee with notice of prior equities**, 18, 635
 - Protection afforded innocent holder**, 18, 634
 - Receiving bills from one who has no authority to pledge**, 18, 635
 - Stolen bills**, 18, 635
 - With what pledgee is charged with notice**, 18, 635
 - Negotiable by statute**, 18, 629
 - Rights of stoppage in transitu**, 18, 631
 - Title of pledgee when consignor is pledgor**, 18, 637
 - To fictitious bill of lading**, 18, 634
 - To forged bill of lading**, 18, 634
 - What pledgee's lien covers**, 18, 630
 - When pledgee holder for value**, 18, 630
 - Where agent of carrier issues bill for goods never received**, 18, 634
 - What amounts to transfer**, 18, 628
- Presumption as to shipper's assent**, 2, 229
- Proof of**, 22, 757
- Rats**, 2, 240
- Restraint by legal process**, 2, 232
- Rights of Bona Fide Purchasers**, 21, 573
 - Fraudulent vendee**, 21, 574
 - General rule**, 21, 573
 - Possession of bill of lading**, 21, 573

BILL OF LADING—Cont'd**Rights of Bona Fide Purchasers—Cont'd**

Right of real owner to rescind contract, 21, 574

Stolen bill of lading, 21, 573

Riots, 2, 239

Risk of boats, 2, 239

Robbers and thieves, 2, 238; 22, 757

Rust, 2, 236; 22, 757

Sales

Delivery by transfer of bill of lading, 21, 553

Shipper's obligation to inform carrier of value of goods, 2, 225

Signatures, 2, 229

Stoppage in Transitu, 2, 244; 23, 927

Advances, 23, 929

Antecedent indebtedness, 23, 929

Assignment of bill of lading, 23, 927

Buyer indorsing bill of lading to bona fide purchase, 2, 859; 23, 927

Consideration, 23, 929

Indorsement of bill of lading by way of pledge to secure advancements, 23, 929

Transfer of duplicate bill of lading, 23, 928

Transfer of unindorsed bill of lading, 23, 927

Strikes, 2, 239

Suffocation, 2, 237

Sweat, 2, 235

The public enemy, 2, 232

Thieves, 2, 238; 22, 757

Title of consignee obtained by transfer, 2, 242

Title of the holder of the bill, 2, 244

Transfer of, 2, 241, 242; 18, 627; 21, 553, 573

Effect of recitals in assignee's hands, 2, 227

Unavoidable dangers to navigation, 22, 756

Unloading, 2, 238

Vermin, 2, 240

When title to property vests in consignee, 3, 336

Whether essential to an assignment of goods, 2, 810

BILL OF PARTICULARS, 2, 244

Admissibility in evidence, 2, 252

Affidavit of necessity of particulars, 2, 248

Amendment, 2, 252

After reference to arbitrators, 1, 553

Amount of each item, 2, 249

As part of pleading, 2, 252

As stay of proceedings, 2, 248

Contents

Claims not made in pleadings, 2, 250

Necessity of stating credits, 2, 250

Court's discretionary power to order, 2, 245

Date of each item, 2, 249

Definition, 2, 244

Demanding more specific, 2, 252

Divorce, adultery, 1, 216; 5, 783

Divorce cases, 5, 765

Does not disclose evidence relied on, 2, 251

Embezzlement, 6, 498r

Form and contents, 2, 248

Forwarding merchants, 8, 584

General character of each item, 2, 250

In adultery, 1, 216; 5, 783

In an action for tort, 2, 247

In criminal cases, 2, 246

In criminal conspiracy, 4, 624

Intoxicating liquors, 11, 770

Justice of the Peace, 12, 445-449

Defendant's set-off, 12, 452

Libel and slander, 2, 248; 13, 397

Mechanics' liens, 15, 163

Must be specific, 2, 248

Nuisances, 16, 963

Proceedings on failure to furnish, 2, 253

Record, 20, 488

Replevin, 20, 1095

Set-off, 2, 247; 22, 336

Compliance with order, 22, 337

Effect, 22, 338

Examples, 22, 336-338

In general, 22, 336-338

Plaintiff's right to call for particulars, 22, 336

Practice in England, 22, 336

Practice in the United States, 22, 336

Time of demand, 22, 337

Variance, 22, 338

Time of Moving for, 2, 248

After issue joined, 2, 248

After reference to arbitrators, 2, 248

At trial, 2, 248

Before appearance entered, 2, 248

Before trial, 2, 248

Under What Circumstances Required, 2, 245

Action for slander or libel, 2, 248; 13, 397

Complaint or declaration too general, 2, 246

Where defendant's knowledge of claim was as good as plaintiff's, 2, 247

Where defense is indefinite, 2, 247

Use and effect, 2, 250

Variance between bill and proof, 2, 251

Verification, 2, 250

Where copy of note is filed on declaration, 2, 250

BILL OF PEACE, 2, 253; 6, 766

See **BILL IN EQUITY**; **BILL QUIA TIMET**;

BILL TO REMOVE CLOUD FROM TITLE.

Claimant must be in possession, 2, 256

Costs, 2, 257

Court interfering between two parties, 10, 826

Definition, 2, 253

Distinguished from bill quia timet, 2, 253

Distinguished from bill to remove clouds, 2, 253

Division into classes, 2, 254

Jurisdiction in United States courts, 2, 257

Multiplicity of parties, 10, 826

- Must be filed on behalf of complainant and other persons whose rights are involved, 2, 255
- Nature, 2, 253; 10, 826
- Necessity greatly diminished, 10, 826
- Necessity of actual trial in decision at law, 2, 256
- Number of trials necessary to establish a right, 2, 256
- Plaintiff having satisfactorily established his claim, 10, 826
- Restraining suitor from reiterating unsuccessful claim, 2, 256
- Right of different persons must be common to all, 2, 255
- To settle boundary lines, 2, 257
- Trespasses, 2, 257
- Trials pending before decision, 2, 256
- Vexatious recurrence of litigation by a numerous class, 2, 254
- When allowed, 2, 253; 6, 766; 10, 825, 826
- Where court of law can consolidate the actions, 2, 255
- Where plaintiff has an adequate remedy at law, 2, 257
- BILL OF QUANTITIES**, see **WORKING CONTRACTS**.
- BILL OF REVIEW**, 2, 262; 6, 771
- Brought after final decree, 2, 264
- Decree
- Recitals in, 2, 265
 - Definition, 2, 262
- Demurrer, 2, 269; 5, 588; 6, 790
- Errors must be matters of law, 6, 772
- Form and Contents**, 2, 268
- Statement of circumstances of fraud, 2, 268
 - Statement of error in law, 2, 268
 - Statement of the original bill in the cause, 2, 268
- For whom it will lie, 6, 772
- Fraud**
- In obtaining decree, 2, 266
 - Instances where allowed, 2, 265
 - Instances where not allowed, 2, 265
 - Matters of practice, 2, 268
 - Newly discovered evidence, 2, 267, 268; 6, 772
- Original bill in the nature of, 2, 263; 6, 722
- Parties**, 2, 263
- Aggrieved by the decree, 2, 263
 - Interested, 2, 264
 - To original suit, 2, 263
- Pleas, 6, 796
- Prayer, 2, 268; 6, 772
- Privies, 2, 263
- Statements, 6, 771
- Supplemental Bill in the Nature of a Bill of Review**, 2, 263
- Leave of court, 2, 267
 - New matter discovered, 2, 267
 - Statement that the decree has not been enrolled, 2, 268
 - When brought, 2, 267
- Surrogates' courts, 24, 990
- Time for Bringing**, 2, 267
- General rule, 2, 268
 - Newly discovered evidence, 2, 267
- Under What Circumstances Allowed**
- New evidence must be relevant and material, 2, 266
 - New matter discovered since decree, 2, 265
 - Where decree has been obtained by fraud, 2, 266
- Under What Circumstances Brought**, 2, 264
- Error in law apparent on face of record, 2, 264
 - When a matter of right, 2, 266
 - When it lies, 6, 771
- BILL OF REVIVOR**, 6, 779
- See **ABATEMENT**; **SCIRE FACIAS**.
- Abatement**, 1, 14; 2, 270
- Death of a female plaintiff, 2, 270
 - Death of a party, 2, 270
 - Death of husband of female plaintiff, 2, 270
 - Death of one of the original parties, 2, 270
 - Marriage of a female plaintiff, 2, 271
 - Suspension and not a determination of the suit, 2, 270
 - Where decedent's interests are transmitted to a representative, 2, 271
 - Where decedent's interest survives, 2, 270
- Allegation**, 6, 780
- Amendment**
- As substitute for bill of revivor, 2, 275
- And supplement, 2, 274; 6, 780
- Answer, 2, 274
- Bill in the Nature of a Bill of Revivor**, 2, 271
- Assignee in bankruptcy or insolvency, 2, 272
 - Brought only by those claiming privity, 2, 273
 - For the benefit of legatee or devisee, 2, 272
 - Founded upon privity of estate or title, 2, 272; 6, 773
 - Statements that it should contain, 2, 273
 - When necessary, 2, 271
 - Where title may be subject to litigation, 2, 271
- Compound bill, 6, 780
- Continuance of old suit, 2, 269
- Costs, 2, 271
- Defense**, 2, 273
- Answer, 2, 274
 - Demurrer, 2, 273; 5, 558; 6, 789
 - Plea, 2, 274
 - Statute of limitations, 2, 274
- Definition, 2, 269; 6, 779
- Demurrer, 2, 273; 5, 558; 6, 789
- Effect, 2, 274
- Executors and administrators, 7, 418
- Form and Contents**, 2, 273
- New matter, 2, 273
 - Plaintiff's title to revive, 2, 273
 - Statements, 2, 273

BILL OF REVIVOR—Cont'd

- In what cases a bill is necessary, 2, 270
- Modern substitutes, 2, 275
- Parties to**, 2, 271, 272; 6, 780
 - Privies, 2, 272
 - Representative of deceased person, 2, 272
 - Surviving plaintiffs who will not join in reviving, 2, 273
 - Where there are several plaintiffs or defendants, 2, 273
- Patent law, 18, 109
- Plea, 2, 274; 6, 796
- Questions before the court, 2, 273
- Scire facias as substitute, 2, 275
- Simple, 2, 271
- Statute of limitations, 2, 274
- Substitution of decedent's representative, 2, 271
- When defendant can revive, 2, 273
- When it lies, 6, 779
- When suit in equity abates, 2, 270

BILL OF SALE, 2, 275; 8, 862

- American enactments, 8, 873
- Apparent Possession**, 8, 866
 - Agricultural implements, 8, 867
 - Bailee's possession, 8, 867
 - Furnished house in possession of tenant, 8, 867
- Furniture**, 8, 867
 - Separate property of wife, 8, 867
 - Possession more than formal, 8, 867
 - Provisions concerning, 8, 866
 - Reputed ownership, 8, 868
 - What chattels deemed in apparent possession, 8, 866
- Attestation**, 8, 868
 - Effect of want of, 8, 869
 - Grantee as attesting witness, 8, 869
 - Provisions concerning, 8, 868
 - Rulings concerning, 8, 869
 - Solicitor, acting, as competent attesting witness, 8, 869
 - What the attestation must state, 8, 869

Consideration, 2, 276; 8, 872, 877

Definition, 2, 275; 8, 863

Description of property, 2, 276

Description of Residence and Occupation, 8, 871

- Clerical error in date, 8, 871
- Description as "gentleman," 8, 871
- Description in affidavit, 8, 872
- Error in Christian name, 8, 872
- Error in spelling name, 8, 871, 872
- Fatal misdescription, 8, 871
- Immaterial errors, 8, 871
- Indefiniteness, 8, 871
- Non-description, 8, 871
- Object of provisions, 8, 871
- Residence of witness, 8, 872

Documents included, 8, 863

Documents Not Included, 8, 864

- Agreement to give bill of sale, 8, 865
- Assignments for the benefit of creditors, 8, 864

Bills of sale given by way of security, 8, 865

Bills of sale in foreign ports, 8, 864

Equitable assignment, 8, 865

Mortgage with attornment clause, 8, 865

Transfer of goods in the ordinary course of business, 8, 864

Warehouse keeper's certificates, 8, 864

Effect, 2, 276

Effect of Non-compliance, 8, 862

As between parties, 8, 862, 863

Whether voidable or void, 8, 863

With English act, 8, 862

English Act, 8, 862

Design and effect of, 8, 862

Requirements, 8, 862

Form and contents, 2, 276

Fraudulent Chattel Mortgages, 8, 875

Retention of possession under condition of bill of sale where transaction in good faith, 8, 875

Statutory provisions concerning record, 8, 875

Implied warranty, 2, 276

Inventories, 8, 863

Parol Evidence, 17, 425; 22, 736

Admissibility in general, 17, 425

Limitation, 17, 425

Reservation, 17, 425

Personal Chattels, 8, 865

After-acquired property, 8, 866

Chattel interests in real estate, 8, 866

Fixtures and growing crops, 8, 866

Shares of stock, 8, 866

What the term does not include, 8, 866

What the term includes, 8, 866

Prescription

Genuine, 8, 1308

Presumption of execution on day of date, 2, 276

Receipts, 8, 863

Recording Acts, 2, 276; 3, 191; 8, 869

Bill of sale subject to defeasance or condition, 8, 870

Change of possession, 8, 874, 875

Delivery of keys, 8, 875

Effect of registration, 8, 874

Marking and setting aside, 8, 875

Priority from date of registration, 8, 870

Proof of registration, 8, 870

Provisions concerning, 8, 869

Provisions in Canada, 8, 874

Provisions in Iowa, 8, 874

Provisions in Maryland, 8, 873

Recording in United States, 8, 862, 873

Renewal of registration, 8, 870

Subsequent bill of sale, 8, 869

Scope of the term, 2, 275; 8, 863

Statement of Consideration, 2, 276; 8, 872

Collateral agreement as to application of consideration, 8, 873

Colorable statement, 8, 873

Expenses incurred in preparing bill of sale, 8, 874

Immaterial inaccuracies, 8, 873

Retention of part of consideration to cover interest, 8, 873

Whether consideration must pass at time of execution of bill of sale, 8, 873

BILL QUIA TIMET, 2, 258

Appointment of receiver, see RECEIVER.

Relief by injunction, see INJUNCTION.

To perpetuate testimony, see BILL TO PERPETUATE TESTIMONY.

To remove clouds from title, see BILL TO REMOVE CLOUDS FROM TITLE.

Against agent, 2, 260

Against executors, 2, 260

Against life-tenants, 2, 260

Against sureties, 2, 260

Against trustee, 2, 260

Covenant for quiet enjoyment, 2, 259

Definition, 2, 258

History, 2, 258

Relief, 2, 262

By giving security, 2, 262

Payment of money into court, 2, 262

To establish wills, 2, 262

Warranty, 2, 259

When Maintainable, 2, 258; 6, 766

Covenant against incumbrances, 2, 259

Covenant to indemnify, 2, 258

Pendente lite, 2, 261

BILL TO PERPETUATE TESTIMONY,

2, 277; 6, 774

See BILL IN EQUITY; BILL QUIA TIMET;

BILL TO TAKE TESTIMONY DE BENE ESSE; DEPOSITIONS.

Defenses, 2, 284

Definition, 2, 277

Demurrer to prayer of relief, 2, 283

Depositions, 5, 621

Examination of witness, 2, 284

Expectancy, 2, 282

Hearing, 2, 284

Nature of the bill, 6, 774

Object, 2, 277

Personal demands, 2, 280

Plea, 6, 796

Prayer, 2, 283

Prayer for Relief

Demurrable, 2, 283

Statement, 6, 774

Statutory requirements, 2, 284

Termination of suit, 2, 284

The commission, 2, 279

The order, 2, 279

What Bill Must Show, 2, 280

All material effects necessary to confer jurisdiction, 2, 280

Defendant's interest, 2, 282

Ground of necessity, 2, 282

Liability of loss of material witness, 2, 281

Matter touching which plaintiff is desirous of giving evidence, 2, 281

Plaintiff's interest, 2, 282

Plaintiff's interest on mere expectancy, 2, 282

That suit at law cannot be brought, 2, 280

When It Lies, 2, 278; 6, 774

Against bona fide purchaser, 2, 280

For the defense, 2, 280

In support of the action, 2, 280

Where future litigation is likely, 2, 278

Where the title or claim is to real estate, 2, 279

Where immediate action would lie, 2, 283

Where no present suit can be brought at law, 2, 278

Where testimony to be taken, 2, 283

Who May Maintain, 2, 283

Defendant, 2, 283

Plaintiff, 2, 283

BILL TO REMOVE CLOUDS, 2, 298;

12, 681

See BILL IN EQUITY.

Answer, 2, 308

Sufficiency of, 2, 308

Assessments, 2, 311

Burden of proof, 2, 312

By whom maintainable, 2, 306

By whom not maintainable, 2, 307

Cancellation of deeds, 2, 302, 312

Color of title, 2, 306

Cross-bill, 2, 308

Defendants, 2, 307

Defendant's Title, 2, 306

What is sufficient, 2, 306

Definition, 2, 298

Ejectment, 2, 305

Evidence, 2, 311

Variance, 2, 312

What is admissible, 2, 312

Executors and administrators, 2, 308

Extent of danger, 2, 302

Jurisdiction, 2, 302

Parties to actions, 17, 654

Plaintiff's title, 2, 305

Possession, 2, 303

Equitable claimant, 2, 304

When, unnecessary, 2, 305

Procedure, 2, 308

Relief, 2, 311

Showing plaintiff's title, 2, 305

Showing that defendant is setting up a cloud, 2, 305

Speculative danger, 2, 302

Statutory abolition, 2, 308

Tax Titles

Action by Owner, 25, 731

Conditions of relief, 25, 735

Deed void for irregularity, 25, 734

Deed void upon its face, 25, 734

Examples, 25, 731-735

"He who asks equity must do equity," 25, 735

In general, 25, 731

Possession by agent, 25, 733

Requisites, 25, 731-735

What tax deed will constitute a cloud, 25, 733

BILL TO REMOVE CLOUDS—Cont'd**Tax Titles—Cont'd****Action by Owner—Cont'd**

Whether complainant must be in possession, 25, 73²

Whether court of equity will entertain, 25, 73¹

Wild and unoccupied lands, 25, 733

Costs, 2, 310

Evidence, 2, 311

Remedy, 2, 311

Tender of tax, 2, 310

When a cloud, 2, 309

Tender of taxes paid, 2, 310

Title, 2, 303

To prevent cloud being cast upon title, 2, 302

Validity of title, 2, 303

Void tax deed or certificate, 2, 309

When Maintainable, 2, 298

Attachment, 2, 301

Claims, 2, 301

Condition unfilled, 2, 299

Contracts for sale, 2, 299

Danger, 2, 303

Deed voidable on its face, 2, 303

Devise, 2, 300

Forgery, 2, 298

Fraud, 2, 298

Judgment, 2, 299

Levy, 2, 300

Lien, 2, 300

Lunacy, 2, 300

Mortgages, 2, 300

Non-acceptance, 2, 298

Non-joinder of husband or wife, 2, 298

Patent, 2, 300

Possession, 2, 303

Sufficient possession, 2, 305

Undelivered deed, 2, 299

Unrecorded deed, 2, 299

Validity of title, 2, 303

When instrument is void on its face or has been adjudged void, 2, 301

Where extrinsic evidence is necessary to show defect, 2, 303

Where defendants have long claimed adversely, 2, 302

Where plaintiff has no title, 2, 306

Who may be intervened, 2, 307

BILL TO TAKE TESTIMONY DE BENE ESSE, 2, 285

See BILL IN EQUITY; BILL TO PERPETUATE TESTIMONY; DEPOSITIONS.

United States Commissioners

Power to take *de bene esse*, see UNITED STATES COMMISSIONERS.

Affidavit, 2, 287, 291

Before whom made, 2, 292

By whom it may be made, 2, 292

Facts to be proved by witness, 2, 292

Non-residence of witness, 2, 292

One witness, 2, 292

Statement that party cannot safely proceed to trial, 2, 293

Applicability of Bill Generally

Rules regulating bills in perpetuum, 2, 286

At what stage of the cause examination may be had, 2, 287

At what stage of the proceedings granted, 2, 290

Before answer, 2, 287

Before appearance, 2, 288

Before issue is joined, 2, 287

By what courts issued, 2, 286

Commission executed after witness has left state of jurisdiction, 2, 290

Costs, 2, 297

Defenses, 2, 293

Discrediting good faith of application, 2, 293

Want of due notice, 2, 293

Definition, 2, 285

Distinguished from bill to take testimony, 2, 285

Examination, 2, 293

By summary proceedings under statute, 2, 293

Under order of the court, 2, 293

How testimony is proven, 2, 288

In Criminal Cases

Where witness resides out of the state, 2, 291

Interrogatories to foreign witness, 2, 290

Judge's notes, 2, 288

Manner of examination, 2, 293

Modes of examination, 2, 293

Nature, 2, 285

Notice, 2, 294

Defective, 2, 296

Indefiniteness, 2, 296

Must be reasonable, 2, 295

Names of witness whose deposition should be taken, 2, 295

Of parties interested, 2, 294

Personal service, 2, 294

Service, 2, 294

Service by leaving copy at place of abode, 2, 295

Service on attorney, 2, 295

Sufficiency, 2, 296

To opposite party, 2, 293

Waiver of, 2, 296

Want of, as defense, 2, 293

What is reasonable, 2, 295

What notice should contain, 2, 295

Publication, 2, 296

Death of witness, 2, 297

Indiscretion of court, 2, 296

Rules, 2, 297

Where witness is capable of attending at court, 2, 296

Where witness is yet living, 2, 296

Rebutting affirmations in bill, 2, 293

Statute must be strictly pursued, 2, 294

Statute strictly construed, 2, 294

What the bill must show, 2, 291

When It Lies, 2, 286

Aged witness, 2, 288

In criminal cases, 2, 287

Infirm witness, 2, 288

- Pending action, 2, 286
 Pregnant woman, 2, 289
 Where personal attendance of witness cannot be procured, 2, 287
 Where there is only one witness, 2, 289
 Witness about to leave jurisdiction, 2, 289
 Witness in ill-health, 2, 288
 Witness residing abroad, 2, 290, 291
 Where witness is party to the action, 2, 286
 While demurrer is pending, 2, 287
 Who may bring, 2, 291
- BILLS AND NOTES, 2, 313**
See ALTERATION OF INSTRUMENTS; CHECKS; COUPONS; DAYS OF GRACE; ESCROW; FORGERY.
See generally, BANKS AND BANKING; SURETYSHIP.
See ILLEGAL CONTRACTS; LETTER OF CREDIT; NOTARY PUBLIC; ORDERS; RE-EXCHANGE; WARRANT OF ATTORNEY.
Days of grace, *see* DAYS OF GRACE.
For negotiable bonds, *see* BONDS.
 Abbreviations in, 1, 18
- Absconding Debtors**
 Necessity of demand, 2, 405
- Acceptance, 2, 373**
 Allowance of twenty-four hours before acceptance, 5, 528²⁷
 As admitting drawer's right to draw bill, 2, 378
 As admitting genuineness of drawer's signature, 2, 378
 As admitting genuineness of indorsement, 2, 379
 As admitting whole bill to be genuine, 2, 379
 By what law governed, 3, 580
 Conditions, 2, 378; 5, 528¹⁰⁶
 Date, 2, 375
 Definition, 2, 315
 Detention by drawee, 2, 377
 Estoppel, 2, 378; 7, 30
 For honor, 9, 758
 Form and words necessary, 2, 375
Implied, 2, 375
 From agreement that it shall be accepted, 2, 376
 From authority to draw it, 2, 376
- Liability of Acceptor, 2, 378**
 General rule, 2, 378
 To drawer, 2, 378, 379
Notice of dishonor, *see infra*, NOTICE OF DISHONOR.
- Presentment, 2, 315; 373; 5, 528²³, 528⁵⁷, 528⁸⁰, 528¹⁰¹**
 How made, 2, 373
 Lost bills and notes, 13, 1147
 Person to whom, must be made, 2, 373
 Place of, 2, 374
 Proper person to make, 2, 373
 Time within which, must be made, 2, 373; 5, 528²
- Waiver of, 2, 373
 What is sufficient presentment, 5, 528⁵⁷
 Where bill is payable on a day named, 2, 373
 Where bill is payable on demand, 2, 373
 Where drawee cannot legally accept, 2, 373
 Where drawee has changed his residence since drawing the bill, 2, 374
- Qualified, 2, 377**
 Bona fide holder without knowledge of the qualification, 2, 378
 Burden of proof, 2, 378
 For part of the bill, 2, 378
 Indorsement of conditions, 2, 378
 Notification, 2, 377
 Revocation, 2, 379
 Statutes requiring written, 2, 376
- Supra Protest, 2, 315**
 Demand, 5, 528²⁶
 Takes effect upon delivery, 2, 342
 Verbal, 2, 376
- When and by Whom Made, 2, 374**
 By one partner of the firm, 2, 375
 Drawee, 2, 374
 Drawee's agent, 2, 374
 General rule, 2, 374
 Reasonable time after presentment, 2, 375
- Acceptor**
 Definition of, 2, 315
 Supra protest, 2, 315; 5, 528²⁶
- Accommodation Paper, 2, 316**
 Bona fide holder, 2, 391
 Consideration of, 2, 364
 Contribution, 4, 6; 24, 812
 Corporations, 2, 351
 Death as revocation, 2, 365
 Indorsement after maturity, 2, 381
 Indorser requiring holder to exhaust collateral security, 2, 388
 Indorser's right to notice of dishonor, 2, 421
 Knowledge of the accommodation on part of a bona fide holder, 2, 365
 Liability of drawer where no demand is made, 2, 399
 Liability of the parties upon, 2, 364
 Necessity of notice of dishonor, 2, 407
 Parol evidence, 4, 7
 Pledge, 2, 365
 Revocation of party giving it, 2, 365
 Right of holder for value, 2, 365
 Suit by holder for value, 2, 365
 What amount bona fide holder may recover, 2, 391
 Where party is obliged to take up bill or note, 2, 365
- Action, 5, 534**
 Commencement of, 5, 535
 Declaration, 5, 535
 Defeated by negligence, 5, 535
 Of debt upon, 5, 167
 Sufficiency of evidence, 5, 536
 Time when brought, 5, 534

BILLS AND NOTES—Cont'd**Agency**

Agent's indorsement as trustee, etc.,
1, 389

Agent's power to sell, includes power
to indorse, 1, 362

Agent's signature, indorsement, etc.,
1, 362; 2, 333, 352

Agent's suit upon bill indorsed in
blank given him for collection, 1, 409

Execution by Agents and Officials, 1,
362; 2, 333, 352

Addition of the word "agent" where
principal is unrevealed, 2, 334

Addition of the words "administra-
tor," "executor," or "guardian,"
to signature, 2, 334

Agent's liability to principal upon
indorsement, 2, 355

Agent's personal liability, 2, 333, 354

Agent's Right

General parol authority of agent,
2, 352

Appointment of, 2, 352

Authority inferred from the nature of
agency, 2, 353

Bank cashiers, 2, 353

Delegation of authority, 2, 352

Liability of agent, 2, 333, 354

Liability of third party to principal
where agent is derelict, 2, 355

Manner of, 2, 333

Principal's name appearing on face
of instrument, 2, 333

Public officer's liability, 2, 334

Ratification of agent's act, 2, 354

Where agent draws on principal, 2,
354

Where delegation of power is by
several persons, 2, 352

Where express written authority has
been given, 2, 353

Where delegation of power is to several
persons, 2, 352

Alien enemy, 2, 354

Allonge, 1, 491

Alteration, 2, 340

See ALTERATION OF INSTRUMENTS.

Estoppel, 7, 30

Of date, 5, 78

Ambiguity, 1, 542

Effect of, 1, 529

Amount to Be Paid, 2, 329

Certainty required in stating, 2, 329

Clerical error, 2, 329

Difference between the written amount
and the figures, 2, 329

Sum subject to deductions, 2, 329

Where amount can be ascertained, 2,
329

Assumpsit

Between holder and other parties to a
bill or note, 3, 588

Attestation of witnesses, 2, 319

Bank cashier's power to indorse, 2, 119

Bank's authority to pay, 2, 102

Bearer synonymous with holder, 9, 418

Blanks, see *infra*, DELIVERED IN
BLANK; FILLING BLANKS.

Bona Fide Holder, 2, 316

See *infra*, PARTNERSHIP.

Agreement to forbear, 2, 392

As against accommodation party, 2,
391

Bad Faith, 2, 393

On part of indorser, 2, 390

Bank discounting for the indorser, 2,
391

Burden of proof, 2, 395

Circumstances which would put a pru-
dent man upon inquiry, 2, 393

Consideration, 2, 391

Failure of consideration, 2, 395

Good faith, 2, 390

Necessity of indorsement, 2, 390

Necessity that bill should be obtained
for value, 2, 390

Negligence, 2, 393

Notice of defenses, 2, 394

Obtaining before maturity, 2, 390

One taking in payment of existing
debt, 2, 392

Pendency of a suit at law as a notice
of defense, 2, 395

Person holding paper as collateral se-
curity, 2, 391

Person holding paper by way of pledge,
2, 391

Person receiving bills and notes by
legal process, 2, 391

Person receiving bills as assignee, 2,
391

Person receiving bills as receiver, 2, 391

Presumption in favor of, 2, 395

Purchase from acceptor or maker, 2,
391

Question of bad faith for the jury, 2,
393

Surrender of collateral by indorser, 2,
392

Transfer by, for value, to one who has
notice of defects, 2, 390

What amount he may recover, 2, 391

What constitutes, 2, 390

Where indorser accepts paper as ex-
tinguisher of claims against his

debtor, 2, 393

Bottomry bond as collateral security, 2,
484

Brokers of, 2, 598

Guaranty as to genuineness of signa-
ture, 2, 598

By What Law Governed, 2, 329-332

Acceptance, 3, 592

Acceptor and indorser residing in dif-
ferent states, 3, 592

Action by indorsee, 3, 594

Assignment, 3, 588

Bills drawn in one state, and accepted,
indorsed, or discounted in another,
3, 582, 591

Bills made in one state but payable in
another, 3, 592

Damages, 3, 595

- Days of grace, 2, 331; 3, 587, 593
 Defenses, 3, 590, 596
 Demand, 3, 587
 Discount, 3, 590
 Effect of discharge in bankruptcy of the acceptor of a bill, 3, 626
 Effect of foreign discharge on note indorsed to bona fide holder before maturity, 3, 627
Indorsement, 2, 331, 384; 3, 587
 Place where indorsement was delivered, 3, 587
 Place where indorsement was made, 3, 587
 Interest, 2, 331, 332; 3, 586, 595
Lex Fori
 Admissibility of evidence, 2, 332
 As governing bills and notes, 2, 332
 Competency of witnesses, 2, 332
 Person to bring suit, 2, 332
 Remedy, 2, 332
 Statute of limitations, 2, 332
Lex Loci Contractus, 2, 329
 Acceptor's liability, 2, 330
 Date of note as determining, 2, 330
 Effect, 2, 330
 Formalities attending the execution, 2, 330
Indorsement, 2, 384; 3, 587
 Indorser's liability, 2, 330; 3, 589, 595
 Liability of drawer of a bill, 2, 329
 Liability of maker of a note, 2, 329
 Validity, 2, 330
 What is place of contract, 2, 330
Lex Loci Rei Sitæ, 2, 331
 Interest computed by, 2, 331
 Note to secure a mortgage, 2, 331
Lex Loci Solutionis, 2, 331
 Days of grace, 2, 331; 3, 587, 595
 Indorsement, 2, 331; 3, 587
 Interest, 2, 332
 Notice of dishonor, 2, 332
 Parol evidence, 2, 332
 Place where bill is payable, 2, 331
 Liability of drawer of a bill payable in another state, 3, 592
 Liability of indorser, 2, 330; 3, 589, 595
Liability of Parties, 2, 330; 3, 585
 Lex loci contractus, 3, 586
 Where note is payable without any specified place, 3, 586
 Negotiability, 3, 589, 594
 Negotiable note made payable to bearer transferable in a foreign country, 3, 589
 Notes executed in one state and made payable or indorsed in another, 3, 588
 Notice of dishonor, 3, 587, 593
 Operation of a bill of exchange, 3, 591
 Place where note first becomes binding, 3, 585
 Protest, 3, 587, 593
 Right of indorsee to sue in his own name, 3, 589
 Rights of action against maker or acceptor, 3, 588
 Rights of bona fide purchaser, 3, 585
 Rights of original parties, 3, 585
 Stamps, 3, 590
 Suits by and against administrators and their assignees, 3, 589
 Transfer, 3, 593
 Usury, 3, 586
 Where cause of action arises, 3, 594
Certificates of Deposit
 As notes, 2, 322
 Conditional promise, 2, 322
 Condition in delivery, 2, 343
Conflict of Laws, see *infra*, BY WHAT LAW GOVERNED.
Consideration, 2, 339
 Gambling consideration, see GAMBLING CONTRACTS.
 Absence of, 2, 369
 Agreement to forbear, 2, 392
 Antecedent debt, 5, 163
 Balance due but unliquidated, 2, 361
 Burden of proof, 2, 372
 Compromise of a claim, 2, 363
 Contracts or agreements, 2, 363
 Contract to deliver a deed, 2, 363
 Credit upon an unsettled account, 2, 360
 Debt due from one person as consideration for note of another, 2, 361
 Exchange of notes, 2, 363
 Exchange of notes of different amounts, 2, 363
 Executor or administrator giving his own note for debt due by decedent, 2, 362
 Existing debt, 2, 360
 Failure of, 2, 369, 370, 395
 Forbearance to sue another, 2, 362
 For extension of time of payment, 2, 387
 Generally, 2, 359
 Given by principal to indemnify surety, 2, 361
Illegal, 2, 365
 See generally, **ILLEGAL CONTRACTS**.
 Gambling, see **GAMBLING CONTRACTS**.
 As defense against bona fide holder, 2, 370
 Composition of a felony, 2, 366
 Composition of private misdemeanor, 2, 367
 Contracts with alien enemies, 2, 365
 Divorce, 2, 367
 In contravention of a statute, 2, 368
 Instrument in violation of the liquor laws, 2, 369
 Marriage, 2, 367
 Part legal and part illegal, 2, 369
 Public office, 2, 366
 Public officers neglecting duty, 2, 366; 3, 887
 Purpose opposed to sound morals, 2, 368
 Renewal notes, 2, 369
 Repeal of a statute which invalidated a note, 2, 369
 Restraint of trade, 2, 367
 Smuggling, 2, 368

BILLS AND NOTES—Cont'd**Consideration—Cont'd****Illegal—Cont'd**

Void as between the parties, 2, 365
 Inadequacy of, 2, 359, 391
 In aid of subscriptions to public charities, 2, 360

Indorsement, 2, 382

Loan made at time of issuing note, 2, 360

Moral, 2, 364

Natural love and affection, 2, 360

Necessity of valid consideration, 2, 359

Note for purchase-price of land, 2, 362

Note given by widow for debt of her husband, 2, 362

Note of the committee of a lunatic for a debt of the estate, 2, 362

Of Accommodation Paper, 2, 364

Where an accommodation party is pledged to take up note, 2, 364

Of forbearance of suit, 2, 361

Old debt, 2, 392

Other than pecuniary, 2, 362

Partial failure, 2, 370

Partly legal and partly illegal, 2, 369; 3, 887

Pecuniary, 2, 360

Presumption in favor of, 2, 372, 379

Release from damages, 2, 364

Statement in memoranda, 2, 341

Surrender of collateral, 2, 392

Surrender of one negotiable instrument in consideration of receipt of another, 2, 361

Total failure, 2, 370

Transfer of personal property, 2, 363

Want of

As between original parties, 2, 339

As defense against a bona fide holder, 2, 369, 370

Defense between original parties, 2, 369

Worthless patent rights, 2, 360

Consolidation of actions on, 1, 184a

Construction

With reference to contemporaneous agreement, 2, 340

Corporations, 2, 351; 16, 482; 17, 129

Accommodation paper by, 2, 351

Acquiescence, 4, 228

Authority of Officers and Agents, 17, 144

Cashier of bank, see BANKS AND BANKING.

Authority expressly conferred, 17, 145

Bona fide holder, 17, 147, 148

Business manager of corporation, 17, 145

Course of business, 17, 148

Estoppel, 17, 147

Examples, 17, 145, 146

Execution, 17, 146

General agent of corporation, 17, 144

Implied authority, 17, 145

In general, 17, 144

Officer denying his own authority, 17, 147

Parol evidence, 17, 147

Personal liability of officers, 17, 146

President, 17, 129

Presumption, 17, 129, 145

As to corporate power, 17, 148

Signature, 17, 146

To transfer negotiable instruments, 17, 147

Treasurer, 17, 133

Unauthorized by charter, 17, 148

Validity of negotiable instruments, 17, 147

Bona fide holders of securities of, 4, 227

Distinction between the liability of a corporation and of an individual, 4, 226

Execution by Corporation, 2, 335

Corporate seal, 2, 335

"On behalf of" or "on account of" corporation, 2, 335

Paper marked with corporate name, 2, 335

Laches, 4, 228

Liability of, for negotiable instrument, 4, 226

Manufacturing companies, 4, 224; 14, 276

Power of

To draw and accept drafts and bills of exchange, 4, 225

To indorse negotiable instruments, 4, 225

To issue negotiable instruments co-extensive with corporation's power to contract debts, 4, 223

To issue negotiable paper, 4, 223

Ratification, 4, 228

Right to incur debts as test of corporate power, 2, 351

Right to receive bills and notes for debts due, 2, 351

Stockholder's injunction against the unauthorized issue of negotiable instruments or use of corporate funds, 4, 229

Unauthorized transfer of negotiable securities, 4, 229

When party dealing in corporation securities is chargeable with notice as to corporation's power under its charter to issue such securities, 4, 227

Where security is regular on its face but issued for an illegal purpose, 4, 227

Counterclaim, 22, 409

Date, 2, 320; 5, 77

Alteration of, 2, 321; 5, 78

Filling, when left blank, 2, 320

In blank, 2, 339

Indorsements, 2, 321

Necessity of, 5, 77

To acceptance, 2, 375

To negotiability, 2, 320

Parol evidence, 2, 320, 321

- Place of date, place of payment, 2, 321
 Post- or ante-dating notes, 2, 321
 Presumption arising from, 5, 78
 Presumption as to date of indorsement, 2, 381
 Prima facie evidence of delivery, 2, 320
 To show date of indorsement, 2, 382
 When payable so many days after, 2, 320
- Death of one of makers of a joint promissory note, 5, 139**
Definition of bill of exchange, 2, 314
Definition of promissory note, 2, 314
Delivered in Blank, 1, 516
 Adding additional stipulations, 1, 519
 Blank filled wrongfully, 1, 515
 Filling of blank so as to change character of instrument, 1, 518
 Implied authority of holder to fill in with his own name, 1, 517
 Liability to payee, 1, 517
 Liability to payee wrongfully filling blank, 1, 518
- Delivery, 2, 342**
 After indorsement, 2, 382
 Conditional, 2, 343
 Date as time of, 2, 342
 In escrow, 2, 343
 Necessity of intent to deliver, 2, 342
 Of sets of bills, 2, 343
 Presumed from possession, 2, 342
 Taking effect upon, 2, 320
 To agent, 2, 342
 To stranger, 2, 342
 Upon Sunday, 2, 342
 What constitutes sufficient, 2, 342
- Demand**
See PROTEST.
When made, see DAYS OF GRACE.
 Absconding debtor, 5, 528²⁸⁵
 Acceptance for honor, 2, 400
 Against acceptor, 2, 399
 Against maker, 2, 399
 Before maturity, 2, 401
- By and to Whom Made, 2, 400; 5, 528²⁹⁰**
 Agent, 5, 528¹⁰³, 528¹⁰⁵
 Assignee, 2, 400; 5, 528¹⁰⁵
 Bank, 5, 528⁹²
 Bank officer, 5, 528¹⁰⁶
 Clerk, 2, 400; 5, 528⁹¹
 Executor, 2, 400
 Feme covert, 5, 528⁹²
 Holder or agent, 2, 400; 5, 528⁹⁰
 Joint makers, 5, 528¹⁰⁴
 Notary, 5, 528⁹¹
 Note payable in lumber, 5, 528¹⁰³
 One authorized by parol, 5, 528⁹¹
 One in lawful possession, 5, 528⁹⁰
 Partners, 5, 528¹⁰⁴
 Presentment to one joint maker, 5, 528¹⁰⁴
 Widow of deceased maker, 5, 528¹⁰⁴
- Diligence, 5, 528⁷⁵, 528⁸⁷, 528⁸⁹**
 Question of law or fact, 5, 528⁸⁷
 Upon part of holder, 2, 404
 Effect of failure to make, 5, 528⁴⁶
 Evidence, 5, 536
- Excuse for not making, 2, 419; 5, 528²⁸⁶, 528⁸⁹
 Foreign and inland bills, 2, 399
 Holder's remedy for failure to make, 5, 528⁴²
 In case of demand notes, 5, 528⁸¹
 Incidents attending demand, 5, 528¹⁰⁶
 Indorsement after maturity, 2, 381
 Insistence upon immediate payment, 2, 404
 Liability of drawer upon accommodation paper, 2, 399
 Local custom, 2, 405
 Lost bills and notes, 13, 1147
 Mailing to acceptor or maker, 2, 404
Necessity of, see infra, WHEN NECESSARY.
 Non-negotiable paper, 2, 399
 On paper of absconding debtors, 2, 405
 Parol evidence, 5, 535
 Payment at any time on day of maturity, 2, 401
 Personal demand upon the maker or acceptor, 2, 403
 Placing in bank for payment at maturity, 2, 404
 Presumption of injury from failure to make, 2, 399
 Production of bill or note, 2, 404
 Proof required of, 2, 400
 Proof where averred, 2, 399
- Sufficiency, 5, 528⁵⁹**
 Of evidence, 5, 536
 Upon foreign bill, 2, 400
- Waiver, 2, 419; 5, 528²⁸⁵**
 Benefits whom, 5, 529
 Binds whom, 5, 528¹¹²
 By implication, 5, 528¹⁰⁷
 By whom waiver may be made, 5, 530
 Effect, 5, 529
 Guaranty of payment, 5, 528¹⁰⁹
 How proved, 5, 529
 Injunction, 5, 528¹⁰⁸
 Instances, 5, 528¹¹²
 Language calculated to induce holder not to make demand, 5, 528¹⁰⁷
 Of notice, 5, 528³⁵
 Oral or in writing, 5, 529
 Promise to pay after dishonor, 5, 528¹⁰⁸, 528¹¹²
 Questions of law or fact, 5, 530
 Request not to press note, 5, 528¹¹¹
 Stipulation to waive note, 5, 528¹¹²
 Taking security, 5, 528¹⁰⁹, 528¹¹⁰
 To express terms, 5, 528¹⁰⁷
 When made, 5, 528¹¹²
- What Demandable, 5, 528¹⁰⁵**
 Current funds, 5, 528¹⁰⁵, 528¹⁰⁶
 Gold or silver coin, 5, 528¹⁰⁵
- What excuses, 5, 528⁸⁹**
When Due
 Cause of error, 5, 528⁸⁶
 Reasonable time depending on distance, 5, 528⁸⁰
 What is a reasonable time, 5, 528⁵⁹
 Where all parties reside in the same place, 5, 528⁵⁹

BILLS AND NOTES—Cont'd**Demand—Cont'd****When Made**, 2, 401; 5, 528⁵⁹At close of banking hours, 2, 402; 5, 528⁷⁴Bill falling due on Sunday, 5, 528⁷⁴Business hours, 2, 402; 5, 528⁷²Custom, 5, 528⁷⁵Date a note falls due, 2, 400; 5, 528⁵⁹Day after maturity, 5, 528⁵⁹Day before maturity, 5, 528⁵⁹Degree of diligence required, 5, 528⁸⁷Demand after business hours, 5, 528⁷²Due diligence dependent upon circumstances, 5, 528⁷⁵, 528⁷⁹, 528⁸⁷Effect of delay in mail, 5, 528⁷⁷

Effect of delay in making, 2, 401

Effect of holidays, 5, 528⁶⁴English and American doctrine as to reasonableness, 5, 528⁵⁹Examples of time which have been held reasonable or otherwise, 5, 528⁶¹Holder for collection, 5, 528⁷⁶Hour, 5, 528⁷²Legal holiday, 5, 528⁷⁵

May be made at any time before suit, 2, 401

Note due on Sundays, 5, 528⁶⁵Notes payable after date, 5, 528⁶⁸Notes payable in installments, 5, 528⁶⁶Overdue note, 5, 528⁶⁰**Reasonable Time**, 5, 528⁷⁵, 528⁷⁹Question of law or fact, 5, 528⁵⁹Sight bill, 5, 528⁷⁹, 528⁸⁰Test of reasonable time, 5, 528⁶¹To charge drawer, 5, 528⁷⁷To charge indorser, 5, 528⁸⁷, 528⁸⁸What are business hours, 5, 528⁷³What constitutes due diligence, 5, 528⁷⁵, 538⁸⁷What delay will discharge indorsers, 5, 528⁹⁰What is reasonable time, 5, 528⁷⁵, 528⁷⁹When bill is due, 5, 528⁷⁴When no date is mentioned, 5, 528⁶⁴Where holder and maker reside in different towns, 5, 528⁶⁰Where indorser resides in one place and does business in another, 5, 528⁷⁶Where maker or acceptor has removed, 5, 528⁹⁰Where parties reside in different places, 5, 528⁷⁶Where parties reside in same place, 5, 528⁷⁶Within a reasonable time, 5, 528⁵⁹**When Necessary**, 2, 393; 5, 528⁸²Acceptance supra protest, 5, 528⁸⁶Accommodation acceptance, 5, 528⁸⁵, 528⁸⁶Accommodation indorser, 5, 528⁵⁸After general assignment of maker, 5, 528⁴⁸After protest for non-acceptance, 5, 528⁵⁸Bill drawn without funds, 5, 528⁴⁶Bill or note payable at bank, 5, 528⁴⁴Bill payable at given date, 5, 528⁵⁷By government officer, 5, 528⁵⁸By United States, 5, 528⁴²Draft given by agent, 5, 528⁵⁶Draft given by president of company on treasurer, 5, 528⁵⁶Drawee directed not to pay, 5, 528⁵³Drawee insolvent, 5, 528⁵³For due-bill, 5, 528⁵⁸In case of maker's or acceptor's death, 2, 401; 5, 528⁴¹Indorsement after maturity, 5, 528⁸⁷Inland bills, 5, 528⁵⁷Insolvency of maker, 5, 528⁴¹Maker, indorser or partner, 5, 528⁴⁰Note payable at particular time and place, 5, 528⁴⁷, 528¹⁰²Note payable in specific articles, 5, 528⁴⁵Note payable on demand, 2, 402; 5, 528⁴⁴, 528⁴⁶, 528⁵¹Partnerships having common member, 5, 528⁵⁵Personal demand where note is payable at bank, 5, 528⁵¹To charge acceptor, 5, 528⁵⁶To charge accommodation indorser, 5, 528⁴⁸To charge administrator, 5, 528⁴⁵To charge assignor, 5, 528⁴⁴, 528⁴⁷To charge drawer by statute, 5, 528⁵³To charge drawer of bill, 5, 528⁸²To charge guarantor, 5, 528⁴⁸, 528⁴⁷**To Charge Indorser**, 2, 386; 5, 528⁸⁷, 528⁸⁷By statute, 5, 528⁴⁷When he holds security, 5, 528⁴¹To charge joint indorser, 5, 528⁴³**To Charge Maker of Note**, 5, 528⁴⁵—528⁴⁷Note payable at particular place, 5, 528⁴⁵To charge maker or joint maker, 5, 528⁴⁶To charge surety, 5, 528⁴⁷To make note a set-off, 5, 528⁵⁸When admission would not injure drawer, 5, 528⁵⁴When government is payee, 5, 528⁴²When indorser has been paid, 5, 528⁴⁹When maker in foreign country, 5, 528⁴⁰, 528⁹⁰When maker is in another state, 5, 528⁴⁹When maker not liable to bona fide indorser, 5, 528⁴⁸When no funds at bank where payable, 5, 528⁴⁸When note non-negotiable, 5, 528⁴⁹When note payable at a particular place, 5, 528⁵⁰

- When parties are partners, 5, 528⁵⁵
 Where drawee has no funds of the drawer, 2, 420; 5, 528⁸³, 528⁵⁸
 Where drawee is insolvent, 5, 528³⁴
 Where indorser is secured, 5, 528¹¹¹
 Where note is payable in specific articles, 5, 528⁵¹
 Whether on public officer, 5, 528⁹²
 When no time of payment is mentioned, 5, 528⁴⁴
 When payable on demand, 5, 528⁴⁴
Where and How Made, 2, 402; 5, 528⁹²
 After default, 5, 528¹⁰³
 At a particular place, 2, 402; 5, 528⁴⁰
 At bank, 5, 528⁹²
 At bank, after business hours, 5, 528⁹⁷
 At bank agency, 5, 528⁹⁶
 At former place of business, 5, 528⁹⁵
 At no particular place, 5, 528⁸⁸
 At place of business, 2, 403; 5, 528⁹⁴
 At place of payment, 2, 402, 403; 5, 528⁹⁶
At Residence, 2, 403; 5, 528⁹⁶
 Of co-maker, 2, 401; 5, 528⁹⁴
 Of deceased maker, 5, 528⁹⁴
 Of maker, 2, 402; 5, 528⁹³
 Of third party, 5, 528⁹⁴
 By institution of suit, 5, 528⁹⁹
 By mail, 5, 528⁹⁸
 By notary, 5, 528⁹⁸
 Corporation warrants, 5, 528⁹⁶
 Definite demand, 5, 528⁹⁸
 Demand must be according to law, 5, 528¹⁰²
 Effect of usage, 5, 528¹⁰²
 Form of words, 5, 528¹⁰³
 In street, 5, 528⁹⁷
 Leaving note in bank, 5, 528⁹⁹
 Mode appointed by maker, 2, 404; 5, 528¹⁰²
 Necessity of personal demand, 5, 528⁹⁶
 Note payable at bank, 5, 528⁹²
 Note payable at particular place, 5, 528¹⁰²
 Personal demand at different place than where note is payable, 5, 528⁹⁷
 Presenting check to be certified, 5, 528¹⁰²
 Presenting one of a set, 5, 528¹⁰⁰
 Refusal without demand, 5, 528¹⁰⁰
 Rule as to showing note, 5, 528¹⁰¹
 Sending notice instead of presenting note, 5, 528¹⁰²
 When demand at bank insufficient, 5, 528⁹³
 When demand at bank sufficient, 5, 528⁹²
 Where bill or note is lost in bank, 5, 528¹⁰⁰
 Where made payable at a particular place, 2, 402; 5, 528⁹⁶
 Where maker or acceptor cannot be found at his office, 2, 401
 Where note is payable at bank, 5, 528⁹⁹
 Where note is payable in property, 5, 528⁹⁷
 Where place of payment is not specified, 5, 528⁹⁸, 528⁹⁴
 Where place of payment is uncertain, 2, 403
 Where several sign as makers, 2, 401; 5, 528⁹⁴
 Wherever holders may be, 5, 528⁹⁵
 Where bill is indorsed after maturity, 2, 399
 Where maker is abroad, 5, 528⁴⁰, 528⁹⁰
 Discharge of drawer's indorsers by delay in making demand, 2, 401
 Discount, 5, 678
Dishonor, see *infra*, NOTICE OF DISHONOR; PROTEST.
 Definition, 5, 690
Drawee
 Definition, 2, 315
Drawer
 Definition, 2, 315
 Drunkard's, 2, 346
Duress, 2, 395
 Note in hands of bona fide holder, 6, 96
 Effect of usage upon mode of making demand, 5, 528¹⁰²
 Equitable holder, 2, 383
 Essential requisites of, 2, 318
Estoppel, 7, 30
 Acceptance, 2, 378; 7, 30
 Acceptance for owner, 7, 30
 Alteration, 7, 30
 Capacity of drawer, 7, 30
 Capacity of payee, 7, 30
 Capacity of prior parties, 7, 31
 Genuineness of signature, 7, 30, 31
 Indorsement, 7, 31
 Negligence, 7, 31
 Of acceptor of bill of exchange, 7, 100
 Signature in blank, 7, 30
 Exchange brokers, 2, 598
Executors and Administrators, 2, 334
 See *infra*, INDORSEMENT.
 Entitled to bills and notes of his decedents, 2, 359
 Execution by, 2, 358
 Giving note for debt of decedent, 2, 362
 Extension of time by holder, 2, 386
False Pretenses, 7, 736
 At common law, 7, 736
 Counterfeit notes, 7, 736
 Illustrations, 7, 736-738
 Misrepresentation as to person executing note, 7, 737
 Note partly paid, 7, 737
 Passing worthless notes, 7, 736
Filling Blanks, 2, 339
 Blank indorsement, 2, 340
 Date, 2, 339
 Payee's name, 2, 339
 Place of payment, 2, 340
 Time of payment, 2, 339
 Within what time blanks may be filled, 2, 340

BILLS AND NOTES—Cont'd

- Foreign Attachment, 8, 308
 - Negotiable notes, 8, 308
 - Non-negotiable notes, 8, 309
 - Note assigned, 8, 309
 - Note not due, 8, 309
- Foreign bills of exchange, 2, 315; 3, 591
- Forgery**
 - Estoppel, 7, 30
 - Lapse of time before claiming, 7, 31
- Forms, 2, 316
- Frauds, statute of, 8, 710; 21, 8
- Fraudulently brought into existence without negligence on part of maker, 5, 330
- Garnishment, 8, 1172**
 - Attachment before maturity, 8, 1173
 - Burden of proof, 8, 1175
 - Citing assignee of note to interplead, 8, 1178
 - Conflict of law, 8, 1173
 - Conflict of opinion, 8, 1172
 - Court ordering instrument to be placed in custody, 8, 1177
 - Debt still the property of payee, 8, 1173
 - General principles, 8, 1173, 1178
 - Judgment of condemnation, 8, 1177
 - Necessity of actual notice of attachment, 8, 1178
 - Necessity of seizure of the notes themselves, 8, 1174
 - Negotiable instrument past due, 8, 1176
 - Note not payable within the state, 8, 1175
 - Notice from a mere stranger, 8, 1178
 - Notice of attachment to bona fide indorsee, 8, 1178
 - Showing affirmatively that debt is property of payee, 8, 1173
 - Showing affirmatively that debt is still property of the defendant, 8, 1175
 - Statutes rendering negotiable instruments liable to attachment, 8, 1172
 - Surrender of note, 8, 1176
 - Where note has been indorsed to a third person, 8, 1174
 - Where paper is not, strictly speaking, negotiable, 8, 1173
 - Where paper still current, 8, 1172
 - Whether within garnishment statutes, 8, 1172
 - While the instrument is current, 8, 1174
- General bill as an assignment of a particular fund, 1, 836
- Gifts, 8, 1320
- Gifts causa mortis, 8, 1343
- Guaranty written in, by holder of bill indorsed in blank, 2, 383
- Guardians, 2, 359
- Holder, 2, 316; 9, 418**
 - See infra*, BONA FIDE HOLDER.
- Husband and Wife, 14, 585**
 - Note by husband to wife, 2, 350
 - Note by wife to husband, 2, 350
 - Unite in giving note, 2, 348

Who may make defense of coverture, 2, 349

Illegal consideration, *see infra*, CONSIDERATION, and *see generally*, ILLEGAL CONTRACTS.

Indicated mode of payment regarded as a condition, 2, 324

Indorsement, 2, 315, 380

Without Recourse, *see* WITHOUT RECOURSE.

"Accountable," 1, 135

After delivery, 2, 381

After maturity, 2, 380

Agent, 1, 342, 352

Agent's liability, 2, 355

Altering negotiability, 2, 338

Blank, 2, 340, 383

Of sealed note, 2, 320

By executor and administrator, 2, 380

By Partner, 2, 355

After dissolution, 2, 358

By what law governed, 3, 583

Consideration, 2, 382

Date proved by parol, 2, 382

Definition, 2, 315, 382

Delivery necessary, 2, 382

Demand

Upon indorsement after maturity, 2, 381

Effect, 2, 384

Executors and Administrators, 7, 298

General power to indorse, 7, 298

Guarantee of representative personally, 7, 299

Improper transfer, 7, 298

Necessity of indorsement for proper delivery, 7, 298

Transfer in payment of executor's individual debt, 7, 298

Forged, 2, 380

Form, 2, 382

Governed by *lex loci contractus*, 2, 384

Holder of Bill Indorsed in Blank

Writing in a guaranty, 2, 383

Indorser's contract, 2, 385

Indorser's guaranty of genuineness of instrument, 2, 385

Indorser's guaranty of validity of a note or bill, 2, 385

Indorser's Liability, 2, 386

After notice of dishonor, 2, 386

Discharge by a release of the party prior to himself, 2, 387

Exoneration from all obligation to the holder, 2, 386

Holder extending time of payment 2, 386

Nature of, 2, 386

Necessity of demand, 2, 386

Necessity of dishonor, 2, 386

Necessity of presentment, 2, 386

Payment of the note or bill by prior party, 2, 387

Plaintiff averring an indorsement necessary to complete title, 2, 388,

Joint payees, 2, 336

- Made payable to, first certain party, 2, 384
 Married woman's liability upon, 2, 349
 Negotiability after, 2, 384
 Of accommodation paper after maturity, 2, 381
 Of one bill of a set, 2, 343
Order of Liability of Indorsers, 2, 385
 Varied by parol, 2, 385
 Overdue bills and notes, 5, 528²³⁹
 Payable to bearer, 2, 337
 Place of, 2, 408
 Power of corporation to indorse, 4, 225
 Presumption as to date, 2, 381
 Presumption as to time of making, 2, 342
 Procured by fraud, 2, 389
 Protest waived, 2, 384
 Restricted, 2, 384
 Rights conferred by, after maturity, 2, 381
 Signature, 2, 382
 Sign written on the note, 2, 382
 Special, 2, 383
 Takes effect upon delivery, 2, 342
 Title inferred from possession where note is payable to bearer, 2, 388
 Title inferred in holder when note is indorsed in blank, 2, 388
 To person having equitable title, 2, 382
 Transferring collateral security, 2, 384
 Transferring indorser's interest, 2, 384
 Unnecessary to holder's title, 2, 383
 Upon death of owner of a bill or note, 2, 380
 Upon Sunday, 2, 342
 When, may be made, 2, 380
 Who may make, 2, 380
 Without recourse, 29, 528
- Infant's**, 2, 346-348
 Necessaries, 10, 666
 New promise of infant, 2, 347
 Privilege to avoid contract, 10, 638
 Ratification, 2, 347
 Returning consideration, 2, 348
 Void or voidable, 10, 630
- Injunctions**, 10, 942
 Notes obtained through fraud, 10, 942
 Restraining collection, 10, 942
 Restraining transfer, 10, 916
- Inland Bills**
 Notary's certificate, 16, 776
 Of exchange, 2, 315
 Protest, 16, 772
 Whether negotiable papers, 16, 771, 772
- Insanity**, 2, 345; 11, 143
 As a defense to an action on a note, 11, 143
 Bona fide holder, 11, 143
 Holder's knowledge of, 11, 143
 Inquisition as proof of, 2, 345
 Sanity presumed, 2, 346
- Instruction**, examples of, 11, 268-274
- Insurance Companies**
 Power to issue bills and notes, 4, 224
- Interest**
 By what law governed, 2, 331, 332; 3, 586, 595
 In case no date is mentioned, 5, 528²⁶⁴
 Upon notes payable in instalments, 2, 397
 When demand necessary, 5, 528²⁸²
- I O U*, see *I O U*.
- Joinder of actions**, 17, 562
- Joinder of Parties**
 Maker and indorser, 17, 573
 Joinder of, under codes, 11, 1015^b
 Joint and several notes, 2, 335
 Kinds of bills of exchange, 2, 315
- Larceny**
 Indictment, 12, 814, 819
 Laws impairing the obligation of contracts, 3, 751
 Limitation of actions, 2, 332; 5, 528²⁶⁴; 13, 722
 Lis pendens, 13, 874
- Lost Bills and Notes**
 Bona fide purchaser, 13, 1149
 Bona fide purchaser before maturity, 13, 1149
 Burden of proving mala fides, 13, 1153
 Caution, 13, 1153
 Declaration, bills, petitions, etc., 13, 1084
 Demand of payment, 13, 1147
 Evidence of original existence, 13, 1088
 Finder, 7, 989; 13, 1149
Gross Negligence, 13, 1152
 An element of mala fides, 13, 1152
 Indemnity, 13, 1146
 Indemnity bonds, 13, 1113
 Notice of non-payment, 13, 1148
 Parties to the action, 13, 1083
 Payment, 18, 191
 Present for acceptance, 13, 1147
 Purchase after maturity, 13, 1151
 Purchase before maturity, 13, 1150
 Review of decision, 13, 1153-1156
 Rights, duties and liabilities of acceptor, 13, 1146
 Rights, duties and liabilities of loser, 13, 1146
 Rights, duties and liabilities of maker, 13, 1146
 Rule in United States Supreme Court, 13, 1156
 Secondary evidence, 13, 1145
 Thief, 13, 1149
 Trover, 13, 1146
 Mailing notice of dishonor, 1, 188
- Maker**
 Definition, 2, 315
 Mandate, 14, 246
 Manifest, 14, 250
- Manner of Execution**, 2, 333
 Drawer or maker must be clearly indicated, 2, 333
 Payee's name, 2, 336
- Manufacturing corporations**, 4, 224; 14, 276
- Marginal figures in bills and notes**, 1, 517; 2, 329

BILLS AND NOTES—Cont'd**Married Women**, 2, 348; 14, 623

See infra, HUSBAND AND WIFE; SEPARATE PROPERTY OF MARRIED WOMEN.

Accommodation note, 2, 348

At common law, 14, 623

Examples, 14, 623, 624

Exceptions, 14, 624

Indorsements, 14, 624, 626

Making restitution, 2, 349

Mortgages, 14, 623

Naturally void or voidable, 2, 348

Promise to pay note after death of husband, 2, 349

Statutes, 14, 623

Suretyship, 14, 623

Master of a vessel, 14, 963**Materials and signature**, 2, 318**Maturity**, 2, 316, 396

Calendar months, 2, 396

Computation of time, 2, 396

Demand note payable instantly, 2, 396
From what date statute of limitations runs, 2, 396

Interest upon notes payable in instalments, 2, 397

Necessity of demand upon, 2, 401

Notes payable conditionally, 2, 397

Notes payable in instalments, 2, 397

Paper transferred after maturity, 2, 397

What is reasonable time, 2, 397

When no date is mentioned, 5, 528²⁶⁴

When payable on demand, 2, 396

Where date of note is on public holiday, 2, 396

Memoranda, 2, 340

Fixing time of payment, 2, 341

Statement of consideration, 2, 341

Stipulations to pay attorney's fee, 2, 341

Warrant to confess judgment, 2, 341

What they may contain, 2, 341

Merger, 15, 336, 342

Higher security, 15, 352, 353

Renewal, 15, 353, 354

Benefit of a mortgage, 15, 355

Intention of parties, 15, 355

Suspension of remedy on old note, 15, 353

Whether a merger, 15, 354

Whether a new debt is created, 15, 355

Whether a payment, 15, 354

Mining Companies

Power to issue bills and notes, 4, 224

Municipal corporations, 2, 352**Municipal Warrants**

Distinguished from bill of exchange, 15, 1208

National Banks, 16, 167

Borrower's own paper, 16, 167

Discount, 16, 167

Paper acquired not as security, 16, 168

Purchase of negotiable paper, 16, 167

What papers may be purchased, 16, 167

Negotiability, 2, 338

After indorsement, 2, 384

Customary words indicating, 2, 338

Definition of negotiable instrument, 2, 338

Indorsement changing character of instrument, 2, 338

Necessity of date to bills and notes, 2, 320; 5, 77

Necessity of promise or order being positive, 2, 321

Negotiability of guaranty written on the back of a bill or note, 9, 76

Negotiable and non-negotiable bills and notes, 2, 338

Of memoranda, 2, 340, 341

Of sealed notes, 2, 320, 321

Payable in different species of currency, 3, 34

Payment at specified bank, 2, 339

Power to fill blanks, 2, 339

Stipulation to pay attorney's fee, 2, 341

Transferable by delivery, 2, 338

Value received, 2, 339

Warrant to confess judgment, 2, 341

Words expressing consideration, 2, 339

Words indicating, 2, 338

"Negotiate," 16, 479

Negotiation, 2, 316

Ne varietur, 16, 489

New Trial

Assessment of damages, 16, 583

Non-performance of a part of agreement which was the consideration, 2, 371

Notary Public, 16, 763

Due diligence required, 16, 764

Duties and responsibilities, 16, 763

Inland Bills, 16, 771

Examples, 16, 771, 772

Functions and powers of notaries, 16, 771

Official character of, 16, 763

Proof of dishonor, 16, 764

Question of law and fact, 16, 765

What is due diligence, 16, 764

Whether notary acts in official character, 16, 772

Note

"Good note," 8, 1360

Payable to Bearer

Title inferred from possession, 2, 388

"Notes of hand," 9, 262

Notice of defenses, 2, 394

Notice of Dishonor, 2, 315, 407, 409; 5, 528²³², 530

Acceptance of payment *supra* protest, 5, 528²³⁸

Accommodation indorser's right to, 2, 421

Addressed to residence or place of business, 1, 189

After indorser's death, 2, 409

Burden of proof of diligence upon holder, 2, 417

Burden of proof on holder to show where it was sent, 2, 415

- Burden of proof to show notice was given in due time, 2, 413
 By agent or holder, 2, 411
 By bankrupt, 2, 412
 By one of several joint holders, 2, 411
 By special messenger, 2, 419
 By stranger, 2, 411
 By what law governed, 2, 332
 By whom given, 2, 411
 Cashier of bank, 2, 413
 Date, 5, 533
 Date to written, 2, 410
 Day allowed to each indorser to notify parties prior to him, 2, 414
Demand
 Excuse for not making, 2, 419
 On day of payment but notice not sent until third day of grace, 5, 528⁶⁷
When Made
 Due diligence, 5, 528⁷⁷
 Description of instrument, 2, 409
 Discharge of indorser or drawer by failure to give, 2, 407
 Due diligence, 5, 528⁷⁶, 533; 6, 41
 During business hours, 2, 414
 Duty of party upon receiving notice to notify his own indorser, 2, 411
 Effect, 5, 533
 Effect of neglecting to give, 2, 407
 Error in describing amount of note or bill, 2, 410
 Failure to give discharges to all prior parties, 2, 412
 Form, 5, 531
 Holder for collection, 5, 528⁷⁶
 Immaterial error in instrument dishonored, 2, 409
 Indorser of non-negotiable paper, 2, 407
 Indorser of promissory note, 5, 528³⁷
 Indorser's liability after, 2, 386
 Indorser who has been paid, 5, 528⁴⁹
 Manner, 5, 532
 Methods of service, 2, 418
 Name of holder, 2, 411
Necessity, 2, 407; 5, 528³², 530
 To render indorser liable, 2, 386
 Next day after maturity as limit to reasonable time, 2, 414
 Notary's certificate, 5, 532
Partnership
 When not necessary, 17, 1082
 Personal service, 2, 418; 5, 532
 Person entitled to, 5, 532
 Place where given, 2, 415
 Presentment before maturity, 5, 528⁶⁷
 Presumption that party resides in the same place as he did when he signed note or bill, 2, 416
 Proof of notice, 5, 534
 Question of law or fact, 5, 528⁶⁷, 534
 Reasonable time, 2, 413; 5, 531
 Requisites of, 2, 408; 5, 531
 Right of a maker of a note to, 2, 408
 Right of an acceptor of a bill to, 2, 408
 Right of persons indorsing before delivery to, 2, 408
 Sent to county seat, 2, 417
 Sent to drawer at place of date of bill, 2, 416
 Sent to residence during temporary absence, 2, 417
 Sent to usual post office, 2, 418
 Served at party's office, 2, 416
 Served at party's residence, 2, 416
Service
 By leaving at indorser's or drawer's residence, 2, 418
 By mail, 2, 418; 5, 532
 By special messenger, 2, 418
 Of notice, 5, 528⁶⁷
 Where indorser and drawer live in the same place, 2, 418
 Where there are several post offices in the same town, 2, 419
 Signature to written, 2, 409
 Sufficiency a question for court, 2, 408
 Time for giving, 2, 413
 To agents, 2, 412
 To all parties to whom the holder looks for payment, 2, 412
 To all successive indorsers, 5, 528⁵⁰
 To assignee of bankrupt, 2, 412
 To charge acceptor, 5, 528⁶⁶
 To joint indorsers, 2, 412
 To member of a partnership, 2, 412
 To member of indorser's family, 2, 413
 To personal representatives, 2, 412
 To whom given, 2, 411
 Usage, 5, 533
 Verbal, 2, 408; 5, 531
 Waiver, 2, 419; 5, 528¹⁰⁶
 What sufficient, 1, 188
 When given, 5, 528⁶⁸
 When necessary, 2, 407; 5, 528³², 530
 When necessary to fix liability of drawer, 5, 528³²
 When notice need not be given, 5, 528⁴⁹
 When parties reside in different places, 5, 528⁶⁸
 When parties reside in same place, 5, 528⁶⁸
 When question of diligence for jury, 2, 317
 When Saturday is last day of grace, 5, 528⁶⁸
 Where drawer has a fluctuating account with drawee, 5, 528⁵³
 Where drawer has no funds in acceptor's hands, 5, 528³³
 Where drawer has no funds in drawee's hands, 2, 420
 Where drawer has reasonable grounds to believe that bill will be paid, although having no funds in drawee's hands, 5, 528⁵⁴
 Where drawer or indorser designates a place for notice, 2, 418
 Where indorsement was made before or after maturity, 2, 408

BILLS AND NOTES—Cont'd**Notice of Dishonor—Cont'd**

Where indorser resides in one place and does business in another, 5, 528^{z76}

Where no place of payment is specified, 5, 528^{z94}

Where notice is sent by mail, 2, 415

Where notice is sent to a foreign country, 2, 415

Where paper is indorsed to one for collection, 2, 412

Where parties have notice of removal of indorser, 2, 417

Where parties reside in different places, 5, 528^{z76}

Where parties reside in place of presentment, 5, 528^{z67}

Where parties reside in same place, 5, 528^{z76}

Where parties to be charged reside in a different place to that of presentment, 5, 528^{z67}

Where sent, 5, 533

Whether earliest possible notice is required, 5, 528^{z68}

Whether personal service is necessary, 5, 528^{z67}

Written, 2, 408

Written notice stating facts of demand of dishonor, 2, 410

Notice of Loss

Advertising, 13, 1110

Necessity of notice, 13, 1109, 1110

Parties liable, 13, 1109

Public notice of loss, 13, 1110

Origin and history, 2, 314

Overdue, 17, 295

Transfer of, 5, 528^{z99}

Paper, 2, 318

Paper fraudulently put into circulation through breach of confidence, 5, 329

Parol Evidence, 5, 535; 17, 427

Acceptances, 17, 429

Admissibility, 17, 427

As to place of payment, 2, 332

Breach of condition in delivery, 2, 343

Conditions, 17, 427

Examples, 17, 427-429

Fraud, 17, 429

Indorsements, 17, 429

Payment, 17, 427, 428

Time of payment, 17, 427

To correct misstatement of payee's name, 2, 338

To explain blank indorsement, 2, 388

To explain peculiar methods of stating time, 2, 327

To show date of indorsement, 2, 382

To show payee, 2, 336

To show that indorsement was without recourse, 2, 389

To show that party signed as agent of another, 1, 391

To show waiver of demand and notice, 2, 390

To vary order of liability of indorsers, 2, 385

To vary what note promises, 2, 326

To vary written date of payment, 2, 328

Parties to Actions, 17, 506

Assignment, 17, 533

Real party in interest, 17, 547

Statutory modifications, 17, 541

Partnership, 2, 333, 335; 17, 994, 1011, 1017

Accommodation paper, 2, 357

After Dissolution, 2, 357; 17, 1143

Borrowing on credit of firm, 17, 1144

Demand upon one member of dissolved firm, 17, 1145

Indorsement, 17, 1143

Negotiable paper antedated, 17, 1145

Paper signed before dissolution, 17, 1144

Renewal of negotiable paper, 17, 1144

Waiver after maturity, 17, 1145

Waiver of demand and notice upon paper, 17, 1145

By person holding himself out as partner, 2, 355

Dormant partner, 2, 355

Effect of dissolution on surety, 17, 1133

Firm name not containing all the partners' names, 2, 333

Issuing commercial paper after dissolution, 17, 1139

Negotiable Paper in the Name of a Partner, 17, 1027

Acceptance in firm name where partner adds his own name, 17, 1028

Acceptance of Draft Drawn Upon Firm by One Partner, 17, 1028

In absence of statute, 17, 1028

Whether accepting partner may be sued separately, 17, 1028

Whether firm is bound by, 17, 1028

Bill drawn by partner in his own name upon firm, 17, 1029

Bill drawn on account of partnership, 17, 1028

Bill drawn on partner and accepted in name of firm, 17, 1029

Individual paper, 17, 1029

Paper Signed by Each Member of the Firm, 17, 1031

As against firm creditors, 17, 1031

As between the partners, 17, 1031

Intention that it shall be a firm debt, 2, 333; 17, 1031

Presumption, 2, 333; 17, 1031

Signature by one, of several names of different partners, 17, 1032

Where given for a purpose connected with partnership, 17, 1032

Where no firm name has been adopted, 17, 1032

- Where note has been applied to partnership purposes, 17, 1031
 Where signed both with firm name and names of partners, 17, 1032
 Whether a personal or partnership obligation, 17, 1031
 Whether joint or several, 17, 1032
 Renewal of firm debt on individual note, 17, 1029
Where Firm Does Business Under the Name of One of Its Partners, 17, 1030
 Indorsement of paper belonging to firm, 17, 1030
 In general, 17, 1030
 Leading creditor to believe that he was trusting firm, 17, 1030
 Name of co-partner used by authority of the others, 17, 1031
 Where partner carries on no other business, 17, 1030
 Where partner's name is not that of the firm, 17, 1027
 Whether binding upon firm, 17, 1027
 New firm, 17, 533
 New partner, 2, 356
Non-Trading Partnerships, 2, 356; 17, 1026
 Authority of partner, 17, 1027
 Burden of proof, 17, 1026
 Farming partnerships, 17, 1026
 Implied authority to indorse, 17, 1027
 Paper essential to carry out partnership purposes, 17, 1026
 Power of partner to bind partnership, 17, 1026
 Notice of defense, 2, 394
Notice of Dishonor
 When not necessary, 17, 1082
Notice to One Partner Is Notice to All, 17, 1081
 Notice of dishonor, 17, 1082
 Notice of payment, 17, 1081
 Particular manner of making notice, 17, 1081
 Presentation, 17, 1081
 Waiver of demand or notice by one, 17, 1081
 When no notice of dishonor is necessary, 17, 1082
Power of Partner as to, 2, 333, 355; 17, 994, 1018
 Trading partnerships, 2, 356; 17, 993
 Power of partner to indorse, 17, 1011
 Power of partner to transfer, 17, 1011
 Power to draw checks on firm's deposit, 17, 1033
 Presumption that note was given about the firm's business, 2, 356
Protection to Bona Fide Holders, 2, 356; 17, 1033
 How far bona fide holders are protected, 17, 1033
 Non-trading firms, 17, 1034
 Scope of business of the firm, 17, 1033
 Trading firms, 17, 1033
Who Is a Bona Fide Holder, 17, 1034
 Accommodation papers, 17, 1036
 Burden of proof, 17, 1036
 Circumstances arousing suspicion, 17, 1034
 Common member of two firms, 17, 1035
 Exercise of proper diligence, 17, 1034
 Grounds for suspicion, 17, 1035
 Note payable on demand, 17, 1035
 Presumption as to accommodation paper, 17, 1036
 Purchase of a broker, 17, 1035
 Purchaser after maturity, 17, 1035
 Renewal of paper, 17, 1035
 "Sureties," 17, 1036
 Usurious note, 17, 1035
 What is notice, 17, 1034, 1036
Rights of Partner in General, 2, 333, 355; 17, 994, 1018
 Implied power, 17, 1018
Signature, 2, 333
 Varying slightly from ordinary method of signing, 2, 333
Surviving Partners, 17, 1159
 Drawing checks, 17, 1160
 Giving firm note for pre-existing debt, 17, 1159
 Indorsement, 17, 1160
 Issuing commercial paper, 17, 1160
 Transferring note by indorsement, 17, 1160
Trading Partnerships, 2, 356; 17, 1018
Accommodation Paper, 17, 1021, 1022
 Bona fide exercise of borrowing power, 17, 1024
 Burden of proof, 17, 1023
 Misappropriation of note by partner, 17, 1024
 Only apparently accommodation paper, 17, 1023
 Surety for the firm, 17, 1024
 Whether binding upon firm, 17, 1022
 Whether binding upon partner who issues it, 17, 1022
 Altering note, 17, 1019
 Attempt to bind one or more of the partners, 17, 1019
Burden of Proof, 17, 1024
 Accommodation paper, 17, 1025
 Authority of partner, 17, 1024, 1025
 That the note was not issued in good faith, 17, 1024
 When upon holder to show authority of partner, 17, 1025
 Fraud on co-partners, 17, 1020
 Guaranty, 17, 1021
 How signing partner is bound, 17, 1019
 Individual purpose, 17, 1021
 Joint and several notes, 17, 1019
 Vol. I.

BILLS AND NOTES—Cont'd**Partnership—Cont'd****Trading Partnerships—Cont'd**

Notes of new firm to pay debts of prior firm, 17, 1020

Notes signed by firm and third person, 17, 1020

Notes to pay individual debt, 17, 1020

Partner procuring loan for himself, 17, 1020

Powers of member, 17, 1018

Power to bind co-partner separately, 17, 1019

Restrictions in articles, 17, 1018

Surety, 17, 1021

Where new firm has assumed debts of old firm, 17, 1021

Where signer is not severally liable, 17, 1020

Transferring after dissolution, 17, 1145

Use of accommodation signatures, 17, 1017

Use of firm's indorsement, 17, 1017

Use of firm's notes, 17, 1017

Payable in dollars, 5, 855

Payable on Demand

Indorsement after maturity, 2, 380

Payable to Bearer, 2, 337, 338

Fictitious payee, 2, 337

Payable to executor and administrator, 2, 358

Payable to several persons jointly, 2, 356

Payee

Definition, 2, 315

Fictitious, 2, 337

How indicated, 2, 336

Identical with maker or drawer, 2, 336

Indorsement where there are several joint, 2, 336

Name misspelled, 2, 338

Parol evidence to correct misstatement of name, 2, 338

Parol evidence to show, 2, 336

Payable to bearer, 2, 337

Payable to several persons, 2, 336

Payee's name in blank, 2, 339

Prima facie the property of the person named, 2, 336

Renewal note made after payee's death, 2, 336

Payment, see *infra*, PLACE OF PAYMENT; TIME OF PAYMENT.

Amount to be paid, 2, 329

At specified bank, 2, 339

Conditional bills and notes, 2, 397

Extension of time by holder, 2, 386

In gold, 2, 326

In installments, 2, 328

In legal tender notes, 2, 326

In Money Only, 2, 325

Promise to pay in bank notes, 2, 326

In specie, 2, 326

In the alternative, 2, 336

Lost or stolen bills or notes, 18, 191

Note payable in installments, 2, 397

Notes and Other Securities Made Payable at a Particular Bank, 18, 199

Examples, 18, 199

Funds lost through subsequent failure of bank, 18, 199

Whether payable absolutely, 18, 199

Notice of Dishonor, see *infra*, NOTICE OF DISHONOR.

Of demand note, 2, 396

Of paper transferred after maturity, 2, 397

Payable on demand when note is silent, 2, 327

Payment before maturity, 18, 198

Payment to one not the holder, 18, 190

Payment to payee or indorsee, 18, 190

Presentment, 5, 528^z⁵⁷

For payment when acceptance is refused, 5, 528^z⁵⁸

Note payable on demand, 5, 528^z⁴⁴

Presumption that holder is legal owner, 18, 190

Question of law or fact, 18, 169, 173

Time must be certain, 2, 326

To person having possession of note, 1, 341

When note payable on demand is due, 2, 327; 5, 528^z⁴⁴

When payable on demand, 2, 396

Payment by Bill or Note, 2, 396; 16, 873; 18, 167

Agent authorized to take note, 18, 194

Burden of proof, 16, 874; 18, 171

Certificate of deposit, 18, 184

Check, 16, 874; 18, 167, 169

Cheques afterwards paid, 18, 174

*Cheques uniformly accepted as cash, 18, 173

Conclusiveness of receipt, 18, 170

Creditor not requiring debtor's indorsement, 18, 171

Debtor's own note, 18, 171

Depriving creditor of security, 16, 876

Depriving taker of some substantial benefit, 16, 876

Evidence of agreement, 18, 169

Examples, 18, 190, 191

Executor's note, 18, 184

Gambling note, 18, 175

General rule, 16, 873; 18, 167, 190

Giving receipt in full, 16, 876

Goods Sold at the Time, 18, 182

Examples, 18, 182-184

Note of third person, 18, 183

Risk of vendor, 18, 182

Vendor induced to take note by fraud, 18, 183

Illustrative cases, 18, 181-183

In Arkansas, 18, 179

In Illinois, 18, 179

In Indiana, 16, 875

In Louisiana, 18, 179

In Maine, 16, 875; 18, 179

In Massachusetts, 16, 875; 18, 179

In Pennsylvania, 18, 179

In Rhode Island, 18, 179

In South Carolina, 18, 179

In Vermont, 16, 875; 18, 179
 Intent of parties, 16, 873
 Necessity of agreement, 16, 873
 Necessity of demand of payment of cheque, 18, 177
 New note on grounds of usury, 18, 181
 Non-negotiable instrument, 18, 190
 Non-negotiable note, 16, 874, 876
 Note expressly accepted as payment, 18, 173
Note Negotiated, 18, 175
 Note produced and delivered up, 18, 176
 Suit on note or original cause of action, 18, 176
 What will excuse the production of note, 18, 176
 When note cannot be produced on trial, 18, 175
 Whether suit can be brought on original consideration, 18, 175, 176
Note of Continuing Partner, 16, 912
 Acceptance as payment, 16, 913
 Acceptance of creditor, 16, 913
 Acceptance of note of each partner, 16, 915
 Assent of new partner, 16, 915
 Burden of proof, 16, 916
 Consideration, 16, 913
 Examples, 16, 912
 Goods purchased but not paid for, 16, 916
 Implied assent, 16, 913
 Individual note of one partner, 16, 912
 Intent question for jury, 16, 914
 Liability of prior firm, 16, 912
 New partner recognizing note, 16, 916
 Note considered higher security, 16, 912
 Note for debts of prior firm, 16, 915
 Taking note of one partner, 16, 914
 When note considered as collateral, 16, 914
 Whether retiring partner is discharged, 16, 912
Note of Third Person, 16, 880; 18, 171
 Antecedent debt, 16, 880, 881
 Certified checks, 16, 881
 Implied agreement, 16, 880
 Indorsement, 16, 881
 Mere acceptance of note alone, 16, 880
 Necessity of evidence that it was taken in satisfaction, 16, 880
 Note accepted without indorsement, 16, 880
 Note of an agent, 16, 881
 Presumption, 16, 880, 881
 Whether creditor accepts note of third person, 16, 880
 Whether original liability is discharged, 16, 880
Note transferred, 16, 874
Order on third person, 18, 184

Out of Different Funds

 Whether bill or assignment, 2, 325
 Out of particular funds, 2, 324
 Partnership, 18, 172
 Party ignorant that it was worthless, 18, 174
 Presumption of payment, 18, 167, 179, 206
 Prima facie evidence of payment, 18, 171
 Rebutting presumption, 16, 875; 18, 180
 Receipt, 18, 170
 Recovery on original cause of action, 18, 176
 Renewal, 16, 876
 Return of old note, 16, 876
 Rules of Indiana court, 18, 178
 Stoppage in transitu, 2, 856; 23, 906
 Surrender of old note, 18, 169
 Suspension of right of action, 18, 177
 Taking note, 18, 169
 Void note, 16, 874
 When not payment, 18, 167
 When payment, 18, 167
 Where creditor has destroyed its value to debtor, 18, 177
 Where surety pays debts of principal, 18, 184
 Where there is evidence of a course of dealing, 18, 173
 Whether acceptance of a promissory note by a creditor acts as an extinguishment of a debt, 3, 896
 Whether intent is question of law or fact, 16, 873
 Whether original contract is extinguished, 16, 872
 Worthless cheque, 18, 174
 Worthless note, 18, 174
 Penciled note, 2, 318
Place of Date
 As place of payment, 2, 328, 332
Place of Payment, 2, 321, 328, 402-404
 Agreed upon by parol, 2, 328
 As determining the law governing the contract, 2, 331
 Certainty required, 2, 328
 Demand at, 2, 402
 Drawee's address as, 2, 332
 Expressed in a memorandum, 2, 328
 Fixed by agreement between parties, 2, 404
 Fixed by memoranda, 2, 341
 In blank, 2, 340
 Place of date as, 2, 328, 332
 Residence of maker or drawer, 2, 328
 Where no place is designated, 3, 587
 Where note is payable at any bank, 2, 329
 Where note is payable at two or more places, 2, 329
Pledge, 18, 608
 Act of pledge, 18, 608
 Delivery of bill, 18, 595, 596
 Delivery of negotiable instruments, 18, 608

BILLS AND NOTES—Cont'd**Pledge—Cont'd**

- Examples, 18, 608, 609
- Indorsement, 18, 608
- In general, 18, 608
- Insolvency, 18, 609
- Negotiable bonds and coupons, 18, 608
- Of bill of exchange, 2, 46
- Pledgee a holder for value, 18, 608
- Pledgee's power and duty to collect, 2, 48

Recourse to Security, 18, 681**Collection of Collateral, 18, 681****Collection Before Debt Secured Due, 18, 689**

Amount collectible on demand, 18, 689

Date of maturity of principal debt, 18, 689

In general, 18, 689

Collection of short time notes, 18, 682**Diligence in Collection, 18, 683**

As pledgor's attorney, 18, 683

Duty of pledgee to use, 18, 683

Fraud or gross negligence, 18, 684

Good faith, 18, 684

What constitutes negligence, 18, 684

When obligation ceases, 18, 684

Duty of pledgee, 18, 681

Duty to collect, 18, 682

Duty to Demand Payment and Give

Notice, 18, 686

Delay, 18, 686

In general, 18, 686

Notice to pledgor, 18, 686

When notice not needed, 18, 686

Duty to Enforce Payment, 18, 687

Consent of pledgor to delay, 18, 688

Due diligence, 18, 687

In general, 18, 687

Interest on collateral, 18, 688

Liability of maker and indorsers, 18, 688

Negligence of agent, 18, 688

Payment to anyone but pledgee, 18, 688

Pledgor demanding prompt collection, 18, 687

Pledgor's right to enforce payment, 18, 688

Indorsement, 18, 682

In general, 18, 681

Liability for Negligence, 18, 684

Burden of proof, 18, 685

Excuse for negligence, 18, 685

Ground of creditor's liability, 18, 684

Liability for actual loss, 18, 685

Maker solvent at maturity but afterwards insolvent, 18, 685

Measure of damages, 18, 684

Necessity of actual loss, 18, 685

Privity in contract, 18, 684

Proof of negligence, 18, 684

Security entirely lost, 18, 685

Manner of enforcing payment, 18, 683

Pledgee in position of trustee, 18, 681

Pledgor's right to enforce where pledgee declines, 18, 683

Power of sale, 18, 682

Right to collect, 18, 682

Compromise, 18, 689

Consent of pledgor, 18, 690

Exchange, 18, 690

Extension of time, 18, 690

Pledgor's remedy for illegal compromise, 18, 690

Whether pledgee can compromise without consent of pledgor, 18, 689

Duty to Demand Payment and Give Notice

Circumstances, 18, 686

Election of funds, 18, 681

Marshaling assets, 18, 681

Sale of Collateral, 18, 690

Agreement that negotiable security shall be sold, 18, 692

Demand and notice, 18, 691

Denying right of sale, 18, 691

Diligence in making sale, 18, 692

Generally, 18, 690, 691

In New York, 18, 692

Market value of collateral, 18, 690

Municipal corporation bonds, 18, 691

Purchase by pledgee, 18, 693

Purchaser's title, 18, 693

Suit on Collateral, 18, 693**Amount of Recovery, 18, 694**

Accommodation papers, 18, 696

Antecedent debt, 18, 696

Equitable defenses, 18, 695

Full face value, 18, 694

In general, 18, 694

Misappropriation, 18, 696

Pledgee's recovery less than his debt, 18, 695

Where the pledgor becomes insolvent, 18, 695

By pledgee, 18, 693

Care to be exercised by pledgee, 18, 694

Collateral unnegotiable in form, 18, 684

Demand of pledgor, 18, 693

In whose name suit should be brought, 18, 694

Obligation of pledgee to sue on note, 18, 694

Showing that part of original debt has not been paid, 18, 694

Whether principal debt is due, 18, 693

Return of Security or Accounting, 18, 697

Application of proceeds, 18, 698

Collateral for several debts, 18, 699

Vol. I.

- Expenses of collection, 18, 698
- Failure to account, 18, 698
- In general, 18, 697
- Pledgor's remedy, 18, 698
- Return of identical bonds, 18, 697
- Surplus over debt secured, 18, 699
- Simultaneous remedies on debt secured and on collateral, 18, 696
- Suit by Pledgee on Debt Secured**, 18, 678
 - Acceptance of debtor's own note, 18, 679
 - Agreeing that pledgee's notes shall be taken in payment, 18, 679
 - Agreeing to suspend action on original debt, 18, 679
 - Collateral security for precedent debt, 18, 679
 - Defenses to Suit**, 18, 680
 - Collection of collateral, 18, 681
 - Examples, 18, 680
 - In general, 18, 680
 - Judgment on collateral, 18, 680
 - Non-collection of collateral, 18, 680
 - Non-production of collateral, 18, 680
 - Non-surrender of collateral, 18, 680
 - Statute of limitation, 18, 681
 - Implied agreement to suspend action on original debt, 18, 680
 - In general, 18, 678
 - Merger of principal debt into judgment, 18, 679
 - Right to sue on original debt, 18, 678
 - Surety, 18, 679
 - Whether debtor can compel creditor to resort to his collateral, 18, 678
 - Title as to third parties, 18, 591
 - Whether recitals of collateral securities in principal note affect negotiability, 18, 603
- Post notes, 14, 246; 18, 870
- Presentment*, see *infra*, **ACCEPTANCE**; **PAYMENT**; **PROTEST**.
- Presumptions**, 19, 53, 78
 - Arising from date, 5, 78
 - Bona fide holder, 19, 78
 - Consideration illegal, 19, 78
 - In favor of validity, 19, 78
 - Valuable consideration, 19, 78
- Printing, 2, 318
- Promise unconditional, 2, 322
- Protest**, 2, 405; 19, 292
 - Acceptance of part of a bill, 2, 378
 - As evidence, 2, 406; 19, 296
 - By Whom Made**, 2, 405; 19, 293
 - Clerk of notary, 19, 293
 - Law-merchant, 19, 293
 - Necessity of notary, 19, 293
 - Notary, 2, 405; 19, 293
 - Statute, 19, 293
 - Construction, 19, 297
 - Date of protest, 19, 293
 - Definition**, 2, 405; 19, 292
 - All the steps necessary to charge indorser, 19, 293
 - In general, 19, 292
 - Duty of notary to give notice of dishonor, 2, 406
 - Evidence of dishonor, 19, 296
 - Fact of presentment, 19, 294
 - Form of, 2, 406; 19, 293
 - For non-payment, 5, 528⁵⁸
 - How authenticated, 2, 406
 - Manner of presentment, 19, 294
 - Place of presentment, 19, 294
 - Presumption as to regularity, 19, 297
 - Question of law and fact, 19, 297
 - Seal, 19, 294
 - Signature of notary, 19, 293
 - Steps comprised in protesting, 2, 406
 - Waiver of**, 2, 384; 19, 297
 - How protest may be waived, 19, 297
 - Indorsement of "protest waived," 19, 297
 - What amounts to a waiver, 19, 297
 - What protest must state, 19, 293
 - When Protest Is Necessary**, 19, 295
 - By statute, 19, 295
 - Checks and drafts, 19, 295
 - Foreign promissory note, 19, 295
 - Instruction by drawer to drawee not to pay bill, 19, 296
 - Protest unnecessary, 19, 296
 - To charge an indorser, 19, 295
 - Where drawer has failed to place funds in the hands of drawee, 19, 296
 - Where absolute acceptance is refused, 2, 377
- Public Officers**
 - Liability, 19, 502
- Questions of law and fact, 2, 420
- Railroad Companies**
 - Power to issue bills and notes, 4, 224, 225; 19, 729
- Railroad Securities**, 19, 729
 - Accommodation note, 19, 729
 - Bona fide holders, 19, 729
 - Power of railroad to issue notes, 4, 224, 225; 19, 729
 - Where corporation is not authorized to issue notes, 19, 729
 - Who is a bona fide holder, 19, 729
- Reasonable Time**, 19, 1090
 - Demand notes, 5, 528⁵⁹
 - Overdue note, 5, 528⁶⁰
 - Test of reasonableness, 5, 528⁶¹
 - What delay will discharge indorser, 5, 528⁶⁰
 - What is, question for the court, 2, 413
- Receipts for money, 2, 322
- Recoupment, 2, 365
- Re-exchange**, 20, 641
 - Acceptor's Liability**, 20, 646
 - Conflict of opinion, 20, 646
 - Examples, 20, 646-648
 - In general, 20, 646
 - Upon what liability rests, 20, 646
 - Where acceptors had funds in their hands, 20, 647
 - Definition of, 20, 641

BILLS AND NOTES—Cont'd**Re-exchange—Cont'd****Drawer's Liability for Re-exchange and Damages, 20, 642**

Agent's liability for re-exchange, 20, 643

Illustration, 20, 643

In general, 20, 642

Inland bills, 20, 643

Joint drawer's liability to co-drawers, 20, 643

Limiting liability, 20, 644

To party taking bill *supra* protest, 20, 645

Where bill has passed through numerous hands, 20, 644

Illustration, 20, 643

Indorser's Liability, 20, 645

By what law governed, 20, 645

Recourse to prior indorser, 20, 645

Measure of damages, 20, 642

Protest, 20, 657

Rate of exchange at common law, 20, 642

Re-exchange and Damages on Promissory Notes, 20, 659

In general, 20, 659

In Massachusetts, 20, 659

In New York, 20, 659

Law-merchant, 20, 659

Where note payable at a particular place, 20, 659

Statutory Provisions Covering Re-exchange and Damages, 20, 648

Fixed rate in lieu of re-exchange, 20, 648, 649

Foreign distinguished from inland bills, 20, 657

Generally, 20, 648

In Alabama, 20, 651

In Arizona, 20, 651

In Arkansas, 20, 651

In California, 20, 651

In Colorado, 20, 651

In Connecticut, 20, 651

In Dakota, 20, 652

In Delaware, 20, 652

In Florida, 20, 652

In Georgia, 20, 652

In Idaho, 20, 652

In Illinois, 20, 652

In Indiana, 20, 653

In Iowa, 20, 653

In Kansas, 20, 653

In Kentucky, 20, 653

In Maine, 20, 653

In Maryland, 20, 653

In Massachusetts, 20, 649, 653

In Michigan, 20, 654

In Minnesota, 20, 654

In Mississippi, 20, 654

In Missouri, 20, 654

In Nebraska, 20, 654

In Nevada, 20, 654

In New Mexico, 20, 655

In New York, 20, 649, 655

In North Carolina, 20, 655

In Ohio, 20, 655

In Oregon, 20, 656

In Pennsylvania, 20, 649, 656

In Rhode Island, 20, 656

In South Carolina, 20, 658

In Tennessee, 20, 656

In Texas, 20, 656

In Utah, 20, 656

In Virginia, 20, 657

In Washington, 20, 648

In West Virginia, 20, 657

In Wisconsin, 20, 657

Necessity of protest, 20, 657

Where acceptor pays part of the bill, 20, 658

Reformation of Instruments, 15, 669

After note has merged into judgment, 15, 671

Examples, 15, 669, 670

Mistake as to legal effect, 15, 670

Omission to fix rate of interest, 15, 670

Omitted words, 15, 670

What notes will be reformed, 15, 669

Release, 20, 751

Alteration of instrument, 20, 751

Extension of time to maker, 20, 751

Indorser released by payment, 20, 751

To joint maker, 20, 751

Renewal, 20, 1034**Of Promissory Note, 15, 354**

Benefit of a mortgage, 15, 355

Intention of parties, 15, 355

Suspension of remedy on old note, 15, 353

Whether a merger, 15, 354

Whether a new debt is created, 15, 355

Whether a payment, 15, 354

Usury, 16, 177

Credit for interest paid from beginning, 16, 178

In general, 16, 178

Limitation inapplicable to defense of usury, 16, 178

Set-off of interest on prior notes, 16, 178

Without additional, 16, 178

Rescission, 21, 65

Accommodation note, 21, 65

Fraud, 21, 66

In general, 21, 65

Res Judicata, 21, 174, 202

General rule, 21, 174

Illustrations, 21, 174-176

Parol acceptance, 21, 174

Privity between parties, 21, 174

Series of notes, 21, 229

Whether judgment against one party binds another, 21, 174

Restrictions Upon Right of Making, 2, 343,

345

Alien enemies, 2, 344, 365

Bankrupts, 2, 345

Burden of proving drunkenness, 2, 346

Civil, 2, 343

Corporations, 2, 351

Drunkenness, 2, 346

- Felons, 2, 344
- Government officers and agents, 2, 345
- Legal, 2, 346
- Marriage of maker to payee, 2, 350
- Married women, 2, 346
- Municipal corporations, 2, 351
- Natural, 2, 345
- Restrictive indorsement, 21, 295
- Savings banks, 21, 717
- Seal, 2, 319; 16, 482
 - Blank indorsement of sealed note, 2, 320
 - Corporate seal, 16, 482
 - Corporation bonds, 16, 482
 - Effect of, 2, 319
 - Not equivalent to signature, 2, 319
 - Statute, 16, 482
- Separate Property of Married Woman, 2, 348; 22, 49**
 - Accommodation note, 22, 49
 - Accommodation of her husband, 22, 49
 - Contract of suretyship, 22, 52
 - Estoppel, 22, 51
 - Joint note with husband, 22, 50
 - Note for the benefit of her business or estate, 22, 50
 - Note given to husband, 22, 51
 - Note in reference to her separate property, 22, 51
 - Power to charge by bond, 22, 52
 - Recital, 22, 52
 - Where married woman not allowed to enter into contract with her husband, 22, 51
 - Whether note is binding upon her separate estate, 22, 49
- Set-off, 22, 304**
 - Bill or note obtained without valuable consideration, 22, 308
 - Counterclaim, 22, 409
 - English rule as to taking overdue note, 22, 306
 - In Arkansas, 22, 351
 - Instrument indorsed overdue, 22, 304
- Recoupment, 22, 365**
 - In Alabama, 22, 349
 - In Arkansas, 22, 351
- Set-off existing between intermediate assignees, 22, 305
- What claims will be allowed against indorsee on overdue note, 22, 307
- When assignee may set off bill or note, 22, 304
- When assignee takes instrument free from any set-off, 22, 305
- Where assignee takes note overdue, 22, 305
- Signature, 2, 318**
 - Adding "Agent" to drawer's signature, 1, 390
 - Corporate seal as, 1, 390
 - Hand-stamp, 2, 319
 - How proved, 2, 319
 - Indorsement, 2, 382
 - Initials, 2, 318
 - Mark, 2, 318
 - Necessity of, 2, 318
 - Of agent, 1, 388, 390
 - Parol evidence to show character of party making, 1, 391
 - Position immaterial, 2, 319
 - Seal not equivalent to, 2, 319
- Specific Performance, 22, 1000**
 - Contracts for assignment, 22, 1000
 - Contracts for cancellation, 22, 1000
 - Contracts for delivery, 22, 1000
 - Contracts for execution, 22, 1000
- Statements of Indebtedness**
 - As promissory notes, 2, 322
 - Statute of frauds, 8, 710; 21, 8
 - Statute of limitations, 5, 528⁶⁴; 13, 722
 - Stipulation to pay attorney's fee, 2, 341
- Stoppage in Transitu**
 - Payment by bill or note, 2, 867; 23, 906
- Subrogation, 24, 240**
 - Acceptor for value of bill of exchange, 24, 243
 - Assignment of purchase-money notes, 24, 242
 - Before payment, 24, 243
 - Examples, 24, 240-245
 - Indorsee subrogated to rights of transferor, 24, 240
 - Indorser who acquired paper overdue, 24, 242
 - In general, 24, 240
 - Payment of protested bill of exchange, 24, 244, 290
 - Stranger taking up note at maturity, 24, 244
 - Transferee subrogated to rights of transferor, 24, 240
 - Volunteer who pays a protested note, 24, 244
 - Where first indorser has been discharged from liability, 24, 240, 242
 - Whether one who pays a protested bill of exchange is a volunteer, 24, 244, 290
 - Whether payment by indorser extinguishes note, 24, 240
- Suits, see *infra*, PLEDGE.**
 - By indorser against prior parties, 2, 383
 - By married woman, 2, 350
 - By real party in interest, 2, 337
 - Indorsement in blank, 2, 383
 - Necessity that plaintiff aver all indorsement necessary to complete title, 2, 388
 - Title inferred from possession where note is payable to bearer, 2, 388
 - Title inferred to be in holder when note is indorsed in blank, 2, 388
 - Where note is made by public officer, 2, 337
- Sunday, 2, 342; 24, 566**
 - Computation of time, 26, 13
 - Examples, 24, 566, 567
 - Made or delivered upon, 2, 342
 - Note executed on Sunday but bearing a different date, 24, 567

BILLS AND NOTES—Cont'd**Sunday—Cont'd**

Note signed by two but delivered by one, 24, 566

Note signed on Sunday, delivered on secular day, 24, 566

Validity in general, 2, 342; 24, 566

Suretyship

Changes in Notes and Bonds, 24, 840

Adding word "surety," 24, 841

Addition of new parties, 24, 842

Change in date, 24, 840

Change of amount, 24, 840

Changes as to interest, 24, 841

In general, 24, 842

Medium in which note is to be paid, 24, 842

Place of payment, 24, 842

Joint execution of note where each party receives one-half of the consideration, 24, 723

Parol evidence to show that joint maker is really a surety, 24, 723

Payment by surety giving note, 24, 779

Take effect upon delivery, 2, 342

Taking negotiable instrument for a less sum in satisfaction of a greater, 3, 834

Taxation

Place of, 25, 146

Agent's residence, 25, 148

Examples, 25, 146-149

In general, 25, 146

In the hands of an agent, 25, 147

Location of paper, 25, 147

Residence of the creditor, 25, 147

Technical terms, 2, 315

Time, Computation of, 26, 7

Sunday, 26, 13

Time of Payment

Certainty, 2, 326

Fixed by memoranda, 2, 328, 341

In blank, 2, 339

Indorsement, 2, 328

Must Be Certain, 2, 326

Any date certain to occur, 2, 327

"At sight," 2, 327

Construction in favor of certainty, 2, 327

On demand, 2, 327; 5, 528²⁴

Trade-marks, 26, 497

Transfer, 2, 352

By corporations, 2, 351

Injunctions, 10, 916

Manner of, 2, 338

Notes Protected by Mortgage, 15, 855

Bond secured by mortgage, 15, 859

Conflict of opinion, 15, 855-861

Doctrine in general, 15, 855-861

Effect of, 15, 855

Equities arising between mortgagor and mortgagee, 15, 855

In Illinois, 15, 857

In Minnesota, 15, 858

In Ohio, 15, 857

To bona fide purchaser, 21, 461

Troyer, 26, 767

By maker of note, 26, 769

By payee against maker, 26, 770

For bill of exchange, 26, 768

For promissory note, 26, 767

Measure of Damages, 26, 845

Examples, 26, 846, 847

Face value with interest, 26, 845

Insolvency of obligor, 26, 846

Maker setting up his own insolvency, 26, 846

Nominal damages upon surrender of note, 26, 846

Note on which judgment has been recovered, 26, 770

Paid note, 26, 770

Trustees, 2, 359

Ultra Vires

Knowledge of, 27, 387

Unconditional Promise, 2, 322

Absence of directions as to payment, 2, 323

Conditions appearing on face of written instrument, 2, 324

Effect of condition, 2, 322

Indicated mode of payment, 2, 324

Notes payable out of particular funds, 2, 324

Notes permitting payment before maturity, 2, 323

"Payable on return of this certificate," 2, 324

Payment in money only, 2, 325

Provision for attorney's fees in case of suit, 2, 324

When convenient, etc., 2, 323

Where condition has been performed, 2, 324

Where time of payment must certainly come, 2, 323

United States, 27, 527

Authority to issue bills of exchange, 27, 528

Damages on a protested bill of exchange, 27, 528

Diligence to charge other parties, 27, 527

Forged indorsement, 27, 528

Holder of commercial paper, 27, 527

The Floyd acceptances, 27, 529

Treasury notes, 27, 527

Usage accelerating time of payment, 5, 528⁷²

Usury, 27, 945, 976

Accommodation Paper, 27, 986

Examples, 27, 986-989

In general, 27, 986

Innocent purchasers, 27, 986, 987

Knowledge, 27, 986

Action on distinct obligation, 27, 978

Between Indorser and Indorsee, 27, 980

Bona fide purchaser, 27, 980

Examples, 27, 980-982

Immediate parties to usury, 27, 980

In general, 27, 980

Right of innocent indorsee to recover against prior parties, 27, 981

Whether indorsee can recover against prior parties, 27, 980

- Discounts**, 27, 989
 Charter provisions, 27, 989
 Days of grace, 27, 989
 Examples, 27, 989, 990
 In general, 27, 989
 Drawing instrument for larger amount than debt, 27, 977
Estoppel, 27, 957
 Representations of debtor, 27, 958
 Sale of accommodation paper, 27, 958
 Subsequent promise, 27, 957
Exchange, 27, 978
 Actual difference of exchange, 27, 979, 980
 Agreement for exchange, 27, 978
 Current rate of exchange between two places, 27, 978
 Device to cover usury, 27, 979
 Foreign exchange, 27, 979
 In general, 27, 978
 Good faith of party making sale, 27, 977
 In general, 27, 976
Innocent Purchasers, 27, 982
 Accommodation paper, 27, 986-988
 Burden of proof, 27, 985
 English statute, 27, 982
 Examples, 27, 982-986
 Holder of usurious mortgage, 27, 984
 In general, 27, 982
 Instrument wholly void in its inception, 27, 982
 New obligation, 27, 985
 Paper voidable merely, 27, 984
 Representations of maker, 27, 983
 Statute protecting bona fide purchasers, 27, 985
Renewal Notes, 16, 177
 Credit for interest paid from beginning, 16, 178
 In general, 16, 178
 Limitation inapplicable to defense of usury, 16, 178
 Set-off of interest on prior notes, 16, 178
 Without additional usury, 16, 178
 Sale for less than face value, 27, 976
 Sale of bonds, 27, 976
 Taking separate notes, 27, 978
 Who may take advantage of, 27, 957
Waiver
 Acceptance of bill or note as waiving lien, 2, 419; 28, 567
 Of demand and notice, 5, 528z⁸⁵, 528z⁸⁷
 Of exemptions, 28, 567
 Of legal rights, 28, 567
 Of production upon demand of payment, 28, 566
Or Renunciation of Bills and Notes, 28, 564
 Cancellation, 28, 565
 Consideration, 28, 565
 In England, 28, 564
 In general, 28, 564
 In United States, 28, 564
 What amounts to, 28, 564
 War as an excuse for not making demand or giving notice of dishonor, 2, 419
 Warrant to confess judgment, 2, 341
 Warranty, 28, 774
When Made, 2, 375; 5, 528z⁸¹
 Hour, 5, 528z⁷⁹
 No established hours of business, 5, 528z⁷³
 When they take effect, 2, 320
 Where sent by mail, 2, 416
 Whether note of principal or agent, 1, 388
 Who may make, 2, 343
 Without recourse, 29, 528
Witnesses
Parties to Negotiable Instruments, 29, 594
 Acceptor, 29, 598
 Action against acceptor, 29, 598
 Action by holder against indorser, 29, 597
 Co-makers, 29, 597
 Drawer, 29, 598
 Examples, 29, 594-599
 Genuineness of instrument, 29, 596
 In general, 29, 594
 Modern rule, 29, 596
 To impeach validity, 29, 594
 When released from liability, 29, 597
 Where judgment has been rendered against party, 29, 598
 Where party is indifferent to the controversy, 29, 596
 Words of politeness, 2, 321
Writing
 Necessity of, 2, 318
BIND, 2, 422
See BOUND.
 Bindings, 2, 422
 Bind such debts in his hands, 2, 422
BIPARTITE, 2, 422
BIRTH, 2, 422
See BORN; CONCEALMENT OF BIRTH; PEDIGREE.
Citizenship acquired by, *see* CITIZENSHIP.
 Concealment of, 3, 416
 Courtesy, 4, 961
BISHOP, 2, 422
BISHOPRIC, 2, 423
BITCH, 2, 423
BITTERS, *see* INTOXICATING LIQUORS.
BLACK, 2, 423
BLACKLEG, 2, 423
BLACKMAIL, *see* THREATS AND THREATENING LETTERS.
BLACKMAILING
 Libel and slander, 13, 301
BLACKSMITH SHOP
 Nuisances
 Noise, 16, 945, 946
 Smoke, 16, 949
BLANC SEIGN, 2, 423
BLANKET BALLOT, *see* SECRET VOTING.

BLANKS, 2, 423*See* ALTERATION OF INSTRUMENTS;

BILLS AND NOTES; BONDS; FORGERY.

Alteration of instruments, 1, 497

Filling Blanks

Suretyship, 24, 744

Questions of law and fact, 19, 655

BLASPHEMY, 2, 423

As a libel, 2, 425

Constitutionality of laws defining and punishing, 2, 424; 3, 725

Definition, 2, 423

Drunkenness, 4, 806

Profane swearing, 2, 424

Public swearing a nuisance, 2, 424

Punishment at common law, 2, 424

BLASTING, see EXPLOSIONS.

Nuisances, 16, 957

BLENDED FUND, see CONVERSION.**BLINDNESS, see DEAF, DUMB AND BLIND PERSONS.**

Contributory negligence, 4, 79

BLOCK, 2, 425

Tenement block in insurance policy, 2, 425

BLOCKADE, 2, 425; 11, 468

Blockaded port, 2, 425

Breach of, 11, 471

Attempt at running, 11, 471

Hovering around port, 11, 472

Inference of attempt, 11, 471

Closing must be effectual, 11, 473

Dissolution, 11, 470

Duty of neutrals, 11, 469

Intent, 11, 473

Leaving blockaded port, 11, 472

Notification of, 11, 471

Of river, 11, 473

Paper blockade, 11, 468

Port left unguarded, 11, 470

Ships in Delicto, 11, 473

Throughout the voyage, 11, 473

Suspicious circumstances, 11, 473

Temporary relaxation, 11, 470

Vessel laden before establishment, 11, 473

Visiting port for supplies, 11, 474

When broken, 11, 469

When de facto, 11, 470

BLOOD, 2, 426*See* SUCCESSION.

Kindred of the whole and the half blood, 2, 427

Next of Blood

Synonymous with next of kin, 2, 426

Of my name and blood, 2, 427; 16, 142

Relation by blood or marriage, 2, 427

Spitting of, 2, 427

Stains, 15, 236

Chemical test, 15, 238

Color, 15, 237

Corpuscles, 15, 240

Diameter of corpuscles, 15, 241

Examples, 15, 236-248

Human blood distinguished from that of lower animals, 15, 238, 239

In general, 15, 236

Microscopic test, 15, 239

Solubility, 15, 237

Spectroscopic test, 15, 247

The guaiacum test, 15, 238

BLOW WITH, 2, 427**BLUBBER, 14, 330****BLUDGEON, 2, 427****BOARD, 2, 427***See* BOARDER.

Boarded, 2, 437

County board, 2, 428

Free on, 21, 531

On board, 2, 429

BOARDER, 2, 437*See* BOARD; LODGER.

Distinguished from guest, 2, 437

BOARDING, 2, 437**BOARDING HOUSE KEEPERS, see**

INNS AND INNKEEPERS; LODGING.

BOARD OF EQUALIZATION AND REVIEW, see TAXATION.**BOARD OF HEALTH, 2, 429***See* HEALTH; HOSPITALS; MUNICIPAL CORPORATIONS; NUISANCES; QUARANTINE.*See generally*, PHYSICIANS AND SURGEONS.

Classification, 2, 430

County commissioners as, 2, 431

Definition, 2, 429

Discretionary power, 2, 434

Individual liability, 2, 436

Liability, 2, 39

Of the municipality, 2, 432, 436

Local boards, 2, 430

Massachusetts act, 2, 433

Municipal liability for acts of, 2, 432, 436

National boards of health, 2, 430

Nuisances, 2, 434, 435

Police powers of municipality, 2, 431

Powers

And limitations, 2, 432

Of municipal corporations to make regulations, 2, 431

That can be liberally construed, 2, 432

To abate a public nuisance, 2, 433

To enact sanitary regulations, 2, 432

To pass laws prohibiting the sale of impure milk, 2, 433

To regulate slaughter-houses, 2, 434

Quarantine, 2, 435

Question as to whether nuisance exists, 2, 432

Restrictions, 2, 434

State boards of health, 2, 430

Summary action by, 2, 435

BOARD OF SUPERVISORS, 2, 437*See* COUNTY COMMISSIONERS.**BOARD OF TRADE, see TRADE, BOARD OF.****BOAT, 2, 438; 15, 501***See generally*, SHIPS AND SHIPPING.

First, 8, 21

BODY, 2, 440*See* DEAD BODY; HABEAS CORPUS.

Body corporate or politic, 2, 441

Body of the county, 2, 440

- Body of water, 2, 441
 Great bodily harm, 9, 597
 Of the body, 17, 35
- BOGUS**, 2, 443
- BOHEA**, 2, 443
- BOILING**, 2, 443
 Boiling water, 2, 443
- BOLT**, 2, 444
- BONA**, 2, 444
See GOODS; GOOD FAITH.
- BONA FIDE**, 2, 444
 Bona fide claimant, 3, 277
 Bona fide debts, 2, 447
 Bona fide mistake, 2, 447
 Bona fide paid, 2, 447
 Bona fide possessor, 2, 446
- BONA FIDE HOLDER**, 2, 316
See BILLS AND NOTES; BONDS.
- BONA FIDE PURCHASER**, 2, 444; 16, 828
See BILLS AND NOTES; RECORDING ACTS.
 Bill to perpetuate testimony against, 2, 280
- Burden of Proof**, 16, 842
 Conflict of authority, 16, 842
 Where fraud has been proven, 16, 842
- By a paramount title, 16, 843
- Can convey good title to one with notice, 16, 841
- Consideration**, 16, 834
 Extending time of payment of antecedent debts, 16, 837
 Giving negotiable instrument, 16, 838
 Giving security for purchase price, 16, 838
 Improvement of premises, 16, 836
 Must be paid before notice, 16, 834
 Necessity of valuable, 16, 834
 New consideration necessary, 16, 837
 Pre-existing debt, 16, 837
 Relinquishment of a security, 16, 837
 Right of reimbursement when part of consideration has been paid, 16, 835
 When part of consideration has been paid, 16, 835
- Creditors**, 16, 828
 Actual knowledge of prior unrecorded incumbrance, 16, 829
 Attaching creditor, 16, 828
 Between general creditors, 16, 830
 Execution levied before assignment, 16, 830
 Judgment creditor, 16, 828
 Judgment preferred to prior equity, 16, 829
 Lien creditor, 16, 831
 Preferred creditor, 16, 830
 Recording act, 16, 828
 Transfer to one creditor whose equities are equal to another, 16, 830
 Unrecorded mortgage, 16, 830
 Vendor's lien, 16, 830
 Who meant by creditors, 16, 828
- Definition, 16, 828
 From an agent, 1, 427
- Grantee agreeing to support grantor for life, 16, 833
 Grantee in quitclaim deed, 16, 833
 In bankruptcy, 2, 80
 Legal title must be acquired before notice, 16, 839, 841
 Mortgagee, 16, 833
- Pleading**, 16, 836
 Consideration, 16, 836
 Denying notice, 16, 836
- Protection Afforded to**, 16, 839
See FRAUDULENT CONVEYANCES; FRAUDULENT SALES.
 Against adverse proceedings in equity, 16, 839
 Against what protected, 16, 839
 Discovery, 16, 839
 One who has never had legal title, 16, 839-841
 When doctrine is applicable, 16, 840
- Purchaser at Judicial Sale**, 16, 831
See SHERIFF'S SALE.
 Effect of reversal, 16, 832
 Judgment creditor who purchases at sale under own judgment, 16, 831
 Notice at or before entry of judgment, 16, 832
 Notice at or before sale, 16, 832
 When notice will affect the purchaser, 16, 832
- Purchaser of equitable estate, 16, 833
- Rights of bona fide purchaser from vendee of conditional sale, 3, 436
- Subsequent grantee with notice, 16, 841
- Surety, 16, 833
- Suspicion of notice, 16, 840
- Where there has been an alteration in the instrument, 1, 502
- Who is bona fide purchaser, 16, 828
- BONDED WAREHOUSES**, 28, 638
 Definition, 28, 638
 Diligence required of owner, 28, 639
 Government's responsibility, 28, 638
 Possession of government, 28, 639
 Removal in case of emergency, 28, 639
- BONDS**, 2, 448
See ALTERATION OF INSTRUMENTS; BOTTOMRY; COUPONS; COVENANT, ACTION OF; FORGERY; FORTHCOMING BONDS.
See generally, SURETYSHIP.
See ILLEGAL CONTRACTS; LOST PAPERS; RAILROAD SECURITIES; REVENUE LAWS.
As to injunction bonds, *see* INJUNCTIONS.
Appeal bonds, *see* UNDERTAKINGS ON APPEAL.
Attachment bonds, *see* ATTACHMENT.
Bail bond, *see* BAIL.
Bastardy bonds, *see* BASTARDY.
Bonds for jail limits, *see* JAIL LIMITS.
Executor's and administrator's bond, *see* EXECUTORS AND ADMINISTRATORS.
Indemnity contract, *see* INDEMNITY.
Municipal aid bonds, *see* MUNICIPAL AID.

BONDS—Cont'd

Municipal bonds, see MUNICIPAL SECURITIES.

Railroad bonds, see RAILROAD SECURITIES.

To dissolve attachment, see ATTACHMENT.

Undertaking on appeal, see UNDERTAKING ON APPEAL.

Acceptance, 2, 460

Evidence of, 2, 460

Necessity of, 2, 460

Actions on, 2, 467*e*; 17, 80

See COVENANT.

Parties to action, see *infra*, PARTIES TO ACTION.

Action of debt, 5, 167

Amount of penalty as giving jurisdiction, 2, 467*f*

Bonds payable in installments, 2, 467*e*

Bonds payable on a day certain, 2, 467*f*

Bonds payable on demand, 2, 467*e*

Date, 2, 467*e*

Jurisdiction, 2, 467*f*

Official Bonds, 2, 466, 467*f*

Officers and agents of private corporations, 17, 80

Where covenant is secured by penalty, 2, 467*e*

Admissions, 2, 464

Alteration, effect of, 1, 497

Attorney

Execution by, 2, 458

Ratification upon authorized execution, 2, 458

Blanks, 2, 451

Authority to fill, must be under seal, 2, 452

Bond written above a person's signature without his authority, 2, 451

Express authority to fill, 2, 452

Implied assent to fill in where blank spaces are left, 2, 452

Proof of Authority to Fill, 2, 452

Question for jury, 2, 452

Redelivery, 2, 452

Bona fide Holder, see *infra*, NEGOTIABLE.

Bonds required in course of judicial proceedings, 2, 466*g*

Condition, 2, 463, 467

Illegal, 2, 463

Impossible, 2, 463

Consideration, 2, 453

Gambling consideration, see GAMBLING CONTRACTS.

Between obligee and surety, 2, 455

Illegal, 2, 454

Presumption of, arising from seal, 2, 453, 455

Want of consideration as defense, 2, 453

Construction, 2, 460

Accidental omission, 2, 462

Indorsement upon bond, 2, 462

Insensible words, 2, 462

Of official, 2, 466*g*, 467*f*

Of particular bonds, 2, 462

Of the whole language, 2, 462

Papers referred to in the bond, 2, 462

Repugnant conditions, 2, 462

Simple bonds, 2, 460

Statutory bonds, 2, 460

Surplusage, 2, 462

Contract to indemnify indorser, 10, 413

Corporation, 2, 466*x*

See MUNICIPAL SECURITIES; RAILROAD SECURITIES; see *infra*, OFFICERS.

Acceptance, 2, 466*x*

Acquiescence, 4, 228

Action in name of, 2, 466*z*

Bona fide holders of securities of, 4, 227

Delivery, 2, 466*x*

Increase of principal's duties, 2, 466*y*

Laches, 4, 228

Members of corporations as sureties on official bonds, 2, 466*x*

Power of, to execute bonds, 2, 466*x*

Ratification, 4, 228

Stockholder's injunction against the unauthorized issue of negotiable instruments or use of corporate funds, 4, 229

Unauthorized consolidation as releasing subscriptions, 4, 272*n*

Unauthorized transfer of negotiable securities, 4, 229

When party dealing in corporation securities is chargeable with notice as to corporation's power under its charter to issue such securities, 4, 227

Where security is regular on its face but issued for an illegal purpose, 4, 227

Defeasance, 5, 510

Definition, 2, 448

Delivery, 2, 458

As an escrow, 2, 459, 460

By unauthorized person, 2, 458

Conditional, 2, 460

Constructive, 2, 460

Definition, 2, 458

Effect of, 2, 460

Necessity of, 2, 458

Of bond of private corporations, 2, 466*x*

Of official bonds, 2, 466*i*

Place of, as fixing the law of the contract, 2, 460

Possession of, by obligee as prima facie evidence, 2, 459

Question of intention, 2, 458

To one obligee as delivery to all, 2, 460

To third person for use of obligee, 2, 459

Without acceptance, 2, 460

Distinguished from ordinary contracts, 2, 455

Distinguished from recognizance, 2, 2; 20, 472

Duress, 2, 450

Of goods, 2, 451

Of persons, 2, 450

Escrow, see ESCROW.

Parol evidence to show bond an, 2, 459

- Whether bond is, question for the jury, 2, 460
- Estoppel, 2, 464; 14, 622
- Execution**, 2, 457
- By attorney, 2, 458
- Of joint bonds not executed by principal, 2, 466a
- Of official bonds presumed to have been made at Washington, 2, 466g, 466n
- Forfeiture**
- Liquidated damages, 2, 462, 467a; 8, 450
- Form and contents, 2, 449
- Fraud**
- Obtaining signature by, 2, 457
- Garnishment**, 8, 1115
- Action for breach of bond, 8, 1116
- Actual damages on bond, 8, 1116
- Amendment, 8, 1115
- Condition of special bond, 8, 1115
- Exemplary damages on bond, 8, 1116
- Failing to comply with statute, 8, 1115
- Garnishee's right of action on bond, 8, 1116
- Necessity of, 8, 1115
- Whether garnishee may object to bond where defendant appears, 8, 1115
- Whether special bond is required, 8, 1115
- Gifts, 8, 1321
- Government, whether negotiable, 16, 484
- Infant, 2, 449
- Interest**
- When demand necessary, 5, 528z³²
- Intoxication, 2, 450
- Irrigation, 11, 846
- Joinder of actions, 17, 562
- Jointly and severally, 2, 460
- Joint or Joint and Several**, 2, 464
- Actual mistake, 2, 466a
- Discharge of estate of deceased surety, 2, 466a
- Equitable relief against heir or executor of a deceased joint obligor, 2, 465
- Execution of joint bond by two or more executors, 2, 466
- Heirs or executors of a deceased joint obligor, 2, 465
- Joint bond not executed by principal, 2, 466a
- Liabilities of obligors in joint bond, 2, 465
- Mistake as ground for equitable relief, 2, 466
- Partnership bonds, 2, 466b
- Presumptions in favor of joint bonds as applicable to sureties, 2, 466a
- Statutory regulations, 2, 466b
- When bond is joint, 2, 464
- Liability of surety, 2, 457, 466k
- Limitation of Actions**, 2, 466o; 13, 724
- New promise, 13, 749
- Liquidated Damages**
- See LIQUIDATED DAMAGES.
- Penalty as, 2, 462, 467a; 8, 456
- Married Women**, 14, 622
- By statute, 14, 622
- Estoppel, 14, 622, 623
- Examples of valid covenants, 14, 622, 623
- In regard to her separate estate, 14, 622
- Validity, 14, 622
- Meaning of term debenture, 5, 141
- Misrepresentation**
- Obtaining signature by, 2, 457
- Name of obligor, 2, 449
- Negotiable**, 2, 466b
- Negotiability of railroad bonds*, see RAILROAD SECURITIES.
- Accidental omissions, 2, 466c
- Analogous to letter of credit, 2, 466c
- As chattels, 2, 466c
- As promissory notes, 2, 466c
- By what rules governed, 2, 466b
- Coupon bonds of municipal and business corporations, 2, 466b
- Indorsement**, 2, 466e
- Liability of indorser, 2, 466e
- Out of the state where made, 2, 466e
- Rights of Bona Fide Holder**, 2, 466c
- As affected by recitals, 2, 466d
- Burden of proof, 2, 466c
- Caution to be exercised, 2, 466d, 466e
- Effect of want of title in vendor, 2, 466c
- Examination of title, 2, 466d
- Ex post facto adjudications, 2, 466e
- Negligence, 2, 466c
- Stolen bonds, 2, 466c
- When dealing with corporate or government bonds, 2, 466d
- Obligee**, 2, 451
- Obligor as, 2, 451
- Obligor**, 2, 449
- Femes covert, 2, 449
- Infant as, 2, 449
- Intoxicated, 2, 450
- Partners, 2, 450
- Persons non compos mentis, 2, 450
- Who may be, 2, 449
- Official**, 2, 466f; 19, 445
- See *infra*, RECEIVER; and see SURETYSHIP; UNDERTAKING ON APPEAL.
- Justice of the peace*, see JUSTICE OF THE PEACE.
- Subrogation**, see SUBROGATION.
- Action on official bond for money received wrongfully, 2, 467g
- Actions on, 2, 467f
- Acts done under color of office, 2, 466i
- Addition to surety's liability by subsequent statute, 2, 466i
- Against whom summary remedies may be taken, 2, 467e
- Apportionment of payments, 2, 466l
- Approval**, 2, 466g
- As a condition precedent, 2, 466h
- How approved, 2, 466h
- Ministerial or judicial act, 2, 466h
- Necessity of, 2, 466g
- Omission inuring to the benefit of the obligor, 2, 466h

BONDS—Cont'd**Official—Cont'd**

Bad statutory bond as common-law bond, 2, 466z

Bond of annually appointed officer, 2, 466m

Bond of defacto officer, 2, 466l

Bonds payable to wrong obligee, 2, 467

Bond taken from deputy by superior officer when not required by law, 2, 466n

Bookkeeper's bond, 17, 68

Breach of Condition, 2, 467a

Failure to pay over money due, 2, 467b

Officer mixing up funds with his own, 2, 467b

Where no actual damage is suffered, 2, 467b

Where officer acted in accordance with plaintiff's instructions, 2, 467c

Change of Principal's Statutory Duties

Effect upon surety of change of statutory duties of principals, 2, 466y

Common-law bond to the United States, 2, 466n

Condition contrary to statute, 2, 467

Conditions not required by statute, 2, 466o

Consideration, 19, 445

Constable's liability, 22, 568

Construction, 2, 466g

Recitals as limiting conditions, 2, 466g

Cumulative bonds, 2, 466j

Definition, 2, 466f

Delivery, 2, 466f, 466i

Designed to effect an illegal purpose, 2, 466z

Election, 2, 466l

Execution, 2, 466f

Execution of bonds of the United States presumed to have been made at Washington, 2, 466g, 466n

"Faithful," 7, 66o

Forfeiture of officer by failure to comply with statute, 2, 466p

Form, 2, 466f

Imperfect, 2, 466z

Importance of the conditions, 2, 467c

Impossible conditions, 2, 467c

Increase of principal's duties, 2, 466y

Judicial officers, 2, 466g

Jurisdiction, 2, 466p

Justification of sureties, 2, 466k

Laches, 2, 466o

Liability

Imposed, must not be in excess of that prescribed by statute, 2, 466g

Of officer for public money, 2, 466l

Of officer for stolen money, 2, 466m

Of Sureties, 2, 466i, 466p

When principal holds office until his successor is elected, 2, 466m

Where principal takes property wrongfully, 2, 466k

Limitation of actions of, 2, 466o, 16, 784

Mandamus to compel approval, 6, 385

Material condition omitted, 2, 467

Measure of the liability of the obligor, 2, 466g

Necessity of compliance with statutory requisites, 2, 466f

Notary Public, 16, 756**Liability of Surety**

Admissions of notary, 16, 785

Statute of limitation, 16, 784

Object of an, 2, 466i

Officer losing money by robbery, 2, 467c

Officers and Agents of Private Corporations, 17, 63, 72, 8o

Acceptance, 17, 64

Action on Bond, 17, 8o

Admissions and declarations, 17, 8o

In whose name, 17, 8o

Joinder of sureties, 17, 8o

Set-off, 17, 81

Approval, 17, 63

Bookkeeper's bond, 17, 68

Cashier's bond, 17, 67

Common-law bonds, 17, 64

Complete appointment, 17, 64

Conditions, 17, 67, 68

Breach, 17, 67

Cashier's bonds, 17, 67

Defense, 17, 67

Duties prescribed, 17, 67

Examples, 17, 67-7o

Failure of bank, 17, 69

Mistake, 17, 67

Robbery, 17, 69

Teller's bond, 17, 67

Treasurer, 17, 69

Want of care, 17, 69

Corporation's right to take, 17, 64

Duration of Liability, 17, 7o

Confused accounts, 17, 72

Consolidation of companies, 17, 72

Holding over, 17, 71

Office unlimited as to term, 17, 7o

Re-election, 17, 7o

Term of office, 17, 7o

Effect of increase of business, 17, 72

Effect of increase of capital, 17, 72

Effect of increase of stock, 17, 72

Evidence of acceptance, 17, 64

Necessity of acceptance, 17, 64

Officer as obligee, 17, 63

Robbery, 17, 69

Scope of Officer's Employment, 17, 73

Effect of imposition of new duties, 17, 73

Extent of surety's obligation, 17, 73

Sureties**Release, 17, 74**

Concealment by obligee, 17, 74

Effect of increased business, 17, 72

Effect of increased capital, 17, 72

Effect of increased stock, 17, 72

Vol. I.

- Imposition of new duties, 17, 73
- Information as to unfitness of officer, 17, 74
- Knowledge of corporation, 17, 75
- Misrepresentation by obligees, 17, 74
- Misrepresentations of principal, 17, 76
- Necessity of actual mala fides, 17, 75
- Negligence of Company**, 17, 77
 - Acceptance of satisfaction from principal, 17, 79
 - Acts of corporation, 17, 80
 - Books as evidence to prove negligence, 17, 78
 - Covenant not to sue, 17, 79
 - Date of appointment, 17, 79
 - Death of officer, 17, 79
 - Duty to discharge delinquent, 17, 77
 - Duty to inform sureties of default, 17, 78
 - Effect of, 17, 77
 - Examination of accounts, 17, 77
 - Failure to institute proceedings after discovery, 17, 77
 - Frauds which might have been discovered by diligence, 17, 77
 - Material change in contract, 17, 80
 - Misleading statements in report, 17, 77
 - Notice by surety of withdrawal, 17, 79
 - Officer's discharge requested by surety, 17, 78
 - Omission of examination, 17, 77
 - Where surety is director, 17, 78
 - Officer a defaulter, 17, 76
 - Past and future delinquencies, 17, 75
- Taking, 17, 64
- Teller's bond, 17, 67
- Treasurer's bond, 17, 69
- Validity**, 17, 65
 - As to common-law bond, 17, 65, 66
 - Directors as sureties, 17, 65
 - Examples, 17, 65, 66
 - Officer not a director, 17, 65
 - Performance of illegal acts, 17, 66
 - Public policy, 17, 65
 - Ultra vires business, 17, 66
- What amounts to an acceptance, 17, 64
- When required, 17, 63
- Where not required by statute, 17, 63, 64
- Officer's liability as insurer for money received, 2, 467c
- Of which the United States is the beneficiary, 2, 466m
- Of whom bonds are required by the United States, 2, 466n
- Omissions, 2, 466g
- Penalty, 2, 467a
- Postmaster, 18, 847
- Power of the United States to require bonds from its officers, 2, 466m
- Priority of payment, 2, 466o
- Rescission, 2, 1, 65
- Retroactive clauses, 2, 466o
- Retrospective and retroactive laws, 2, 466m
- Robbery, 17, 69
- Set-offs against the United States, 2, 466p
- Sheriffs**, 22, 555
 - Acts colore officii, 22, 555
 - Acts virtute officii, 22, 555
 - As collecting agent, 22, 560
 - Breaches of duty arising out of performance of ministerial duties, 22, 555
 - Damage to property seized, 22, 556
 - Deficient statutory bond as good as common-law bond, 22, 559
 - Deputy's bond, 5, 630; 22, 559
 - Escape, 22, 556
 - Examples of liability, 22, 555
 - Failure to deliver goods to defendant, 22, 556
 - Failure to levy, 22, 556
 - Failure to return process, 22, 556
 - For what acts sheriff liable, 22, 555
 - For what acts sureties are not liable, 22, 557
 - Judgment against sureties on motion, 22, 558
 - Judgment as evidence against sureties, 22, 558
 - Levying on property of strangers, 22, 557
 - Levying upon exempt property, 22, 557
 - Liability for acts of deputies, 22, 559
 - Liability of sheriff and sureties, 22, 555, 557
 - Liability of sheriff for services of person employed by deputy, 22, 559
 - Loss by negligence, 22, 556
 - Non-payment of money collected, 22, 556
 - Overpayment, 22, 557
 - Surety's Liability**, 22, 556-560
 - For acts after expiration of term, 22, 557
 - For penalties, 22, 557
 - Where sureties have limited their liability, 22, 557
 - Whether unsatisfied judgment against sheriff is a bar to suit upon bond, 22, 558
- State Officers**, 2, 466p; 23, 107
 - Examples, 23, 107
 - Succeeding terms—liability of sureties, 23, 107
- Statutes requiring directory or mandatory, 2, 466p
- Substitute bonds, 2, 466k
- Successive bonds, 2, 466k

BONDS—Cont'd**Official—Cont'd**

Suit on de facto, 5, 108

Suits upon, 2, 466*q***Summary Remedies, 2, 467*c***Constitutionality of, 2, 467*d*Notice to the officer only, 2, 467*d*Where one of the sureties is dead, 2, 467*d*Supplemental bonds, 2, 466*k*Surety's liability for money received outside the line of his duty, 2, 466*z*Surety's liability where principal is re-appointed, 2, 466*k*

Tax collector, 25, 290, 291

Tax collector's liability under his official bond, 25, 361

The law as part of the contract, 2, 466*i*To whom they should be payable, 2, 466*f*

Treasurer's bond, 17, 69

United States' priority against insolvent national banks, 2, 466*p*

Validity of unnecessary bond, 19, 445

Varying slightly from prescribed form, 2, 467

When required, 19, 445

When they become operative, 2, 466*i*Who may bring suit on irregular official bond, 2, 467*a*

Of persons non compos mentis, 2, 450

Parol Evidence, 17, 425

Absolute bond intended as an indemnity, 17, 426

Examples, 17, 425, 426

Name inserted by mistake, 17, 426

Parties to Actions, 2, 449, 467*b*; 17, 527

Code provisions, 17, 527

Examples, 17, 526-528

On joint bond, 2, 465

Party aggrieved, 17, 527

Person intended to be secured, 17, 527

Real party in interest, 17, 526-528

Statutes, 17, 527

Penalty, 2, 462, 467*a*; 8, 450*See* LIQUIDATED DAMAGES.

Presumption as to its being intended as liquidated damages, 2, 462

When enforced, 2, 463

Pleading, 2, 465

Pledge**Bond and Mortgage, 18, 649**

After default, 18, 650

Assignment in writing, 18, 650

Bona fide pledgee for value, 18, 649

Delivery alone, 18, 650

Enforcing security, 18, 650

Estoppel paper, 18, 650

Fraudulent release, 18, 649

Parol agreement, 18, 650

Remedy, 18, 650

Rights of pledgee, 18, 649

Secret equities, 18, 649

Whether the security may be pledged, 18, 649

Prison Bounds, 19, 93

Breach of bond, 19, 93, 94

Indemnity to sheriff, 19, 94

Invalid statutory bond as good as common-law bond, 19, 95

Joint bond, 19, 94

Overstepping the limits, 19, 93

Precept from court, 19, 93

Proof of breach, 19, 94

Sheriff's duty, 19, 93

Strictness of proof required, 19, 95

Unauthorized condition, 19, 94

What is equivalent to an escape, 19, 93

When bond is good for, 19, 94

Where bounds have not been defined, 19, 93

Proceedings in which court has no jurisdiction, 12, 312

Profert and Oyer, 18, 508

At common law, 18, 508

Demurrer, 18, 511

Effect of demanding oyer, 18, 510

Effect of failure to demand oyer, 18, 510

Effect of profert, 18, 510

Letter of administration, 18, 510

Letters testamentary, 18, 510

Necessity, 18, 508

On what instrument required, 18, 508

Profert unnecessarily made, 18, 511

Records of superior court, 18, 509

What is meant by craving oyer, 18, 510

When oyer is demandable, 18, 510

Whether party must make use of oyer, 18, 511

Whether refusal is error, 18, 511

Receivers, 2, 466*w*; 20, 159

Additional security on extension of receivership, 20, 163

Amount of bond, 20, 161

As prerequisite to receiver's control of property, 20, 162

Conditioned, 20, 159

Contribution against co-surety, 20, 168

Discharge of Surety, 20, 164, 166

Examples, 20, 167

How surety may obtain discharge, 20, 166

Dispensing with security, 20, 162

Failure to execute as defense to action, 20, 240

Number of sureties, 20, 160

Refunding of receivership funds by surety, 20, 167

Reimbursement of surety, 20, 167

Removal for insufficiency, 20, 202-212

Requirements, 20, 159

Security becoming insufficient, 20, 163

Sureties' Liability, 20, 164

Death of receiver, 20, 164

Default prior to execution of bond, 20, 165

Evidence of breach, 20, 165

Extent of Liability, 20, 166

Costs, 20, 166

- Principal and interest, 20, 166
- Terms of bond, 20, 166
- Nature of sureties' liability, 20, 164
- Release of liability, 20, 164
- When liability becomes absolute, 20, 164
- Surety's course on being sued, 20, 168
- Validity of bond, 20, 162
- Who may become surety, 20, 160
- Recitals**, 2, 464
 - As affecting bona fide holder of negotiable bond, 2, 465e
 - As limiting conditions, 2, 466g
 - Collateral matter, 2, 464
 - Conclusiveness of, 2, 464
 - Immaterial matter, 2, 464
 - Limiting condition, 2, 464
- Recognizance, 20, 471
- Reformation of Instruments**, 15, 669
 - Bond left partly blank, 15, 669
 - Examples, 15, 669
 - Sureties, 15, 669
 - When equity will interfere, 15, 669
- Release**
 - Of One Obligor as Release of All**, 20, 751
 - Covenant not to sue, 20, 751
 - Intention, 20, 751
 - Obligor released by operation of law, 20, 751
 - Question of law and fact, 20, 751
 - Receipt under seal, 20, 751
- Removal of causes, 20, 1022
- Replevin**, 20, 1088
 - Larger bond than necessary, 20, 1088
 - Necessity, 20, 1088
 - Replevin Bond**, 20, 1091, 1130
 - Action for damages against sheriff where bond insufficient, 20, 1136
 - Actions on Bond**, 20, 1141
 - Action of debt, 20, 1141
 - Damages**, 20, 1145
 - Costs, 20, 1146
 - Costs of original suit, 20, 1147
 - Evidence of, 20, 1146
 - Failure to prosecute, 20, 1146
 - Nominal damages, 20, 1146
 - Plaintiff estopped from denying value recited in bond, 20, 1147
 - Recitals in bond as to value of property, 20, 1146
 - Return of property, 20, 1146
 - Reviewal of judgment, 20, 1146
 - Sureties in court, 20, 1147
 - Use of property, 20, 1145, 1146
 - Value of property fixed by judgment, 20, 1147
 - Declaration**, 20, 1142
 - Breach assigned, 20, 1143
 - Breach larger than condition of bond, 20, 1143
 - Copies of writ of replevin, 20, 1143
 - Delivery of bond, 20, 1144
 - Delivery of property to plaintiff, 20, 1143
 - Demand, 20, 1144
 - In California, 20, 1142
 - In Nebraska, 20, 1143
 - In Oregon, 20, 1143
 - Judgment for costs, 20, 1142
 - Judgment for delivery, 20, 1143
 - Jurisdiction of court, 20, 1144
 - Material facts to be alleged, 20, 1142
 - Mere allegation of failure to deliver, 20, 1143
 - Notice to obligor in bond, 20, 1144
 - Number of sureties and principals, 20, 1143
 - Return of officer, 20, 1143
 - Setting forth material conditions on bond, 20, 1144
 - Termination of replevin suit, 20, 1142
 - Variance, 20, 1144
 - Failure to return property, 20, 1142
 - Judgment for costs, 20, 1142
 - Necessity of demand, 20, 1142
 - Plea in actions on replevin bonds, 20, 1144
 - Scire facias, 20, 1141, 1142
 - Statutory regulations, 20, 1141
 - Whether bond is assignable, 20, 1142
 - Who may bring action, 20, 1142
 - Writ of return, 20, 1142
- Affidavit governs amount, 20, 1132
- At common law, 20, 1130
- Before whom officer can levy, 20, 1130
- Bond with sureties, 20, 1130
- Breach of Condition**, 20, 1137
 - Condition distinct and separate, 20, 1137
- Defenses**, 20, 1141
 - Examples, 20, 1141
- Evidence of breach, 20, 1138
- What Constitutes Breach**, 20, 1138
 - Abatement by death of defendant, 20, 1139
 - Condition that party shall prosecute suit, 20, 1138
 - Dismissal, 20, 1138, 1139
 - Failure to return property, 20, 1139
 - In Minnesota, 20, 1140
 - In Missouri, 20, 1140
 - In Pennsylvania, 20, 1140
 - In Rhode Island, 20, 1140
 - Judgment against party, 20, 1138
 - Proof of judgment, 20, 1140
- Defective statutory bond good as common-law bond, 20, 1134
- Delivered to sheriff, 20, 1136
- Description of action, 20, 1135
- Description of property, 20, 1135
- Effect of giving insufficient bond, 20, 1134
- Effect of giving no bond, 20, 1134
- Election for damages, 20, 1131
- Exceptions to sureties, 20, 1135
- Forma pauperis, 20, 1135
- Form of bond, 20, 1135

BONDS—Cont'd**Replevin—Cont'd****Replevin Bond—Cont'd**

- How conditioned, 20, 1132
- In Arkansas, 20, 1091, 1092
- In California, 20, 1092
- In Connecticut, 20, 1133
- In Delaware, 20, 1133
- In Georgia, 20, 1092
- In Indiana, 20, 1092, 1131
- In Illinois, 20, 1133
- In Iowa, 20, 1092
- In Kansas, 20, 1092, 1133
- In Maine, 20, 1133
- In Michigan, 20, 1131, 1134
- In Minnesota, 20, 1091, 1133
- In Missouri, 20, 1134
- In Nebraska, 20, 1133
- In Nevada, 20, 1092
- In New Jersey, 20, 1134
- In New York, 20, 1091, 1134, 1136
- In Pennsylvania, 20, 1092
- In Tennessee, 20, 1092
- In United States, 20, 1130
- In Vermont, 20, 1133
- Motion Where Bond Is Defective, 20, 1134**
 - Plea in abatement, 20, 1134
 - Time of motion, 20, 1134
- Name of defendant, 20, 1135
- Nature of bond, 20, 1130
- Number of sureties, 20, 1133
- Object of bond, 20, 1132
- Obligors impeaching bond, 20, 1135
- Payment of money into court, 20, 1133
- Payment to defendant of damages and costs, 20, 1132
- Penalty, 20, 1132
- Pledges of record, 20, 1130
- Prosecution of action, 20, 1132
- Return of chattels, 20, 1132
- Return of goods, 20, 1130
- Sheriff responsible for sureties, 20, 1136
- Sheriff's duty, 20, 1130
- Signing approved bond, 20, 1134
- Stating amount, 20, 1132
- Statute of Westminster, 20, 1130
- Suretyship, 24, 862**
 - Alteration of the contract, 24, 862
 - Conclusiveness of judgment, 24, 862
 - Examples, 24, 862, 863
 - When sureties discharged, 24, 863
- Third party claimant, 20, 1092
- Title Acquired to Property by Giving Bond, 20, 1136**
 - In California, 20, 1137
 - In Kansas, 20, 1137
 - In Massachusetts, 20, 1137
 - In Ohio, 20, 1137
 - In Pennsylvania, 20, 1136
 - In Vermont, 20, 1137
- United States plaintiff, 20, 1131
- Warrant to confess judgment, 20, 1133

Where one surety sufficient, 20, 1133

Whether assignable, 20, 1142

Rescission, 21, 65

Private bonds, 21, 65

Scroll as seal, 2, 456

Seal, 2, 455

As importing the consideration, 2, 455

Necessity of, 2, 455

Necessity of recital in the body of the instrument, 2, 456

Necessity that party should affix it himself, 2, 457

One seal adopted by several obligors, 2, 456

Scroll as seal, 2, 456

Statutes abolishing, 2, 456

What is, 2, 456

Secondary evidence, 13, 1131

Signature, 2, 455

Bonds signed by sureties alone, 2, 457

Form of, 2, 457

Necessity that party should write it himself, 2, 457

Obtained by fraud, 2, 457

Obtained by misrepresentation, 2, 457

Place of, 2, 457

Surety and principal signing at different times, 2, 457

State Bonds, 23, 98

Bona fide holder of invalid bond, 23, 99

Bonds constituting a debt in excess of amount allowed by constitution, 23, 99

Bonds issued for illegal purpose, 23, 98, 99

Coupons, 23, 99

Enforcement, 23, 98

By federal courts, 23, 98

By state courts, 23, 98

Examples, 23, 99, 100

Summary Remedies

Against whom they may be taken, 2, 467e

Sunday, 2, 458

Sureties on, of feme covert, 2, 449

Suretyship*See SURETYSHIP; see infra, OFFICIAL RECEIVERS; REPLEVIN; SHERIFFS.***Changes in Notes and Bonds, 24, 840**

Adding word "surety," 24, 841

Addition of new parties, 24, 842

Change in date, 24, 840

Change of amount, 24, 840

Changes as to interest, 24, 841

Medium in which note is to be paid, 24, 842

Place of payment, 24, 842

Title Bonds

Specific performance, 22, 970

Trover, 26, 769

Voluntary, 2, 467a; 3, 827

What law governs, 2, 460

When absolute, 2, 460

BONE

Identity, 15, 232
Manufacture of bone, 14, 259

BONUS, 2, 467^h

BOOK, 2, 467ⁱ

See **BOOKS AS EVIDENCE**; **COPYRIGHT**.
As to false entries, see **FORGERY**.
Church registers, 20, 520
Effects, stock book and book debts, 6, 194
Horn, 4, 151
Letter book, 2, 467^p; 13, 237, 261
My books, 16, 109
What constitutes, 2, 468
Within copyright law, 4, 151

BOOKKEEPER

As an expert in handwriting, 9, 267, 293

BOOKS AS EVIDENCE, 2, 467^j

See **PRODUCTION OF DOCUMENTS**; **PEDIGREE**; **RES GESTÆ**.
Admissibility in evidence when made by stewards, bailiffs, etc., 2, 467^m
Admissibility of entries made in the usual course of business, 2, 467^m
Alterations, 2, 468
Application of payments, 18, 242
Authentication of books of foreign laws, 1, 1022
Bank books, 2, 467^p
Book Entries as Evidence of Payment, 18, 200
Book entries made by payor, 18, 200
Entries in creditor's books, 18, 201
Examples, 18, 200, 201
Form in which account is kept, 18, 201
Made in course of business, 18, 200

Books

Of account, 2, 467^m
Of assessment of public taxes, 2, 467^l
Of Corporations, 2, 467^o; 17, 177; 20, 520
Seal, 2, 467^p
Of original entries, 2, 467^p; 13, 261, 262
Of Science or Art, 2, 467^m
Jury room, 12, 377
What constitutes a book, 2, 468
Charts, 7, 76
Copies, 2, 467^l
Corporation's Books, 2, 467^o; 17, 177; 20, 520
As between members of corporation, 20, 520
Conclusiveness, 20, 521
Rebuttal by parol testimony, 20, 521
Requisites to admission, 2, 467^p
Subject of private nature, 20, 519
Whether best evidence of facts recorded, 20, 520
Whether books prove themselves, 20, 520

Counsel reading from law books. see *infra*, **READING FROM LAW BOOKS**.

Course of Business

Memoranda made in, 2, 467^m; 15, 267

Deceased Person

Memoranda made by, 2, 467^m

Declarations in public record made in performance of duty, 7, 75

Digests, 2, 467^j
Embezzlement, 6, 498^t
Entries in bankers' books, 7, 76
Entries made by parties themselves, 2, 467^p

Family Bible, 2, 467^m; 7, 809

See **BIBLE**; **PEDIGREE**.

Foreign law, 23, 294, 295
Fraudulent appearances, 2, 468

Histories, 2, 467^l

Statements in, 7, 76

Law books, 16, 528; 19, 615, 621, 622

Letter Book, 2, 467^p; 13, 237, 261

Contract by correspondence, 13, 261
Destruction of originals, 13, 261
Duplicate original, 13, 262
Foundation for introducing, 13, 262
Secondary evidence, 13, 261
Sworn copy of letter press copy, 13, 262

Maps, 7, 76

Mechanics' Liens

Original Entries, 15, 189

Examples, 15, 189

Omissions, 15, 189

Medical Books, 2, 467^m; 15, 207

Admissibility, 15, 207
Contradicting witness, 15, 209
Discretion of court, 15, 209
Examples, 15, 207
Homicide, 9, 722
Obscenity, 17, 9
Reading medical books during argument, 15, 208

Memorandum in Usual Course of Business, 2, 467^m; 15, 267

Calling person who made them, 15, 267
Certificate of third person, 15, 267
Conflict of opinion, 15, 267
Corroborating testimony, 15, 267, 268
Examples, 15, 267
Person residing out of state, 15, 267-270
When admissible, 15, 267
When question of time material, 15, 268

Pamphlet laws, 2, 467^j

Parish registers, 20, 520

Partnership, 17, 1317

Books as evidence of, 17, 1313
Construction of the articles, 17, 1293
Entries after dissolution, 17, 1293
In taking account, 17, 1293
Proof that the person is member of the firm, 17, 1293

Principles governing admission, 2, 467^j

Prison calendar, 2, 467^l

Private laws, 1, 1022

Proof of handwriting, 9, 267, 293

Public Records in Evidence, 2, 467^k; 20, 513

Admissibility in general, 20, 513

Attestation, 20, 514

By whom attested, 20, 515

How identified, 20, 515

Parol evidence, 20, 515

Signature, 20, 515

Certified copy of record, 20, 518

Common-law rule, 20, 513

BOOKS AS EVIDENCE—Cont'd**Public Records in Evidence—Cont'd**

- Effect, 20, 516
- Examples, 20, 513
- Force as evidence, 20, 516
- How record is proven, 20, 518
- In favor of officer who made entry, 20, 513
- Inferences, 20, 514
- Introducing record itself as evidence, 20, 518
- Journals of either house, 2, 467*k*
- Judicial records, 2, 467*l*
- Parol Evidence to Vary or Contradict**, 20, 517, 518
 - Certificate of custodian of the record, 20, 518
 - To explain record, 20, 518
 - To show that instrument is not a record, 20, 517
 - Where record is destroyed, 20, 517
 - Where statutes require record, 20, 517
- Prima facie, 20, 517
- Statutory provisions, 20, 513
- Tax books, 20, 514
- Tax collector's returns, 20, 514
- To prove matter in record, 20, 513
- To show that a certain document is not public record, 20, 515, 517
- Weight of evidence, 20, 516
- Whether primary evidence, 20, 516
- Whether they impart absolute verity, 20, 517
- Reading extracts from newspapers, 16, 524
- Reading from Law Books**, 16, 528; 19, 615, 621, 622
 - Counsel**, 19, 621, 622
 - Adopting views expressed in book as his own, 19, 622
 - Court's right to restrict counsel, 19, 624
 - Examples, 19, 622
 - In Virginia, 19, 624
 - Measure of damages, 19, 623
 - Passages bearing upon questions of fact, 19, 622
 - Unnecessary consumption of time suffered, 19, 625
 - Where charge of judge precedes argument, 19, 623
 - Where the passage as read has no application to the facts of the case, 19, 625
- Reading scientific books before jury, 2, 467*m*; 15, 207; 16, 527
- Recitals of public facts in statutes, 7, 75
- Registers kept at the navy office, 2, 467*k*
- Registers of baptisms or births, 2, 467*k*
- Reports of decisions, 20, 503
- Requisites, 2, 467*l*
- Sales, 21, 504
- Secondary Evidence**
 - Memoranda made in the course of business, whether, 2, 467*m*; 15, 267

- Ships and Shipping**, 22, 716
 - Against person on whose affidavit obtained, 22, 717
 - As evidence of ownership, 22, 716
 - Character as a domestic vessel, 22, 717
 - Conclusive evidence as to fitness, 22, 717
 - Enrollment, 22, 717
 - In favor of person claiming to be owner, 22, 717
 - Insurance, 22, 717
 - Ownership, 22, 717
 - Ownership merely incidental, 22, 717
 - Parol evidence to show ownership, 22, 717
 - Port to which ship belongs, 22, 717
 - Registry obtained on oath, 22, 716
 - Ship's logbook, 2, 467*l*; 20, 521
 - Ship's register, 20, 521
 - Whether prima facie evidence to charge a person as owner, 22, 716
- Showing bad character of person making entries, 3, 116
- Slate, entries upon, 2, 468
- State Papers**
 - Printed copies, 20, 505
 - Volume of the American state papers, 20, 505
- Statute books, 1, 1022; 2, 467*j*; 8, 437
- Stock**
 - To prove call, 23, 815
- Stockholders, 23, 782
- The Rule as to Admission of Merchants' Books of Original Entries**, 3, 540
 - In Alabama, 2, 467*g*
 - In Arkansas, 2, 467*g*
 - In California, 2, 467*g*
 - In Colorado, 2, 467*g*
 - In Connecticut, 2, 467*g*
 - In Delaware, 2, 467*g*
 - In Florida, 2, 467*g*
 - In Georgia, 2, 467*r*
 - In Illinois, 2, 467*r*
 - In Indiana, 2, 467*r*
 - In Iowa, 2, 467*r*
 - In Kansas, 2, 467*s*
 - In Kentucky, 2, 467*s*
 - In Louisiana, 2, 467*s*
 - In Maine, 2, 467*s*
 - In Maryland, 2, 467*t*
 - In Massachusetts, 2, 467*t*
 - In Michigan, 2, 467*u*
 - In Minnesota, 2, 467*w*
 - In Mississippi, 2, 467*u*
 - In Missouri, 2, 467*u*
 - In Nebraska, 2, 467*w*
 - In Nevada, 2, 467*w*
 - In New Hampshire, 2, 467*u*
 - In New Jersey, 2, 467*v*
 - In New York, 2, 467*v*
 - In North Carolina, 2, 467*w*
 - In Ohio, 2, 467*w*
 - In Oregon, 2, 467*w*
 - In Pennsylvania, 2, 467*w*
 - In South Carolina, 2, 467*y*
 - In Tennessee, 2, 467*z*
 - In Texas, 2, 467*z*

- In Vermont, 2, 467z
 In Virginia, 2, 467z
 In Wisconsin, 2, 468
 The rule as to merchant's account books, 3, 540
 What books are admissible, 2, 467j
- BOOKSELLER**, 2, 469
- BOOM**, 2, 469
- BOOM COMPANIES**, 2, 469; 8, 615
See LOGS AND LOGGING.
 As common carriers, 2, 786
- Compensation**, 2, 473
 Constitutionality of, 2, 475
 Constitutionality of charges, 2, 473
 Rests upon contract, 2, 473
 Where logs are driven without consent of owners, 2, 474
- Constitutional law, 2, 475
 Definition, 2, 469; 8, 615
 Degree of care to be used by, 2, 475
 Driving logs of non-consenting owner's, 2, 474
 Easements of the public, 2, 470
- Eminent Domain**, 8, 615
For the exercise of eminent domain, generally, see EMINENT DOMAIN.
 A public use, 6, 527
 Exclusive rights, 2, 472; 8, 615
 Interference with right of riparian owners, 2, 471
 Law regulating charges, 8, 615
- Liability**, 2, 475
 As bailees for hire, 2, 475
 As common carriers, 2, 475
- Lien**, 2, 473
 When log is driven without owner's consent, 2, 474
 Miscellaneous cases, 2, 475
 Nature of boom companies, 2, 471
 Nature of property in booms, 2, 475
 Obstruction of navigable waters, 2, 470, 472; 4, 250; 8, 615
 Obstruction of power to mills, 2, 470
 Police power, 2, 475
 Power to condemn land, 2, 475
 Quasi-public corporations, 2, 471
 Questions of law and fact, 19, 646
 Right of floatage not paramount, 2, 470
 Right to float logs, 2, 470
Right to Improve Stream, 2, 475
 For purposes of floatage, 2, 470
 Right to maintain booms, 2, 472
 Right to toll, 8, 615
 Statutory restrictions, 2, 472
- BOOTH**, 2, 476
- BOOTS**, 2, 476
 One pair of boots, 2, 476
- BOOTY**, 2, 730
- "BORN,"** 2, 476; 29, 415, 417
See BIRTH.
 Born and to be born, 2, 477
 Born or to be born, 2, 477
 Child en ventre sa mere, 2, 477
- BOROUGH-ENGLISH**, 2, 480; 27, 705
- BOROUGHES**, 2, 478
See MUNICIPAL CORPORATIONS; TOWNS AND TOWNSHIPS.
- Constitution and powers, 2, 479
 Definition, 2, 478
 History, 2, 478
- BORROW**, 2, 480
See LOAN.
 All borrowed money, 2, 481
 Borrowing money distinguished from receiving deposits, 2, 481
 Borrowing of money, 2, 481
- BORROWED**, 2, 481
- BORROWER**, 2, 481
 In New York usury law, 2, 481
 Port or harbor of Boston, 2, 482
- BOTH**, 2, 482
 Or of both, 2, 482
- BOTTLES**, 2, 482; 21, 303
 As distinguished from demijohn, 2, 482
- BOTTOMRY**, 2, 483; 14, 327, 332
See RESPONDENTIA.
 Admiralty jurisdiction over, 1, 198
 Assignment of contract, 2, 484
 Bond as collateral security for bill or note, 2, 484
 Bond as negotiable instrument, 2, 484
 Burden of proof, 2, 491
 By what law governed, 2, 492, 493
 Chattel mortgage distinguished from, 2, 743
 Contingent upon the safe arrival of the vessel, 2, 485
 Contract good in part and bad in part, 2, 484
 Definition, 2, 483
 Distinguished from respondentia, 21, 287
 Effect of voluntary discontinuance of voyage, 2, 485
 Extrinsic evidence, 2, 483
 General nature of the contract, 2, 483
 Instrument in form of bond, 2, 483
 Insurable interests, 11, 317
 Laches, 2, 492
- Lender**
 Conniving to defraud master, 2, 490
 Insurable interest, 2, 490
 Must act in good faith, 2, 490
 Must make due inquiry, 2, 490
 Need not see to application of the money, 2, 490
 Showing various items of the advance, 2, 491
- Lien**, 2, 492
 Bona fide holder, 2, 492
- Maritime Interest**, 2, 486
 Necessity that bond should carry, 2, 486
 Where bond provides for neither marine interest nor marine risks, 2, 486
 Where voyage is defeated before risk is run, 2, 486
- Maritime Losses**
 Risk, 2, 485
 Necessity that contract be in writing, 2, 483
 Pledging personal credit of owner, 2, 484
- Priority**, 2, 492
 Between two bonds, 2, 493
 General average, 2, 493

BOTTOMRY—*Conf'd***Priority—***Conf'd*

Sailors' wages, 2, 492

Salvage expenses, 2, 492

Procedure, 2, 493

In rem or in personam, 2, 493

Service, 2, 493

Requirements of the lender, 2, 490

Ship and cargo belong to different owners, 2, 493

Total loss, 2, 485

Usury, 2, 486; 27, 1020

"Utterly lost," 13, 1054

What Is Bound, 2, 491

Where ship and cargo belong to different persons, 2, 492

What Is Payable, 2, 491

Interest upon the maritime interest, 2, 491

Value of vessel is the limit, 2, 491

What Justifies the Master in Executing, 2, 487

Debt which detains the ship, 2, 489

Duty to communicate with owner of cargo, 2, 487

Duty to obtain funds on personal credit of owner, 2, 487

Express authority, 2, 487

Necessity, 2, 488

Repairs, 2, 489

Sacrifice of cargo to ship, 2, 487

Sacrifice of ship to cargo, 2, 487

Where agent of owner is present, 2, 488

Where he has funds of his own, 2, 488

When Payable, 2, 491

Abandonment, 2, 491

Arrival of vessel, 2, 491

Deviation or capture, 2, 491

Sale or transfer of vessel, 2, 491

Who May Execute, 2, 486

Master, 2, 486

One acting for master, 2, 488

Owner, 2, 486

Who May Loan, 2, 489

Agent or consignee, 2, 489

Part owners, 2, 489

Persons indebted to owner, 2, 489

BOUGHT, 2, 494*See* BUY.

All goods bought, 2, 494

BOUGHT AND SOLD NOTES, see

BROKERS.

Of factors, 3, 319

BOUND, 2, 494*See* BIND.

Bounding on, 2, 504

Bound to convict, 2, 494

Bound with surety, 2, 495

Held and firmly bound, 2, 495

Persons bound as security for another, 2, 495

Shall remain bound as now, 2, 495

BOUNDARIES, 2, 495*See* ACCRETION; FENCES; ON; PARTY WALLS; SURVEYS.*Mines and mining claims, see* MINES AND MINING CLAIMS.*Ad filum aquæ, 1, 189; 2, 504; 24, 1004; 26, 107***Adverse Possession, 1, 248**

When fixed by grantor, 1, 250

Worked by agreement upon, 1, 249

Agreement of adjacent owners as to dividing line, 24, 1023

"Along," 1, 495

Ancient Documents

As proof of, 1, 569

Arbitration

Certainty required in award, 1, 699

Parol award as, 1, 692

Submission to, 1, 660

Award

Fixing boundary line as defense to trespass, 1, 714

"Beach"

As a boundary, 2, 159

Bill of peace to settle, 2, 257

"By land of," 2, 704

"By," "on," or "along" a highway, 2, 704; 9, 375

"By the line of" a highway, 9, 375

"By the margin of" a highway, 9, 375

"By the side of" a highway, 9, 375

Center of stream, 1, 189; 2, 504; 24, 1004-1006; 26, 107

Courses and Distances, 2, 508

Controlling quantity, 2, 508

Declarations as to, 5, 366

Of municipalities, counties, etc., 5, 366

Private, 5, 366

Definition, 2, 495

Description, 2, 495, 496

Construction in favor of grantee, 2, 498

Contemporanea expositio est optima et fortissima in lege, 2, 497

Effect of uncertainty, 2, 496

Elements of, 2, 499

Falsa demonstratio non nocet, 2, 497

First part of, prevailing over last, 2, 498

Line described as running between two objects, 2, 501

Line described as running from one monument to another, 2, 501

Only such lands pass by deed as comply with description, 2, 498

Parol evidence, 2, 496

Particular description controlling general, 2, 498

Punctuation, 2, 496

Reformation of, 2, 496

Rejection of repugnant elements, 2, 498

What it should contain, 2, 499

Which Controls

Monuments or courses and distances, 2, 499

Courses or distances in quantities of land, 2, 499

Equity Jurisdiction, 6, 722

Fraud, 6, 722

Mere confusion of boundaries, 6, 722

- Multiplicity of suits, 6, 722
- Estoppel, 7, 15
- Evidence**
 - Maps and surveys as, 2, 502
 - From and to, 26, 49, 50
- Highway**, 2, 500, 507, 704; 9, 375
 - How true line is determined, 2, 508
 - Presumption that boundary goes to middle of highway, 7, 964
 - "The Side"
 - The side of the street as a boundary, 2, 507
 - Where the public does not own the bed of the road, 2, 507
 - Where the state or municipality owns the bed of the road, 2, 507
- Improvements where there is mistake in, 10, 257
- Indictment**
 - When offense is on or near, 10, 593
- Injunction to settle, 2, 257
- Judicial Notice**, 12, 172; 28, 243
 - Examples, 28, 243
 - In general, 28, 243
 - Proof of venue, 28, 244
 - Surveys, 28, 243
- Lakes and Ponds**, 2, 506; 12, 642
 - Artificial Ponds**, 2, 506; 12, 653
 - General doctrine, 12, 653
 - Shifting boundary, 12, 654
 - Generally, 12, 642
 - In Illinois, 12, 648
 - In Indiana, 12, 648
 - Federal ruling, 12, 649
 - State ruling, 12, 648
 - In Maine, 12, 644
 - In Massachusetts, 12, 642
 - Application to artificial pond, 12, 642
 - Grant bounded by great pond or lake, 12, 643
 - Reconciliation of prior ruling, 12, 644
 - Rule as to waters in general, 12, 642
 - In Michigan, 12, 648
 - In New Hampshire, 12, 645
 - In New York, 12, 645
 - In Ohio, 12, 647
 - In Vermont, 12, 645
 - In Wisconsin, 12, 650
 - Intervening water, 12, 653
 - Natural, 2, 506; 12, 642
 - Prevailing doctrine, 12, 642
 - Receding of Waters**, 12, 651
 - In general, 12, 651
 - New York view, 12, 652
 - Water's edge, 12, 642
 - Where natural pond is raised by artificial means, 2, 507
- Landlord and tenants, 12, 708
- Lease, 12, 984
- "Line," 13, 842
- Low-water mark, 13, 1189
- Middle of stream, 1, 189; 2, 504; 24, 1004; 26, 107
- Monuments**, 2, 499; 15, 713; 24, 1015
 - Adjoining lot or farm, 2, 500
- Artificial**, 2, 500
 - Controlling courses and distances, 2, 502
- Beaches and shores, 2, 500
- Erecting artificial monument subsequent to deed, 2, 500
- Line from one to another a straight line, 2, 501
- Natural**, 2, 499
 - Controlling artificial, 2, 501, 502
- Parol evidence, 2, 501
- Ponds and lakes, 2, 500; 12, 642
- Streams, 2, 500
- Streets and highways, 2, 500
- Trees, walls and fences, 2, 500, 507, 704; 9, 375
- More or less, 24, 1019
- Municipal Corporations**, 15, 1001
 - Acquiescence, 15, 1001
 - Annexation and Consolidation**, 15, 1007
 - As to rural lands, see MUNICIPAL CORPORATIONS.
 - Power of Legislature**, 15, 1007
 - Consent made necessary by statute, 15, 1009
 - Consent of inhabitants of territory, 15, 1008
 - Contingent and adjoining lands, 15, 1011
 - Delegation of Power**, 15, 1010
 - To municipality, 15, 1010
 - Farm lands, 15, 1011
 - In general, 15, 1008
 - Laying lots, 15, 1012
 - Necessity of consent of government, 15, 1010
 - Necessity of direct legislation, 15, 1009
 - Taxation, 15, 1009
 - What territory may be annexed, 15, 1011
 - Title of act, 15, 1008
- Delegation of Power**, 15, 1003
 - To local boards, 15, 1004
 - To municipality, 15, 1004
 - To private citizens, 15, 1004
- Exercise of Power Beyond Corporate Limits**, 15, 1006
 - Highways, 15, 1006
 - In general, 15, 1006
 - Non-resident entering limits, 15, 1007
 - Generally, 15, 1001
 - In England, 15, 1002
 - Jurisdiction over rivers, 15, 1005
 - Laches, 12, 565
 - Power to change, 15, 1001
 - Power to fix, 15, 1001
 - Rivers, 15, 1006
 - Scope of legislative control, 15, 1002
 - Shifting boundaries, 15, 1006
 - Sufficiency of boundaries, 15, 1001
 - Suits, 15, 1003
 - What are corporate limits, 15, 1001
- Navigable and non-navigable streams, 1, 189; 2, 504

BOUNDARIES—Cont'd**Navigable Stream**

What is, 2, 505

Parks, 2, 507

Parol Evidence, 2, 496

Stipulations as to boundaries, 17, 424

To control courses and distances, 2, 508

To show where lost monument stood, 2, 501

Where there is a variance between monuments and courses and distances, 2, 503

Perambulation, 18, 298

Private ways, 19, 102

Quantity, 2, 508

Railroads, 24, 1018

Res judicata, 21, 250

Rivers, 2, 504*See infra*, NAVIGABLE STREAM; STREAMS.

Concurrent jurisdiction of states, 12, 296; 23, 101

Municipal corporations, 15, 1006

Shore, 22, 778, 779

States, 23, 100

Between Georgia and Alabama, 23, 102

Between Indiana and Kentucky, 23, 103

Between Louisiana and Mississippi, 23, 102

Between Missouri and Iowa, 23, 102

Between Missouri and Kansas, 23, 102

Between Missouri and Kentucky, 23, 102

Between New Jersey and Delaware, 23, 103

Between New York and Connecticut, 23, 103

Between New York and New Jersey, 23, 103

Between Virginia and Tennessee, 23, 103

Certain state boundaries, 23, 102

Compacts or agreements between the states, 23, 100

Construction of compacts or agreements by supreme court, 23, 101

Disputed boundaries, 23, 101

General principles governing, 23, 101

Jurisdiction of supreme court, 23, 100

Jurisdiction where river is a boundary, 12, 296; 23, 101

Lapse of time as a bar, 23, 101

Proceedings in suit between states, 23, 101

Question of law and fact, 23, 102

Right to establish and fix, 23, 100

Statute of frauds, 8, 673

Statutes**Constitutional Provisions Requiring that Subject Shall Be Expressed in Title, 23, 251, 252****County Boundaries**

Constitutional provisions that statutes shall contain no more than one subject, 23, 271, 272

Streams, 2, 504

Boundary following the meanderings of a stream, 2, 504

High-water mark as boundary, 2, 504, 506

Low-water mark as boundary, 2, 505

Non-navigable, 1, 189

Center line of the stream as a boundary, 1, 189; 2, 504; 24, 1004; 26, 107

Where the boundary is described as "bounding on" or "running along" a stream, 2, 504

Right to construct wharves and piers, 2, 505

Title to bed of fresh-water streams, 2, 506

Title to tidal waters not actually navigable, 2, 506

Street as boundary, 24, 113

Surveys, 2, 502; 24, 1015

Tide waters, 26, 107

To, 26, 49

Towns and Townships, 26, 106

In Alabama, 26, 106

In Connecticut, 26, 106

In Illinois, 26, 106

In Indiana, 26, 106

In Iowa, 26, 106

In Kansas, 26, 107

In Louisiana, 26, 107

In Maine, 26, 107

In Massachusetts, 26, 107

In Michigan, 26, 107

In Missouri, 26, 107

In Montana, 26, 107

In Nebraska, 26, 107

In New Hampshire, 26, 107

In New York, 26, 107

In Ohio, 26, 107

In Oklahoma, 26, 108

In Pennsylvania, 26, 108

In South Carolina, 26, 108

In Utah, 26, 108

In Vermont, 26, 108

In Virginia, 26, 108

In Washington, 26, 108

In West Virginia, 26, 108

In Wisconsin, 26, 108

Trees on or Near Boundary Line, 26, 558, 593

Clippings, 26, 559

Fruit, 26, 559

Fruit falling from overhanging branches, 26, 559

Injunction, 26, 559

Overhanging branches a nuisance, 26, 559

Ownership, 26, 558

Roots or branches extending into another's land, 26, 558

Trees standing directly on boundary line, 26, 558

Trespass, 26, 559

Trespass, 26, 592

Effect of land not being marked, 26, 592

- In general, 26, 592
- Line trees, 26, 558, 593
- Whether they must be proven as laid, 26, 668
- United States surveys, 2, 502
- When determined by courses and distances, 2, 502
- BOUNTIES**, 15, 452; 26, 155, 156
 - A bounty as an element of a contract, 15, 450
 - Effect of desertion, 15, 452
 - Examples, 15, 451
 - Infants, 15, 452
 - Interest on bounties, 15, 453
 - Municipal Corporations**, 15, 449, 1052
 - When authorized by statutes, 15, 1052
 - Within specified statutory authority, 15, 1052
 - Notice of enlistment, 15, 451
 - Parent and child, 17, 382
 - Taxation**, 15, 445; 25, 96
 - Bounties to men previously enlisted, 15, 447
 - Constitutionality, 15, 445
 - Federal bounty laws, 15, 445
 - In general, 15, 445-447
 - Legality of, 15, 445
 - Municipal Corporations**, 15, 449, 1052
 - Legislative authority, 15, 449
 - Subsequent confirmation by legislature, 15, 449
 - Repayment of sums advanced by individuals, 15, 449
 - State laws, 15, 445
 - The enlistment must be in compliance with the offer, 15, 450
 - When bounty due, 15, 450, 451
- BOWKETT**
 - In "Starr-Bowkett" societies, 2, 607
- BOWLING ALLEY**
 - Nuisances, 16, 945
- BOWLS**, see GAMING.
- BOXING**, see PRIZE FIGHT.
- BOYCOTT—BOYCOTTING**, 2, 512; 4, 613
 - See generally, CRIMINAL CONSPIRACY.
 - See STRIKES.
 - As a criminal conspiracy, 4, 613
 - Boycotting a newspaper, 4, 614
 - Coercion of servants, 14, 803
 - Employed in connection with strikes, 24, 132
 - Injunction, 24, 135
 - Origin of term, 4, 613
 - Threatening letters, 25, 1071
- BRANCH**, 2, 513
 - Branch Railroad**, 2, 513
 - See LATERAL OR BRANCH RAILROAD.
 - Branch of the legislature, 2, 514
 - Future extensions or branches, 2, 514
 - Main branch of a river, 2, 514
- BRAND**, 2, 514
- BRASS**, 2, 514
 - Brass knuckles, 2, 515
- BREACH OF PROMISE OF MARRIAGE**, 2, 520
 - Acceptance**
 - At what time it must be made, 2, 521
 - Action**, 2, 525
 - Common law, 2, 525
 - Ex contractu, 2, 525
 - Survival of, 2, 525; 3, 903; 5, 132; 7, 263
 - Breach**, 2, 524
 - Party repudiates his promise, 2, 524
 - Where party marries some other person, 2, 524
 - When party not in default need not wait for date of performance, 2, 525
 - Where party refuses to marry on the day fixed, or after a reasonable time, 2, 524
 - Capacity of the Parties**, 2, 523, 526
 - Impotence as a defense in suit of breach of promise of marriage, 2, 523
 - Infants, 2, 523
 - Liability for action for deceit where party knew of his incompetence, 2, 523
 - Married persons, 2, 523
 - To enter into a valid marriage, 2, 523
 - Character (in Evidence)**
 - Ante litem motam, 3, 116
 - Character of the prosecutrix, 2, 528; 3, 112
 - Conditional promise, 2, 521, 522
 - Consideration**, 2, 522
 - Future intercourse, 2, 523
 - Contract**, 2, 520
 - May be inferred, 2, 521
 - Statute of frauds, 2, 522; 8, 689
 - Corroboration of witness, 29, 834
 - Costs in criminal proceedings, 10, 220
 - Damages**, 2, 526; 5, 21
 - Aggravation**, 2, 527; 21, 1040, 1043
 - Cruel and insulting conduct of defendant, 2, 528
 - Manner in which engagement was broken off, 2, 528
 - That defendant has pleaded plaintiff's unchastity, 2, 528
 - Defendant's general reputation, and reputation for wealth, 2, 527
 - Excessive, 5, 61
 - Exemplary damages, 2, 526
 - For wounded feelings, 2, 527
 - In the discretion of the jury, 2, 526
 - Mitigation**, 2, 528; 15, 688
 - Disease, 2, 528
 - Plaintiff's unchastity, 2, 528
 - Plaintiff's want of affection for defendant, 2, 528
- Deceit**, 2, 523
- Defenses**, 2, 525
 - Discharge by plaintiff's consent, 2, 525
 - Incompetence of either party, 2, 523, 526
 - Necessity of showing that breach was due to plaintiff's bad conduct, 2, 526
 - Necessity of showing that defendant renounced promise as soon as he discovered cause, 2, 526
 - Prior breach by plaintiff, 2, 526
- Definition**, 2, 520
- Duress**, 2, 523

BREACH OF PROMISE OF MARRIAGE—*Cont'd***Evidence**, 2, 527*See infra*, **DAMAGES**.

Cruel and indecent conduct of defendant, 2, 528

Defendant's general reputation and reputation for wealth, 2, 527

Facts arising after suit, 2, 527

Length of engagement, 2, 527

Manner in which engagement was broken off, 2, 527

Of general reputation for wealth, 2, 527

Plaintiff's unchastity, 2, 528; 3, 112, 116

Seduction, 2, 527

Social position of defendant, 2, 527

That defendant has pleaded plaintiff's unchastity, 2, 528

Upon question for damages, 5, 64

Exemplary damages, 2, 526**False Pretenses**

Representing that one is single, 7, 748

False representations, 2, 523

Form, 2, 522

Fraud, 2, 523**Fraudulent concealment**, 2, 523**Imprisonment for debt**, 10, 214**Infants**, 10, 624**Mitigation of damages**, 2, 528; 15, 688**Mutuality**, 2, 521**New Trial**, 16, 587

Where verdict is influenced by prejudice, passion, etc., 2, 526

Presumption that the marriage is to be within a reasonable time, 2, 522**Production of Documents**

Private documents for inspection before trial, 19, 246

Promise as contrary to public policy, 2, 522**Promise conditioned upon death of consort of one of the parties**, 2, 522**Promise conditioned upon divorce of one of the parties**, 2, 522**Promise must be certain**, 2, 521**Promise that is a restraint on marriage**, 2, 522**Promise upon a contingency**, 2, 521**Seduction**, 2, 527**Aggravation of Damages**, 21, 1040, 1043

Action by woman, 21, 1041

Conflict of authority, 21, 1040, 1041

Pending engagement between the parties, 21, 1042

Seduction in an action for breach of promise of marriage, 21, 1042

Where father is accused of not having exercised proper care, 21, 1042

Whether defendant may prove, 21, 1040

Sexual intercourse as a condition to the promise, 2, 522**Sexual intercourse as a consideration**, 2, 523**Statute of Frauds**, 2, 522

Promise of marriage not to be performed within a year, 8, 689

Survival of action, 2, 525; 3, 903; 7, 263

Survival of right of action, 5, 132

The acceptance, 2, 520

The offer, 2, 520

Time when the marriage is to take place, 2, 522

Writing

Necessity of, 2, 522

BREACH OF THE PEACE, 2, 515*See* **ASSAULT; DISORDERLY HOUSE; SURETY TO KEEP THE PEACE**.**Affidavits**, 2, 517, 519**Arrest for**

When made in presence of officer, 1, 734

Definition, 2, 515

Husband and wife, 9, 807

No right to consent to injury constituting a, 3, 667

Solicitation to commit, 4, 671

What constitutes, 2, 515, 734

BREACH OF TRUST, 2, 528*See* **TRUST AND TRUSTEES**.**Covenants**

Mistake, 15, 627

BREAD

Fancy bread, 7, 810

BREAK, 2, 528

Breaking doors, 1, 742, 746

Breaking outer door, 2, 529

BREAKAGE, 14, 332

In bill of lading, 2, 236

BREAKING, 2, 659**Actual**

In law against burglary, 2, 660

BREEDING, 2, 529

Bred, kept or preserved, 2, 529

For breeding purposes, 2, 529

BRETHREN, 2, 529**BREVET**, 2, 529**BREWER**, 2, 530**BREWERY**

Effect of prohibitory laws upon brewery property, 5, 70

BRIBERY, 2, 530*See* **EMBRACERY**.*See generally*, **EXTORTION**.*See* **ILLEGAL CONTRACTS**.

Attempt to bribe, 4, 660, 663

Constitutionality of act to punish bribery at nominating convention, 6, 285

Criminal conspiracy to procure an acquittal by bribery, 4, 600

De facto officer, 2, 531

Definition, 2, 530

Disfranchisement for, 6, 273

Elections, 6, 438

Embracery

As a species of bribery, 2, 530

Infamous crime, 10, 605

Instances, 2, 533

Judges, 2, 533

Libel and slander, 13, 301, 336

Nature of offense, 2, 530

- Necessity that the money should be tendered, 2, 532
- Offer of any valuable consideration, 2, 532
- Offer to bribe, 2, 531
- Proposal by public officer to receive a bribe, 2, 532
- Proposal that officer shall receive a bribe, 2, 532
- Sheriffs, 2, 603
- To permit escape from arrest, 2, 533
- Validity of note given as bribe, 2, 531
- Voters**, 2, 533
- English statutes, 2, 535
- Necessity that election be held, 2, 535
- Offer by candidate to take smaller salary, 2, 534
- Promise to pay for loss of time or traveling expenses, 2, 534
- Supplying refreshments to, 2, 534
- What is bribery of a, 2, 533
- Witnesses, 2, 533
- BRICK**, 2, 540
- Brick clay, 15, 501
- Brick dwellings, 2, 540
- Brick earth, 15, 501
- Brick Kilns**
- Nuisances, 10, 829; 16, 949
- Examples, 16, 950
- In general, 16, 949
- Injury to trees, plants, etc., 16, 950
- Questions of law and fact, 16, 950
- Whether a nuisance per se, 16, 950
- Brick store, 2, 540
- BRIDGES**, 2, 540
- Action for Damages**, 2, 588
- Defenses, 2, 561
- Injury from defective bridge, at common law, 2, 558
- Liability of toll bridge, 2, 560
- Negligence of bridge officers, 2, 561
- Notice that bridge is out of repair, 2, 559
- Railings, 2, 562
- Reasonable care to be used in ascertaining defect in bridge, 2, 560
- Action for injury caused by unlawful piers, 2, 551
- Admiralty jurisdiction over, 1, 196
- Approaches**, 2, 557
- As part of bridge, 2, 557
- Whether part of bridge is question for jury, 2, 557
- At city's cost, 10, 267
- Burden of maintenance, 2, 545
- By What Authority Erected**, 2, 542
- Necessity of license to erect a public bridge, 2, 542
- Power and duty of counties, towns, etc., 2, 543
- Power and duty of municipal corporation, 2, 543
- Rebuilding, 2, 544
- Special authority, 2, 544
- Canals**, 28, 1049
- Duty to construct and repair, 2, 545; 28, 1049
- Examples, 28, 1049, 1050
- Mandamus, 28, 1049
- Carriers of Passengers**
- Duty as to bridges, 2, 758
- Compared with ferries, 2, 540
- Construction of**, 2, 552
- Care to Be Used**, 2, 552
- By railway companies, 2, 552
- Obstruction to navigation, 2, 552; 10, 842
- Counties**
- Burden of maintenance of bridges, 2, 543, 545
- County Commissioners**
- Powers, 4, 390
- County's Liability**, 2, 553; 4, 366
- For defective, 4, 365
- In absence of statute, 4, 366
- Crossings, 19, 870
- Dedication**, 2, 542; 5, 417
- Bridge, unless accepted, a nuisance, 5, 417
- Care of bridge, 5, 417
- Limits and qualifications, 5, 417
- Necessity of public utility of bridge, 5, 417
- Definition, 2, 540
- Drawbridges, 2, 549
- Duty of city or town to have, safe, 2, 553
- Duty of private persons to erect public bridges, 2, 544
- Eminent domain, 2, 562
- Extending out of state, 9, 366
- Highways**
- As part of highway, 2, 541
- As public highways, 9, 365
- Crossings, 4, 908
- Nuisance, 5, 417
- Indictment**
- At common law for want of repairs, 2, 558
- Failure to keep in repair, 19, 928
- For erecting over navigable streams, 2, 551
- Of municipality, 4, 683
- Injunctions**, 2, 558, 564; 10, 977, 980
- Bridge infringing on ferry franchise, 10, 979
- Jurisdiction, 10, 977
- Lessee of railroad bridge, 10, 978
- Navigable waters, 2, 564; 10, 977
- Toll-bridges, 10, 978
- Interstate commerce, 11, 542
- Liability of county officers, 19, 515
- Local assessments, 25, 515
- Local improvements, 10, 207
- Mandamus**, 2, 564; 14, 159, 205; 28, 1049
- Acceptance by authorities, 14, 209
- Examples, 14, 205
- Repairing public bridges, 14, 205
- Repairs, 14, 209
- When the writ will lie, 14, 205
- Mechanics' Liens**, 15, 23, 24, 26, 28, 31
- Railroad bridges, 15, 23, 24, 26, 31
- Municipal Corporations**
- Implied promise to pay for use, 15, 1082

BRIDGES—Cont'd**Municipal Corporations—Cont'd**

Legislative control, 15, 990

Municipal taxation, 15, 1246

Navigable Waters, 2, 546, 552; 10, 842; 11, 546; 15, 259*See* INTERSTATE COMMERCE.

As a nuisance, 2, 550, 552; 10, 842

Bridge in two states, 2, 549

Conditions, 2, 548

Drawbridges, 2, 549

Injunction, 2, 564; 10, 977

Obstruction to navigation, 2, 548, 552; 10, 842

Power of cities, 2, 550

Power of congress to authorize, 2, 546

Power of state to authorize, 2, 546

Railway Bridges, 2, 546, 548, 549

Implied power to erect, 2, 550

Remedy for obstructing navigation, 2, 551

Remedy where piers obstruct navigation, 2, 551

To cause as little obstruction as possible to navigation, 2, 552

Whether power of congress exclusive, 11, 546

Nuisances, 2, 550*See infra*, NAVIGABLE WATERS; INJUNCTION.

Bridge erected in public way, unless accepted by public, a nuisance, 5, 417

New toll-bridge impairing franchise of old as, 2, 563

Officers, 2, 561**Ownership**, 2, 545

Part of street, 23, 947

Power of state legislature to build, 9, 365

Prescription, 2, 542**Private Bridges**

Definition, 2, 542

Used by public, 2, 556

Public Bridges, 2, 542; 9, 365

By prescription, 2, 542

What constitutes a public bridge, 2, 542

Railings, 2, 562**Railroad**, 2, 541 550; 19, 870; 28, 967

At highways, 19, 870

Care to be used in construction of bridges by, 2, 552

Conforming to the requirements of charter in constructing, 2, 553

Drawbridges, 2, 549

Duty to repair, 2, 556

Injury to servants who ride on the top of cars, 19, 871

Liability for injuries, 2, 553; 19, 870

Liability of railroad for defective bridges, 2, 559, 560

Overhead bridges, 19, 871

Over navigable streams, 2, 546, 548, 549

Safety, 19, 871

Security of bridge, 19, 871

State determining when they shall be erected, 2, 544

Use of, by foot passengers, 19, 872

Regulation of commerce, 2, 546-548**Repairs**, 2, 553

Approaches, 2, 557

Bridge erected for private conveyance in highway, 5, 417

Bridge in two counties, 2, 555

Embankments, 2, 557

Liability of private corporations, 2, 556

Private Bridges, 2, 556

Used by public, 2, 556

Statutory liability to repair, 2, 554

Riparian Rights, 28, 966

Examples, 28, 966-968

Floods, 28, 968

In general, 28, 966

Liability, 28, 966

Railroad company, 28, 967

Street Railways

Repairs, 23, 989

Structures that have been held, 2, 541

Taxation, 25, 105

Municipal taxation, 25, 604

Taxation to support, 25, 90

Toll-Bridges, 2, 563**Exclusive Rights**, 2, 563

Not to be implied, 2, 563

Liability of owners for defective bridges, 2, 560

New bridge impairing franchise of old, 2, 563

Where bridge extends out of state, 9, 366

Towns and townships, 26, 161

What constitutes question of fact, 2, 541

What included by the term, 9, 365

Whether included in term "land," 12, 655

Whether included under the term "highway," 9, 365

BRIEF, 2, 565

Brief statement in Maine practice, 2, 566

Brief statement of Maine statutes, 2, 566

BRINE, 15, 501**BRING**

Advancements brought into hotch-pot, 2, 566

"Bringing an action or suit," 2, 566

Bring up, 2, 566

Brought before the justices or magistrate, 2, 568

BRITISH, 2, 568

British-built ship, 2, 569

British custom, 2, 570

British statute, 2, 570

British subjects, 2, 571

British weight, 2, 571

Good British brig, 2, 568

Recognized British ship, 2, 569

BROKEN, 2, 571**Broken Contract**

Breach of contract, 3, 908

BROKERS, 2, 349, 571*See* AGENCY.*For stockbrokers*, see STOCKBROKERS.*Usury*, see USURY.

Acting as middleman, 2, 589

Appointment, 2, 588

As general agents, 1, 349

Authority, 1, 1034; 2, 573

Insurance brokers, see *infra*, INSURANCE.

Real estate brokers, see *infra*, REAL ESTATE BROKERS.

Defined by usage, 1, 1029; 2, 573

Delegation of, 1, 368; 2, 576

Implied, 2, 573

Insurance, 2, 593

Power to receive payment, 2, 574

Power to sell by sample, 2, 574

Real estate, 2, 593

Revocation, 2, 592

To contract in his own name, 2, 574

Warranty, 2, 574

Bills and Notes, 2, 598

Guaranteeing as to genuineness of signature, 2, 598

Seller of a note bound by representations of the broker, 2, 598

Bona fide purchasers from, 21, 573

Bought and Sold Note, 2, 591

Authority to sign, 2, 573

Statute of Fraud, 2, 591; 8, 714

Broker's entry unsigned, 8, 715

Notes not agreeing in terms, 8, 714

Sufficiency of memorandum, 8, 714

Whether the notes or the entry are original memorandum, 8, 715

Why only one note is given in evidence, 8, 715

Burden of Proof

That customer is not responsible, 2, 588

Buying from or Selling to Themselves, 2, 576

Where broker communicates the facts to his principal, 2, 576

Commission, 2, 578

Compensation, 2, 578; 3, 378

Of real estate brokers, see *infra*, REAL ESTATE BROKERS.

Accounting to principal for commission from third party, 2, 589

Appointment in writing, 2, 588

Burden of proof that customer is not responsible, 2, 588

Contingent on success, 2, 578

Double commissions, 2, 588, 589

Employment of several brokers, 2, 585

Expenses, 2, 588

Express appointment, 2, 588

Failure of principal to make a good title, 2, 581

Fixed by custom, 2, 578

Illegal Transactions, 2, 589

Wagering contracts, 2, 573

In absence of understanding, 2, 578

Necessity that broker act in good faith, 2, 582

Necessity that broker be the procuring cause, 2, 582, 584

Necessity that customer be ready to buy on terms stipulated, 2, 586

Necessity that customer be responsible, 2, 587

Necessity that transactions should be completed, 2, 578

Principal negotiating himself, 2, 584

Recovering commissions from both parties, 2, 588, 589

Sale of one broker revoking authority of others, 2, 585

Voluntary services, 2, 588

When acting as middleman, 2, 589

When customer refuses to complete the contract, 2, 581

Where acting for both parties, 2, 588

Where agent is authorized to sell without power to convey, 2, 580

Where broker abandons negotiations and principal completes them, 2, 585

Where broker procures party, and principal takes further proceedings out of his hands, 2, 583, 584

Where principal does not know that the purchaser is broker's customer, 2, 583

Where principal reduces price pending negotiations, 2, 584

Where purchaser decides not to buy and other parties induce him to buy, 2, 583

Where transaction is not consummated through no fault of the broker, 2, 578

Contracting in his own name, 1, 1034

Custom-house, 2, 598

Definition, 1, 347; 2, 571

Distinguished from factors, 2, 572; 3, 318

Exchange, 2, 598

Expenses, 2, 588

Fraudulent Sales

Broker as bona fide holder, 8, 840

Good faith required from, 2, 582

Imprisonment for debt, 10, 228

Insurance, 2, 593

See INSURANCE AGENTS.

Agent of Insured and Insurer

Authority to give the insured credit, 2, 595

Knowledge of broker, knowledge of company, 2, 596, 597

Notice, 2, 596, 597

Premium, 2, 595

Ratification of appointment by insured after loss, 2, 598

Responsibility of insurer for representations, 2, 598

Authority, 2, 593

To abandon a case of loss, 2, 594

To adjust and receive payment of losses, 1, 1034; 2, 594

To arbitrate, 2, 594

To have policy canceled, 2, 594

To receive payment, 2, 594

Contracting and suing in their own names, 2, 594

Definition, 2, 593

Duty to see that insurance covers risk, 2, 594

Duty to see that insurers are responsible, 2, 594

Lien of, 2, 594

Extent of, 2, 594

Sub-agents, 2, 594

BROKERS—Cont'd

Insurance—Cont'd

Lien of—Cont'd

To what it attaches, 2, 595
Where principal is agent of third party, 2, 595

Usages and customs, 2, 593

Liability to Principal, 2, 575

Commissions received from third parties, 2, 589

Exercise of reasonable skill and ordinary diligence, 2, 575

For mistake made in good faith, 2, 575

For Selling Shares

Before default without notice, 2, 48

Obedience to instructions, 2, 575

Liability to Third Parties

Parol evidence, 2, 590

When acting for unnamed principal, 2, 590

When he acts without authority, 2, 590

License, 13, 521

Lien, 2, 572, 595

Marriage, see MARRIAGE BROKERS.

Pass book as an account stated, 1, 124

Payment of, 1, 355

Personal liability of, 1, 402

Pledge, see *infra*, RIGHT OF PLEDGEE.

Power to warrant stock sold, 1, 359

Principal's Liability, 2, 577

For contracts of broker, 2, 577

Produce, 19, 227

Definition, 1, 347

Real Estate, 2, 592; 28, 93

Authority, 28, 94

To execute a sale, 2, 592

Compensation, 28, 95

Examples, 28, 94, 95

Insolvency of party, 28, 95

Refusal of vendor to convey, 28, 95

Definition, 1, 347; 2, 592

Enforcement, 28, 94

Examples, 28, 93, 94

Necessity that his authority be under seal, 2, 593

Statute of frauds, 8, 704

Undisclosed principal, 28, 94

Revocation, 2, 592

Right of Pledgee When He Is a Broker, 18, 707

Broker as customer's agent, 18, 707

Broker carrying stock on margin, 18, 707

In Massachusetts, 18, 708

Notice to customer, 18, 708

Stock pledged for advances, 18, 707

Whether the broker can sell on default, 18, 708

Selling by sample, 1, 1034

Set-off, 22, 321

As to agency in general, see SET-OFF.

Ship brokers, 2, 598; 3, 144

Statute of Frauds, 2, 591; 8, 704

Bought and Sold Note, 2, 591; 8, 714

Constitutes contract, 2, 591

Satisfying statute, 2, 591

Variance, 2, 591

Broker, agent for both parties, 2, 591; 8, 720

Broker's clerk, 8, 720

Broker's entry constitutes contract, 2, 591

Fraudulent alteration of bought or sold note, 2, 592

Usages and Customs, 1, 1029; 2, 573

Authority of insurance brokers, 2, 593

Fixing compensation, 2, 578

Illegal or immoral, 2, 573

Knowledge of usages, 27, 744

Stockbrokers, 27, 862

The custom that broker shall recover commissions from both parties, 2, 589

Yielding to express instructions, 2, 573

Warranty, 28, 783

When Agent of Both Parties, 2, 576

Where the interests conflict, 2, 577

When factors, 2, 572

BROTHER, 2, 599

Includes illegitimate, 2, 599

"My brother's son," 16, 109

Within statutes against incest, 2, 599

BUBBLE, 2, 600

BUBBLE ACTS, see JOINT STOCK COMPANIES.

BUCKET SHOPS

Right of telegraph companies to remove ticker from, 8, 611

BUDGET, 2, 600

BUFFALO, 2, 600

BUGGERY, 2, 600

See SODOMY.

BUILD, 2, 600

Contractor or builder, 2, 601

Contracts to, 2, 600

Erect or, 2, 601

New-build, 2, 601

What the power to build includes, 2, 600

BUILDER, 2, 601

BUILDER'S RISK, see *infra*, FIRE INSURANCE.

BUILDING, 2, 601

See HOUSE.

As to the erection of wooden buildings within fire limits, see FIRE DEPARTMENT.

Destruction of buildings to prevent the spread of fire, see FIRE DEPARTMENT.

Addition to, 2, 603

Appurtenance to, 2, 603

British-built ship, 2, 569

Building, altering, repairing, or ornamenting, 1, 523

Building erected, 2, 603

Building ground, 2, 603

Building material, 2, 603; 14, 976

Building purposes, 2, 604

Burglary

Building, what is, within statutes against, 2, 601, 660

Construction, erection, or repair of, 2, 603; 6, 808

Contracts

- Insurable interests of builder, 11, 317
- For religious worship, 2, 604
- If the building should fall, 2, 603
- In application for insurance, 2, 602
- In law against burglary, 2, 601, 660
- In law of arson, 1, 758
- In lease, 2, 602
- Line of, 13, 843
- Maintain a building, 14, 3
- Mansion, 14, 255

Municipal Corporations

- Destruction of building as nuisance, 15, 1184

Regulations

- Building permit, 15, 1177
- Erection of Frame Building, 15, 1171, 1172
- See FIRE DEPARTMENT.
- Injunction against erection, 15, 1172
- Strict construction of provision, 15, 1173, 1176, 1178

- Fire escapes, 15, 1177
- Insecure or unsafe buildings, 15, 1176
- Inspection, 15, 1176
- Power of corporation, 15, 1176
- Removal of building through streets, 15, 1177
- Strict construction, 15, 1173, 1176-1178

- Nature and material structure of, insured, 2, 603

- New, 2, 603; 16, 489
- Or other property, 2, 603
- Public buildings, 2, 603

Restrictions

Covenants

- Whether They Run with the Land, 19, 1002
- Auction sales, 19, 1003
- Effect of restriction without express covenant, 19, 1003
- Examples, 19, 1002, 1003

- Saw-mill, 2, 601

- Stable, 2, 602

- Tenement distinguished from, 25, 946

- Unfinished house, 2, 601

- Within covenants against erecting, 2, 602

- Within intoxicating liquor laws, 2, 602

- Within Mechanics' Liens Law, 2, 602

- See MECHANICS' LIENS.

- Within various statutes, 2, 601

- Wooden, 2, 604

BUILDING AND LOAN ASSOCIATIONS,
2, 604

- Application of Stock Payments to Extinction of the Debt, 2, 639

- Application by the borrower, 2, 639

- Appropriation by the association, 2, 639

- Right of surety to have borrower's stock sold for the debt, 2, 640

- Stock payments do not ipso facto work an extinguishment of the mortgage, 2, 639

- Terminating membership, 2, 640

- Appointment of receiver, 2, 644

- Assumpsit against a member for his dues, 2, 619

- Assumpsit by member, 2, 625

- A terminating society, 2, 606

- Borrower continuing as a member of society, 2, 608

- Bowkett and Starr-Bowkett societies, 2, 607

- By-laws, 2, 624, 632

- Imposing fines, 2, 620

- Imposing forfeiture, 2, 620

- Mortgage in conformity with, 2, 633

- Construction of by-laws, 2, 621

- Contribution to Losses and Expenses, 2, 622

- Extent of member's liability, 2, 623

- Set-off, 2, 623

- Where member has become a borrower, 2, 623

- Withdrawal to escape, 2, 623

- Definition, 2, 604

- Dues, 2, 618, 628

- Assumpsit for, 2, 619

- Fines for, 2, 620, 621

- Foreclosure for non-payment of, 2, 634

- Lien for, 2, 619

- Separation for purpose of imposing separate fines, 2, 629

- Duties and Liabilities of Members, 2, 618

- Contribution to losses and expenses, 2, 622

- Effect of member becoming a borrower, 2, 619

- Obligation to pay dues, 2, 619

- Duty of corporation to see that money loaned is properly expended, 2, 627

- Estoppel, 2, 618

- Association pleading ultra vires, 2, 625

- Fines, 2, 620, 628, 629

- As liquidated damages, 2, 620

- By-law construed favorable to member, 2, 621

- Definition, 2, 620

- Interest upon, 2, 621

- Power to impose, 2, 620

- Reasonable, 2, 621

- Second fine for non-payment of same dues, 2, 621

- Subdivision of dues for the purpose of imposing separate fines, 2, 629

- Forfeitures, 2, 620

- Causes should be distinctly defined by by-law, 2, 622

- Legality of, 2, 621

- Method of enforcement established by by-law must be followed, 2, 622

- Necessity of declaration of, by the society, 2, 622

- Of stock is, of membership, 2, 622

- Waiver, 2, 622

- General Powers, 2, 613

- Borrowing money, 2, 615

- Common attributes of the corporation, 2, 613

- Imposition of fines, 2, 620

- Investing in real estate, 2, 615

BUILDING AND LOAN ASSOCIATIONS

—*Cont'd*

General Powers—*Cont'd*

- Loans to members, 2, 627
- Loans to persons not "sui juris," 2, 616
- Loans to strangers, 2, 616
- Trafficking in its own stock, 2, 615
- What is unlawful, 2, 614
- Implied powers, 2, 614
- Interest, 2, 628**
 - Fines for non-payment, 2, 629
 - Foreclosure for non-payment of dues, 2, 634
 - Incident to the loan, 2, 628
 - Interest, 2, 621
 - Upon premiums, 2, 631
 - Usury, 2, 628
- Lien for dues, 2, 619
- Loan, whether the transaction is, 2, 611
- Loans and Their Incidents, 2, 628**
 - Dues, 2, 628
 - Fines, 2, 628
 - Premiums, 2, 629
 - Security, 2, 632
 - Interest, 2, 628
- Marshaling assets, 2, 641
- Method of business, 2, 608
- Mortgages, 2, 633**
 - Bond and mortgage as evidence of terms of contract, 2, 633
 - Classes of, 2, 633
 - De minimis non curat lex, 2, 634
 - Examining articles of association to determine when mortgage contract terminated, 2, 637
 - Extinguishment of membership of mortgagor, mortgage remaining in hands of association, 2, 638
 - Foreclosure for non-payment of dues or interest, 2, 634
 - Foreclosure procedure, 2, 634
 - Foreclosure sale, 2, 634
 - In conformity with by-laws stated, 2, 633
 - Rule to ascertain amount due in case of foreclosure or voluntary redemption, 2, 635
 - Terms of, to determine amount due, 2, 637
 - Usury, 15, 766, 770, 776
- Mutuality of the system, 2, 610
- Nature of the contract as a partnership, 2, 611
- Nature of the contract of loan, 2, 611
- Origin, 2, 605
- Partnership, whether a, 2, 611
- Permanent Association, 2, 606**
 - Repayment, 2, 637
- Power to Give Notes to Members, 4, 224**
 - Instead of money, 4, 224
- Premiums, 2, 629**
 - Amount of, how determined, 2, 631
 - Definition, 2, 629
 - Fraud in determining the amount, 2, 631
 - Interest upon, 2, 631
 - Recovery of, 2, 612

- Private Powers**
 - Power to lend money to members, 2, 627
- Real Estate**
 - Investing in, 2, 615
- Repayment in serial and permanent associations, 2, 637
- Rights of Members, 2, 623**
 - Invoking chancery to wind up the association, 2, 626
 - Right to receive a loan, 2, 627
 - Rights of repaying borrowers, 2, 637
- Right to Receive a Loan, 2, 627**
 - Compelling building association to lend money, 2, 628
 - Essential incident of membership, 2, 627
 - Refusal by association, 2, 627
- Right to Withdraw, 2, 624**
 - Account of profits, 2, 625
 - By-law construed in favor of the member, 2, 624
 - Liability of withdrawing member, 2, 626
 - One who has become a borrower, 2, 625
 - Status of withdrawing member, 2, 625
 - Statutory, 2, 624
 - Suits by withdrawing stockholders against the association, 2, 626
 - When membership is terminated, 2, 625
- Security, 2, 632**
 - Mortgage or deed of trust of a third person, 2, 633
 - Mortgages, 2, 633
- Serial Associations, 2, 607**
 - Repayment, 2, 637
- Statutes enabling association to recover premium, 2, 612
- Stock book as prima facie evidence of membership, 2, 618
- Stock Payments, 2, 618**
 - Application of, to extinguishment of the debt, 2, 638, 639
- Strangers**
 - Loan to, 2, 616
- Striking account between association and borrowing member, 2, 637
- Subscriptions, 2, 618**
 - Fines for non-payment, 2, 629
- Suits by association against borrower, 2, 613
- Suits by stockholders against association, 2, 626
- Termination of Membership, 2, 638**
 - By application of stock payments to the extinguishment of borrower's debt, 2, 640
- Ultra vires, 2, 625, 628
- Usury, 2, 628**
 - Mortgages, 15, 766**
 - Agent's commission, 15, 770
 - Borrower not a member, 15, 770, 776
 - Examples, 15, 770
 - Impositions and fines, 15, 770
 - Period shorter than a year, 15, 770
 - Plea of, 2, 613

- Rights of borrower in case of, 2, 613
- Setting up the claim after judgment, 2, 613
- What charges are deemed usurious, 2, 613
- Whether the transaction is usurious, 2, 611, 612
- Varieties, 2, 605
- Who May Be Members, 2, 616**
 - Corporations, 2, 616
 - Estoppel, 2, 618
 - Executors and administrators, 2, 617
 - Infants, 2, 616
 - Married women, 2, 616
 - Owners of stock, 2, 616
 - Stock book prima facie evidence of membership, 2, 618
- Winding up, 2, 643**
 - Advanced members, 2, 638
 - Application to court of equity, 2, 644
 - Insolvency, 2, 643
 - Liabilities of the association, 2, 646
 - Priority of a member who is a creditor or depositor, 2, 646
 - Priority of creditors and depositors, 2, 646
 - Right of stockholder to invoke chancery, 2, 627
 - Rights of borrowers who form a majority of membership, 2, 645
 - Rights of members, 2, 644
 - Want of responsible officer, 2, 643
 - When assets of the association become equal to par value of stock, 2, 645
- BUILDING CONTRACTS, see WORKING CONTRACTS.**
- BULL, 2, 646; 23, 701**
- BULLION, 2, 648**
- BUNDLE, 2, 649**
- BUNDLING, 21, 1027**
- BURDEN, 2, 649**
 - Conveyance of goods or burden in course of trade, 2, 649
 - Excessively, 7, 114
- BURDEN OF PROOF, 2, 649**
 - See* CONTRIBUTORY NEGLIGENCE; OPEN AND CLOSE; PRESUMPTIONS; REASONABLE DOUBT.
 - Absolute deed as mortgage, 17, 467
 - A rule of convenience, 2, 650
 - As to consideration for bill or note, 2, 372
 - As to particular facts, 7, 96
 - Bona fide holder of bill or note, 2, 395
 - Bona Fide Purchasers, 16, 842**
 - Conflict of authority, 16, 842
 - Where fraud has been proven, 16, 842
 - Bailee's negligence, 2, 59
 - Bottomry bond, 2, 491
 - Carriers of Goods, 2, 905**
 - As to Liability**
 - For loss by carrier who is not a common carrier, 2, 776
 - For loss of goods by carrier without hire, 2, 775
 - Presumption where goods were in good condition when delivered to first carrier, 2, 873
 - To explain deviation, 2, 852
 - Where place of loss is unknown, 2, 872
 - Carriers of Live Stock**
 - Against Carriers of Live Stock**
 - Where loss occurs, 3, 165
 - Carriers of Passengers**
 - As to contributory negligence, 2, 768
 - As to negligence of, 2, 767
 - Catching Bargain**
 - Parties to, 3, 38
 - Cattle killed upon railroad, 7, 925
 - Checks**
 - As to injury to the drawer, where there has not been due presentment and notice, 3, 216
 - Community property, 3, 357
 - Concealed weapons, 3, 410, 414
 - Confessions, 3, 496
 - Copyright, 4, 165
 - Corpus delicti, 4, 309; 9, 725
 - Counterclaim, 2, 430
 - Criminal Cases, 2, 657; 4, 844**
 - See* REASONABLE DOUBT.
 - Erasures in indictment, 2, 657
 - Former conviction, 2, 657
 - Independent exculpatory fact, 2, 657
 - Insanity, 2, 657; 4, 844, 845; 9, 727
 - Self-defense, 2, 657; 4, 845
 - When upon accused, 4, 845
 - When upon prosecution, 4, 844
 - Damages for infringements, 10, 760
 - Dealing with agent as principal, 2, 650
 - Definition, 2, 649
 - Distinguished from weight of evidence, 2, 655
 - Divorce suits, 5, 828
 - Domicile**
 - Change of domicile, 5, 865
 - Drunkenness, 2, 346
 - Election cases, 6, 433
 - Embezzlement, 6, 498s
 - Eminent domain, 6, 622
 - Express Companies, 7, 577**
 - Action for goods abstracted, 7, 577
 - Action for negligence, 7, 577
 - Deviation and loss of consignment, 7, 577
 - Failure of consideration, 2, 650
 - False pretenses, 7, 780
 - Fellow-Servants**
 - Incompetency of, 7, 851
 - Fires Caused by Operation of Railways**
 - Conflict of opinion as to presumption of negligence, 8, 9-11
 - Construction of engine, 8, 5
 - Negligence where shown that fire originated from defendant's engine, 8, 9
 - Operation of engine, 8, 5
 - Presumption as to negligence, 8, 10
 - Proof of origin of fires, 8, 7
 - Rule in the various states, 8, 9-11
 - Fraud, 2, 650; 8, 654**
 - Fiduciary relation, 8, 654
 - General rule, 8, 654
 - Implied warranty, 10, 134, 135

BURDEN OF PROOF—Cont'd**Fraud—Cont'd**

To show that party did not rely on misrepresentations, 8, 654

Where false representations are proved, 8, 654

Fraudulent Conveyances, 2, 650; 8, 752

Existing creditors, 8, 752

Subsequent creditors, 8, 752

Fraudulent Sales

Action of replevin by the vendor, 848

As to bona fide purchaser, 8, 841

Gaming houses, 8, 1092

Garnishment, 8, 1152, 1233

Intervention of third party, 8, 1242

Negotiable instruments, 8, 1175

General rule, 2, 650; 7, 95

Habeas Corpus

Bail, 9, 209

Homicide, 9, 725

As to corpus delicti, 4, 309; 9, 725

As to malice, 9, 725

As to sanity, 9, 727

Presumption of sanity, 9, 727

Presumption of sanity where defendant is deaf mute, 9, 728

When burden of proof upon defendant, 9, 726

Illegal note, 2, 650

Implied Warranty

Fraud, 10, 134, 135

In action of deceit, 5, 345

In bill to remove clouds, 2, 312

In case of alibi, 1, 455

Infanticide, 15, 225

Infant's necessities, 10, 665

Infringement of Patent, 10, 760

Where defendant has made improvement, 10, 764

In respect to alteration in deed, 5, 425

Intent

Gambling contracts, 8, 1010

Jeopardy, 11, 967

Justice of the peace, 12, 457

Larceny, 12, 880

Instructions as to possession of stolen property, 12, 880

Possession of stolen goods, 12, 847

Possession of stolen property, 12, 852

Libel and Slander

Justification, 13, 395

Language prima facie actionable, 13, 492

Special damages, 13, 446

License, 13, 518, 557

Life Insurance

Insanity, 13, 644

Intemperance, 13, 641

Suicide, 13, 645

Limitation of actions, 13, 771

Lis pendens, 13, 910

Local Assessments

Assent by property owners, 25, 537

Logs and lumber, 13, 1035

Lost wills, 13, 1136

Malicious prosecution, 2, 652; 14, 46

Malpractice

Care and skill, 14, 78

Mandate, 14, 249

Marine Insurance

Seaworthiness, 14, 371

Marriage

Contract in evasion of, 14, 481

During lucid interval, 14, 491

Incapacity, 2, 652

Married Women

Capacity to contract, 14, 605, 612

Master and Servant

Knowledge of defect, 14, 844

Liability of master to servant, 14, 904

Master of a Vessel

Sale of cargo, 14, 969

Sale of vessel from necessity, 14, 968

Mechanics' Liens, 15, 51, 187

Money due from owner, 15, 51

Medical Jurisprudence

Infanticide, 15, 225

Merger, 15, 367

Military law, 15, 436

Municipal Corporations

Liability for negligence, 15, 1152

Municipal Securities, 15, 1271

Fraud in inception of paper, 15, 1271

In Illinois, 15, 1271

Nonperformance of condition precedent, 15, 1271

Possession as prima facie evidence of ownership, 15, 1271

Mutual Insurance

Good standing, 16, 104

Navigable waters, 16, 245

Navigation

In Case of Collision, 16, 360

Inevitable accident, 16, 361

Neglect of precaution, 16, 361

To show negligence, 16, 360

When on plaintiff, 16, 360

Negative Allegations, 2, 651

Fencing railroad track, 2, 651

Incapacity to marry, 2, 652

Malicious prosecution, 2, 652

Negative involving a criminal omission, 2, 654

That negotiable promissory note was not taken in payment of a precedent debt, 2, 652

When parties have equal opportunity of proving a negative, 2, 651

Negligence, 16, 453

Beyond a reasonable doubt, 16, 453

Collision, 16, 360

Establishing every element, 16, 454

Examples, 16, 453-455

In absence of presumption, 16, 453

In general, 16, 453

Negating contributory negligence, 16, 455

Preponderance of evidence, 16, 453

Proximate cause, 16, 453

Shifting, 16, 455

Upon plaintiff, 16, 453

Where act is also a crime, 16, 454

Notice to produce papers, 16, 860

Vol. I.

- Novation**, 16, 869, 874, 875
 New firm assuming debts of partnership when partner retires, 16, 906
- Nuisances**
 Prescriptive right, 16, 999
- Onus Probandi**
 Definition, 2, 650
- On whom general burden of proof lies**, 7, 95
- Parent and Child**, 17, 337
 Agency, 17, 358
- Parties to actions**, 17, 512
- Partition**, 17, 747
- Partnership**
Bills and Notes, 17, 1024
 Authority of partner, 17, 1024, 1025
 Bona fide holder, 17, 1036
 Non-trading partnerships, 17, 1027
 That the note was not issued in good faith, 17, 1024
 When upon holder to show authority of partner, 17, 1025
- Notice of Dissolution**, 17, 1121
 Actual knowledge of dissolution, 17, 1121
 Dormant partner, 17, 1120
 In general, 17, 1118
 Ratification of unauthorized act, 17, 1051
 To prove existence of partnership, 17, 1312, 1313
- Patent law**, 18, 101-103
- Payment**, 18, 201
 Agent's authority, 18, 192, 193
 Party pleading payment, 18, 201
 Payment by bill or note, 18, 171
 Upon whom burden of proof rests, 18, 201
- Physicians and Surgeons**
 License, 18, 432
- Pilots**, 18, 456
- Presumption as to infant's incapacity to commit a crime**, 2, 654
- Presumption as to officers doing their duty**, 2, 655
- Presumption as to sanity**, 2, 655
- Presumption of innocence**, 2, 654
- Presumptions of fact**, 19, 59
- Probate**
 Domicile, 19, 165
- Public Officers**
 Duty not performed for want of funds, 19, 495
 Liability for default of servant, 19, 497
- Quo warranto**, 19, 673, 680
- Railroads**
 Location, 19, 838
 Obligation to fence, 7, 908
 Power to contract, 19, 816
- Railroad Securities**, 19, 724
 Where purchase of bonds is made after maturity, 19, 724
 Where purchase of bonds is made before maturity, 19, 724
- Real Covenants**, 19, 996
 Breach of covenant of warranty, 19, 996
- Breach of quiet enjoyment**, 19, 996
- Receipts**, 19, 1129
- Reformation of instruments**, 15, 656
- Release**, 20, 767
- Replevin**, 20, 1107, 1108
 Right to exclusive possession, 20, 1050
- Rescission**, 21, 96
- Res Judicata**, 21, 185, 192, 202, 217
 Clear and certain, 21, 202
 To show what was determined by judgment, 21, 202
- Revenue Laws**
 Actions against collector, 21, 341
 Forfeiture, 21, 333
- Rewards**, 21, 403
- Sales**
 Action by seller for breach of contract, 21, 592-595
 Authority to pay by mail, 21, 567
 Of intoxicating liquors, 2, 653
- Salvage**, 21, 710, 711
- Savings banks**, 21, 728
- Seal**, 21, 887
 Of corporation, 4, 244
- Seduction**
 Chaste character of woman, 21, 1047
- Several issues**, 2, 656
- Societies and clubs**, 22, 820
- Specific Performance**, 22, 1075
 To show terms of contract, 22, 1075
 To show the making of the contract, 22, 1075
 When contract is within statute of frauds, 22, 1078
- Statute of Frauds**
 Acceptance and actual receipt, 8, 730
- Stockholders**
 Non-compliance with statutory provisions, 23, 874
 Performance of conditions, 23, 834
- Succession**, 24, 429
- Sunday**
 To show that instrument was executed on Sunday, 24, 569
- Taxation**
 Action against collector, 25, 352
 Appeal, 25, 266
 Boards of equalization and review, 25, 259
 Exemptions, 25, 159
- Telegraphs and Telephones**
 In actions for negligence, 25, 831
 Whether transmitting presumption of negligence, 25, 831
- Test**, 2, 655
 Mere form of a proposition does not change rule, 2, 656
 Several issues, 2, 656
 Witness testifying to an affirmative fact, 2, 656
- Testamentary Capacity**, 25, 996
 Deaf, dumb, and blind persons, 25, 975, 976
 English rules, 25, 997
 Inequalities in will, 25, 1000
 Intoxication, 25, 991
 Lucid intervals, 25, 979, 1001

BURDEN OF PROOF—Cont'd**Testamentary Capacity—Cont'd**

- New York code, 25, 1000
- On party alleging disability, 25, 996
- On party propounding will, 25, 998
- Open and close, 25, 1003
- Person once insane, 25, 1001
- Presumption of capacity, 25, 996
- Prima facie case of competency, 25, 999
- Rational will, 25, 1002
- Subscribing witnesses, 25, 999
- Testator under guardianship, 25, 1002

To Disprove a Negative Averment

- Sale without license, 2, 653
- Set-off of bankrupt's notes against assignee, 2, 653
- Where proof is in the hands of the opposite party, 2, 652

To obtain bail, 2, 10**To Show Notice of Dishonor, 2, 415**

- In due time, 2, 413

Towage

- To show agreement for remuneration, 26, 93
- Upon libellant, 26, 94

Trespass, 27, 664

- Each claiming property by pleadings, 26, 665
- Examples, 26, 664-666
- In general, 26, 664
- On him wrongfully maintaining possession, 26, 665
- On the plaintiff, 26, 664
- Trespass to try title, 26, 662
- Where defendant is not in possession, 26, 666

Trover, 26, 812

- Original tortious taking, 26, 813
- Quantity and quality of goods, 26, 813
- Reasonable doubt, 26, 813
- To show conversion, 26, 813
- Upon the defendant, 26, 813
- Upon the plaintiff, 26, 813

Undue Influence, 27, 494

- Wills, 27, 501
- Husband and wife, 27, 513
- Where testator is of weak mind, 27, 504

- Upon defendant, when, 2, 652

Usury, 27, 1045**Warehouse and Warehouseman, 28, 648**

- Delivery to warehouseman, 28, 649
- Examples, 28, 648-650
- In general, 28, 648
- On plaintiff, 28, 648

Warranty

- In general, 28, 860
- Sale by sample, 28, 860
- When instrument has been altered, 1, 512
- Where presumption of law is in favor of affirmative, 2, 654

BURGAGE-TENURE, 2, 658**BURGESS, 2, 658****BURGLARIOUSLY, 4, 752****BURGLARY, 2, 659****See HOUSE.****Jeopardy, see JEOPARDY.****Plea of autrefois acquit, see JEOPARDY.**

- Agents, 2, 681
- Attempt to commit, 2, 692; 4, 663
- Banking house, 2, 677
- Barns, 2, 674

Breaking**Actual, 2, 659, 660**

- Chimneys, 2, 664
- Cupboards, 2, 665
- Definition, 2, 661
- Entering an open door, 2, 661
- Fixtures, 2, 665
- Gates, 2, 666
- Interior doors, 2, 664
- Lifting a latch, 2, 662
- Necessarily including force, 2, 660
- Pulling down upper sash of window, 2, 664
- Pushing open a closed door, 2, 662
- Pushing open a transom, 2, 662
- Pushing open a trapdoor, 2, 662
- Quality of fastenings, 2, 664
- Safes, 2, 665
- Servant entering master's bedroom, 2, 662

Trapdoors, 2, 666**Unlatching a chamber door, 2, 661****Walls, 2, 666****Windows, 2, 663**

- And entering with intent to steal, though the goods are not carried away, 2, 660

Breaking out of a dwelling house, 2, 666**Constructive, 2, 667****Menaces, see infra, THREATS AND THREATENING LETTERS.****By fraud, 2, 667****By one of several, 2, 669****Conspiracy, 2, 668; 4, 597****Definition of, 2, 528****Out of a Dwelling House****Trapdoors, 2, 666****Unbolting a door to escape, 2, 667****Buildings adjoining dwelling house, 2, 674****Consent, 2, 671****Conspiracy to commit, 2, 668; 4, 597****Conviction of Larceny**

- Upon failure to convict of burglary, 2, 696; 15, 368

Corpus delicti, 4, 309**Defense against burglary, 19, 1110****Dairy house, 2, 674****Definition, 2, 659****Dwelling House, 2, 677****Definition, 6, 101****What is, 2, 671, 672****Entry, 2, 669**

- Any part of the body within the house, 2, 669

- At another night from the breaking, 2, 686

- By firing a gun into a house, 2, 670

- Consent, 2, 671
- Constructive by one of several, 2, 670
- Introduction of firearms or instruments, 2, 669
- Necessity of, 2, 669
- What constitutes, 2, 669
- Evidence, 2, 693**
 - Possession of burglarious tools, 2, 695
 - Possession of stolen property, 2, 693
 - Rule in larceny as applying to burglary, 2, 693
 - Sufficiency of evidence as to the absence of felonious intent, 2, 690
 - Guest at an inn, 2, 680; 11, 57
 - House, 2, 677
- House Breaking**
 - Possession of implements of, as an evidence, 2, 695
- Indictment, 2, 660**
 - Agents, 2, 681
 - Allegation of commission without allegation of intent, 2, 692
 - Allegation of intent where felony is committed after the breaking and entering, 2, 693
 - Alleging night time, 2, 688
 - Charging "breaking" and proof of "breaking out," 2, 667
 - Charging intent, 2, 689
 - Conviction of larceny, 2, 696; 15, 368
 - Guest at an inn, 2, 680
 - House divided and occupied by several, 2, 678
 - House occupied as public offices, 2, 681
 - House occupied by clerks and agents, 2, 681
 - House occupied by corporation, 2, 685
 - House occupied by guests, 2, 684
 - House occupied by servants, 2, 682
 - House occupied by servants as tenants, 2, 683
 - House occupied by tenant, 2, 684
 - Lodgers, 2, 679
 - Name of owner must be stated with accuracy, 2, 678
 - Ownership by wife or family, 2, 680
 - Ownership, how laid, 2, 677
 - Partners, 2, 685
 - Value of property, 2, 695
 - Variance as to ownership of property, 2, 686
 - Variance in the statement of intent, 2, 691
 - Inns and innkeepers, 2, 680; 11, 57
 - Instruction, examples of, 11, 270-274
- Intent, 2, 688**
 - Allegation of commission without allegation of intent, 2, 692
 - Allegation of intent where felony is committed after the breaking and entering, 2, 693
 - Charging, in indictment, 2, 689
 - Felony intended to be committed, a felony at common law, 2, 689
 - Impossibility, 2, 692
 - Not executed, 2, 692
 - Question of fact, 2, 689
 - Sufficiency of evidence as to the absence of a felonious intent, 2, 690
 - To commit a felony an essential attribute, 2, 688
 - To commit a trespass, 2, 690
 - Variance in the statement of, 2, 691
- Joinder with larceny, 12, 827
- Key, 12, 519
- Larceny, 2, 696; 11, 943, 945; 12, 827; 15, 368
- Libel and slander, 13, 336
- Lodgers, 2, 679
- Mansion House**
 - Definition, 2, 671
 - Minor offense, 2, 696
- Night Time, 2, 686; 16, 707**
 - Breaking one night, entering another, 2, 686
 - "By night," 2, 704
 - Sunset and sunrise, 2, 687
 - What is, 2, 687
- Occupancy, 2, 671
- Offense at common law, 2, 659
- Ownership, 2, 677
- Possession of implements of house breaking as a separate offense, 2, 695
- Railroad depot, 2, 677
- Rape**
 - Burglary with intent to commit, 2, 692
- Receiving stolen property, 20, 442
- Res gestæ, 21, 115
- Stables, 2, 674, 676
- Statutory offense, 2, 659, 676
- Temporary absence, 2, 672
- Tenements, 2, 678
- Threats and Threatening Letters**
 - Constructive Violence in Burglary and Robbery, 2, 688; 25, 1067**
 - Compelling person to open door, 25, 1067
 - Examples, 25, 1067, 1068
 - In general, 25, 1067
 - Injury to party, 25, 1068
 - Mobs, 25, 1068
 - Value of property, 2, 695; 28, 47
- Variance**
 - As to ownership of property, 2, 686
 - In the statement of intent, 2, 691
- Warehouse, 2, 674
- What are implements of house breaking, 2, 695
- What Premises Are Subject To, 2, 671**
 - Banking house, 2, 677
 - Barns, 2, 673
 - Buildings adjoining dwelling house, 2, 674
 - By statute, 2, 676
 - Dairy houses, 2, 674
 - House, 2, 677
 - Mansion house, 2, 671
 - Occupancy, 2, 671
 - Outhouse, 2, 673
 - Railroad depot, 2, 677
 - Stables, 2, 676
 - Stables or cow houses, 2, 674
 - Store, 2, 677

BURGLARY—*Cont'd***What Premises are Subject**—*Cont'd*

- Storehouse in which someone sleeps, 2, 671
- Temporary absence, 2, 672
- Tent, 2, 671
- Warehouse, 2, 673

BURIAL, 2, 698*See* DEAD BODY.

For burial expenses, see DEBTS OF DECEDENTS.

Duties of Executors and Administrators, 7, 301

- As to what are proper expenses, 7, 302
- Direction in will, 7, 302
- Expenses as against creditors, 7, 301
- Expenses as against legatees or distributees, 7, 301
- Mourning apparel for widow, 7, 302
- Priority over debts, 7, 302
- Station in life of decedent, 7, 301
- Suitable burial, 7, 301

Funeral Expenses, 7, 433**Liability of Executor or Administrator**, 7, 340

Where there are no assets, 7, 341

Where third party orders the burial, 7, 340

Where person paying out of estate is executor de son tort, 7, 184

Places of, 2, 698

Used for burials, 2, 698

BURIAL-GROUNDS, see CEMETERIES.**BURLAPS**, 2, 698**BURN**, see ARSON.

Arson by statute, 1, 763

BURNING-FLUID, 2, 698

Camphene, spirit gas, or any burning fluid, 2, 698

Distinguished from kerosene, 2, 698

Distinguished from naphtha, 2, 698

BURST, 2, 699

Bursting of boiler, 2, 699; 14, 332, 379

BUSHEL, 2, 699**BUSINESS**, 2, 699

Occupation tax, see TAXATION.

All business, 2, 700

Business or occupations, 2, 700

Carrying on business, 3, 17

Course of, 4, 445

Covenant not to be concerned in a business, 3, 419

Dangerous, 5, 76

Doing business, 2, 701; 25, 661

Express, 7, 539

Follow his, 8, 76

In and about business, 2, 701

In Sunday law, 2, 699

License, 13, 527

Mercantile, 2, 701

More hazardous business, 2, 701

Of a court, 2, 701

Office of, 2, 701

Ordinary business, 17, 272

Other business, 2, 702

Out of business, 17, 289

Place of business, 18, 464; 25, 145

Sunday laws, 24, 535

Synonymous with occupation, 2, 699

To engage in, 6, 642

Trade, business, 2, 700

Usual course of business, 27, 915

Whether property, 19, 288

BUSINESS CARD, 2, 731**BUSINESS CORPORATION**, 2, 701**BUSINESS MEN**

As an expert in handwriting, 9, 293

BUSINESS TAXES, see TAXATION.**BUT**, 2, 702**BUTCHER**, 2, 702**BUY**, 2, 702

See BOUGHT; SALES.

Buying of pleas, see MAINTENANCE.

Buying stolen property, see RECEIVING

STOLEN GOODS.

Buying office, see OFFICERS.

Buyer, 2, 702

Buyer's option, 2, 702

Buy in, 2, 702

Buying, 2, 702

Buying counterfeits, 2, 703

Buying wife, 2, 703

Buy off, 2, 702

Buy on credit, 2, 702

Buy out, 2, 702

Buy the refusal, 2, 702

Power to buy, 2, 702

Proposals to buy, 2, 702

BY, 2, 703

Authorized by law, 2, 703

Bound by surety, 2, 703

By a certain time, 2, 703

By a highway, 2, 704

By a sea, 2, 704

By a stream, 2, 704

By authority, 2, 703

By estimation, 2, 703

By force, 2, 704

By, from, or under, 2, 704

By him, 2, 704

By his agent, 2, 703

By land of, 2, 704

By means, 2, 704

By night, 2, 704

By the consent of the company, 2, 703

By the court, 2, 703

By the drink, 2, 703

By the final judgment, 2, 704

By the people, 2, 704

By the year, 2, 704

By virtue of his employment, 2, 704

Known by, 2, 704

"Of" meaning "by," 17, 34

BY-LAWS, 2, 705

See ORDINANCES; SOCIETIES AND CLUBS.

See generally, STOCK; STOCKHOLDERS.

Safe deposit companies, see SAFE DEPOSIT COMPANIES.

Adoption, 2, 709

Existence established by custom, 2, 709

Necessity of corporate seal, 2, 709

Necessity of stating reason for, 2, 709

- Regulations affecting persons not members, 2, 709
- Authority to Make, 2, 705**
 - Charitable corporation, 2, 705
 - Delegation of the power, 2, 706
 - Directors, 2, 706
 - Members of the corporation, 2, 706
 - Societies and clubs, 2, 705
 - Stock corporations, 2, 706
 - Whether an essential attribute of a corporation, 2, 705
- Breach of**
 - As cause for expulsion, 1, 560
- Building and Loan Associations, 2, 624, 632**
 - Imposing fines, 2, 620
 - Imposing forfeitures, 2, 622
- Construction, 2, 711**
- Definition, 2, 705**
- Directors, binding upon, 2, 706**
- Distinguished from regulations of private corporations, 2, 705**
- Enforcement, 2, 711**
 - Assumpsit for penalties, 2, 711
 - By religious or social corporations, 2, 711
 - Disfranchisement, 2, 711
 - Forfeiture, 2, 711
 - Imprisonment, 2, 711
 - Penalty, 2, 711
 - Power to enforce by fine, 2, 711
- Evidence**
 - Against officer, 2, 710
- Informalities, 2, 710**
- Lien reserved upon shares of stockholders, 2, 710**
- Local laws, 2, 705**
- Mandamus**
 - Expulsion, 16, 77
- Municipal corporations, 2, 705**
- Mutual Insurance, 2, 172, 176; 16, 41**
 - Amendment, 2, 176
 - Change of beneficiaries, 16, 55, 56
 - Compliance with by-laws, 16, 92
 - Conformity to general requirements, 16, 42
 - Construction, 2, 174; 16, 46
 - Effect of violation, 16, 44
 - Effect upon contracts, 16, 40
 - Examples, 2, 173, 174
 - Expulsion of members, 16, 42, 43
- Forfeiture**
 - And suspension of contract, 16, 77
 - Compliance with, 16, 82
 - Of contract of membership, 16, 46
 - Provisions, 16, 46
- Formalities, 16, 43**
- Guaranty and reserve funds, 16, 58**
- Invalid by-laws, 2, 173**
- Jurisdiction of courts, 16, 43**
- Mandatory and directory requirements, 16, 44**
- Notice, 16, 71**
- Payment of sick benefits, 16, 43**
- Penalty, 16, 46**
- Pleadings, 16, 100**
- Presumption of knowledge of members, 16, 41**
- Principles of agency, 16, 45**
- Provision as to entire amount becoming due and payable, 16, 46**
- Regulations adopted by officers, 16, 41**
- Retroactive laws, 16, 45**
- Strict construction, 16, 46**
- Suspension, 16, 44**
- Ultra vires acts, 16, 45**
- Unreasonableness, 2, 173**
- Validity, 16, 42**
- Waiver, 16, 45**
- What the by-laws shall contain, 2, 173**
- National Banks**
 - Adoption, 16, 163
 - Power to Prescribe, 16, 162**
 - Adoption of by-laws by quorum of board, 16, 163
 - Transfer of stock, 16, 163
 - Validity of by-laws giving bank a lien, 16, 163
 - Statutes, 16, 163
 - Validity, 16, 163
- Notice, 2, 710**
 - Member having no notice of by-laws, 2, 710
 - Presumption of knowledge, 2, 710
- Of a Bank**
 - Affecting the rights of third parties, 2, 110
 - Requiring production of original pass book, 2, 110
- Questions of law and fact, 19, 639, 645, 648**
- Reasonableness of, 1, 563**
- Regulating the mode of making transfers, 2, 710**
- Stock**
 - Authority to issue preferred stock, 23, 604
- Stockholders**
 - Forfeiture, 23, 819
- Unincorporated Societies, 2, 708**
 - See* RELIGIOUS SOCIETIES; SOCIETIES.
 - Binding force of, 2, 709
 - Reasonableness, 2, 708
- Validity, 2, 706**
 - By-law authorizing voting by proxy, 2, 708
 - By-law creating lien on shares of stockholder in national bank, 2, 707
 - By-law making right of transfer dependent upon the approval of directors, 2, 710
 - By-laws in restraint of trade, 2, 707
 - Conflicting with charter, 2, 707
 - Conflicting with common law, 2, 707
 - Conflicting with constitution, 2, 706
 - Conflicting with statute, 2, 706
 - Excessive penalties for breach, 2, 707
 - Question for the court, 2, 708
 - Reasonableness, 2, 707
 - Void as to part and good as to the rest, 2, 708
- Voting by proxy, 2, 708**
- Waiver, 2, 711**

BY-LAWS—Cont'd

- Who Are Bound, 2, 709
- By-laws regulating mode of making transfers of shares, 2, 710
- Members, 2, 709, 710
- Persons not members, 2, 709

BY-ROAD, 2, 712**BY-STANDER, 2, 712; 12, 342****CABIN, 2, 712****CABINET, 2, 712**

- Cabinet council, 2, 713
- Cabinet or collection of curiosities, 2, 713
- Cabinet ware, 2, 713
- Cabinet ware rooms, 2, 713
- In England, 2, 712
- In the United States, 2, 712

CABLE, 2, 713**CABLE CARS, see STREET RAILWAYS.****CADET, 2, 713****CALCULATED, 2, 713****CALCUTTA, 2, 713**

- Calcutta linseed, 2, 713

CALENDAR, 2, 714

- Calendar month, 15, 712
- One calendar month's notice, 2, 714

CALL, 2, 714; 23, 701, 724

- See GAMBLING CONTRACTS; STOCK-HOLDERS.

- Called lurchers, 2, 714

- Called to testify, 2, 714

- Call forth, 2, 714

- On call, 2, 714

"CALL" DISTINGUISHED FROM "PUT" 23, 725**CALLING**

- Ordinary calling, 17, 272; 24, 538

CALUMNY, 2, 715**CAMEO, 2, 715****CAMP**

- Camp meeting, 2, 716

CAMPHENE, 2, 715

- Fire insurance, 7, 1034

CAN, 2, 716

- Best you can, 2, 717

- Cannot, 2, 717

CANADA, 2, 717

- Canada currency, 2, 718

- Canada money, 2, 717

CANALS, 9, 366

- Abandonment, 28, 1054
- Admiralty jurisdiction over, 28, 1053
- Appropriation of fee simple, 28, 1044
- As public highway, 9, 366
- Bridges, 2, 545; 28, 1049
 - Duty to construct and repair, 2, 545; 28, 1049
 - Examples, 28, 1049, 1050
 - Mandamus, 28, 1049

Canal Boat, 2, 439

- Maritime liens, 14, 412

- Owners of canal boats as common carriers, 2, 784

- Whether a ship, 22, 711

Canal Commissioner

- Judges, 12, 3

Canal Companies**Bills and Notes**

- Power to issue, 4, 224

- Company owning, not a common carrier, 2, 784

- Compliance with statute, 28, 1044

Duty and Liability of Owners, 28, 1047

- Bridges, 2, 545; 28, 1049

- Damages to adjoining premises, 28, 1047

- Examples, 28, 1047-1049

- Navigation, 28, 1050

- Riparian rights, 28, 1047

Eminent Domain, 28, 1043, 1044

- As to the exercise of eminent domain generally, see EMINENT DOMAIN.

- A public use, 6, 525

- Examples, 28, 1043, 1044

- Fee, 28, 1044

- How compensation ascertained, 28, 1045

- Right to enter, 28, 1044

Ice, 9, 859**Law of the road, 12, 964****Mandamus, 14, 163****Mechanics' liens, 15, 32****Municipal Corporations**

- Legislative control, 15, 990

- Navigable waters, 16, 244

Navigation, 28, 1050

- Duty of the company, 28, 1050

- Examples, 28, 1050-1052

- Rules of navigation, 28, 1052

- Public use, 28, 1043

Railroads operating, 19, 824**Right to enter, 28, 1044****Rights of public, 28, 1042****Statute of frauds, 8, 667****Statutory creation, 28, 1042****Stock**

- Whether stock in canal companies is personalty, 23, 591, 592

Streets and Sidewalks

- Dedication, 24, 8

Surplus Water, 28, 1052**Tolls, 28, 1045**

- Construction against company, 28, 1045

- Discrimination, 28, 1046

- Examples, 28, 1045-1047

- Governed by charter, 28, 1045

- Passengers, 28, 1045

- Private canal, 28, 1047

- Rates provided by charter, 28, 1046

- Right to demand, 28, 1045

- Time of payment, 28, 1047

Water property of canal owners, 28, 1042

- Whether navigable waters, 16, 244

- Whether property subject to execution, 8, 634

CANCEL, 2, 718

- Cancellation of a will, see WILL.

- Cancellation of stamps, 2, 719

- Cancelling deeds, 2, 719

CANCELLATION, see WILLS; BILL TO REMOVE CLOUDS; ALTERATION OF INSTRUMENTS.

- Under codes, 11, 1015d

- CANDIDATE**, 2, 720
 Initials, 6, 346
- CANDLES**, 2, 721
 Tallow-chandler, 2, 721
- CANNOT**, see **CAN**.
- CANON**, 2, 721
- CANT**, 2, 721
- CANVAS**, 2, 722
- CANVASSING BOARDS**, see **ELECTIONS**.
- CAPABLE**, 2, 722
- CAPACITY**, 2, 722
 Fiduciary, 2, 722; 7, 957
 In any office or capacity, 2, 722
 Misdemeanor in his professional, 2, 722
- CAPE**, 2, 723
- CAPIAS**, 2, 723
- CAPIAS AD RESPONDENDUM**, 2, 723
 Arrest (Civ. Cas.), 1, 720
 At common law, 2, 724
 Definition, 2, 723
 History, 2, 724
 In what cases allowed, 2, 724
 Statutes, 2, 724
- CAPIAS AD SATISFACIENDUM**, 2, 725;
 7, 118
 Arrest (Civ. Cas.), 1, 720
 Breaking doors to execute, 1, 722
 Definition, 2, 725
 Irregularities in the writ, 2, 725
- CAPITA**, 2, 726
 See **SUCCESSION**; **WILLS**.
 Per capita, 2, 726; 18, 297
- CAPITAL**, 2, 726
 Capital cases, 2, 728; 3, 28
 Capital letters, 2, 728
 Capital offense, 2, 728
 Capital stock, 2, 726
 Charged with a capital offense, 2, 728
 Moneyed capital, 2, 726
- CAPITAL PUNISHMENT**, 4, 728
- CAPITAL STOCK**, see **STOCK**.
- CAPITATION**, 2, 728
- CAPITATION TAXES**, see **TAXATION**
- CAPTAIN**, 2, 728
- CAPTION**, 2, 729
 See **INDICTMENT**.
- CAPTORS**, 2, 730
- CAPTURE**, 2, 729; 14, 332
 See **INTERNATIONAL LAW**.
 Booty, 2, 730
 Captured property, 2, 730
 Capturing merchant vessel as pirate, 2, 730
 Conjunct capture, 2, 730
 Prize, 2, 730
 Recapture, 2, 730
- Seamen**
 Wages, 21, 926
 Capture not followed by condemnation, 21, 926
 Right to remain in ship until condemnation, 21, 926
 Ship's acquittal, 21, 926
 Where vessel is ransomed, 21, 926
- CAR**, 19, 779; 23, 942
 See **ROLLING STOCK**.
 Street car, 23, 942
- CARDINAL**, 2, 731
- CARDING**, 2, 731
- CARDS**, 2, 731
 See **GAMING**; **GAMING HOUSES**.
 Cheating at cards, 4, 602
 Playing cards at tavern, 8, 1045-1047
- CARE**, 2, 731
 See **ORDINARY CARE**.
 A, care of B, 2, 732
 All possible skill and care, 18, 842
 Care and management, 2, 732
 Care and skill, 2, 732
 Due care, 2, 732; 6, 40
 Especial care, 2, 732
 Extraordinary care, 2, 732; 7, 657
 Great care, 2, 732
 Reasonable and proper care, 2, 732
 Slight care, 2, 731
 Support and take care of, 2, 732
 Utmost care, 2, 732; 28, 1
- CARELESSLY**, 2, 732
- CARGO**, 2, 732; 3, 147; 13, 973; 14, 332
 Cargo and freight, 14, 332
 Complete, 3, 383
 Full and complete, 2, 734; 3, 147
 Goods and cargo, 14, 332
 Goods stored on deck, or live stock, 2, 733
 Inboard cargo, 14, 332
 Meaning of term, 2, 732
 Profit on, 2, 735
- CARNAL KNOWLEDGE**, 2, 735; 11, 379
 Abuse, 2, 735
 Equivalent to sexual intercourse, 2, 735
- CARRIAGE**, 2, 735; 28, 520-522
 See **BICYCLES**.
Lewd and lascivious cohabitation and behavior, see **LEWD AND LASCIVIOUS**.
 Bicycle as, 2, 736
 Equivalent to vehicle, 2, 735
 Other four-wheel spring carriage, 2, 737; 17, 283
 Other such carriage, 2, 737
 Pleasure carriage, 2, 737
- CARRIERS**, see **CARRIERS OF GOODS**;
CARRIERS OF LIVE STOCK; **CARRIERS OF PASSENGERS**; **EXPRESS COMPANIES**; **SHIPS AND SHIPPING**.
Mail, see **MAIL**.
 Injunctions, 10, 949
 Instruction, examples of, 11, 267
- CARRIERS OF GOODS**, 2, 770
 See **ACT OF GOD**; **BILL OF LADING**;
CARRIERS OF LIVE STOCK; **CARRIERS OF PASSENGERS**; **CHARTER-PARTY**;
EXPRESS COMPANIES; **FAST FREIGHT LINES**; **FORWARDING MERCHANTS**;
FREIGHT; **INTERSTATE COMMERCE**;
STOPPAGE IN TRANSIT; **STRIKES**;
TOWAGE; **TUGS AND TOWS**; **TRANSFER COMPANIES**; **WAREHOUSEMEN**.
As to lien for freight, see **FREIGHT**.
Connecting carriers, see **CONNECTING CARRIERS**.
Discrimination, see **INTERSTATE COMMERCE**.

CARRIERS OF GOODS—Cont'd

Discrimination in freight charges, see
FREIGHT.

For carriers of animals, see CARRIERS
OF LIVE STOCK.

Lien of carrier, see FREIGHT.

Pledge of bill of lading, see PLEDGE.

Subrogation, see SUBROGATION.

Actions Against, 2, 902

Actions in tort, 2, 903

Actions on contract, 2, 903

Burden of proof, 2, 905

Evidence, 2, 904

Measure of damages, 2, 905

Parties to Suit, 2, 902

Consignee, 2, 902

Party contracting with carrier, 2,
902

Where consignor retains interest, 2,
902

Recovery by either consignee or con-
signor bars the other, 2, 903

Act of God

Care to be exerted after loss by, 2,
853

Excused by, 1, 173

Agent, see infra, CONSIGNMENT OF
GOODS TO AGENT.

Agent's Authority

Limited by his employment, 2, 807

To contract for delivering goods be-
yond company's line, 2, 806

To execute bills of lading, 2, 230

What actions are binding upon the
company, 2, 807

**Agents Authorized to Receive Consign-
ments, 2, 805, 807**

Baggage master, 2, 805

Captain of steamboat, 2, 805

Deck hands of a steamboat, 2, 807

Mate of ship, 2, 805

Officials at a railway station, 2,
805

Servants acting on their own responsi-
bility, 2, 807

Servants of connecting carriers, 2,
805

As factors, 3, 318

Attachment

Of goods, 2, 854

When goods in carrier's custody are at-
tachable, 2, 854

Burden of Proof, 2, 735, 776, 905

Non-delivery, 2, 905

Presumption where goods were in good
condition when delivered to first car-
rier, 2, 873

To disprove negligence, 2, 905

To excuse non-delivery, 2, 902

To explain deviation, 2, 852

To show that warehouseman was not at
fault, 2, 884

Where carrier's liability is limited by
contract, 2, 905

Where place of loss is unknown, 2, 872

Care during transit, 2, 852

Care to be exerted after disaster, 2, 853

Carriers for Hire but Not Common Carriers,
2, 775

Definition, 2, 775

Degree of care to be used by, 2, 775

Evidence as to loss, 2, 777

Liability where loss is caused by mis-
conduct of the owner, 2, 776

Lien, 2, 777

Ordinary diligence, 2, 776

Ordinary negligence, 2, 776

Presumption of negligence, 2, 776

Questions of law and fact, 2, 777

Robbery, 2, 776

Special Contract

Increasing or diminishing carrier's
liability, 2, 776

Unavoidable accidents, 2, 776

Carriers Without Hire, 2, 772; 14, 246

Bailee as competent witness of theft of
goods, 2, 774

Bailee's gross negligence in regard to
his own goods, 2, 775

Burden of proof as to liability, 2,
735

Burden of proof as to negligence, 2,
776

Character of goods lost, 2, 775

Distinguished from common carriers,
2, 772

Liability for loss of goods, question for
the jury, 2, 775

Liability for slight, ordinary, and gross
negligence, 2, 773

Liability where bailee has lost articles
of his own at same time, 2, 774

Measure of liability, 2, 772

Theft of bailor's property from bailee,
2, 774

Cars of other companies, 2, 871

Change in Destination of Freight

By consignee, 2, 807

By consignor, 2, 808

Classes of carriers, 2, 772

Color of title adverse to consignor, 2,
854

Common Carriers, 2, 777

Carriers by land and carriers by water,
2, 780

Casual undertaking to carry by one not
engaged in carrying as a business, 2,
780

Criterion of the character of the car-
rier, 2, 779, 780

Definition, 2, 777

Distinguished from others, 2, 778

Duty to carry for all persons, 2,
779

Liabilities of casual carrier, 2, 780

Liabilities of insurer, 2, 779

Liability as Common Carriers

Forwarders

Presumption as to carrier, 8, 582

Goods awaiting orders, 8, 578

Instructions by railroad that goods
are at owner's risk, 8, 578

Instructions to forward forthwith, 8,
578

- Use of the word "forward," 8, 580
 Public character of duties of, 2, 781
 When liability attaches, 2, 378
Who Are, 2, 781
 Cartmen, 2, 782
 Company transferring cars of another carrier, 2, 782
 Draymen, 2, 782
 Express companies, 2, 783
 Omnibus proprietors, 2, 783
 Owners of canal boats, 2, 784
 Owners of ships, 2, 784
 Porters, 2, 782
 Railroad companies, 2, 781
 Railroad transporting the cars of another road for hire, 2, 782
 Receivers of railways, 2, 782
 Stage coaches, 2, 784
 Street railways, 2, 782
 Tow-boats, 2, 784
 Transportation companies, 2, 782
 Trustees of mortgage bonds of a railway, 2, 782
 Wagoners, 2, 783
 When carrier liable as warehouseman, 2, 788
Who Are Not
 Boom companies, 2, 786
 Company carrying dogs in baggage car, 2, 786
 Company owning a canal, 2, 784
 "Forwarding merchants," 2, 784
 Owner of a toll-bridge, 2, 784
 Postmasters and mail contractors, 2, 785
 Private ferry, 2, 785
 Sleeping car companies, 2, 785
 Telegraph and telephone companies, 2, 785
 Telephone companies, 2, 785
 Concealment by shipper as to value of goods, 2, 225
Conflict of Laws, 2, 834
 Law of the place of performance, 2, 836
 Lex loci contractus, 2, 834
 Presumption as to law, 2, 834
 Consignment of goods to agent as consignment to carrier, 2, 805
 Consignor's duty to mark goods, 2, 810
Contracts Limiting Liability, 2, 818
 Carrier's position as a monopoly, 2, 818
Carrier Relieving Himself from Liability for Negligence, 2, 816, 822; 9, 913
 In Alabama, 2, 824
 In Arkansas, 2, 825
 In California, 2, 830
 In Colorado, 2, 825
 In Connecticut, 2, 825
 In Delaware, 2, 830
 In Florida, 2, 830
 In Georgia, 2, 825
 In Illinois, 2, 825; 7, 579
 In Indiana, 2, 826
 In Iowa, 2, 826; 7, 579
 In Kansas, 2, 826
 In Kentucky, 2, 826
 In Louisiana, 2, 826
 In Maine, 2, 826
 In Maryland, 2, 830
 In Massachusetts, 2, 826
 In Michigan, 2, 830; 7, 579
 In Minnesota, 2, 827
 In Mississippi, 2, 827; 7, 579
 In Missouri, 2, 827
 In Nebraska, 2, 828
 In Nevada, 2, 830
 In New Hampshire, 2, 828
 In New Jersey, 2, 828
 In New York, 2, 830
 In North Carolina, 2, 828
 In Ohio, 2, 830
 In Oregon, 2, 830
 In Pennsylvania, 2, 828
 In Rhode Island, 2, 830
 In South Carolina, 2, 828
 In Tennessee, 2, 828
 In Texas, 2, 829; 7, 579
 In United States courts, 2, 824
 In Vermont, 2, 830
 In Virginia, 2, 829
 In West Virginia, 2, 829
 In Wisconsin, 2, 829
 Clause in bill of lading claiming benefit of insurance, 2, 838
 Construed most strongly against interests of carrier, 11, 517
 Contract inures to benefit of intermediate carrier, 2, 871
 Exemptions from liability construed most strongly against interests of carrier, 11, 517
 Exemption from liability for delay in delivery, 2, 850
Express Companies, 7, 548
 Assent of consignor, 7, 551
 By custom, 7, 551
 By express contract, 7, 548
 By fraud of consignor, 7, 551
 By notice, 7, 550
 By receipt, 7, 551
 English statute as to notice, 7, 550
 Evidence of assent, 7, 551
 For advertisement in newspaper, 7, 550
 General notice, 7, 550
 In New York, 7, 548
 In Pennsylvania, 7, 548
Liability for Negligence, 7, 549
 Generally, 7, 549
 In New York, 7, 550
 In United States, 7, 550
 In West Virginia, 7, 550
 Notice printed upon bill of lading, 7, 551
 Notice printed upon receipts, 7, 551
 On connecting line, 7, 549
 Posting placards, 7, 551
 Rule in England, 7, 548
 Rule in federal courts, 7, 548
 Stoppage in transitu as excuse for non-delivery, 7, 558.
 Taking receipt or bill of lading, 7, 551

CARRIERS OF GOODS—Cont'd**Contracts Limiting Liability—Cont'd****Express Companies—Cont'd**

Value of goods fixed by bill of lading,
7, 549

Fast freight lines, 7, 814

Liability for loss greater than the declared value of the goods, 2, 798

Limiting liability as insurer, 2, 836

Limiting liability for acts of God and the public enemy, 2, 818

Limiting liability for extraordinary loss, 2, 819

Limiting liability to carrier's own route, 2, 866

Necessity that limitation be just and reasonable, 2, 819

Notices Limiting Liability, 2, 811

Assent of consignor, 3, 859

Bill of lading containing restrictive conditions, 3, 859

English doctrine, 2, 811

English statutes, 2, 814

For Negligence, 2, 816, 822; 9, 913

In Alabama, 2, 816

In Connecticut, 2, 816

In Illinois, 2, 816

In Indiana, 2, 816

In Kentucky, 2, 816

In Louisiana, 2, 816

In Maine, 2, 816

In Maryland, 2, 818

In Massachusetts, 2, 817

In Michigan, 2, 816

In Mississippi, 2, 816

In New Hampshire, 2, 816

In New Jersey, 2, 818

In New York, 2, 816

In North Carolina, 2, 816

In Ohio, 2, 817

In Pennsylvania, 2, 818

In South Carolina, 2, 818

In Tennessee, 2, 817

In Texas, 2, 817

In United States court, 2, 817

In Vermont, 2, 817

General Notice in

Doctrine in England, 2, 814

In Canada, 2, 814

In United States, 2, 815

Notices requiring presentation of claim within a limited time, 2, 815

Printed upon a ticket, 3, 858

What public notices bind consignee, 2, 815

Reasonable Limitations, 2, 820

Injury to live stock, 2, 820

Willful misconduct of the company's servants, 2, 820

Special and express agreements, 2, 834**Statutes, 7, 579**

In England, 7, 579

In Illinois, 7, 579

In Iowa, 7, 579

In Michigan, 7, 579

In Mississippi, 7, 579

In Texas, 7, 579

Time of delivery, 2, 842

Time-table, 26, 17

Unreasonable limitations, 2, 820

What are reasonable limitations, 2, 819

Where the limitation is accompanied by reduction in the cost of carriage, 2, 819

Damages recoverable, 2, 904

Declaration of Value, 2, 793, 811-815

Duty of consignor to give truthful and correct answers, 2, 797

Effect of carrier's knowledge not derived from the declaration of the consignor, 2, 802

Incorrect description, 2, 820

Inference of value from appearance of goods, 2, 803

Liability of carrier where loss occurs through his negligence for a greater sum than declared, 2, 798

Liability of carrier where value is concealed, 2, 795

Necessity of, 2, 793

Pictures exposed, 2, 802

Under English Carriers' Act, 2, 794

What amounts to a concealment of value, 2, 795

What are articles of value, 2, 794

What is a sufficient, 2, 797

Where consignor is not asked to state value of goods, 2, 796

Where figures are illegibly written, 2, 802

Defective packing, 2, 853

Definition, 2, 771

Degree of care to be used by, 2, 775

Delay, see *infra*, **LIABILITY ARISING FROM.**

Delivery, 2, 884

See *infra*, **LIABILITY ARISING FROM DELAY.**

At residence, 2, 896

Change in Destination of Freight

By consignee, 2, 897

By consignor, 2, 897

C. O. D., 2, 899

Connecting carriers, 2, 885

Discrimination, 2, 901

Duty of Carrier, 2, 884

To unload and deposit in a safe place, 2, 894

Excuses for Non-Delivery, 2, 899, 902

Attachment of goods, 2, 900

Consignor discharging carrier from further responsibility, 2, 900

Illegal acts of consignor, 2, 900

Stoppage in transitu, 2, 900

Surrender to real owner, 2, 900

Facilities for, 2, 901

Fraud, 2, 888

Goods to be held until called for, 2, 899

Imposition, or mistake, 2, 888

Impossibility by reason of absence or death of consignee, 2, 885

Inspection by consignee, 2, 899

Vol. I.

Measure of Damages

- For delivery at wrong destination, 2, 907
- For non-delivery, 2, 907
- For refusal to deliver, 2, 907
- Misdelivery where goods are destroyed by bad packing, 2, 890
- Mistake in marking, 2, 888
- Negligence immaterial, 2, 885
- Notice to Consignee**, 2, 891
- Necessity of**
 - In Alabama, 2, 892
 - In California, 2, 892
 - In England, 2, 894
 - In Georgia, 2, 892
 - In Illinois, 2, 892
 - In Indiana, 2, 892
 - In Iowa, 2, 892
 - In Kansas, 2, 893
 - In Kentucky, 2, 893
 - In Louisiana, 2, 893
 - In Massachusetts, 2, 891
 - In Michigan, 2, 893
 - In Minnesota, 2, 893
 - In Missouri, 2, 892
 - In New Hampshire, 2, 892
 - In New Jersey, 2, 893
 - In New York, 2, 893
 - In North Carolina, 2, 892
 - In Ohio, 2, 894
 - In Pennsylvania, 2, 892
 - In South Carolina, 2, 894
 - In Tennessee, 2, 894
 - In Vermont, 2, 894
 - In Wisconsin, 2, 894
- Where consignee is unknown to carrier, 2, 894
- Notice to consignor**, 2, 891
- Of goods by warehouseman where delivery is impossible, 2, 885
- Of goods on holidays and fast days, 2, 898
- On Sunday, 2, 898
- On wharf, 2, 900
- Orders for, 2, 895
- Reasonable time for carrier to hold goods a question of law, 2, 894
- Responsibility for abandoning goods upon wharf, 2, 886
- Time of, 2, 898
- To agent of consignee, 2, 886
- To bona fide purchaser of the goods, 2, 887
- To Connecting Carrier**, 2, 869
 - Usages and customs governing, 2, 870
 - What is delivery, 2, 869
- To excuse non-delivery, 2, 902
- To impostor, 2, 887
- To one to whom it has been customary to make delivery, 2, 887
- To person claiming title, 2, 854
- To real consignee, 2, 887
- Upon order, 2, 887
- Usage, 2, 870, 891
- Usage determining place of, 2, 891
- Usage relieving carrier from liability for negligence, 2, 891

Waiver

- Acceptance of a portion of goods at place other than that specified, 2, 895
- By conduct of consignee, 2, 895
- By consignee, 2, 894
- By request for delivery at some other place than that stipulated for, 2, 895
- Consignee's order conflicting with consignor's, 2, 895
- Owner's resumption of charge, 2, 896
- Deviation**, 2, 850
 - Burden of proof to explain, 2, 852
 - Consent of owner, 2, 850
 - General rule as to liability, 2, 850
 - Notice of, 2, 852
 - Sudden emergency, 2, 852
- Disregard of directions as to route, 8, 973
- Duress**
 - Common-law right, 6, 78, 80
 - Exceptions, 6, 80
- Duty**
 - To deliver to connecting carrier, 8, 582
 - To inform consignor of blockade or stoppage, 2, 791
 - To notify owner of obstruction of connecting lines, 2, 871
- To Receive Goods**, 2, 787
 - Dangerous articles, 2, 788
 - Exceptions to duty, 2, 787
 - Goods defectively packed, 2, 787
 - Goods must be offered in reasonable time, 2, 787
 - Preferences, 2, 788
 - Refusal to pay reasonable charges for carriage, 2, 787
 - Statutes regulating, 2, 792
 - Waiver of right to refuse to receive, 2, 788
 - Where carrier is exposed to particular danger, 2, 788
 - Where coach is full, 2, 788
 - Where conveniences are wanting for reception, 2, 787
 - Where goods are perishable, 2, 788
- Embezzlement, 6, 483
- Evidence, 2, 904
- Explosions, 7, 518
- Facilities**, 2, 788
 - Delay in consequence of a lack of cars, 2, 790
 - Duty to afford sufficient, 2, 790
 - For delivery, 2, 901
 - Order of transmission of freight, 2, 793
- False pretenses by, 7, 750
- Fraudulent Sales**
 - Carriers as bona fide holders, 8, 840
- Garnishment**, 8, 1158
 - Property in transitu, 8, 1159
 - Where bill of lading has been issued, 8, 1159
- Goods injured by flood, 8, 71
- Instruction, examples of, 11, 267-274
- Insurable interest, 2, 837; 11, 317
- Intoxicating liquors, 11, 741

CARRIERS OF GOODS—Cont'd**Liability**

Arising from Delay, 2, 841, 907

See *infra*, SHIPS.

Act of God, 2, 844

Followed by loss of goods, 2, 845

Proximate and remote cause, 2, 845

Contracts limiting liability, 2, 842

Excuses for Delay, 2, 844

Attachment, 2, 854

Increased expense, 2, 844

Mobs, 2, 847

Negligence of another company
2, 844

Riots, 2, 847

Strikes, 2, 847; 8, 607; 24, 133

Where delay was necessary to in-
sure safety of goods, 2, 844

Express contract to deliver within
certain time, 2, 841

Loss of market, 2, 843

Measure of damages, 2, 850, 907

Perishable goods, 2, 843

Reasonable time question for jury,
2, 841

Reasonable time within which to de-
liver, 2, 841

Where bill of lading contains an ex-
emption from liability, 2, 850

Arising from deviation, 2, 850

Arising out of delivery, 2, 884

As Insurer, 2, 836

Contracts limiting liability, 2, 836

As Warehouseman, 2, 878; 28, 652

Admixture of goods by warehouse-
men, 2, 883

At the end of transit, 2, 880

Burden of proof, 2, 884

Connecting carriers as warehouse-
men, 2, 880

Custom affecting reasonable time,
28, 654

Degree of care to be used, 2, 879

Evidence, 2, 884

Examples, 28, 652

For loss by rats, thieves, accidental
fire, etc., 2, 879

Goods stored at terminal waiting
transportation over connecting
line, 2, 880

Gratuitous storage, 2, 879

In general, 28, 652

Liability as common carrier continu-
ing after transit, 2, 882

Liability as insurer, 2, 879

Lien of warehouseman, 2, 884

Loss by leakage or explosion, 2,
879

Measure of damages, 2, 884

Measure of warehouseman's duty, 2,
878

Misconduct of carrier, 28, 652, 654

Negligence, 2, 883

Notice to consignee, 2, 882, 891; 28,
656

Reasonable time to call for goods,
28, 654

Receipt of goods in warehouse for
transportation, 2, 878

Refusal of consignee to receive, 28,
656

Special contracts, 2, 880

Tennessee act, 2, 882

Where consignee fails to receive
goods, 2, 881

Where consignor has been notified
of arrival, 2, 881

Where something remains undone
by consignor prior to shipment, 2,
878

Who are common carriers, 2, 882

Care during transit, 2, 852

Continuance until delivery, 2, 884

Defective packing, 2, 853

During transit, 2, 836

Felony of servants, 2, 853

For goods deposited in carrier's ware-
house, 2, 804

For goods deposited in inn where car-
rier starts from, 2, 807

Perishable goods, 2, 853

When it begins, 2, 803

Liens, 13, 580

At common law, 13, 580

Charges for storage, 13, 585

Connecting carriers, 8, 972

Goods delivered by one who does not
own them, 2, 50

Import duties, 13, 585

Of warehouseman, 2, 884

Right to sell property, 13, 580

Statutory Lien, 13, 580

In Alabama, 13, 580

In Arizona, 13, 580

In California, 13, 580

In Colorado, 13, 580

In Connecticut, 13, 581

In Dakota, 13, 581

In Delaware, 13, 581

In Georgia, 13, 581

In Illinois, 13, 581

In Indiana, 13, 581

In Iowa, 13, 581

In Kansas, 13, 581

In Louisiana, 13, 582

In Maine, 13, 582

In Maryland, 13, 582

In Massachusetts, 13, 582

In Michigan, 13, 582

In Minnesota, 13, 582

In Mississippi, 13, 582

In Missouri, 13, 582

In Nebraska, 13, 582

In Nevada, 13, 583

In New Jersey, 13, 583

In New Mexico, 13, 583

In New York, 13, 583

In North Carolina, 13, 583

In Ohio, 13, 583

In Oregon, 13, 583

In Pennsylvania, 13, 583

In Rhode Island, 13, 583

In South Carolina, 13, 583

In Tennessee, 13, 583

- In Texas, 13, 584
- In Utah, 13, 584
- In Vermont, 13, 584
- In Virginia, 13, 584
- In Washington, 13, 584
- In Wisconsin, 13, 584
- In Wyoming, 13, 584
- Stolen goods, 13, 585
- Stoppage in transitu, 13, 584
- To what charges lien extends, 13, 585
- Upon goods carried, 13, 580
- Usages and Customs**, 27, 880
 - Stowage, 27, 874, 880
- Waiver of**, 13, 585
 - Attaching property, 13, 586
 - Conditional delivery, 13, 585
 - Giving credit, 13, 586
 - Importing of goods, 13, 585
 - Partial delivery, 13, 585
- Mandate, 14, 246
- Marine insurance, 14, 326
- Marking goods, 2, 810, 890
- Measure of Damages**, 2, 905
 - Business profits, 2, 908
 - Consequential and remote damages, 2, 908
 - Contract of sale as a criterion of damages, 2, 907
 - Damages for delay where goods remain salable, 2, 907
 - Delivery at wrong destination, 2, 907
 - For delay, 2, 850
 - For failure to deliver goods, 2, 906
 - For refusal to deliver, 2, 907
 - For refusal to transport, 2, 906
 - Household goods, furniture, etc., 2, 910
 - How value is estimated, 2, 908
 - In case of delay, 2, 906
 - Interest, 2, 909
 - Loss through negligence of warehouseman, 2, 884
 - Value of goods at the point of delivery, 2, 905
 - Where goods are shipped at a fixed valuation, 2, 910
 - Where special damage is occasioned by loss or delay, 2, 909
- Misdelivery, 2, 888
- Mobs, 2, 847
- Necessity for Deviation**
 - Question of law, 2, 852
- Negligence**, see *infra*, CARRIERS FOR HIRE BUT NOT COMMON CARRIERS; CARRIERS WITHOUT HIRE; CONTRACTS LIMITING LIABILITY.
 - Immaterial where there is no delivery, 2, 885
 - Notices limiting liability for, 2, 816
 - Of warehouseman, 2, 883
 - Three degrees of, 2, 773
- Notices limiting liability*, see *infra*, CONTRACTS LIMITING LIABILITY.
- Notice to consignee*, see *infra*, DELIVERY.
- Notice to consignor*, see *infra*, DELIVERY.
- Notice of claim for injury, 2, 815
- Notice of claim not condition precedent, 2, 909
- Notice of intention to claim damages for loss of goods, 2, 909
- Order of transmission, 2, 793
- Owner's risk, 17, 300
- Payment**
 - Voluntary payment, 18, 222
- Penalty for allowing goods received to remain unshipped, 2, 792
- Perishable goods, 2, 853
- Preferences**, 2, 788
 - In delivery, 2, 901
 - Right to grant, at common law, 2, 789
- Presentation of claim before withdrawal of goods, 2, 909
- Presumption from consignment, 2, 810
- Proximate and remote cause, 2, 845
- Questions of Law and Fact**, 19, 645
 - Necessity for deviation, 2, 852
 - Reasonable time, 2, 841
- Reasonable time, 2, 841
- Recoupment, 22, 363
- Refusal to carry, 8, 928
- Retention of control, 2, 808
- Seizure of Goods by Legal Process**, 2, 854
 - Notification to owner, 2, 854
 - When goods are attachable, 2, 854
- Ships**, 22, 745
 - Bill of lading*, see BILL OF LADING.
 - Carrier's right to carry to destination, 22, 752
- Delivery**, 22, 774
 - Of Goods by Vessel**, 22, 747
 - Condition of wharf, 22, 751
 - Consignee not ready to receive goods, 22, 747
 - Consignee unable to receive goods, 22, 748
 - Delivery according to the usages and customs of port, 22, 750
 - Delivery at wharf, 22, 747
 - Delivery into custom house, 22, 747
 - Examples, 22, 747-752
 - Freight where consignee cannot or will not receive goods, 22, 748
 - Liability for Non-Delivery**, 22, 762
 - Burden of proof, 22, 762
 - In general, 22, 762
 - Measure of damages, 22, 762
 - Prima facie liability, 22, 762
 - Speculative or possible profits, 22, 762
 - What sufficient evidence to charge, 22, 762
 - Manner of delivery, 22, 747
 - Mode of delivery, 22, 750
 - Place of delivery, 22, 750
 - Right to store goods for owner after reasonable time, 22, 750
 - Ship prevented from arriving at point of destination, 22, 748
 - Ship that puts back to port of departure, 22, 748
 - Time of delivery, 22, 751
 - Unloading cargo, 22, 751

CARRIERS OF GOODS—Cont'd**Ships—Cont'd****Delivery—Cont'd****Of Goods by Vessel—Cont'd**

Usages and customs, 22, 747

Waiver of completion of voyage,
22, 749

When notice not necessary, 22, 748

Where assignee refuses to accept
goods, 22, 750Where goods must be delivered,
22, 747

Of goods to vessel, 22, 746

Payment as a prerequisite, 22, 774

Demanding goods at intervening port,
22, 752**Forwarding by Other Carriers**, 22, 752Duty to forward perishable goods,
22, 752Liability of owner of cargo for in-
creased freight arising from the
hire of another vessel, 22, 753Refusal on part of master to forward
the goods or to transship, 22, 753Ship driven into intermediate port
by stress of weather, 22, 753

Implied warranty, 22, 745

In general, 22, 746

Liability for Delay in Delivery, 22, 761Diminution of value of goods, 22,
761

Examples, 22, 761

In general, 22, 761

Loss of market, 22, 761

Market value at time of delivery, 22,
762

Measure of damages, 22, 761, 762

Liability for Loss or Injury to Goods, 22,
753*Exceptions in bill of lading*, see **BILL
OF LADING**.*Jettison*, see **JETTISON**.

Breakage, 22, 759

Capture, 22, 758

Damage by reason of bad storage,
22, 744Defects in construction of vessel, 22,
754**Delay in Delivery**, 22, 761Diminution in value of goods, 22,
761

Examples, 22, 761, 762

In general, 22, 761

Loss of a market, 22, 761

Market value at time of delivery,
22, 762

Measure of damages, 22, 761, 762

Duty to remain by ship when cap-
tured, 22, 758Goods injured by loading or unload-
ing, 22, 755

Goods lost, 22, 753

Goods misdelivered, 22, 755

Goods stolen, 22, 753

In general, 22, 745, 753

Leakage, 22, 759

Loss by collision, 22, 754

Loss by fire, 22, 754

Loss by Improper Storage, 22, 758

Examples, 22, 758, 759

In general, 22, 758

Insufficient dunnage, 22, 759

Negligence, 22, 756, 757

Non-Delivery, 22, 762

Burden of proof, 22, 762

In general, 22, 762

Measure of damages, 22, 762

Prima facie liability, 22, 762

Speculative or possible profits, 22,
762What sufficient evidence to charge,
22, 762

Notice of attachment, 22, 758

Personal responsibility of master or
owner for negligence, 22, 757**Presumption in Case of Loss or Dam-****age**, 22, 763, 764

Burden of proof, 22, 763

Default of carrier, 22, 763

Examples, 22, 764, 765

In general, 22, 763

Prima facie presumption, 22, 763

Rebutting presumption, 22, 763

Stipulation at time of sale, 22, 757

Unseaworthiness, 22, 754

Lien for loss of goods, 22, 745

Lightermen and stevedores, 22, 746

Merchandise bound for freight, 22, 746

Reciprocal rights, 22, 745

Seaworthiness, 22, 745

Sufficient master and crew, 22, 745

Transshipping in case of necessity, 22,
752

Transshipment of goods, 22, 753

Vessel and cargo bound to due per-
formance of the contract, 22, 746Vessel driven into port for repairs, 22,
752

When liability begins, 22, 746

Station Agents**Power**, 2, 805To bind company by contract be-
yond its line, 2, 806

Street railways, 23, 944

Strikes, 2, 847; 8, 607; 24, 133

Transportation of cars of other com-
panies, 2, 871**Trover**, 26, 755

Liability of carrier in trover, 26, 781

Measure of damages, 26, 823

Usage, see *infra*, **DELIVERY**.**Usages and Customs**

Knowledge of usages, 27, 746

Waiver by Consignee

Of his rights as to delivery, 2, 894

Warehouse and Warehouseman, 28, 656,
662See *infra*, **LIABILITY AS WAREHOUSE-****MAN**.

Wharfinger's liability, 2, 804

When Carrier's Liability Begins, 2, 803,
810Delivering goods at a particular place
by direction of carrier, 2, 804

- Delivery, 2, 803
- Delivery at usual place of consignment, 2, 803
- Ferryman's liability for carriage, 2, 804
- Witnesses, 29, 546
- CARRIERS OF LIVE STOCK**, see **CARRIERS OF GOODS; INTERSTATE COMMERCE; STOCK YARDS.**
- As to lien for freight*, see **FREIGHT.**
- Discrimination in freight charges*, see **FREIGHT.**
- Actions Against**, 3, 16g
 - Burden of proof, 3, 16g, 16h
 - Evidence, 3, 16h
 - Testimony of witnesses deriving knowledge from newspapers, 3, 16j
 - Measure of damages, 3, 16h
- As Common Carriers**, 3, 1
 - English rule, 3, 2
- Burden of Proof**, 3, 16g
 - Where contract imposed duty to care for live stock of consignor, 3, 16h
- Carriers' Duty to Receive Live Stock**, 3, 6, 10
 - In Michigan, 3, 10
 - Where animals were received from connecting line on Sunday, 3, 10
- Common Carriers**, 3, 1
 - Duty to accept live stock, 3, 2
 - Duty to accept live stock for carriage, 3, 6
- Connecting Carriers**, 3, 16f, 16a
 - Against which carrier action lies, 3, 16f
 - Carrier's liability for defective cars belonging to connecting line, 3, 16a
 - Duty to transport live stock in the same cars in which received, 3, 16a
- Contract Exempting Carrier from Liability Where Liability Occurs Through Carrier's Negligence**, 3, 9
 - Where hogs become heated and carrier does not apply water, 3, 9
- Contract Limiting Liability**, 3, 2, 9, 10, 16k
 - Contract that consignor shall determine whether cars are safe, 2, 16b
 - Injury to live stock, 2, 820
 - In New York, 3, 15
 - In the United States, 3, 13
 - "Just and reasonable" restriction, 3, 11
 - Notice of claim for damages, 3, 15
 - Reasonable conditions, 3, 14
 - Reasonable Limitations**
 - Incorrect description, 2, 820
 - Stipulation against loss by overcrowding, heat, etc., 3, 14
 - Stipulation that carrier shall be liable only for a certain sum, 3, 16k
 - Stipulation that owner shall care for live stock and feed them during journey, 3, 14
 - Under English acts, 3, 11
 - Unjust and unreasonable conditions, 3, 12
 - Unreasonable conditions where reasonable alternative is offered, 3, 12
- Contracts to furnish cars to forward live stock, 2, 793
- Drover's passes, 3, 16
- Duty to Care for Live Stock Generally**, 3, 16d
 - Duty to secure animals so that they cannot escape, 3, 16d
 - Duty to throw water upon heated hogs, 3, 9, 16e
- Duty to feed and water, 3, 16d
- Duty to furnish safe cars and appliances, 3, 16a
- Duty to load and unload, 3, 16b
- Injuries Arising from Intrinsic Qualities of Live Stock**, 3, 8
 - Animal injured through its own unruly conduct, 3, 9
 - Where animal dies from heat, cold or want of food, 3, 8
 - Where animals injure themselves or others, 3, 8
- Instruction, examples of, 11, 268-271
- Liability**, 2, 237
 - As Insurer**, 3, 1
 - English rule, 3, 2, 5
 - In Alabama, 3, 6
 - In California, 3, 7
 - In Georgia, 3, 6
 - In Illinois, 3, 6
 - In Indiana, 3, 6
 - In Iowa, 3, 6
 - In Kansas, 3, 6
 - In Kentucky, 3, 6
 - In Louisiana, 3, 6
 - In Maine, 3, 6
 - In Massachusetts, 3, 6
 - In Michigan, 3, 5
 - In Minnesota, 3, 6
 - In Mississippi, 3, 6
 - In Missouri, 3, 6
 - In Nebraska, 3, 7
 - In New Hampshire, 3, 7
 - In New York, 3, 7
 - In North Carolina, 3, 7
 - In Ohio, 3, 7
 - In Pennsylvania, 3, 7
 - In South Carolina, 3, 7
 - In Tennessee, 3, 6
 - In United States courts, 3, 8
 - In Vermont, 3, 7
 - In Virginia, 3, 7
 - In West Virginia, 3, 7
 - In Wisconsin, 3, 7
 - Depending upon the nature of goods carried, 3, 2
- During Transit**, 3, 16a
 - Duty to care for live stock generally, 3, 16d
 - Duty to feed and water, 3, 16d
 - For defective cars of connecting line, 3, 16a
 - Horses strangling, 3, 16e
 - Liability for escape, 3, 16e
 - Loss by fire, 3, 16e
 - Where consignor has selected his own vehicles, 3, 16b
- For death of animal, 3, 2, 3

CARRIERS OF LIVE STOCK—Cont'd**Liability—Cont'd****For Delay, 3, 16e**

Caused by a strike, 3, 16f

Live stock received on Sunday, 3, 16f

Loss of market, 3, 16f

Loss of weight, 3, 16f

For injury arising from the inherent nature of animals carried, 3, 2**Where his negligence is primary cause of loss or injury, 3, 9****Loading and Unloading, 3, 16b****Loss where consignor has undertaken the duty, 3, 16c****Where consignor has contracted to load and unload, 3, 16c****Loss of market, 3, 16f****Measure of Damages, 3, 16i**

Charges for expenses, 3, 16i

False declaration of value, 3, 16i

Interest, 3, 16j

Knowledge of value derived from newspapers, 3, 16j

Limitations of specified sum where the contract or delivery is incomplete, 3, 16i**Limited to so much per head, 3, 16k****Ordinary, 3, 16i****Stipulation that carrier shall be liable only in certain sum, 3, 16k****Value at place of destination as criterion, 3, 16j****Where there is no market at place of destination, 3, 16j****Negligence****Contracts limiting liability for, 3, 2, 9, 10, 16k****Notice of Claim for Damages****Notice requiring claim to be made before stock is unloaded, 3, 16****Notices limiting liability, 3, 10****Passes, 3, 16****Proximate and remote damages, 3, 16j****Railroad's duty to accept live stock for carriage, 3, 6****Responsibility limited by nature of animals carried, 3, 6****Statutory Regulations as to Transportation of Live Stock, 3, 16g****In Iowa, 3, 16g****In Maine, 3, 16g****In Massachusetts, 3, 16g****In Nebraska, 3, 16g****In New Hampshire, 3, 16g****In New York, 3, 16g****In Ohio, 3, 16g****In Pennsylvania, 3, 16g****In South Carolina, 3, 16g****In Vermont, 3, 16g****Valuation fixed by shipper, 3, 16k****CARRIERS OF MAILS, see MAIL; POSTAL LAWS.****CARRIERS OF PASSENGERS, 2, 738****See BAGGAGE; CROSSINGS; INTERSTATE COMMERCE; STREET RAILWAYS; SLEEPING CARS; TIME-TABLES.****Authority of officials to employ surgical help, see PHYSICIANS AND SURGEONS.**
Carrying beyond destination, see TICKETS.**Comparative negligence, see COMPARATIVE NEGLIGENCE.****Contributory negligence, see CONTRIBUTORY NEGLIGENCE.****For expulsion of passengers, see RAILROADS.****Rates and fares, see TICKETS AND FARES.****Respondent superior, see infra, MASTER AND SERVANT.****Stations, see STATIONS.****Tickets and fares, see TICKETS AND FARES.****Warehousemen****As to carrier's duty as warehouseman, see BAGGAGE.****Accident, 2, 746****Act of God, 2, 745****Where carrier has been negligent, 2, 746****Act of public enemy, 2, 746****Assault by servant, 1, 792, 809; 14, 820.****Within the scope of his employment, 1, 809****Without the scope of his employment, 1, 810; 14, 820****Axles, 2, 759****Boarding and Leaving Trains, 2, 763****Calling name of station before train comes to a stop, 2, 761****Duty of railroad to give notice of starting of its trains, 2, 761****Duty of railroad to stop train for reasonable time, 2, 761****Injury while leaving a stationary car, 2, 763****Moving trains, 2, 762****Party carried past his station, 2, 762****Signal to start where passenger is getting on or off, 2, 762****Boiler explosion, 2, 764, 769****Brakes, 2, 759****Bridges, 2, 758****Breaking down, 2, 769****Burden of Proof, 2, 767, 768****Contributory negligence, 2, 768****General rule, 2, 767****Carriers without hire, 14, 246****Collision, 2, 764, 769****Collision between trains of different companies at railroad crossings, 4, 950****Conclusive presumption, 2, 770****Connecting Lines, 2, 757****Liability of carrier for negligence of his connecting lines, 2, 757****Liability of railroad for negligence of carrier running trains over its line, 2, 757****Contracts Limiting Liability for Negligence, 9, 913****Baggage, 19, 915****Construed most strongly against interests of carrier, 11, 517**

Free Passes, 25, 1097
 Degree of negligence, 25, 1099
 Drover's passes, 25, 1102
 Grades of agents, 25, 1099
 Gross negligence, 25, 1099
 In England, 25, 1098
 Negligence of servants and agents, 25, 1099
 Validity, 25, 1097
 Wholly void, 25, 1100
Contractual liability, 2, 738
Contributory Negligence, 2, 751
 Burden of proof, 4, 33
 Crossing the line, 2, 765
 Diseased condition as evidence of, 4, 34
 Diseased condition must be traced to injury, 4, 33
 Drunkenness as excuse for, 2, 751
 General doctrine, 2, 751
 Liability for all natural consequences of injury, 4, 32
 Liability, if negligence not shown to be cause of disease, 4, 33
 Negligence of father attributed to daughter, 2, 752
 Negligence of husband as bar to recovery by wife, 2, 752
 Negligence of person killed, 2, 752
 Of passenger, 2, 761, 765
 Ordinary care of a passenger, 4, 55
 Ordinary care of carriers of passengers, 4, 54
 Passenger assuming a dangerous position on invitation of servant, 2, 766
 Passenger putting himself in a dangerous place, 2, 765; 4, 57
 Passenger's compliance with reasonable regulations of carrier, 4, 56
 Passenger's right to rely on carrier's appliances, 4, 55
 Passenger voluntarily going into danger, 4, 56
 Person's own negligence where he sues for personal injuries of another, 2, 751
 Persons unconnected with plaintiff, 2, 752
 Plaintiff jumping from car from fear of collision, 4, 49
 Presumption of, 2, 769
 Putting head or arm out of window, 2, 765
 Question for the jury, 4, 33
 Resting arm within window, 2, 766
 Riding in baggage car, 2, 766
 Riding on engine, 2, 765
 Riding on platform, 2, 765, 766; 3, 287
 Surgical treatment enhancing effects of injury, 4, 34
 Where no other proximate cause of diseased condition or injury except defendant's negligence can be found, 4, 33
 Whether diseased condition arose from defendant's negligence, 4, 34

Damages**Excessive Damages**

For carrying passengers beyond destination, 5, 55
 For wrongfully ejecting a passenger, 5, 55

Exemplary Damages

Carrying beyond destination, 25, 1117
 For expulsion, 19, 912

For Wrongful Expulsion, 19, 910

Bodily harm, 19, 911
 Exemplary damages, 19, 912
 Humiliation, 19, 910
 Inconvenience, 19, 911
 Insult, 19, 910
 Mental suffering, 19, 910, 911
 Pecuniary loss, 19, 911
 Which have been held not excessive, 5, 55

Degree of care to be used, 2, 745

Derailment, 2, 764, 769

Disorderly persons, 19, 904

Drovers, 3, 16

Duty, 2, 758

Axles, 2, 759
 Brakes, 2, 759
 Bridges, 2, 758
 Embankments, 2, 758
 Level crossings, 2, 758
 Locomotives, 2, 759
 New appliances, 2, 759
 Rails, 2, 758
 Roadway, 2, 758
 Rolling stock, 2, 759
 Switches, 2, 758
 Ties, 2, 758
 To enforce its regulations, 2, 759
 To protect against disorderly passengers, 2, 764
 To provide means of transportation, 16, 417
 To provide seats, 2, 765
 Wheels, 2, 759
 Embankments, 2, 758, 769

Evidence

Preponderance of, sufficient to establish negligence, 2, 767

Expulsion from Train, 2, 764

See infra, MASTER AND SERVANT; RAILROADS.

Expulsion of passengers from street railway, *see* STREET RAILWAYS.

Assault, 1, 792, 809

Care to be exercised, 19, 907

Contagious diseases, 19, 904

Damages for wrongful expulsion, 19, 910

Disorderly passengers, 2, 764; 19, 904

Duty to the ejected person, 19, 907

For refusal to pay car rate, obligation to return residue to passenger, 25, 1108

Intoxicated persons, 19, 904

Manner, 19, 907

Amount of force to be used, 19, 908
 Duty of railroad to eject person, 19, 907

CARRIERS OF PASSENGERS—Cont'd**Expulsion from Train—Cont'd****Manner—Cont'd**

- Liability for injuries arising from failure to exercise proper care, 19, 907
- Resistance of passenger, 19, 908
- Train must be at full stop, 19, 908
- What circumstances to be considered, 19, 908
- When relationship of carrier and passenger does exist, 19, 907
- Where relationship of carrier and passenger does not exist, 19, 907
- Persons refusing compliance with regulations, 19, 903

Place, 19, 908

- Definition of "regular station," 19, 909
- Definition of "usual stopping place," 19, 909
- Distinction between trespassers and others, 19, 909
- In absence of statute, 19, 909
- In general, 19, 908
- Liability of company for acts of conductor, 19, 909
- Malicious acts of conductor, 19, 909
- Scope of agency, 19, 909, 910
- Unauthorized ejectment by conductor, 19, 910
- Usual stopping place, 19, 908
- Wrongful acts of conductor, 19, 909
- Prescribing conditions, 19, 904
- Relation of carrier and passenger, 19, 907
- Return of ticket, 25, 1109, 1111
- Right to expel, 19, 903
- Stop-over privilege, 25, 1109

Tickets, 19, 904; 25, 1076, 1090

- Defective ticket, 25, 1078
- In general, 19, 904
- Passenger detaching coupons from commutation ticket, 25, 1090
- Proper course upon reasonable demand, 19, 907
- Reasonable opportunity to pay fare, 19, 905
- Reasonable opportunity to secure tickets, 19, 906
- Refusal to deliver up tickets, 19, 905
- Refusal to pay extra fare, 19, 905
- Refusing to produce ticket, 25, 1089
- Return of, 15, 1109, 1111
- Tender of fare, 19, 906
- Third person offering to pay fare, 19, 906
- What is reasonable opportunity to purchase tickets, 19, 906
- Where passenger has no ticket, 25, 1076
- Where ticket is different from that asked for, 25, 1076
- Whether expelled passenger may re-enter upon tender of fare, 19, 906

Whether ticket is the only evidence of contract, 25, 1076

When conductor has a right to expel, 19, 904

False imprisonment, 14, 820, 825; 26, 15

Free passengers, 2, 742

Independent Contractors, 2, 755**Liability of Carrier**

Carrier's duty to take precautions against possibility of negligence, 2, 756

For injuries to passengers while line is in process of construction, 2, 755

For negligence of, 2, 755

Where contractor is paid by the day, 2, 756

Where contractor neglects to perform his duty, 2, 756

Where contract requires work to be done in accordance with plans furnished by railway, 2, 755

Where railway has the right to direct changes in the manner of doing the work, 2, 755

Where railway may remove incompetent workmen, 2, 755

Where the act itself is a wrong, 2, 756

When servants of the carrier, 2, 755

Infants, 2, 750, 767

Care and discretion to be used by the infant, question for the jury, 2, 750

Degree of care to be used towards, 2, 750

Infirm Passengers, 2, 767

Care to be given them by the carrier, 2, 767

Injury aggravated on account of infirmity, 2, 767

Instruction, examples of, 11, 267-269

Intoxicated persons, 2, 751; 19, 904

Latent Defects in Vehicles**Liability of Carrier, 12, 910**

Burden of proof, 12, 917

Conclusions concerning passenger carrier's liability, 12, 912

Crack in iron axle, 12, 915

English view, 12, 913, 914

Examples, 12, 912-923

Imputed negligence, 12, 913

In Illinois, 12, 923

In Massachusetts, 12, 918

In Michigan, 12, 912, 920

In New York, 12, 911, 915

In Pennsylvania, 12, 918

In Tennessee, 12, 912, 921

Letting out grand stand, 12, 914

Negligence of manufacturer, 12, 912

Purchase from skillful manufacturer, 12, 911

Review of decisions, 12, 912

Lessors and Lessees, 2, 756

Lessor's liability for torts of lessee, 2, 756

Liability of both parties for lessee's negligence, 2, 756

- Liability of railroad for lessee's negligence, 2, 756
- Level crossings, 2, 758
- Liability**
 - Act of injured party, 2, 747
 - Act of public enemy, 2, 746
 - As insurers, 2, 746
 - Degree of care to be used, 2, 745
- Dependent on Contract**, 2, 742
- See* TICKETS AND FARES.
- One who fraudulently induces carrier's servants to carry him gratuitously, 2, 742
- Passenger without ticket intending to pay his fare, 2, 742
- Trespassers, 2, 742
- For acts of others, 2, 752
- False imprisonment, 4, 254, 255
- General rule, 2, 739
- Of carrier for acts of its conductor, 4, 251
- Of individuals, 2, 748
- Passengers on Freight Cars**, 2, 742
 - Where carriers' public regulations do not permit the carriage, 2, 742
- Passengers on hand cars, 2, 743
- Passengers on pay cars, 2, 743
- Passengers riding gratuitously, 2, 742
- Persons to whom liable, 2, 739
- Third parties, 2, 747
- Ultra Vires**
 - As a defense, 2, 747
- Willful detention by conductor, 14, 820, 825; 26, 15
- Lien, 13, 585
- Master and Servant**
 - Liability of Master for Torts of Servant**, 2, 753; 14, 819
 - Actionable language, 14, 820
 - Arrest of passenger, 14, 820
 - Assault by conductor upon demand of ticket, 1, 809; 14, 820
 - Disobedience of orders by the servant, 2, 754
 - Examples, 14, 820, 821
 - Expulsion from Train**, 14, 821
 - Authority of conductor or brakeman, 14, 821
 - Careless or negligent manner, 14, 822
 - Examples, 14, 821-823
 - Jumping through fear of being thrown, 14, 823
 - Kicking from platform, 14, 823
 - Liability of company, 14, 822
 - Persons attempting to board train, 14, 823
 - Generally, 14, 819
 - Independent contractors, 2, 755
 - Kissing female passenger, 14, 820
 - Mistake in judgment of servant, 2, 754
 - Necessity that the relation of employer and employee exists, 2, 753
 - Offensive conduct towards passenger by servant, 14, 819
 - Passengers on vessel, 14, 821
 - Removal of trespasser from train, 14, 821
 - Test of the existence of the relation of master and servant, 2, 753
 - Undertaking of carrier, 14, 819
 - Wanton assault, 1, 810; 14, 820
 - Where act complained of is a trespass, 2, 754
 - Where master does not know of nor order the particular act, 2, 754
 - Willful act of servant beyond the scope of his authority, 2, 754
- Master of Vessel**
 - Authority, 14, 971
- Mental suffering, 19, 910
- Mortgage Trustees**, 2, 757
 - Liability for negligence, 2, 757
 - Liability of railroad for negligence of, 2, 757
- Negligence**, *see infra*, CONTRACTS LIMITING LIABILITY; CONTRIBUTORY NEGLIGENCE.
 - Carrying party past his station, 2, 762
 - Connecting lines, 2, 757
 - Degree of care to be used with regard to children, lunatics, etc., 2, 750
 - Duty of carrier, 2, 758
 - Duty to provide means of transportation, 16, 417
- Incapacity of Person Injured**
 - Knowledge of carrier, 2, 751
 - Independent contractors, 2, 755
 - Infirm passengers, 2, 767
 - Injury to passenger from boiler explosions, 2, 764
 - Injury to passenger from collision, 2, 764
 - Injury to passenger from derailment, 2, 764
 - Intoxication of injured person, 2, 751
 - Lessors and lessees, 2, 756
 - Liability for negligence of party who built and furnished the road, 2, 758
 - Liability for sudden jolts, 2, 765
 - Liability where package falls from rack upon passenger, 2, 765
 - Mental incapacity of person injured, 2, 750, 751
 - Mortgage trustees, 2, 757
 - Presumption of, 2, 768
 - Receivers, 2, 757
 - Respondeat superior, 2, 753; 14, 819
 - Stage-coach accidents, 2, 769
 - Where passenger has to cross track before entering or after leaving cars, 2, 761
- New appliances, 2, 759
- Ordinary care, 16, 399
- Passenger defined, 2, 742
- Passengers on Freight Cars**, 2, 742
 - Implied power of conductor to accept passengers, 2, 742
- Paying Passenger**
 - What constitutes, 2, 743
- Pennsylvania act of 1868, 2, 740
- Persons Non Compos Mentis**, 2, 750
 - Degree of care to be used towards, 2, 750

CARRIERS OF PASSENGERS—Cont'd

- Persons to Whom Liable, 2, 739**
 - Attendants of passengers, 2, 739
 - Consignors and consignees personally assisting in the reception of their freight, 2, 740
 - Drovers, 2, 743
 - Express agents, 2, 740
 - Free passengers, 2, 744
 - Party whose fare is paid by another, 2, 744
 - Passenger of another carrier, 2, 739
 - Pennsylvania act of 1868, 2, 740
 - Persons entering under special contract upon defendant's line, 2, 740
 - Post office employees, 2, 740
 - Servants, 2, 739
 - Servants of another carrier, 2, 739
 - Soldiers carried under contract with government, 2, 740
 - Train boys, 2, 740

Presumption of Negligence

- Boiler explosion, 2, 769
- Breaking down bridges, 2, 769
- Cases in which presumption has been held inapplicable, 2, 769
- Collisions, 2, 769
- Derailment of cars, 2, 769
- Embankments, 2, 769
- Falling of berth in sleeping car, 2, 769
- Of contributory negligence, 2, 769
- Sudden jerks in starting, 2, 769

Questions of Law and Fact

- Calling name of station before train comes to a stop, 2, 761
- Reasonableness of railway regulations, 2, 759

Railroads

- Rails, 2, 758
- Railway mail agents, 13, 1204

Railway Regulations, 2, 759

- Enforcement, 2, 759
- Publication, 2, 759
- Reasonableness, 2, 759
- Reasonableness, question for jury, 2, 759

Receivers, 2, 757**Relation of carrier and passenger, 19, 908****Roadway, 2, 758****Rolling stock, 2, 759****Seats, 2, 765****Servants as Passengers, 2, 743**

- Passenger performing casual service, 2, 743
- Payment of fare, 2, 743

Ships, 22, 765

- Character of passenger, 22, 765
- Duty to carry passengers, 22, 765
- In general, 22, 765

Injuries and Wrongs to Passengers, 22, 768

- Assault and battery, 22, 770
- Contributory negligence of passenger, 22, 769
- Examples, 22, 769, 770
- Injury through accident, 22, 769

Latent defect in machinery, 22, 769**Liability of vessel, 22, 768****Liability when no fare is paid, 22, 769****Loss of passenger's life, 22, 769****Maintaining order on board, 22, 770****Negligence of parties in charge of vessel, 22, 768****Wrongful acts of employees, 22, 769, 700****Loss of Baggage and Other Property, 22, 767****Baggage not delivered to carrier, 22, 767****Beds and bedding, 22, 767****Delivery to carrier's servant, 22, 767****Jewelry, 22, 767, 768****Money, 22, 768****Property stolen, 22, 768****Responsibility for loss of baggage, 22, 767****Wearing apparel, 22, 767****What is baggage, 22, 767****Obligations of carrier, 22, 765****Performance of engagement rendered impossible by stress of weather, 22, 766****Public notice that carrier will receive passenger, 22, 765****Refusal to carry passengers, 22, 765****Removing passenger from vessel, 22, 765****Return of money when vessel does not arrive in time, 22, 765, 766****Unreasonable delay along route, 22, 766****When passenger entitled to have his passage money returned, 22, 765, 766****Stage-coach accidents, 2, 769****Steamship Companies****Distinguished from innkeeper, 11, 12****Street railways, 23, 944****Sudden jolts, 2, 765, 769****Switches, 2, 758****Taxation****Regulation of Commerce, 25, 28****Coming into the state, 25, 31****Going from state to state, 25, 31****In general, 25, 28****Leaving the state, 25, 31****Passing through the state, 25, 31****Specific tax upon passenger carriers, 25, 31****Unconstitutional, 25, 31****Tender of fare, 19, 906****Ties, 2, 758****Ultra vires, 2, 747****Wheels, 2, 759****When the Relation of Carrier and Passenger Begins, 2, 744****Purchase of ticket, 2, 744****When passenger arrives at station, 2, 745****When the Relation of Carrier and Passenger Ends, 2, 745****Journey concluded, 2, 745**

- Passenger who has taken the wrong train, 2, 745
 Person ejected from cars, 2, 745
Who Are Passengers, 25, 1081
 Before entering car, 25, 1083
 Drovers, 3, 16
 Free passes, 25, 1085, 1096
 Getting into train after it has started, 25, 1083
 In general, 25, 1081
 Leaving cars at intermediate stations, 25, 1085
 Leaving train while in motion, 25, 1084
 Person assisting passenger, 25, 1082
 Person entering train in good faith, 25, 1082
 Person getting into train by mistake, 25, 1082
 Person remaining after refusal to pay fare, 25, 1083
 Presumption, 25, 1081
 Purchase of ticket, 25, 1081
 Waiting in waiting room, 25, 1083
 Whether passenger should have paid his fare, 25, 1082
 Whether ticket must be purchased before entering train, 25, 1081
 While leaving train, 25, 1084
CARRY, 3, 161; 23, 701
 Carry arms, 3, 161
 Carry away, 3, 161
 Carrying on business, 3, 17
 Carrying out, 3, 19
 Carrying to sell, 3, 19
 Carry into port, 3, 161
 Carry off, 3, 161
 To live and carry on business, 13, 928
CARRYING CONCEALED WEAPONS, see **CONCEALED WEAPONS**.
CART, 3, 19; 28, 521
 Cart or truck wagon, 3, 20
 Cartways, 3, 20
 Taxed cart, 3, 20
CARTRIDGES
 Pistol cartridges, 18, 462
CAR TRUSTS, 26, 229
 Corporation leasing to other corporations, 26, 230
 Corporation owning stock of other corporations, 26, 230
 In co-partnership with corporation, 26, 229
 Nature of the association, 11, 1041
CAS, 3, 20
 See **ACT OF GOD**.
 Cas fortuits, 3, 20
CASE, 3, 21
 See **SETTLED CASE ON APPEAL**.
 Case agreed, *see* **AGREED CASE**.
 A case arising under a treaty, 3, 21
 All cases affecting ambassadors, 3, 22
 Capital cases, 3, 28
 "Case affecting" contrasted with "cause affecting," 3, 22
 Case arising in the naval forces, 3, 22
 Case in which the law of the United States authorizes an oath to be administered, 3, 22
 Case Stated, 3, 29
 See **AGREED CASE**; **REPORT AND CASE MADE**; **SETTLED CASE ON APPEAL**.
 Cases at law, 3, 25
 Cases in law and equity, 3, 21
 Cases of admiralty and maritime jurisdiction, 3, 22
 Civil cases, 3, 26, 27
 Criminal cases, 3, 27, 28
 Facts of his case, 3, 29
 In case, 10, 323
 In Case of the Death
 In wills, 3, 30
 In each case, 3, 29
 Sit in any case, 3, 30
 Special Cases, 3, 23
 Actions of assumpsit, 3, 25
 Actions to foreclose mortgages, 3, 23
 Proceedings to obtain partition of lands, 3, 25
 Special cases not cases at law, 3, 25
 Taking recognizance of bail, 3, 25
CASH, 3, 31
 Bank notes, 3, 34
 Cash notes, 3, 34
 Copper cash, 3, 35
 Credit in cash, 3, 35
 Estimated cash value, 3, 34
 Full cash value, 3, 34
 Gold dust, 3, 34
 In cash, 3, 35; 10, 323
 Net cash, 16, 487
 Sales for cash, 3, 31
 Terms cash, 3, 34
 Treasury notes, 3, 34
CASHIERING, 15, 411
CAST, 3, 35
 Cast away, 3, 35
 Casting vote, 3, 35
CASUAL, 3, 36
 Casual poor, 3, 36
CASUALTY, 3, 37
 Casualties of war, 3, 37
 Casualty or necessity, 3, 37
 Inevitable casualties, 3, 37
 Unavoidable, 3, 37
CATALOGUE, 3, 37
 Sales, 21, 451
CATCHING BARGAIN, 3, 37
 See **POST-OBIT CONTRACT**.
 Acquiescence, 3, 42
 Adequate consideration, 3, 39, 40
 As fraud upon expectant heir, 3, 38
 Burden of proof to show fairness, 3, 38
 Concealment of death increasing the value of reversionary interest, 8, 830
 Definition, 3, 37
 Exceptions to the Doctrine, 3, 41
 Knowledge and assent of the ancestor, 3, 41
 Where ancestor joins in the bargain, 3, 41
 Where price is fixed in some fair manner, 3, 42
 Where sale is made by auction, 3, 42
 Where the transaction is a family arrangement, 3, 42

CATCHING BARGAIN—Cont'd

- Expectant heirs, reversioners, etc., 27, 460
- Form of Transaction**, 3, 37
 - Annuity, 3, 37
 - Mortgage, 3, 37
 - Post-obit, 3, 37
 - Sale, 3, 37
- Inadequate consideration, 3, 39
- Knowledge of expectant's family, 3, 41
- Necessity of fraud and imposition, 3, 39
- Ratification, 3, 42
- Return of amount actually paid with interest, 3, 39
- Return of expenditures made for valuable improvements, 3, 39
- Setting aside, 3, 39
- Statutory enactments, 3, 42
- The Equitable Doctrine**, 3, 38
 - Agreements infected with fraud, 3, 38
- Unconscionable Bargains**, 27, 421
 - Definition, 27, 421
 - Examples, 27, 421, 422
 - Gross inadequacy of price, 27, 422
 - Mere inadequacy of price, 27, 421
 - Relief in equity, 27, 421, 422
- Valuation, 3, 41
- Where expectant had professional advisor, 3, 40
- Where expectant is of mature age, 3, 40
- Where sale was to the ancestor, 3, 41
- Who are Expectant Heirs**, 3, 40
 - Legatees, 3, 40
 - Persons holding vested reversions, 3, 40
 - Remaindermen, 3, 40
 - Where part of estate is in possession, 3, 40

CATCHINGS, 3, 43

CATTLE, 3, 43; 11, 370

See generally, ANIMALS.

See FENCES.

Cattle Guards, 3, 43; 7, 912

Definition, 7, 912

Duty to repair, 7, 914

Impairment of Obligation of Contracts

Right of state to regulate, 8, 622

Injury to crops, 7, 914

In towns and villages, 7, 913

Obligation to maintain in absence of statute, 7, 913

Obligation under statutes, 7, 913

Proper cattle guards, 7, 913

Cattle turned loose, 3, 43

Definition, 12, 812

Driving or conducting cattle, 3, 43

Fodder for cattle, 3, 44

Larceny, 12, 782

Indictment, 12, 812

Neat cattle, 16, 367

CAUSA MORTIS, *see* GIFTS.

CAUSE, 3, 44, 47

As to rules to show cause, *see* RULES.

Reasonable cause, *see* MALICIOUS PROSECUTION.

Adequate cause, 1, 189

Administer, or cause, 3, 48

Any other cause, 3, 44

Any party to a cause, 3, 47

"Case affecting" contrasted with "cause affecting," 3, 22

Cause affecting persons, 3, 47

Cause of Action, 3, 46, 594; 11, 1015½

See LIMITATION OF ACTIONS.

All other actions or causes of actions, 1, 660

Claim synonymous with, 3, 275

Facts constituting, 7, 658

Ground of action, 9, 62

What constitutes, 1, 549

Cause of complaint, 3, 44

Cause of removal, 3, 44

Cause or matter, 3, 47

Causes and suits, 3, 47

Causes remaining untried, 3, 47

Cause to be taken, 3, 47

Civil cause, 3, 47

Due, 3, 44; 6, 40

Final disposition of the cause, 3, 47

For cause, 3, 44

Good cause, 3, 45; 8, 1357

Good cause of action, 3, 47

Irresistible superhuman cause, 3, 45

Jurisdiction of, 12, 315

Justifiable cause, 3, 45; 12, 514

Legal cause, 3, 45

Nature and cause, 3, 45

Original cause, 17, 274

Other cause, 3, 45

Probable cause, *see* PROBABLE CAUSE.

Reasonable cause, 3, 45

Same cause, 3, 46

Satisfactory cause, 3, 46

This cause, 3, 47

CAVEAT, 3, 48

See PATENTS; PROBATE.

State lands, 23, 60

CAVEAT EMTOR, *see* FRAUDULENT SALES; IMPLIED WARRANTY.

CEASE, 3, 48

Ceased to be thereon, 3, 48

Cease to be operated, 3, 48

Cease to inhabit, 3, 48

Cease to reside, 3, 48

CEDE, 3, 48

CEDULE, 3, 48

CELEBRATE, 3, 48

Celebrate a marriage, 3, 49

Celebrating a rite, 3, 48

CELLAR, 3, 49

CEMETERIES, 3, 49

See DEAD BODY; PEWS.

Exemption from execution, *see* EXECUTION.

Exemption from taxation, *see* TAXATION.

Actions, 3, 54

As Nuisances, 3, 55; 16, 927

Injunction against cemeteries, 3, 55

Mere proximity, 3, 55

Not necessarily, 3, 55

Whether nuisance *per se*, 16, 938

Charitable gift to maintain monuments, 3, 132

Dedication, 3, 51

Definition, 3, 49
Digging up disused burial ground, 5, 119
Eminent Domain
 For the exercise of eminent domain generally, see EMINENT DOMAIN.
 Cemeteries a public use, 6, 528
 Excluding surface water, 3, 53
 Health, 9, 323
 Monuments, 3, 51
 Mortgages on, 3, 55
 Order of removal, 20, 796
Ordinances
 Reasonableness, 17, 248
 Pew holder's rights in church yards, 3, 50
 Pew owner's title similar to that of lot owners, 3, 49
 Police power, 18, 749
 Police regulations, 20, 796
 Power of legislature, 20, 795
 Removal of body, 3, 50; 5, 116
 Right of burial of the dead, 3, 51, 166
 Right to improve monuments, 3, 51
Right to Remove Corpse, 3, 52
 Husband's right to remove wife's body when buried in lot without his consent, 3, 52
 Legislature authorizing municipality, 3, 53
 Owner's right, 3, 53
 Widow's right to remove husband's body, 3, 53
Title of Lot Owner, 3, 49
 As easement, 3, 49
 When a license, 3, 50
 Where grave is in a separate independent cemetery, 3, 51
Trespassers, 3, 53
 Divesting or taking up tombstones, 3, 53
 One who has dedicated the land, 3, 55
 Unlawful disinterment of dead body, 3, 53
 Who may maintain action against, 3, 54
 Underground waters, 27, 438
 When equity will protect from desecration, 3, 54
CERTAIN, 3, 58
 Certain rent, 3, 58
 Twelve months certain, 3, 58
CERTAINTY, 3, 58
 Moral Certainty, 3, 56; 15, 715
 See REASONABLE DOUBT.
CERTIFICATE, 3, 59
 Of deposit, see BANKS AND BANKING.
 Of Division of Opinion
 In the circuit courts, see UNITED STATES COURTS.
 Of stock, see STOCK.
 Collector's, 3, 59
 Loan certificate, 13, 799
 Of appraisement, 3, 59
 Of Purchase
 Return
 Estoppel, 7, 17
 Written statement or, 3, 60
CERTIFIED CHECKS, see CHECKS.
CERTIORARI, 3, 60; 6, 812
 See APPEAL; ERROR, WRIT OF; REMOVAL OF CAUSES.

Streets and Sidewalks
 Proceedings to establish street, see STREETS.
 Accompanying writ of error, 6, 831
 Acts not judicial, 3, 63
 Amendment, 6, 831
 As an ancillary process, 3, 67
 Assignment of error, 3, 62
 Bill in equity, 6, 769
By What Courts Granted, 3, 60
 At common law, 3, 60
 Courts exercising general original common-law jurisdiction, 3, 60
 Statutes regulating, 3, 60
 Cases in which the writ was held to lie, 3, 66
 City council, 3, 66
 Commissioners, supervisors, etc., opening streets and highways, 3, 65
 Contested elections, 3, 66
 Costs, 3, 66
 Definition, 3, 60
Diminution of Record, 6, 831
 Brought before the superior court on appeal or writ of error, 3, 67
 Discretion of court to grant or refuse, 3, 63
 Dismissal, 3, 65
 Effect of issuing writ, 3, 66
 Eminent domain, 6, 631
 Final power in inferior court to determine cause, 3, 60
 Forcible entry and detainer, 8, 181
Garnishment, 8, 1263
 Quash proceedings where judgment has been satisfied, 8, 1263
 When independent of appeal, 8, 1263
 When writ may be had, 8, 1263
 Grounds for want of jurisdiction, 12, 310
 Habeas corpus, 3, 67; 9, 184, 211, 227
 In criminal cases, 3, 66
 Inquiry extending beyond jurisdiction of lower court, 3, 62
 Insanity, inquisition of, 11, 118
Intoxicating Liquors
 License, 11, 664
 Refusal to hear remonstrances, 11, 664
 When writ may be awarded, 11, 664
 Where no objection was raised at time of granting, 11, 664
 Judgment, 3, 66
 Jurisdiction of fact disputed, 3, 62
 Jurisdiction of lower court, 3, 62
 Justice of the Peace, 3, 66; 12, 489
 Transcript, 12, 485
 Local Assessments, 24, 81; 25, 572
 Apportionment, 25, 520
 Misdemeanor, 12, 412
 Motion to quash or supersede, 3, 65
 Notice, 3, 65
 Ordinances, 17, 269
Parties to Actions
 Real party in interest, 17, 551
 Petition, 3, 65
 Petitioner's interest, 3, 63

CERTIORARI—*Cont'd*

Prohibition performing functions of, 19, 265

Purpose of the writ, 3, 61

Receivers

Appointment, 20, 106

Removal of Causes, 20, 1015, 1025

Prosecutions against revenue officers and officers acting under the election laws, 20, 1025

Return, 3, 61

Entire record of inferior tribunal, 3, 61
Statement of rulings of inferior court, 3, 61

Where jurisdiction is denied, 3, 61

School trustees, 3, 66

Statutory writ, 3, 60

Supersedeas, 24, 584; 25, 464

Examples, 24, 584, 585

In general, 24, 584, 585

Levy before certiorari, 24, 584

Taxation, 25, 464

Whether certiorari is supersedeas, 24, 584

Taxation

Appeal to proper inferior tribunal, 3, 65; 25, 453

As a stay, 25, 464

Costs, 25, 465

Discretionary action, 25, 459

Errors or forms, 25, 460

Evidence extrinsic to the record, 25, 464

Fiduciary, 25, 462

Immaterial irregularities, 25, 460

Improper abatement, 25, 457

In general, 25, 456

Joinder of parties, 25, 462, 463

Judgment, 25, 464

Judicial error, 25, 457, 458

Laches, 25, 461

Legislature's right to prohibit use, 25, 456

Misperformance of official duty, 25, 457

Office of the writ, 25, 456

Overvaluation, 25, 458

Petition filed by one taxpayer, 25, 462

Record erroneous, 25, 459

Resort to ordinary remedies, 25, 453

Return, 25, 463

Amendment, 25, 463

Authority of proceedings, 25, 463

Insufficient, 25, 463

Of records, 25, 463

Of what records, 25, 463

What return should show, 25, 463

Showing special interests of taxpayers, 25, 462

Specifying illegality relied upon, 25, 462

Supersedeas, 24, 584; 25, 464

To whom writ may be directed, 25, 463

Vacating assessment, 25, 465

Verification of petition, 25, 462

Void tax, 25, 459

What may be reviewed, 25, 457

What will be heard, 25, 464

When writ must be applied for, 25, 461

When writ will lie, 25, 456

Where no adequate remedy exists, 25, 459

Where taxpayer has failed to make return, 25, 455

Where there is no appeal, 25, 459

Writ in the name of the people, 25, 462

To municipal courts, 3, 66

To what courts it lies, 3, 63

What Matters Reviewed, 3, 62

Disputing record of inferior court, 3, 62

Errors in law, 3, 62

Incompetent evidence admitted, 3, 62

Where there is any evidence to establish essential fact, 3, 62

When Granted, 3, 63

Acts not judicial, 3, 63

Limitation as to time, 3, 64

Petitioner's interest, 3, 63

To correct mere irregularities, 3, 64

To review interlocutory orders, 3, 64

When appeal is lost by fraud or accident, 3, 64

Where appeal is improperly denied, 3, 64

Where a writ of appeal or error might be brought, 3, 64

Where great public inconvenience would ensue, 3, 64

Where matter sought to be reviewed rests in discretion of trial court, 3, 64

Where party has been guilty of laches, 3, 64

Where substantial justice has been done in the lower court, 3, 63

Whether writ of right, 3, 63

CESSION OF TERRITORY, 26, 550**CESSPOOLS**

Nuisances, 16, 955

CESTUI QUE TRUST, see TRUSTS AND TRUSTEES.**CHAIN**, 3, 67**CHAIR**, 3, 67**CHAIRMAN**, 3, 68**CHALLENGE**, see DUELLING; JURIES AND JURY TRIALS.**CHAMBER OF COMMERCE**, see TRADE, BOARD OF.**CHAMBERS**, 3, 68; 12, 15

As to power of judges, see JUDGES.

CHAMPAGNE, 3, 68**CHAMPERTY AND MAINTENANCE**, 3, 68**Advancing Costs**, 3, 79

Incidental costs of litigation, 3, 79

Retaining costs advanced where contract is void for champerty, 3, 79

Warranty against client's liability to pay costs, 3, 80

After litigation ended, 3, 79

Assignment

Of claim for personal tort, 3, 85

Of claims for unliquidated damages, 3, 85

Where damages have been fixed by judgment of court, 3, 85

- Champtertous contract** between attorney and client, 3, 86
Champterty as a Defense, 3, 86
 Demurrer to a pleading, 3, 86
 What persons can take advantage of, 3, 86
 Where the champtertous contract itself is sought to be enforced, 3, 86
Contingent Fees, 1, 968; 3, 78
 General rule, 3, 78
 How looked upon in England, 3, 79
 Lien on fund recovered, 3, 79
 What agreements will be upheld, 3, 78
 Where attorney is material witness in a case, 3, 79
Contract by attorney to prosecute suit at his own cost, 3, 72
Contract by which an attorney retains a certain per cent of money collected, 3, 72
Definition of, 1, 967; 3, 68, 69
Different agreements which have been held champtertous or otherwise, 3, 72
Dismissal of the cause by court, 3, 86
Effect of Maintenance, 3, 85
 In pari delicto potior est conditio defendentis, 3, 85
 Lien of attorney, 3, 86
 When money paid upon contract may be recovered, 3, 85
 Where the parties to contract bear the relation of attorney and client, 3, 85
Exceptions, 3, 76
 Attorneys, 3, 78
 Cotenants, 3, 77
 Guarantor, 3, 77
 Heir apparent upholding his ancestors, 3, 77
 Husband and wife, 3, 77
 Relationships, 3, 77
 Vendor upholding his vendee, 3, 77
 Where party believes he has an interest, 3, 76
 Where party has an interest, 3, 76
Existence in United States, 3, 73
Lien of attorney, 3, 86
Maintenance
 As an indictable offense, 3, 70
 Definition of, 3, 68
Necessity of a stipulation for payment of costs, 3, 75
Necessity of suit being carried on at expense of champtertor, 1, 967
Offense not confined to attorneys, 3, 71
Offense of maintenance though there is no suit actually commenced, 3, 70
Offense where party acts under misapprehension, 3, 70
Parol evidence to show that contract is champtertous, 3, 73
Pretended Titles, 3, 80
 Adverse possession necessary to void deed, 3, 81
 Conveyance made by state, 3, 83
 Conveyances to cestuis que trustent, 3, 83
Conveyance to disseisor, 3, 81
Deed a mere nullity, 3, 82
Doctrine in equity, 3, 83
Judicial sale, 3, 83
Mere possibility that purchaser of title may be obliged to bring suit, 3, 82
Mortgages, 3, 82
Partial eviction from the land, 3, 83
Presumption that vendor knew condition of his own title, 3, 82
Sales of property pendente lite, 3, 82
Second deed, 3, 82
Wills, 2, 82, 84; 3, 84
Provision that vendor must have received profits or been in possession of land for one year, 3, 80
Quantum meruit, 3, 86
Specific performance, 22, 1014
Statute of 32 Hen. VIII., c. 9, 3, 80
Statutory Modifications by Legislation, 3, 73
 In Alabama, 3, 73
 In Arkansas, 3, 73
 In California, 3, 73
 In Connecticut, 3, 73
 In Delaware, 3, 75
 In District of Columbia, 3, 74
 In Georgia, 3, 75
 In Illinois, 3, 75
 In Indiana, 3, 75
 In Iowa, 3, 75
 In Kansas, 3, 73
 In Kentucky, 3, 75
 In Louisiana, 3, 75
 In Maine, 3, 73
 In Maryland, 3, 74
 In Massachusetts, 3, 76
 In Michigan, 3, 73
 In Minnesota, 3, 75
 In Mississippi, 3, 75
 In New Hampshire, 3, 74
 In New Jersey, 3, 73
 In New York, 3, 74
 In North Carolina, 3, 76
 In Ohio, 3, 73
 In Oregon, 3, 73
 In Pennsylvania, 3, 73
 In Rhode Island, 3, 75
 In South Carolina, 3, 74
 In Tennessee, 3, 75
 In Texas, 3, 73
 In Vermont, 3, 73
 In Virginia, 3, 74
 In West Virginia, 3, 73, 75
 In Wisconsin, 3, 75
Things in litigation, 3, 80
What constitutes the offense, 3, 71
CHANCE, 3, 88
 Chance medley, 3, 89
 Game of chance, 3, 88
CHANCELLOR, 3, 89
CHANCERY, see EQUITY; MASTER IN CHANCERY, 14, 919
CHANDLER
 Tallow, 2, 721
CHANGE, 3, 89
 Actual change of possession, 3, 90

CHANGE—Cont'd

Changed, 3, 89

Change form or ground of action, 3, 89

Change in property, its use or occupation, 3, 89

Change its original purpose, 3, 89

Change of Contract**Rescission**

New and inconsistent contract, 3, 891

Change of Grade, 3, 89*See* STREETS.

Change of moorings, 3, 89

Change of possession, 3, 89

Change of title, 3, 89

CHANGE OF VENUE, 3, 90; 28, 244*As to removal of causes to United States courts, see* REMOVAL OF CAUSES.

Addressed to sound discretion of the court, 4, 818

Affidavit, 3, 104; 4, 821; 28, 255

Cause of action, 3, 105

Counter, 4, 822

Facts and circumstances from which conclusion is deduced, 4, 821

How the fact should be stated, 3, 104

In conformity with statute, 4, 821

Necessity of party swearing to it himself, 3, 105

Of Merits, 15, 374

Contents, 15, 383

Opinion and belief in, 4, 821

Stating cause of prejudice of judge, 3, 104

Stating facts positively, 3, 105

Stating ground for belief that fair trial cannot be had, 3, 105; 4, 821

Stating the town, village, or residence of witness, 3, 105

Substituting new, 3, 105

Sufficiency, 4, 821

When the venue is sought to be changed for the convenience of witnesses, 3, 104

Where party is unable to obtain, 3, 105

Application of one of two defendants jointly indicted, 4, 820

Arraignment after a change of venue, 3, 107; 4, 762

Because an Impartial Trial Cannot Be Had, 3, 96; 13, 987, 988; 9, 649; 28, 250

Allegation must be clearly established, 3, 96

Attempt to impanel jury, 3, 99, 100

Court ordering on its own motion, 3, 100

Discretion of court, 3, 96

Examination of jurors to determine whether a fair trial could be had, 3, 99

In criminal cases, 3, 99

Sworn statements of reputable citizens as evidence, 3, 99

What evidence is sufficient, 3, 97, 98

What is considered as proof of the fact, 3, 100

When it will be ordered, 3, 97, 98

Because of non-residence of parties, 3, 100

By consent, 12, 302

By whom and at what time application must be made, 4, 821

Change as to one of several defendants, 4, 820

Court ordering on its own motion, 3, 94, 95, 100

Court's discretion must be reasonably exercised, 4, 818

Definition, 3, 90

Disqualification of Judge, 3, 93; 28, 248

Bias or prejudice on part of judge, 3, 93; 12, 53

Judge acting upon his own knowledge, 3, 94

Pecuniary interest, 3, 93

When counsel for either of the parties before he was elevated to the bench, 3, 94

Effect of, 3, 105; 28, 256

After arraignment and plea, 3, 107

Necessity of rearraignment, 3, 107; 4, 762

On Jurisdiction, 3, 105

Agreement conferring jurisdiction upon the court to which the change is made, 3, 105

In criminal actions where there are several defendants, 3, 106

In real actions, 3, 106

Removal of cause from jurisdiction of court, 3, 105

Waiver of objections, 3, 106

Prosecuting attorney, 3, 107

Right of court to appoint counsel, 3, 107

Sentence, in what county to be executed, 3, 107

When it is too late to object to a change, 3, 107

Where there are several defendants, 3, 107

Final Judgment

Whether order granting is, 12, 65

Finding of court conclusive, 4, 820

For Convenience of Witnesses, 3, 95

Affidavit stating what is expected to be proved by witnesses, 3, 96

Discretion of court, 3, 95

Dispatch or oppressive delay of suits as a consideration, 3, 96

For convenience of preponderance of witnesses, 3, 96

In criminal cases, 3, 96

Number of witnesses, 3, 96

When ordered, 3, 95

Where plaintiff's witnesses reside in the county where venue is laid, 3, 96

Homicide, 9, 649

Affidavit, 9, 649

Counter affidavits by prosecution, 9, 649

Discretion of court, 9, 649

Filing original indictment in new jurisdiction, 9, 650

Local prejudice, 3, 96; 9, 649; 13, 987, 988; 28, 250

Transcript of indictment, 9, 650
 What affidavit must contain, 9, 649
 When place of trial changes manner of rights, 9, 649
 In Alabama, 4, 818
 In California, 4, 818
 In Indiana, 4, 819
 In Iowa, 4, 819
 In Kentucky, 4, 819
 In Missouri, 4, 819
 In New York, 4, 819
 In Pennsylvania, 4, 819
 In Texas, 4, 819
 Judge ordering upon his own motion, 3, 94, 95, 100
Justice of the Peace, 12, 402, 408, 441
 Affidavit, 12, 441
 Confession of judgment for costs, 12, 442
 Correction of irregularities, 12, 442
 Costs, 12, 442
 In general, 12, 441
 Insufficiency of affidavit, 12, 442
 Justices' duty, 12, 441
 Statutory provisions, 12, 441
Larceny, 12, 831
 Application of district attorney, 12, 831
 Discretion of court, 12, 831
 Local prejudice, 3, 96; 9, 649; 13, 987, 988; 28, 250
Mandamus, 14, 115
 Discretion of judge, 14, 115
 To compel, 3, 91
 Whether change of venue can be compelled by, 14, 115
 Misdemeanors, 12, 408
 Motion, 15, 895, 901
 Motion for, after default, 5, 473
 Necessity of prisoner's consent, 3, 732
 Necessity that defendant be present when application is made in his behalf, 4, 820
 New trial, 16, 515
 Objections for first time on appeal, 4, 820
Objections to
 When they may be made, 3, 107
 Prejudice of judge, 3, 93; 12, 53
 Preliminary examination, 12, 416
Record, 3, 106; 20, 477, 481
 Affidavit, 20, 486
 Referees, 20, 690
 Resting in discretion of court, 3, 108
 Review by courts on appeal, 3, 108; 4, 819; 28, 257
Service of Process
 Effect upon defective process, 22, 170
 Power of court to amend return after, 22, 205
 Special judge, 12, 27
To What County Cause Should Be Moved, 3, 90; 27, 244
 Actions ex delicto, 3, 92
 Change to county not the nearest, 3, 91
 Examples, 28, 244-246
 In general, 28, 244
 Most convenient, 3, 91

Nearest county, 3, 90
 When change is on account of prejudice of judge, 3, 91
 Who decides what is nearest county, 3, 91
 Transcript of the record and proceedings sent to second court, 3, 106; 20, 477, 481
When Change May Be Had, 3, 91; 28, 246
 Application of one of several defendants, 3, 92
 By consent, 3, 91
 Convenience of witnesses, 28, 249
 Examples, 28, 246-248
 In actions arising ex delicto, 3, 92
 In criminal cases, 3, 92
 In general, 28, 246
 More than one change by application of party, 3, 93
 Non-residence of parties, 28, 253
 Where party brings himself within statutory requisites, 3, 91
 * Where venue has been once changed, 3, 92
When the Motion May Be Made, 3, 102; 28, 254
 After cause is on trial, 3, 103
 After trial before a referee, 3, 104
 At what stage of the pleadings, 3, 104
 Earliest opportunity, 3, 102
 When parties are ready to go to trial and jury has been called, 3, 104
Who May Apply for, 3, 101; 28, 253
 Application by one defendant where another defendant has been denied, 3, 102
 Corporation, 3, 102
 Formal parties, 3, 101
In Criminal Cases
 Where there is more than one defendant, 3, 102
 One among a number of defendants, 3, 92, 101
 One not party to the record, 3, 101
 Where only one of parties to suit is served with process, 3, 101

CHANNEL, 3, 108

Main channel, 14, 1

CHAPEL, 3, 109

Chapel of ease, 3, 109
 Chapels subject to mother church, 3, 109
 Free chapels, 3, 109
 Parochial chapel, 3, 109
 Private chapels, 3, 109

CHAPTER, 3, 109

Chapter headings, 3, 109

Dean and chapter, 3, 110

CHARACTER (IN EVIDENCE), 3, 110; 29, 797

See LIBEL AND SLANDER.

Action for false imprisonment, 7, 689

Assault and Battery, 1, 819; 3, 114

Bad character, 15, 685

Bad character, 1, 1041

Breach of Promise of Marriage, 3, 12**Civil Proceedings**

Ante litem motam, 3, 116

CHARACTER (IN EVIDENCE)—*Contd***Certificate of**

Forgery, 8, 481

Character proved must be ante litem motam, 3, 116

Chastity, 1, 25; 29, 805

Bastardy cases, 29, 806

Impeaching female witness, 29, 805

Keeper of house of ill-fame, 29, 806

Male witnesses, 29, 805

Prosecution for rape, 29, 807

Reputation for, in adultery, 1, 216

Seduction, 29, 806

Where chastity is immaterial to the issue, 29, 805

Where chastity is material to the issue, 29, 806

Conviction of an infamous crime, 29, 810

Definition, 3, 110

Distinguished from reputation, 21, 1047, 1049

Divorce, 3, 113

Bad character to prove adultery, 5, 787

Proof of woman's good character, 5, 787

Drunkenness, 29, 807

Evidence in rebuttal, 3, 115

Examination of Impeaching Witness, 29, 798

Cross-examination, 29, 800

Direct Examination, 29, 798

Question what is witness's general reputation, 29, 799

Question whether witness knows general reputation, 29, 798

Fraud, 3, 113

General moral character, 15, 715; 29, 797

General reputation, 3, 114; 4, 861; 5, 696, 697; 29, 797

Good character, 8, 1357

Good character as a fact within knowledge of witness, 4, 861

Homicide

Character of deceased, 3, 111; 4, 862; 9, 683

Character of Defendant, 3, 111; 9, 699

Attack upon character, 9, 700

Community where defendant lives, 9, 700

Evidence in rebuttal by prosecution, 9, 700

Proof of good character, 9, 699

When evidence of character admissible, 9, 699

How Proved, 3, 114

Competency of witness who is a stranger to locality and neighborhood, 3, 115

Evidence in rebuttal, 3, 115

Evidence of particular and specific facts, 3, 114

General reputation, 3, 114; 4, 861; 29, 797

Individual's opinion of witness, 3, 115

Necessity that witness should be acquainted with general reputation of the person, 3, 115

Negative testimony, 3, 114

Particular and specific facts, 3, 116

Question as to whether witness would believe party on oath, 3, 115

In Civil Proceedings, 3, 112

Assault, 1, 819; 3, 113; 15, 685

Breach of promise of marriage, 3, 112, 116

Divorce, 3, 113; 5, 787

Kind of character to be proved, 3, 114

Libel and Slander, 3, 112, 114; 13, 396

Ante litem motam, 3, 116

Kind of character to be proved, 3, 114

Malicious prosecution, 3, 113; 14, 59

Miscellaneous actions in which it is not admissible, 3, 113

Necessity that character should be attacked before good character can be proved, 3, 112

Of parties, 3, 112

Presumption that all characters are good, 3, 112

When character of party is relevant, 3, 112

In Criminal Proceedings, 3, 110; 7, 82

Character proved relating to particular charge, 3, 110

Effect of proof of good character, 3, 111

Good character creating a reasonable doubt, 3, 111

Irrelevance of bad character of accused, 3, 110

Presumption from failure to prove good character, 3, 111

Prisoner's general reputation for peace and good order, 3, 111

Rebutting proof of bad character, 3, 112

Relevance of good character of accused, 3, 110

To aid jury in ascertaining grade of crime, 3, 111

In general, 29, 797

Larceny, 12, 853

Libel and slander, 3, 112, 114, 116; 13, 396

Malicious Prosecution, 3, 113; 14, 59

Bad character of plaintiff, 14, 75

Good character of accused, 14, 60

Hostility toward defendant, 14, 60

Question of damages, 14, 60

Master and Servant, 14, 799

Forged testimonials, 14, 800

Knowingly giving false character, 14, 800

Libel, 14, 799

Obligation to give character, 14, 799

Privileged communications, 14, 799

Moral character, 15, 715; 29, 797

Neighborhood, 3, 115; 29, 802

Of Plaintiff**Bad Character**

In mitigation of damages, 3, 112

Particular acts of misconduct, 29, 804

Particulars, 3, 114, 116

Particular Traits of Character, 29, 805
 When material to the issue, 29, 807
 When not material to the issue, 29, 805
Rape, 3, 112; 19, 961
 Acts of illicit intercourse with defendant, 19, 961, 962
 Acts of unchastity committed with other persons, 19, 962
 Cross-examination, 19, 962
 Particular acts of unchastity with third persons, 19, 962
 Showing general reputation for chastity, 19, 961
Reputation after commencement of action, 29, 804
Reputation for Chastity, 3, 158
 Incest, 10, 349
Requisite Knowledge of the Impeaching Witness, 29, 800
 Examples, 29, 801, 802
 Personal knowledge, 29, 801
 Nearest neighbors, 29, 802
Seduction, 3, 113, 116
Chastity, 21, 1035
 Cross-examination as to intercourse, 21, 1036
 Evidence of good character, 21, 1037
 General character for, 21, 1036
 In an action by the woman, 21, 1036
 Notorious unchastity, 21, 1036
 Proving statement of woman as to intercourse with another man, 21, 1037
 Reputation after seduction, 21, 1037
 Specific acts of intercourse, 21, 1036
Criminal Offense
Chaste Character, 21, 1046
 Burden on the defendant, 21, 1047
 Character distinguished from reputation, 21, 1046
 Cross-examination of the woman, 21, 1048
 Evidence limited to time prior to the offense, 21, 1048
 Evidence of previous conduct, 21, 1049
 Presumption of good character, 21, 1047
 Previous, 21, 1046
 Questions of law and fact, 21, 1047
 Rebutting woman's testimony, 21, 1048
 Reformation, 21, 1048
 Requirements of the statutes, 21, 1046
 Specific acts of sexual intercourse, 21, 1048
 Statute using the word "repute," 21, 1048
 Time immediately preceding the offense, 21, 1048
 When evidence of "reputation" admissible, 21, 1047, 1049
 Where statute makes no mention of chastity, 21, 1046

Showing bad character of party making entry when book is in evidence, 3, 116
 Showing bad character of subscribing witness, 3, 116
Time and Place of Acquiring Reputation
 Present or recent place of residence, 29, 802
 Presumption as to continuance of reputation, 29, 803
 Time when he testifies, 29, 802
 When character of person is irrelevant, 3, 110
 When deemed to be relevant, 7, 82
CHARCOAL, 3, 118
CHARGE, 3, 118, 120
 As applied to property, 3, 118
 Attorney's charge at law, 3, 120
 Bankruptcy act, 3, 119
 Charge and accuse, 1, 143
 Charge and discharge, 3, 119
 Charged with a capital offense, 2, 728
 Charged with crime—accused of crime, 3, 121
 Charge on holding, 3, 120
 Charge to enter heir, 3, 120
 Charge to jury, 3, 121
 Charging order, 3, 121
 Charging part of a bill, 3, 119
 Charging the hundred, 3, 121
 Debts and charges, 3, 120
 Declaration of charge, 3, 120
 Free of charge, 3, 120
In a Mortgage
 When not synonymous with lien, 3, 119
 In charge, 10, 323
 In complaint, 3, 121
 Lawful, 3, 119
 Necessary charges, 16, 370
 Person in charge, 3, 121
 Priority of charge, 3, 120
 When not synonymous with lien, 3, 119
 When synonymous with fee, 7, 820
CHARGEABLE, 3, 122
 Actually chargeable, 3, 122
 Chargeable thereby, 3, 122
CHARGE AND ACCUSE, 1, 143
CHARGES D'AFFAIRES, see CONSULS.
CHARGING THE JURY, see INSTRUCTIONS.
CHARIOT, 3, 122
CHARITABLE USES, see CHARITIES.
CHARITIES, 3, 122
See generally, PERPETUITIES; TRUSTS FOR ACCUMULATION; TRUSTS AND TRUSTEES.
See RELIGIOUS SOCIETIES.
As to resulting trusts where trusts fail, see IMPLIED TRUSTS.
For exemption of charities from taxation, see TAXATION.
Subscriptions for, see SUBSCRIPTIONS.
Sunday laws, see SUNDAY.
 American Peace Society, 3, 132
Beneficial Associations Distinguished from Charities, 2, 174
 Exemption from taxation, 2, 174

CHARITIES—Cont'd**Beneficial Associations Distinguished from Charities—Cont'd**

Benefit of, to an indefinite number of persons, 3, 126

"Benevolent," 15, 624

Benevolent objects or purposes, 2, 182

Bill to test the legality of a trust, 3, 135

Chancery's jurisdiction in America, 3, 124

Chancery's original and inherent jurisdiction, 3, 123

Changing the use, 3, 135

Charitable Associations

Authority to make by-laws, 2, 705

Cy Pres Doctrine, 3, 133; 18, 366

By whom exercised, 3, 133

Cases in which it has been repudiated, 3, 134

Cases sustaining, 3, 134

Definition, 3, 133

Examples of the application of, 3, 134

In Alabama, 18, 370

In Connecticut, 18, 370

In Indiana, 18, 370

In Iowa, 18, 370

In Michigan, 18, 367, 370

In Minnesota, 18, 367, 370

In New York, 18, 367

In North Carolina, 18, 367, 370

In Pennsylvania, 18, 368

In Tennessee, 18, 370

In Virginia, 18, 367, 370

In West Virginia, 18, 370

Decree of the Court

For sale, 3, 136

Definition, 3, 122

Devises for Charitable Purposes

By what laws governed, 3, 642

Distinction between ordinary trusts and one for charitable uses, 3, 126

Doctrine of

In Alabama, 3, 124

In California, 3, 124

In Connecticut, 3, 124

In Delaware, 3, 124

In Georgia, 3, 124

In Illinois, 3, 124

In Indiana, 3, 124

In Iowa, 3, 125

In Kentucky, 3, 125

In Louisiana, 3, 125

In Maine, 3, 125

In Maryland, 3, 125

In Massachusetts, 3, 125

In Michigan, 3, 125

In Minnesota, 3, 125

In Mississippi, 3, 125

In Missouri, 3, 125

In New Hampshire, 3, 125

In New Jersey, 3, 125

In New York, 3, 125

In North Carolina, 3, 125

In Ohio, 3, 125

In Pennsylvania, 3, 125

In Rhode Island, 3, 125

In South Carolina, 3, 125

In Tennessee, 3, 126

In Texas, 3, 126

In Vermont, 3, 126

In Virginia, 3, 126

In Wisconsin, 3, 126

Education, 3, 128; 6, 167

Examples of bequests to a class which have been upheld, 10, 52

Examples which have been upheld, 4, 218

For increase of learning and diffusion of knowledge, 3, 129

For poor relations, 3, 127, 128

For widows and orphans, 3, 128

Freemasons, gift to, 3, 132

Gifts for particular individuals, 3, 126, 133

Gifts in aid of poor rates, 3, 128

Gifts to Shaker community, 3, 132

Illegal conditions, 3, 136

Incidents of charitable uses, 3, 135

Increase in rentals devised to charities, 29, 513

Indefiniteness, 3, 133; 10, 52

Jurisdiction over charities in the various states, 3, 124

Liability of charitable funds for torts, 3, 138

Marshaling assets, 14, 734-738

Mismanagement, 3, 135

"Missionary purposes," 15, 623

Monuments

Gift to maintain, 3, 132

Municipal corporations, 15, 1062

Municipal corporations as trustees, 11, 829

Non-residence, 20, 811

Origin of chancery's jurisdiction, 3, 123

Origin of law relating to charitable uses, 3, 123

Partition, 17, 685

Perpetuities, 3, 135; 18, 362

Charitable trusts distinguished from remainders, 18, 362

Contingency, 18, 365

Corporation to come into existence within period allowed for vesting future estates, 18, 368

Cy Pres Doctrine, 18, 366

Generally, 18, 366

In Alabama, 18, 370

In Connecticut, 18, 370

In Indiana, 18, 370

In Iowa, 18, 370

In Michigan, 18, 367, 370

In Minnesota, 18, 367, 370

In New York, 18, 367

In North Carolina, 18, 367, 370

In Pennsylvania, 18, 368

In Tennessee, 18, 370

In Virginia, 18, 367, 370

In West Virginia, 18, 370

General consideration, 18, 362

Gifts depending upon the happening of some future event, 18, 365

Gifts to charity then over to another charity, 18, 364

Gifts to charity then over to individual, 18, 364

- Gifts to individual then over to charity, 18, 364
- Gifts which have been held charitable, 18, 362
- In Pennsylvania, 18, 369
- In what cases the question of remoteness may arise, 18, 364
- Vesting, 18, 362
- When gift void for remoteness, 18, 365
- Whether rule applies to charities, 18, 363
- Powers**
 - Aid in equity, 18, 983
- Private Charities**, 3, 132
 - Trusts for, 3, 132
- Property not inalienable, 3, 136
- Religious purposes, 3, 130; 20, 811
- Religious society altering its faith, 3, 135
- Restraints Upon Donors**, 3, 137
 - In California, 3, 137
 - In England, 3, 137
 - In Georgia, 3, 137
 - In Kentucky, 3, 137
 - In Maryland, 3, 137
 - In Missouri, 3, 137
 - In New York, 3, 137
 - In Ohio, 3, 137
 - In Pennsylvania, 3, 137
- Savings banks, 21, 717
- Servants of**
 - Liability of corporation, 14, 813
 - Statute of charitable uses, 3, 123, 124
 - Statute of 43 Eliz., c. 4, 3, 123, 124
 - Statute of limitations, 3, 137
 - Statutes of mortmain, 3, 137
- Statutory Regulation of Trust Funds Held by Public Corporations as Trustees**, 11, 828
 - Change from one corporation to another, 11, 828
 - Diversion of trust funds, 11, 829
 - Funds for special uses, 11, 828
 - Legislative decision between towns claiming trusteeship, 11, 829
 - Regulation by legislature, 11, 828
- Succession Taxes**
 - Exemption from taxation, 24, 445
 - Suit by attorney general, 3, 135
 - Superstitious gifts, 29, 247
 - Superstitious uses, 3, 130
 - The purposes of charitable gifts, 3, 126
 - Theftford school case, 29, 513
 - Torts, 3, 138
- Trustees**
 - Who May Be**, 3, 137
 - Cities, 3, 138
 - Corporations**, 3, 137
 - Trusts germane to objects of incorporation, 3, 138
- Trusts**
 - Failing for want of trustee, 3, 135
 - For almsgiving and general relief, 3, 127
 - For charitable uses, 2, 705
 - For corporation or persons having vested rights, 3, 135
- For Education**, 3, 128
 - Construction of the term education, 6, 167
 - Examples of trusts which have been declared void, 6, 168
 - Examples of trusts which have been upheld, 6, 167
 - Validity, 6, 164, 167
- For particular objects which have been upheld**, 3, 127
- For Public Purposes**, 3, 131
 - Instances of trusts which have been sustained, 3, 131
 - Reduction of national debt, 3, 131
 - What are, 3, 131
- For Religious Purposes**, 3, 130; 20, 811
 - For foreign missions, 3, 131
 - Gift for the restrictive use of a definite number of persons, 3, 130
 - Instances of trusts which have been sustained, 3, 131
 - Repairs of churches, 3, 130
 - Superstitious uses, 3, 130
 - Where they may be upheld, 3, 130
- For the poor**, 3, 127
 - Held not charitable, 3, 132, 135
 - Which require a future incorporation, 3, 138
- Uncertainty**, 3, 133
 - Bequest to "suffering poor of the town of A," 10, 52
 - Examples, 10, 54
 - Of objects of a trust, 3, 126
- Witnesses, 29, 539
- CHART**, 3, 138
 - For copyright in*, see **COPYRIGHT**.
 - Advertising cards, 3, 140
 - Card exhibiting colors, 3, 140
 - Cards or tables, 3, 140
 - Copyright in, 4, 139, 155
- CHARTER**, 3, 141
 - See* **CORPORATIONS**.
 - Incorporation by Special**
 - How acceptance of charter is proven, 4, 193
 - Provision that directors shall be shareholders, 17, 81
- CHARTER-PARTY**, 3, 143
 - See* **BILL OF LADING**; **DEMURRAGE**.
 - For perils accepted*, see also **BILL OF LADING**.
 - Act of God or king's enemies as excuse, 3, 150
 - Admiralty jurisdiction over, 1, 198
 - As contract of affreightment, 3, 152
 - "As near thereto as she can safely get," 3, 146
 - Authority to relet vessel, 3, 144
 - Breach, 3, 152
 - By agents, 3, 148
 - Cesser clause, 3, 148
 - Charterer as owner for the voyage, 3, 153
 - Charter to government, 3, 153
 - Complete cargo in, 3, 383
 - Conditions Precedent**, 3, 151
 - Essentiality of performance, 3, 152
 - General rule, 3, 151

CHARTER-PARTY—*Cont'd*

- Construction of Contract**, 3, 150
 - Construed as covenants in a deed, 3, 150
 - Intention of parties determines whether the condition is precedent, 3, 152
 - Intention of the parties who covenant, 3, 150
 - Written words controlling printed, 3, 150
- "Customary dispatch," 3, 149
- Damages for Breach of Contract**, 3, 154
 - Measure of damages, 3, 154
 - Personal action of charterer, 3, 154
- "Dangers of the sea," 3, 148
- "Dangers of the seas excepted," 3, 148
- Definition, 3, 143
- Deviation, 3, 149
- Dispatch, 5, 644
- "Dispatch in discharging," 3, 149
- Dissolution of Contract**, 3, 154
 - By consent of parties, 3, 154
- Duty of performance notwithstanding accident, 3, 154
- "Empty," 3, 148
- Failure of consideration, 3, 152
- Form, 3, 143
- "Freight," 3, 153
- Freight on right delivery, 3, 147
- General nature, 3, 144
- Implied Engagements**, 3, 149
 - Care of goods, 3, 149
 - Deviation, 3, 149
 - Obedience to directions of owner, 3, 149
 - Reasonable time, 3, 149
 - Safe delivery of the articles, 3, 150
 - Seaworthiness, 3, 149
 - Voyage not to be circuitous, 3, 149
- "Incident to the navigation of the river," 3, 148
- Jurisdiction, 3, 155
- "Let," 3, 153
- Marine insurance, 14, 325
- Maritime Liens**
 - Charterer's liability, 14, 420
- Measure of Damages**
 - For breach of charter-party, 3, 148
- Near thereto as she may safely get, 16, 367
- Obligations of Parties**, 3, 152
 - General duties of master, owner and charterer, 3, 152
 - Refusal to furnish a cargo, 3, 152
 - To alter vessel, 3, 152
 - Where vessel becomes disabled, 3, 152
- Obligation to sail "forthwith" or with "all convenient speed," 3, 146
- Parol evidence, 17, 427
- "Perils of navigation," 3, 148
- Recordation, 3, 144
- Refusal of goods by master, 3, 153
- Remedy, 3, 155
- Representations, 3, 145
- Retaining control of master and crew, 3, 144
- Return of vessel impossible, 10, 179

- Safe port, 21, 442
- Seals, 1, 198
- Seaworthiness**, 3, 146
 - See* SEAWORTHINESS.
 - Effect of contract, 3, 146
 - Implied engagement of, 3, 149
 - What amounts to a contract of, 3, 146
 - What term includes, 3, 146
- Statement that ship will sail on or before given date, 3, 145
- Surrender of entire control of vessel, 3, 144
- "To be employed," 3, 148
- "To load a full and complete cargo," 3, 147
- Under seal, 3, 144
- Usages and Customs**, 3, 149, 150
 - Annexing incidents to contracts, 3, 151
 - As governing contract of charter-party, 3, 150
- Evidence**
 - Explained but not contradicted by, 3, 150
 - General custom of merchants, 3, 150
 - Judicial notice of general custom of merchants, 3, 151
 - To explain the meaning of particular words, 3, 151
 - Varying contract, 3, 151
- Usual contents, 3, 145
- Variance from provisions, 3, 145
- Vessel let on shares, 3, 153
- Vessel owner's lien on cargo for transportation, 3, 144
- Where contract becomes illegal, 3, 150, 154
- Whether a charter-party is a conveyance, 4, 137
- Who May Make**, 3, 143
 - At home port, 3, 143
 - Brokers, 3, 144
 - Master, 3, 143
- "With all possible dispatch," 3, 148
- "Working days," 3, 149

CHASE, 3, 155**CHASTE**, 3, 156

- Previous chaste character, 3, 157
- Reformed women, 3, 156
- Reputation, 3, 156
- Second betrayal, 3, 156
- Unchaste conduct, 3, 157
- Virtue, 3, 156

CHASTE CHARACTER, 1, 25**CHASTITY**, 3, 158

- See* CHARACTER IN EVIDENCE; RAPE; SEDUCTION; SOLICITATION OF CHASTITY.

For reputation for want of chastity, see LIBEL AND SLANDER.

Character for, When Relevant, 3, 112

- Breach of promise of marriage, 3, 112
- Seduction, 3, 113
- Credibility of prostitute, 3, 163
- Evidence of Specific Facts**
 - To prove want of, 3, 115
- Incest, 10, 349
- Libel and slander, 13, 302, 336, 338, 345

Presumption as to, 3, 156
 Reputation for, in adultery, 1, 216
Witnesses, 29, 805
 Bastardy cases, 29, 806
 Keeper of house of ill-fame, 29, 806
 Male witnesses, 29, 805
 Prosecution for rape, 29, 807
 Seduction, 29, 806
 Where chastity is immaterial to the issue, 29, 805
 Where chastity is material to the issue, 29, 806

CHATTEL MORTGAGES, 3, 175

See **CONDITIONAL SALES**; **GARNISHMENT**; **PLEDGE AND COLLATERAL SECURITY**.

See generally, **MORTGAGES**; **PURCHASE-MONEY MORTGAGES**.

Acknowledgment

Necessity of, 3, 182

Affidavit, 3, 182

Mode of making, 3, 182

Statement of consideration, 3, 182

Assignment of Mortgage, 3, 209

At law, 3, 209

In equity, 3, 209

On rolling stock, 1, 831

Registration, 3, 209

Without the debt, 3, 209

Attempt to sell, 3, 205

Change of Possession, 3, 195

See infra, **FRAUDULENT**.

Stipulation that mortgagor shall retain possession until default, 3, 196

Suffering mortgagor to retain possession after default, 3, 198

Where mortgage is silent as to possession of property, 3, 195

Conditional Sales

Courts construing transaction as chattel mortgage rather than, 3, 178

Conditional Sales Distinguished from, 3, 425; 21, 632

Cases of conditional sales, 3, 425

Conditional sales not favored, 3, 425

Construction of the instrument, 21, 632

Examples, 21, 632

Extinguishing the debt, 3, 425

In general, 3, 425

Intention of the parties, 21, 632

Necessity, 3, 425

No words of conveyance, 21, 632

Test, 3, 425

Where there is no debt, 21, 632

Conflict of Laws, 3, 552, 570

Chattel mortgage of a vessel, 3, 552

Contents, 3, 179

Definition, 3, 175

Degree of proof required to show that bill of sale is chattel mortgage, 3, 177

Delivery of instrument to mortgagee, 3, 194

Demand for goods mortgaged, 5, 528²

Description, 3, 181; 15, 747

Debt or liability for which it is given, 3, 181

I-D—14

Effect of omission on validity, 3, 180, 181

Examples of insufficient, 3, 181; 15, 747

Examples of sufficient, 3, 180; 15, 747

Insufficient, 3, 181; 15, 747

Necessity of, as between mortgagor and mortgagee, 3, 180

Necessity of, as to third parties, 3, 180

Of articles mortgaged, 3, 180

Reference to a schedule, 3, 181

Sufficient, 3, 180; 15, 747

Which it should contain, 3, 181

Discharge of, 3, 201

By acknowledgment of satisfaction of mortgage, 3, 202

By payment, 3, 201

By redemption of chattel, 3, 201

Extinguishment of mortgage debt, 3, 201

Statute of limitations, 3, 201

Where mortgage is given to debtor's sureties, 3, 201

Distinguished from Pledge, 3, 176; 18, 590

Delivery and possession of subject-matter, 18, 590

In general, 18, 590

Intention of parties, 18, 593

Intent of parties governs, 18, 592

Pledge preferred to mortgage, 18, 592

Registration, 18, 590

Special property, 18, 590

Title, as to third person, 18, 591

Whether title passes, 18, 590

Writing, 18, 590

Equity of redemption, 3, 200

Executions, 3, 179; 7, 129

Existence of subject, 21, 473, 474

Foreclosure, 3, 205; 8, 278

Equitable jurisdiction, 3, 205

Mortgagee not bound to, 8, 279

Necessity of, 3, 205

Possession, 8, 279

Power of sale, 8, 279

Proper parties, 3, 206

Sale of entire property, 8, 279

Same rule as applies to real estate, 8, 278

Who shall be made parties, 8, 279

Forfeiture where goods are mortgaged separately to several persons, 3, 204

Form, 3, 179

Form, contents and execution under seal, 3, 179

Fraud, question for jury, 3, 196, 197

Fraudulent, 8, 854

Mortgagor permitted to continue business, 3, 196

Necessity of intent to defraud, 3, 199

Proceeds of sales to be applied on mortgage debt, 3, 198

Retention of possession, 3, 196

Retention of possession under conditional bill of sale where transaction is in good faith, 8, 875

Sales to be for mortgagor's own benefit, 3, 197

CHATTEL MORTGAGES—Cont'd

Fraudulent—Cont'd

Statutory provisions concerning record, 8, 875

Suffering mortgagor to retain possession after default, 3, 198

Where executed to hinder and delay creditors, 3, 199

Future advances, 3, 188

Justly due, 3, 188

Law governing where property is removed into another state, 3, 190

Lex situs governs, 3, 190

Livery stable keepers, 13, 954

Livery Stable Keeper's Lien

Priority, 13, 956

Examples, 13, 955

Previously recorded mortgage, 13, 956

Property left by mortgagor without mortgagee's permission, 13, 959

Stallion, 13, 958

Mortgage absolute on its face but given to secure contingent liability, 3, 188

Mortgagee's right to possession, 3, 195

Mortgagee's Right to Take Possession on

Default, 3, 204

At common law, 3, 204

Taking must be peaceable, 3, 204

Where the debt is payable in installments, 3, 204

Where there is a clause that mortgagee may take possession at any time he may deem himself insecure, 3, 205

Mortgage void as to part of chattels covered, 3, 187

Nature of Mortgagee's Title, 3, 200

Equity of redemption, 3, 200

In equity, 3, 200

Legal title, 3, 200

Upon breach of condition, 3, 200

Nature of Mortgagor's Interest, 3, 189

After default, 3, 189

Before default, 3, 189

While mortgagor remains in possession, 3, 189

Necessity of mortgagee taking possession on default to preserve his lien, 3, 204

Notice of Sale

For breach of condition, 3, 206

Parol evidence to show that a bill of sale absolute on its face is, 3, 177

Partnership, 17, 967

Filing, 17, 918

Partnership debts, 3, 188

Possession in mortgagor, 3, 190

Possession must be actual, 3, 196

Present and future debts, 3, 188

Presumption as to execution at its date, 3, 181

Presumption of Fraud

Reason for retention of possession by mortgagor, 3, 196

Proof of contents of mortgage by original copy, 3, 194

Purchase-Money Mortgages, 19, 587

In general, 19, 587

Interest of wife, 19, 588

Judgment creditor's lien, 19, 588

Priority, 19, 588

Questions of law and fact, 3, 196, 197

Redemption, 3, 200

Equity of, 3, 200

Time within which to redeem, 3, 200

When equity is lost, 3, 200

Refiling, 3, 194

Computation of time, 3, 195

How refilled, 3, 195

Omission to refile, 3, 195

Provisions requiring, 3, 195

Successive refilings, 3, 195

When refilled, 3, 195

Where refilled, 3, 195

Registration, 3, 191; 20, 539

Bills of sale, 3, 191

Capital stock of corporations, 20, 539

Chattels capable of delivery, 20, 539

Chattels real, 20, 539

Choses in action, 20, 539

Corporations, 3, 193

"Forthwith," 3, 193

In general, 20, 539

Joint owners, 3, 193

Lost mortgage, 3, 191

Necessity of, as between the parties, 3, 192

Necessity of, as to execution creditors, 3, 192

Of assignment of mortgage, 3, 209

Partnership, 3, 193

Place of record, 20, 550

Provisions requiring, 3, 191

Refiling, 3, 194

Removal of mortgagor to another county, 3, 193

Removal of mortgagor to another town, 3, 192

Schedule or inventory, 3, 191

Ships and shipping, 22, 744

Statutes, 20, 539

Sufficiency of record, 20, 563

Time of record, 20, 544, 545

Validity of unrecorded mortgage, 3, 198, 199

Vessels, 3, 191; 22, 744

When instrument is considered as filed, 3, 194

When instrument is considered as "recorded," 3, 194

Where not clear whether instrument is chattel mortgage or a conditional sale, 20, 538

Where possession passes to mortgagee, 3, 192

Where property is removed, 20, 551

Within what time it must be made, 3, 193

Removal of mortgagor to another county, 3, 192

Removal of mortgagor to another town, 3, 192

Renewal notes, 3, 188

Retention of possession, 8, 755

Rights of Action in Mortgagee, 3, 202

Action for damages to his reversionary interest, 3, 203

Against officer levying attachment, 3, 203

Detinue, 3, 203

Replevin, 3, 202

Replevin against mortgagor, 3, 202

Replevin against purchaser, 3, 203

Suit for debt without resorting first to the property, 3, 202

Trespass, 3, 203

Trover, 3, 203

Rights of Second Mortgagees, 3, 208

Subsequent mortgage of chattels, 3, 208

Where mortgages are made and recorded at same time, 3, 208

Where second mortgagee has right of possession, 3, 208

Where the first mortgage is discharged or extinguished, 3, 208

Where there is an agreement that one of the mortgagees shall have priority of lien, 3, 208

Sale for Breach of Condition, 3, 206

Application of proceeds, 3, 208

Caveat emptor, 3, 207

Excessive sales, 3, 207

Expenses of sale, 3, 208

Mortgagee accounting to mortgagor for surplus of sale, 3, 207

Mortgagee as purchaser, 3, 207

Must be fair and in good faith, 3, 206

Necessity of, 3, 206

Notice, 3, 206

Ships and Shipping, 22, 729, 742

Absolute bill of sale as chattel mortgage, 22, 736

Absolute bill of sale recorded, 22, 730

Distinguished from bottomry bond, 22, 742

Examples, 22, 743, 744

In general, 22, 742

Liability for repairs between mortgagor and mortgagee, 22, 729, 730

Mortgagee agreeing to pay, 22, 730

Mortgagee in possession, 22, 729

Mortgagee not in possession, 22, 730

Mortgagee ordering goods or services, 22, 730

Part owner, 22, 723

Plaintiff to take possession, 22, 743

Power of court of admiralty, 22, 743

Protection of bona fide purchasers, 22, 743

Registration, 3, 191; 22, 744

Registry, 22, 743

Repairs on credit of mortgagor, 22, 730

Right of mortgagee, 22, 743

Right of possession, 22, 743

Transfer without delivery, 22, 739

Statute of Fraud, 3, 178

Contracts for sale of goods, wares and merchandise, 8, 705

Stock of goods in store, 21, 474

Symbolical delivery, 3, 196

Test to determine whether transaction is a chattel mortgage, 3, 175

To secure future advances, 3, 187

Trespass, 26, 609, 610

Trover

Action by Mortgagee, 26, 757

Action against mortgagor, 26, 758

Action against third party, 26, 758

Demand and refusal, 26, 758

In general, 26, 757

Mortgagee who has not foreclosed, 26, 757

Mortgagee who never had possession, 26, 757

Senior and junior mortgagee, 26, 758

Measure of damages against stranger, 26, 821

Measure of damages of mortgagee against mortgagor, 26, 823

Measure of damages of mortgagor against mortgagee, 26, 823

Mortgagee's liability in trover, 26, 784

Upon mare in foal, 1, 59

Usurious consideration, 3, 189

Validity, 3, 190

As Against Third Persons, 3, 198

Executor or administrator of mortgagor, 3, 199

Intent to defraud, 3, 199

Persons who can claim against unrecorded mortgages, 3, 198

Purchasers with knowledge of the mortgage, 3, 198, 199

Unrecorded mortgage of which attaching creditors have actual notice, 3, 198

Where executed to hinder and delay creditors, 3, 199

By What Law Governed, 3, 190

Generally, 3, 190

Verbal, 3, 179

Violation of statutes, 3, 189

Void for uncertainty, 3, 179

Waiver, 28, 555

Acceptance of payment after forfeiture, 28, 556

Consenting to sales, 28, 555

Levying an attachment, 28, 555

Of foreclosure, 28, 556

Of irregularities in sale, 28, 556

Of rights under the mortgage, 28, 555

What May Be Mortgaged, 3, 183

Bank stock, 3, 183

Grass growing, 3, 185

Growing crops, 3, 185

Executory interests, 3, 183

Fixtures, 3, 185

Maturity of crop, when material, 3, 185

Personal property of every description, 3, 183

Property to be afterwards acquired by mortgagor, 3, 184

Rolling stock, 3, 183

Stock in trade, 3, 184

Unplanted crops, 3, 185

CHATTEL MORTGAGES—Cont'd

- What Mortgage Covers and Secures, 3, 186; 15, 148
- Increase of live stock, 3, 186
- Mortgage to secure future advances, 3, 187
- New materials afterwards added to mortgaged goods, 3, 186
- Repairs, 3, 186
- Restriction to articles specifically mentioned, 3, 187
- Stock of merchandise, 3, 186
- Unfinished articles of manufacture afterwards finished, 3, 186
- Where mortgage is void as to part of chattels covered, 3, 187
- Where property mortgaged is exchanged for other, 3, 187
- What transaction amounts to, 3, 176
- When bill of sale absolute on its face will be treated as chattel mortgage, 3, 177
- Where filed, 3, 192
- Where given for a sum greater than the liability of mortgagor, 3, 188
- Who May Mortgage Chattels, 3, 182
- Conditional vendee, 3, 183
- General rule, 3, 182
- Ratification**
 - Where mortgage is not made by owner, 3, 183

CHATTELS, 3, 163; 15, 944

See CHATTEL MORTGAGE; FIXTURES; GOODS; PERSONAL PROPERTY.

As to personal chattels within bills of sale acts, see BILLS OF SALE.

Future interest in chattels, see REMAINDERS AND EXECUTORY INTERESTS.

Bees, 3, 169

Chattel interests in remainder, 3, 170

Chattels in Action

Choses in Action, 3, 170

Definition, 3, 170

Torts, 3, 171

Chattels personal, 3, 167

Chattels Real, 3, 164

See LANDLORD AND TENANT; LEASE; REAL PROPERTY.

As personal property, 3, 164

Definition, 3, 164

Estates at will and for years, 3, 164

Heirlooms, 3, 165

Crops, 3, 167

Dead bodies, 3, 166

Definition, 3, 163

Fish, 3, 166

Fixtures, 3, 166

Goods, chattels and effects, 6, 187

Joint tenancy, 3, 168

Movables, 3, 163

Nature of, 3, 164

Property, 3, 168

Absolute, 3, 168

In possession, 3, 168

In severalty, 3, 169

Qualified property, 3, 169

Real and personal, 3, 164

Real estate of partnership in equity, 3, 167

Shares in canals and railroads, 3, 166

Tenancy in common, 3, 168

Title to

By accession, 3, 174

By attachment against property, 3, 175

By contract, 3, 173

By forfeiture, 3, 171

By gifts, 3, 172

Donatio-causa mortis, 3, 172

Gifts inter vivos, 3, 172

By insolvency and bankruptcy, 3, 173

By intellectual labor, 3, 174

By judgment, 3, 171

By marriage, 3, 171

By occupancy, 3, 171

By succession, 3, 171

By testament and administration, 3, 174

Copyright, 3, 174

Patent, 3, 174

Trademark, 3, 174

Trees, 3, 167

Wild animals, 3, 169

CHEAT, 3, 209; 4, 601

See DECEIT; FALSE PERSONATION; FALSE PRETENSES; FALSE TOKENS; FRAUD.

And defraud, 5, 519

Allegation, 7, 776

Conspiracy to, 4, 605

False news, 3, 210

Fraud must be latent, 3, 210

Illegality of thing pretended, 3, 210

Libel and slander, 13, 334, 361

Private cheats, 3, 210

Public cheats, 3, 210

CHEATING

By means of false dice, 7, 795

Gambling

Contracts, 8, 1003

Recovery of property in hands of bona fide purchaser, 8, 1003

Libel and slander, 13, 302

With dice, 5, 661

CHEATING AT CARDS, 4, 603

See generally, GAMBLING CONTRACTS.

CHECKS, 3, 211

See BANKS AND BANKING; BILLS AND NOTES; CLEARING HOUSE; FORGERY.

Payment by, see PAYMENT.

Acceptance, 3, 220

Implied, 3, 228

Alteration in date, 3, 225

Amount of, 3, 212

Ante-dated and post-dated, 3, 218

As purporting to be drawn upon a deposit, 3, 211

Burden of Proof

As to injury to the drawer where there has not been due presentment and notice, 3, 216

By what law governed, 3, 591

Certified, 3, 219

Bank's duty to hold sufficient funds of drawer to meet check, 3, 219

By mistake, 3, 221

- Certification as discharging drawer, 3, 220
 Certification equal to an acceptance of a bill of exchange, 3, 219
 Estoppel, 7, 31
 Forgery, 3, 221
 Fraudulent alterations after signature, 3, 221
 Guaranty as to genuineness of a bad check, 3, 221
 Guaranty as to genuineness of signature, 3, 221
 Guaranty that check is good for that amount, 3, 221
 How a check may be certified, 3, 220
 National banks, 16, 165
 Novation, 16, 881
 Certificate must be made at bank, 16, 882
 Definition of certified check, 16, 881
 Discharge of drawer from liability, 16, 882
 Effect of certification, 16, 881
 Retaining check for unreasonable time, 16, 882
 Statute of fraud, 16, 883
 Substitution of bank as debtor, 16, 882
 Who may certify, 16, 882
 Recovering amount paid on raised checks, 3, 221
 Statute of limitations, 3, 220
 Verbal acceptance, 3, 220
 What certification imports, 3, 221
Checkholder's Right to Sue Bank
 Conflicting doctrines, 3, 226, 227
 Upon refusal to pay check, 3, 226
Collection
 Drawee bank as suitable agent for, 3, 216
 Conflict of laws, 3, 596
 Damages for wrongful dishonor of, 3, 225
 Days of grace, 2, 398; 5, 528z⁷⁰
 Definition, 3, 211
 Definition of draft, 6, 1
Demand, 5, 528z⁸⁶, 528z⁴², 528z⁸⁰
See infra, PRESENTMENT.
 Check sent to drawee for collection, 5, 528z⁸⁴
 Day, 5, 528z⁸⁰
 Day of date or day following, 5, 528z⁸⁰
 Delay as an acceptance, 5, 528z⁸⁴
 Drawn on Saturday and presented on Monday, 5, 528z⁸²
 How far drawer discharged by laches, 5, 528z⁸³
 How far laches presumed, 5, 528z⁸⁴
 Negotiation and circulation of bank check, 5, 528z⁸²
 Notice to which drawer is entitled, 5, 528z⁸⁷
 Payment of draft by check, 5, 528z⁸¹
 Post-dated check, 5, 528z⁸³
 Post-dated check falling due on Sunday, 5, 528z⁸⁴
 Reasonable time, 5, 528z⁴³; 19, 1089
 What is reasonable time, 5, 528z⁸¹
 What is unreasonable delay, 5, 528z⁸²
 When made, 5, 528z⁸⁰
When Necessary
 After payment is stopped, 5, 528z⁵⁸
 Charge drawer of, 5, 528z⁸⁸
 Transaction effected with fraud, 5, 528z⁵⁸
 Diligence required in presentation, 5, 528z⁸⁶
 Diligence to charge drawer, 5, 528z⁵⁸
Dishonor
 Measure of damages for wrongful, 3, 225
 Drawee bank as suitable agent for collection, 3, 216
 Effect of death upon drawer of, 5, 137
Estoppel
 Certification of a check, 7, 31
 Failure to demand before bank fails, 5, 528z⁸⁶
False Pretenses, 7, 738
 Check signed in fictitious name, 7, 741
 Evidence to show that check was of value, 7, 787
 Implication as to funds in bank, 7, 739
 Payment in check when property is to be weighed and paid for in cash, 7, 741
 Post-dated checks, 7, 739, 740
 Representation that drawer has money in bank, 7, 738
 False tokens, 7, 795
Forged
 Fraudulent alterations after signature, 3, 225
 Payment to Bona Fide Holder, 3, 222
 Rule in Pennsylvania, 3, 224
 Forged indorsements, 3, 225
Forgery of Signature, 3, 222
See FORGERY.
 Identification, 3, 222
 Liability as between bank and depositor for loss by forgery, 3, 222
 Negligence of drawer or holder, 3, 223
 Notice of, 3, 224
 Of certified, 3, 221
 Reasonable time for giving notice, 3, 224
 Gifts, 8, 1320
 Gifts causa mortis, 8, 1344
 Giving check on bank where maker has no funds, 5, 337
 Identification, 3, 222
 Memorandum, 3, 219
National Banks
 Certification, 16, 207
Notice of Dishonor, 3, 212; 5, 528z⁸⁶
 Delay in giving, 3, 215
 Necessity of, 3, 212
 When unnecessary, 3, 212
Notice of Loss
 Advertising, 13, 1110
 Necessity of notice, 13, 1109, 1110
 Parties liable, 13, 1109
 Public notice of loss, 13, 1110
 Novation, 16, 874

CHECKS—Cont'd

Operating as an assignment of particular fund, 3, 596

Orders, 17, 224

Passing worthless, 7, 795

Payment

By national banks, 16, 207, 208

Of draft by check, 5, 528⁶¹

Order of, 3, 218

Part payment of checks, 3, 218

Time within which drawee must make payment or refuse, 3, 217

Presentment, 3, 212

See infra, DEMAND.

Burden of proof as to injury to drawer, 3, 216

By mail, 3, 214, 216

Delay in, 3, 215

Delay in, as discharging drawer, 3, 216

Drawer extending time for, 3, 216

Necessity of, 3, 212

Reasonable time is question of law, 3, 214

Time of, 3, 213

If the bank be not at place where payee received check, 3, 213

Within banking hours on the day check was received, 3, 213

Unreasonable delay discharges indorser, 3, 216

What is reasonable time for, 3, 213

When unnecessary, 3, 212

Protest, 19, 295

Questions of Law and Fact

Reasonable time for presentment, 3, 214

Railroads, 19, 918

Raised checks, 3, 225

Reasonable time, 3, 213; 5, 528⁴⁸, 528⁶¹; 19, 1089

Rights of bona fide holder without notice, 3, 217

Set-off, 22, 282

Sundays, 5, 528⁶⁵

Tender, 25, 908

Unaccepted check as assignment of deposit, 1, 837

Where marginal figures differ from amount stated in body of check, 3, 212

Whether entitled to days of grace, 2, 398; 5, 528⁷⁰

CHEMIST, 3, 228

Expert and opinion evidence, 7, 503

CHEROKEE, 3, 228**CHEVISANCE, 3, 228****CHICORY, 3, 228****CHIEF, 3, 229****CHILD—CHILDREN, 3, 233, 229**

See ADOPTION; CONCEALMENT OF BIRTH; GRANDCHILD; GUARDIAN AND WARD; INFANTS; PARENT AND CHILD; QUICK WITH CHILD.

For contributory negligence of children, see CONTRIBUTORY NEGLIGENCE.

Rape, see RAPE.

Stepchildren, see PARENT AND CHILD.

Street Railways

Injury by, see STREET RAILWAYS.

Turntables

Injury by, see TURNTABLES.

Abandonment of, 1, 3

Adopted children, 3, 232

Any child, 3, 233

Bastards, 24, 413

Whether bastards are children, 3, 230

Child en ventre sa mere, 2, 477

Children

Held to mean issue, 3, 233; 11, 873

Male children, 14, 5

Child's part, 3, 233

Confessions by children, 3, 489

Crossings, 4, 944, 948

Dying declarations, 6, 133

Explained by issue, 11, 872

Family of minor children, 3, 233

Grandchildren, 3, 231; 18, 288

Presumption as to services and board, 17, 344

Whether it includes grandchildren, 3, 231

Heirs construed to mean children, 22, 514

Includes an adopted child, 1, 206

In wills, 11, 374, 870

Issue, 11, 902

Construed children, 3, 233; 11, 872

Used in one clause as children, 11, 873

Labor regulations, 18, 753

Limitation to A and His Children

No gift over, 11, 879

Lineal descent, 13, 844

"My eleven children," 3, 233

Negligence, 19, 933, 934

Our child or children, 3, 233

Playing in Street, 9, 400

Contributory negligence, 9, 400

Rebutting charge of contributory negligence, 9, 401

Right of child to use of street, 9, 400

Police power, 18, 753

Poor children, 3, 229

Pregnant with child, 3, 229, 233

Scope of term in statutes regulating advancements, 1, 221

Seventh or youngest child, 3, 233

Shelley's case, 22, 516

Stepchildren, 3, 232

Whether issue includes, 11, 870

Theaters

Employment of children, 25, 1045

Three children, 3, 233

What is a child within the statutes against concealment of birth, 3, 417

When the rule of comparative negligence not applicable to, 3, 373

Whether words of limitation or purchase, 3, 232

Wills

As attesting witnesses, 29, 232

Younger children, 3, 234

CHILDISH, 3, 234**CHINA, 3, 234****CHINA CLAY, 15, 501**

CHINESE, 3, 234*See* ALIENS; IMMIGRATION.

Civil rights, 3, 250

Constitutional law, 3, 249, 250

Criminal Conspiracy

To intimidate or drive out the Chinese

from the country, 4, 595

Exclusion act, 26, 547

Habeas corpus, 9, 169, 945

Immigration

Act of 1884, 9, 947

British subjects, 9, 943

Canton certificates, 9, 949

Certificates, 9, 947

United States, 9, 949

When not required, 9, 947

Chinese sailor on American vessel, 9, 945

Chinese seaman's right to land, 9, 947

Chinese treaty, 9, 947

Chinese who is not laborer, 9, 948

Evidence as to laborer, 9, 948

Exceptions, 9, 942

Habeas corpus, 9, 169, 945

Natives of Chinese extraction, 9, 943

Non-laboring Chinese, 9, 948

President's order of removal, 9, 946

Prohibition, 9, 941

Restriction with reference to Chinese

subjects, 9, 943

Sailor leaving and returning on an

American ship, 9, 944

Status of seamen, 9, 944

Statutory differences relative to jurisdiction, 9, 946

Naturalization, 6, 272

Witnesses, 29, 622

CHIP, 3, 234**CHOCOLATE, 3, 234**

Distinguished from confectionery, 3, 234

CHOICE, 3, 234**CHOOSE, 3, 234**

Chosen freeholders, 3, 235

Chosen to office, 3, 235

Definition of discretion, 5, 681

Equivalent to appoint, 1, 631

CHOSE, 3, 235*For chose in action, see* CHOSSES IN ACTION.

Chose in action, 3, 235

Chose in possession, 3, 235

Chose local, 3, 235

Chose transitory, 3, 235

CHOSEN FREEHOLDERS, see COUNTY COMMISSIONERS.**CHOSSES IN ACTION, 3, 235***See* ASSIGNMENTS.**Assignment, 1, 827; 3, 236***As to the assignment of bank checks, see* CHECKS.*As to the assignment of bills of exchange and promissory notes, see* BILLS AND NOTES.

Assignee's suit in his own name, 3, 236

Assignee's suit in name of assignor, 3, 236

At common law, 3, 236

Debtor's defenses against assignee, 3, 236

Illegal, 3, 237

Implied, 3, 238

No particular form of, 3, 237

Of future earnings, 3, 237

Of part of a debt, 3, 237

Personal actions which do not survive, 3, 237

Assignor as party to bill in equity, 2, 217

Definition, 3, 170, 235; 17, 539

Examples, 3, 235; 17, 539

Form of action, 3, 236

Larceny, 12, 784

At common law, 12, 784

Invalid bonds or notes, 12, 784

"Personal goods," 12, 784

Statute, 12, 784

Purchase by attorney of, 1, 950

Recording acts, 20, 539

Replevin, 20, 1061, 1062

Right of action arising under contract, 3, 235

Right to recover pecuniary damages for tort, 3, 235

Sequestration, 22, 97

Whether property, 19, 287

CHRISTIAN, 3, 238

Christian name, 3, 239

CHUCK-A-LUCK, 3, 239**CHURCH, 20, 775***See* DISTURBING MEETINGS; RELIGIOUS SOCIETIES.

Church register, 20, 519

Parochial church, 17, 418

CIDER, 3, 239*See* INTOXICATING LIQUORS.**CINDERS, see** ELEVATED RAILROADS.**CIPHER, 3, 239**

Handwriting, 9, 264

CIRCUIT, 3, 239

Orphans' court, 17, 278

CIRCUIT COURT OF APPEALS, 27, 645

United States Courts, 27, 645

Attorneys, 27, 647

Authority, 27, 645

Jurisdiction, 27, 647

Examples, 27, 647, 648

Statutory provisions, 27, 647

Officers, 27, 646

Organization, 27, 645

Practice and Procedure, 27, 648

Time for appeal, 27, 649

Quorum, 27, 647

Quorum of judges, 27, 646

Seats, 27, 647

Statutory provisions, 27, 645, 647, 649

Terms, 27, 647

CIRCUIT COURTS, see UNITED STATES COURTS.*See generally, COURTS.***CIRCULAR, 3, 240**

Circular Notes, 3, 240

See LETTER OF CREDIT.

Circulating medium, 3, 240

CIRCULARS

Sales, 21, 451

CIRCUMSTANCES, 3, 240

Circumstances of terror, 3, 240

Insolvent circumstances, 3, 240

Like circumstances, 13, 661

CISTERNS, see **STREETS**.**CITATION**, 3, 240

Citation of authorities, 3, 241

CITE, 3, 241**CITIZENSHIP**, 3, 242See **ALIEN**; **EXPATRIATION**; **NATURALIZATION**.See generally **INHABITANTS**.*Citizens of different states*, see **UNITED STATES COURTS**.**Acquired by Birth**, 3, 242

Children of citizens who are born out of the jurisdiction of the United States, 3, 244; 6, 264

Nationality of parents as test, 3, 244

What persons acquire citizenship by birth, 3, 242

Alien woman marrying citizen, 1, 457; 3, 244; 6, 264

Allegiance

Allegation of, 6, 755

Definition, 1, 490

Pleas to, 6, 791

Children born within the United States jurisdiction, 1, 457

Chinese, 3, 250

Civil Rights Act, 3, 249

Common property of the state, 3, 709

Compared with residence, 21, 125

Corporations

As citizens, 3, 252, 710, 728; 4, 276; 8, 365; 25, 659

Removal of causes, 20, 994

Definition, 3, 242

Election, 3, 244

Equity pleading, 6, 755, 791

Federal and state, 3, 708; 16, 224

Foreign citizens, 8, 280

Foreign Corporations, 8, 365; 25, 659

Citizenship for purposes of federal jurisdiction, 8, 367, 381; 20, 993

Discrimination against, 8, 366

Federal jurisdiction, 8, 367, 381; 20, 993

Standing as citizens in state courts, 8, 367

Whether citizens under federal constitution, 8, 365

Fourteenth and fifteenth amendments, 3, 728; 6, 264

Indians, 3, 245; 10, 440; 20, 993

General status of, 3, 245

How they may become citizens, 3, 246

Intermarriage of female alien with citizen, 1, 457; 3, 244

Jurisdiction, 12, 275; 305

Marriage, 1, 457; 3, 244

Mines and Mining Claims, 15, 516

Affidavit of citizenship, 15, 517

Examples, 15, 516, 517

Necessity, 15, 516

Proof of citizenship, 15, 517

National Banks, 16, 147

Citizenship in a state, 16, 147

Citizenship of shareholder, 16, 148

Habitation, 16, 148

Removal of cause, 16, 148; 20, 994

Whether citizen of United States, 16, 147

Naturalization, see **NATURALIZATION**. Naturalized citizen's competency as to a juror, 4, 826

Naturalized citizen's right to take lands, 3, 248

Presumptions, 6, 266; 19, 76

Property rights as affected by, 3, 254

Public Lands, 19, 312

Preemption, 19, 312, 316, 317

Public Officers, 19, 401

Alien who has qualified as an elector, 19, 401

Elector, 19, 401

Eligibility of alien, 19, 401

In general, 19, 401

Inhabitants, 19, 401

Resident who has declared his intention to become a citizen, 19, 401

Who is a citizen, 19, 401

Qualifications of voters, 3, 709; 6, 263

Railroads, 19, 791

Accepting benefits accruing under the license, 19, 794

Citizen of the creating state, 19, 792

Corporation chartered under the laws of several states, 19, 796

Effect of citizenship of members composing the corporation, 19, 793

Effect of leasing as to citizenship, 19, 793

Fixing separate identity in two states, 19, 797

License to operate in another state, 19, 793

Meaning of citizenship as here used, 19, 792

National corporation, 19, 797

Right to remove causes into federal courts, 19, 795

Statute giving same powers as it has in the state of its creation, 19, 793, 794

Taxation of corporation chartered in two states, 19, 797

Whether state may confer citizenship upon corporation of another state, 19, 794

Religious societies, 20, 780

Removal of Causes, 20, 989

Prejudice and local influence, 20, 1001

To United States Courts, 20, 992

Act of 1879, 20, 992

Acts subsequent to 1793, 20, 993

Aliens, 20, 992

Allegation of residence in petition, 20, 993

Citizenship at time of suit, 20, 993

Corporations, 8, 367, 381; 20, 993

Corporations chartered in different states, 20, 995

Examples, 20, 992-995

Foreign corporations, 20, 995

- Indians, 20, 993
- In general, 20, 992-995
- National banks, 16, 148; 20, 994
- Personal citizenship, 20, 992
- Pleadings, 20, 993
- Railroads, 20, 995
- Residence in a territory, 20, 992
- States, 20, 992
- Right of suffrage, 3, 709; 6, 263
- Rights of Citizens of Other States**, 3, 708
 - See CONSTITUTIONAL LAW; INTER-STATE COMMERCE; TAXATION.
 - A state tax which discriminates in favor of the products of its own state, 3, 709
 - Imposition of heavier license tax upon non-residents, 3, 709
 - Privilege guaranteed by constitution of the United States, 3, 708
 - The supreme court will not define rights and privileges, 3, 708
- Rights of Former Slaves**
 - Constitutional law, thirteenth, fourteenth, and fifteenth amendments, 3, 249
- Rights of states to legislate regarding, 3, 250
- State citizenship, 3, 708; 16, 224
- Statutes conferring right to hold real property upon aliens as conferring citizenship, 3, 255
- What Constitutes**
 - Children of aliens merely visiting or passing through country, 6, 265
 - Children of American parents, born abroad, 3, 244; 6, 264
 - Effect of slavery of parents, 6, 266
 - Fourteenth amendment, 6, 264
 - Fourteenth amendment only declaratory, 3, 728; 6, 266
 - Persons of color, 6, 266
 - Place of birth, 6, 264
 - Presumption of citizenship from residence, 6, 266; 19, 76
 - Wife of naturalized citizen, 3, 244
- CITY**, 3, 256; 15, 952
 - See MUNICIPAL CORPORATIONS.
 - City lot, 13, 1163
- CIVIL**, 3, 256
 - Civil Service*, see PUBLIC OFFICERS.
 - Civil action, 3, 257
 - Civil cases, 3, 26
 - Civil cause, 3, 47
 - Civil liberty, 13, 508
- CIVIL ACTION**, 3, 257
 - At common law, 3, 257
 - In the civil law, 3, 257
- CIVIL DAMAGE ACT**
 - Actual damages, 3, 267
 - Character of statute, 3, 257
 - Constitutionality, 3, 257
 - Damage for death of parent or husband while intoxicated, 5, 53
 - Damages in case of death, 3, 265
 - Death a legitimate and natural consequence of intoxication, 3, 265; 266
 - "Dependent," 3, 265
 - Evidence**, 3, 271
 - Generally, 3, 271, 272
 - Liquor dealer's license, 3, 272
 - Of habitual drunkenness, 3, 271
 - Proof that seller contributed to intoxication, 3, 271
 - Sales subsequent to commencement of suit, 3, 272
 - Where injurious to means of support, 3, 263, 264
 - Exemplary Damages**, 3, 265, 267; 7, 479; 9, 836
 - Mitigating circumstances, 3, 268
 - When allowable, 3, 267
 - Where act is punishable as criminal offense, 3, 268
 - Where there are circumstances of aggravation in conduct of defendant, 3, 268
 - Husband's suit, 3, 256; 9, 836
 - Injuries for Which Damages May Be Claimed**, 3, 261
 - Compensation for nursing, 3, 267
 - Death, 3, 265
 - Death occurring from accident while person is intoxicated, 3, 265, 266
 - Injury to means of support, 3, 262
 - Injury to person, 3, 261
 - Injury to property or means of support, 3, 261, 262
 - Mental anguish, disgrace, etc., 3, 261
 - Necessity of actual damage, 3, 261
 - Right to recover amount paid for liquor, 3, 262
 - Where intoxicated person destroys property of another, 3, 262
 - Injury to Means of Support**
 - Question for the jury, 3, 263, 264
 - Joint Action**
 - Against several sellers, 3, 258
 - Lawful and unlawful sale, 3, 272
 - Liquor must have caused or contributed to intoxication, 3, 271
 - "Means of support," 3, 262; 5, 53
 - Mitigating circumstances, 3, 268
 - Parent, 3, 265
 - Parties to the action, 3, 261
 - Proof of injury to means of support, 3, 262
 - Proximate and remote cause, 3, 271
 - Recovery for loss of means of support, 3, 262; 5, 53
 - Seller having given orders to his servants not to sell liquor to the inebriate, 3, 269
 - Statutes**, 9, 836
 - Strictly construed, 3, 272
 - Suit independent of statute, 9, 836
 - What bars the action, 3, 269
 - Where death ensues from intoxication, 3, 265
 - Whether retrospective, 3, 272
 - Who Are Liable**, 3, 258
 - Dealers, for sales by agent or servant, 3, 258
 - In case of habitual intoxication, 3, 259
 - Joint action against several, 3, 258
 - Necessity of knowledge to render owner of premises liable, 3, 260

CIVIL DAMAGE ACT—Cont'd**Who Are Liable—Cont'd**

One satisfaction only for the injury, 3, 259

Owner of premises, 3, 260

Where intoxication is produced by several sellers, 3, 258

Who has a right of action, 3, 269

Who may recover damages, 3, 262

Wife drinking with her husband, 3, 270

CIVIL DEATH, see DEATH.**CIVILITER, 3, 273****CIVILITER MORTUIS, 3, 273**

See DEATH.

CIVILIZATION, 3, 273**CIVIL OFFICERS, 19, 392****CIVIL RIGHTS, 3, 249**

See COLORED PERSONS; CONSTITUTIONAL LAW; TAXATION.

Removal of Causes, 20, 1023

Constitutionality of the statute, 20, 1024

Existence of law alone, 20, 1024

In general, 20, 1023

Modification of the statute, 20, 1023

Right denied by constitution or law of the state, 20, 1023

Right denied by judiciary of state, 20, 1023

Right denied by private person, 20, 1023

Scope of the term, 20, 1023

State acts, 20, 1023

CIVIL WAR, see WAR.**CLAIM, 3, 273**

Claiming under, 3, 276

Claims and demands, 3, 274

Claims and effects, 3, 274; 6, 187

Claims include notes, 3, 274

Counterclaim, 3, 274

See SET-OFF.

Damage and claim, 3, 274

In acts of congress, 3, 275

Indemnity against claims, 3, 274

In pleading, 3, 276

In public land laws, 3, 276

In relation to land and land titles, 3, 276

In statute of limitations, 3, 275

In tort and contract, 3, 276

Just claim, 12, 381

Lawful claims, 3, 274

Synonymous with cause of action, 3, 275

Torts

Whether it includes, 3, 275

Under whom they claim, 3, 276

When synonymous with demand, 3, 275

CLAIM AND DELIVERY, see FORTHCOMING BOND; REPLEVIN; TROVER.**CLAIMANT, 3, 277**

Bona fide claimant, 3, 277

Pension acts, 3, 277

Preëmptioner as, 3, 277

CLAIM OF COMISANCE, 3, 277**CLAIM OF LIBERTY, 3, 277****CLANDESTINE, 3, 277**

Clandestinely provided, 3, 278

Clandestine mortgages, 3, 277

CLASS, 3, 278

For the constitutionality of class legislation, see CONSTITUTIONAL LAW; STATUTES.

For gifts to, see CHARITIES; LEGACIES AND DEVICES; WILLS.

Persons, 3, 278

CLAUSE, 3, 278

See generally, STATUTES.

Appeal, 3, 279

Clause irritant, 3, 279

Clause rolls or close rolls, 3, 279

Distinguished from purview, 3, 278

Enacting, 3, 279

Penal clause, 18, 268

Purport clause, 19, 591

Repealing, 3, 279

Saving, 3, 279

CLAY, 3, 279; 15, 501**CLAY SUBSOIL, 15, 501****CLEAN, 3, 279****CLEANSE, 3, 279****CLEAR, 3, 279; 13, 1030**

Clear days, 3, 282; 26, 7

Clear deed, 3, 280

Clearly convinced, 3, 279

Clearly established, 3, 279

Clear of all incumbrances, 3, 280

Clear of assessments, 3, 280

Clear of charge, 3, 280

Clear of expense, 3, 280

"Clear out" a highway, 3, 281

Clear proof, 3, 279

Clear title, 3, 280

Clear yearly rent, 3, 280

In annuities, 3, 281

In constitution, 3, 281

In contract, 3, 281

In statute, 3, 281

"In the clear," 3, 281

In wills, 3, 281

To clear land, 3, 281

CLEARANCE, 3, 282**CLEARING HOUSE, 3, 282**

Clearing house due-bill, 3, 285

Effect of a settlement through clearing house, 3, 283

Effect of clearing house regulations and usages, 3, 283

Liability of a bank acting as a clearing house, 3, 283

Mistakes, 3, 284, 285

Mode of operation, 3, 282

Presentment through clearinghouse, 3, 285

Stock Exchange, 23, 775

Examples, 23, 775

In general, 23, 775

Nature and character, 23, 775

CLERGYMAN, 20, 776

See RELIGIOUS SOCIETIES.

Privileged communications, see PRIVILEGED COMMUNICATIONS.

CLERICAL, 3, 286

Clerical or other defects, 5, 515

CLERICAL ERRORS, 3, 286

Ambiguity arising from, 1, 543

Amendments, 1, 550

Bail, undertakings for, 2, 21

CLERKS, 1, 348; 3, 286*See* FILE; *see generally* AGENCY; MASTER AND SERVANT.*For embezzlement by, see* EMBEZZLEMENT.

As receiver, 20, 75

Attorney's Clerk

Privileged communications, 19, 132

Clerks of Courts, 19, 562c

Adjournments, 19, 562f

Administering oaths, 19, 562c

Appointment, 19, 562c

Assessment of damages, 19, 562e

By what authority clerk acts, 19, 562c

Clerk acting as attorney, 19, 562j

Conversion of money in his possession, 19, 562h

Custodian of records, 19, 562e

Default in performance where there is no mandatory duty, 19, 562j

Diligence in the preparations of a copy of the records, 19, 562h

Distinguished from county clerk, 19, 548

Duty of court, 19, 562j

Election, 19, 562c

Exercising judicial powers, 19, 562d

Furnishing copy of records, 19, 562h

In general, 19, 562c

Inspection of records, 19, 562g

Issue of process, 19, 562h

Issuing warrants of arrest; 19, 562e

Judicial discretion, 19, 562f

Liability for negligence, 19, 562i

Liability for omissions, 19, 562i

Liability in damages for breach of duty, 19, 562g

Liability in damages for failure to issue process, 19, 562h

Mandamus to compel furnishing copy of records, 19, 562h

Mandamus to compel issuance of process, 19, 562h

Mandamus to enforce performance of duties, 19, 562g

Ministerial duties, 19, 562i

Minutes of court, 19, 562f

Misplacing papers, 19, 562h

Mistake of judgment, 19, 562i

Money or property coming into the hands of the court, 19, 562e

Powers and duties, 19, 562c-562j

Request of party interested, 19, 562j

Statutory duties, 19, 562f

Taxing costs, 19, 562e

Whether he may be referee, 20, 681

County Clerks

Collection, 19, 548

Distinguished from clerk of court, 19, 547, 548

Duties, 19, 548

In general, 19, 547

Powers, 19, 548

Definition, 1, 348

Deputy Clerk, 5, 639

Incompatible offices, 19, 562y

Papers issued in clerk's own name, 5, 624

Garnishment, 8, 1144

Government clerk, 8, 1399

Grand jury, 9, 17

Incompatible offices, 19, 562x

Mandamus, 14, 132

Approval of bond, 14, 133

Clerk ousted from office, 14, 133

Issuing certificates of election, 14, 133

Recording an instrument, 14, 132

Statute duty, 14, 132

To compel issue of process, 14, 132

To furnish copies of record, 14, 132

Transcript of record, 14, 133

What the writ lies to, 14, 132

Whether other remedies exist, 14, 132

Minutes, 15, 618

Mistake, 15, 675

Mittimus, 15, 692

Public administration, 19, 203

Suretyship, 24, 892

CLIENT, *see* ATTORNEY AND CLIENT.**CLOSE-HAULED**, 16, 294**CLOTHES**, 3, 286

Larceny of wife's, 3, 286

Taking clothes from a dead body, 3, 286

CLOUD ON TITLES, *see* BILL TO REMOVE CLOUDS.

Enjoining sale, what give rise to, 10, 808

Injunctions

Judgment, 10, 859, 895

What is a cloud upon title, 2, 298

CLUBS, *see* SOCIETIES AND CLUBS.**CO.**, 1, 15; 3, 287**COACH**, 2, 735; 737; 3, 287; 23, 17**CO-ACTION**

In patent law, 11, 796

CO-ADJUTORS, *see* EXECUTORS AND ADMINISTRATORS.**COAL**, 3, 287; 15, 501*See* COLLIERY; MINES AND MINING CLAIMS.

Coal mines, 3, 288

Coal privileges, 3, 287

Coals worked out, 3, 288

Raised, 15, 506

Refined coal or earth oils, 3, 287

Screened coal, 15, 595

Seams of coal, 3, 313

Trover, 26, 777

COAST, 3, 288

Atlantic, 3, 288

Coasting trade, 3, 288

Plying coastwise, 3, 288

COASTING, 9, 395

Streets and sidewalks, 24, 98

COCK FIGHTS, *see* GAMING.**C. O. D.**, 1, 17; 3, 289; 7, 570

As a receipt, 3, 289

Carriers undertaking, 2, 899

Connecting lines, 3, 289

Definition, 3, 289; 7, 570

Evidence to explain, 3, 289; 7, 576

C. O. D.—Cont'd**Intoxicating Liquors**

- Where sale takes place, 21, 511
- Judicial notice, 3, 290; 7, 571; 12, 167
- Previous dealings, 3, 289
- Questions of law and fact, 19, 652
- Refusal of goods by consignee, 3, 289
- Replevin by Express Companies**
 - For goods sent C. O. D., 7, 575
- Transportation charges, 3, 290
- Vendor and vendee—title, 3, 290
- When consignee refuses to take goods, 7, 571

CODE, 3, 290

See PLEADING; STATUTES.

Pleading

- As System, 18, 491**
 - Amendments, 18, 493
 - Criminal action, 18, 491
 - Defense based upon equitable grounds, 18, 492
 - Distinction between law and equity 18, 492
 - Forms of action, 18, 491
 - Singleness of the issue, 18, 492
 - Substance not form, 18, 492
 - The demurrer, 18, 493

Statutes

- Constitutional provisions requiring that subject shall be expressed in the title, 23, 241

CODICILS, 3, 291

See WILLS.

- Annexation of codicil to will, 3, 293
- Appointment of executor by, 7, 177
- Codicil and will recorded as one instrument, 3, 301

Construction of Will and Codicil, 3, 292; 29, 344

- Additional legacy given by codicil, 3, 296
- Codicil inconsistent and repugnant to clause in will, 3, 295
- Codicil to be reconciled to will as far as possible, 3, 296
- Construed together as one instrument, 3, 292
- Disposition of will not to be disturbed any more than it is absolutely necessary, 3, 294
- Erroneous recital that gift has been made in a will in a particular form, 3, 295
- Express intention to alter will in one particular, negatives an intention to alter it in any other respect, 3, 297
- Intention to revoke must clearly appear, 3, 296, 297
- Whole will takes effect so far as it is consistent with codicil, 3, 294

Definition, 3, 291

- Destruction, 29, 269
- Later codicils affect republication or earlier ones, 3, 303
- Origin, 3, 291

Presumptive Revocation of Codicils by Destruction of Will, 3, 299**Intention of testator, 3, 299**

Where codicil is substantially independent of will, 3, 300

Where it appears that testator intended only to revoke the will, 3, 300

Proof of execution of codicil obviating proof of execution of will, 3, 304

Republication and Confirmation of Will by Codicil, 3, 301

Charge of undue influence in execution of will, 3, 304

Codicil attached or referring to a particular will, 3, 301

Codicil attached to paper never executed as a will, 3, 303

Codicil must be executed with due solemnity, 3, 303

Codicil must distinctly recognize existence of will, 3, 302

Earlier codicil republished in later one, 3, 303

Execution of codicil *per se* as a republication of will, 3, 301

Identification, 3, 303

Where there is more than one will, 3, 303

Necessity that codicil be indorsed upon or attached to will, 3, 302

Of a will which is invalid to pass real estate, 3, 304

Presumption that codicil is part of testator's last will, 3, 303

Revival of revoked will by codicil, 3, 303

Will and codicil to be regarded as one instrument, speaking from date of codicil, 3, 301

Revival of revoked will by codicil, 3, 303

Revocation of Will, 3, 296

See WILLS.

By destruction of codicil, 3, 300

By destruction of will, 29, 293

Codicil attached to a particular will establishing or revoking intervening wills, 3, 301

Effect on intermediate will while codicil is ineffectually attempting to revoke a prior will, 3, 299

Gift of residue in codicil revoking gift in will, 3, 299

How revocation may be effected, 3, 297

Intention to revoke must clearly appear, 3, 296

Making different dispositions of the estate, 3, 298

Partial, 3, 299

Power of sale in will, 3, 299

Presumptive revocation of codicils by destruction of will, 3, 299

Where same expressions occur in both will and codicil, and testator cancels them in one only, 29, 292

Testamentary capacity, 25, 974

Unattested codicil, 3, 292

Where codicil of testator provides that if he dies within a certain period one will shall go into effect; if otherwise, the other, 3, 293

- Whether will includes codicils, 29, 125
 Will speaking from date of codicil, 3, 304
- CODIFICATION**, 3, 290
- COERCION**, see DURESS.
- COFFEE**, 3, 305
- COFFEE-HOUSE**, 3, 305
 Distinguished from inn, 3, 305
- COFFER**, 3, 305
- COGNATE**, 3, 306
- COGNIZANCE**, 3, 305
Judicial cognizance, see JUDICIAL NOTICE.
 In quare clausum fregit, 3, 307
 In replevin, 3, 306
 Making cognizance rather than avowry, 3, 307
 Powers of cognizance, 3, 306
- COGNIZANCE OF PLEAS**, 3, 306
 Cognizance and control, 3, 306
- COGNOVIT**, 3, 307
 Cognovit actionem, 3, 307
- COHABIT—COHABITATION**, 3, 308
See ADULTERY; LEWD AND LASCIVIOUS CONDUCT AND COHABITATION.
 As proof of bigamy, 2, 197
 Definition, 1, 211
 Necessity of proof of, in bigamy, 2, 198
 Necessity that parties live together, 3, 308
 Sexual intercourse alone as constituting, 3, 308
- COIN**, 3, 309; 4, 334
 Coined money, 3, 309
 Coins, gold, silver, and copper, 3, 310
 Instrument adapted for coining, 3, 310
 To pay in current coin, 3, 310
- COINAGE**, 3, 310
- COLLAR**, 3, 310
- COLLATERAL**, 3, 310
Collateral impeachment, see JUDGMENT.
 Collateral ancestors, 3, 310
 Collateral assurance, 3, 310
Collateral Attack
 Election of justice of the peace, 12, 396
 Collateral consanguinity, 3, 310
 Collateral descent, 3, 310
 Collateral estoppel, 3, 310
 Collateral facts, 3, 310
Collateral Inheritance Tax, 3, 310
See SUCCESSION TAX.
 Definition, 3, 310
 Collateral issue, 3, 310
 Collateral kindred, 3, 310
 Collateral limitation, 3, 310
 Collateral promise, 3, 311
Collateral Security, 3, 311
See PLEDGE AND COLLATERAL SECURITY.
 Collateral warranty, 3, 311
- COLLATIO BONORUM**, 3, 311
- COLLATION**, 3, 311
 Collatio signorum, 3, 312
- COLLECT**, 3, 312
 Collected, 3, 312
 Collectible, 3, 312
 Collection, 3, 312
- Collector, 3, 313
 For collection, 3, 312
- COLLECTION**, 3, 312
By a bank, see BANKS AND BANKING.
Authority
 Of agent to collect, 1, 1036
 To sell and convey as authority to collect, 1, 1036
 Check sent to drawee for, 5, 528⁸⁴
 Demand by holder for, 5, 528⁷⁶
 Express companies, 7, 571
 Mercantile agencies, 15, 301
 National banks, 16, 207
 Receipts for collection only, 16, 207
 Sheriff, 22, 560
 Sheriff as collecting agent, 22, 560
- COLLECTION AGENCIES**, 8, 82-84
See BANKS AND BANKING.
 "For collection," 8, 82
 Imprisonment for debt, 10, 228
- COLLECTOR OF REVENUE**, see REVENUE LAWS.
- COLLEGES**, see SCHOOLS; EDUCATION; UNIVERSITIES AND COLLEGES.
- COLLIERY**, 3, 313
See MINES AND MINING.
 Definition, 3, 313
 Ejectment for coal mine, 3, 314
 Working a, 3, 314
- COLLISION**, 16, 276
 Gavin
 Definition, 4, 570
 In bill of lading, 2, 235
- COLLOQUIUM**, see LIBEL AND SLANDER.
- COLOR**, 3, 314
 Pleading, 18, 556
- COLORED PERSONS**, see MISCEGENATION.
 Constitutional law, 3, 249, 250
 Damages for exclusion of persons on account of color, 5, 43
 Enlistment, 15, 402
 Inns and innkeepers, 11, 34
 Mulatto, 15, 946
 "Negro," 16, 484
 Provisions as to race, color, or previous condition of servitude, 3, 251
- Railroads**
 Discrimination, 19, 823
 Providing separate passenger coaches, 19, 889
- Removal of Causes**, 20, 1023
 Constitutionality of the statute, 20, 1024
 Existence of law alone, 20, 1024
 Modification of the statute, 20, 1023
 Right denied by constitution or law of the state, 20, 1023
 Right denied by judiciary of the state, 20, 1023
 Right denied by private person, 20, 1023
 Scope of the term, 20, 1023
 State acts, 20, 1023
- Schools**, 21, 766
 Appropriation for separate schools, 21, 767

COLORED PERSONS—Cont'd**Schools—Cont'd**

- Constitutionality of separate schools, 21, 766
- Constitutional provisions forbidding exclusion of colored pupils, 21, 767
- Mandamus to compel admission, 21, 767
- Right to admission where separate schools are not provided, 21, 767
- Separate schools, 21, 766

Theaters

- Exclusion from**, 25, 1038
 - Discrimination against negroes as a race, 25, 1038
 - In the absence of statute, 25, 1038
 - Police power, 25, 1038
 - Right of state to regulate, 25, 1038
 - Right to exclude, 25, 1038
 - United States constitution, 25, 1039
 - Whether manager must assign reasons for excluding persons, 25, 1039
- Right to assign particular seats, 25, 1039

Witnesses, 29, 622**COLOR OF TITLE**, 1, 253; 3, 314; 26, 40

- American origin, 26, 40
- An absolute nullity, 1, 288
- Ancient debt, 1, 277
- As a substitute for fences, 1, 257
- As evidence of possession, 26, 40
- As giving constructive possession, 26, 40
- As showing extent of land claimed, 26, 41
- Boundaries and fences, 1, 282, 283
- Boundaries described in plaintiff's deed, 1, 290
- Claim under contract to convey, 26, 46
- Claim under parol gift, 26, 46
- Conditional promise, 26, 46
- Conflicting possessions, 1, 288
- Conflicting titles, 1, 289
- Constructive possession of whole tract where part only is occupied, 26, 38
- Constructive possession under constructive deed, 1, 291
- Deed not recorded, 1, 283
- Definition of, 1, 276; 26, 40
- Effect, 26, 41
- Entry under, 1, 262
- Executory agreement, 26, 46
- Extent of possession, 1, 290
- Fence fixed by adjacent proprietors, 1, 280
- Fraud, 1, 292
- Generally, 26, 37
- Gift, 1, 280

Good Faith, 1, 277; 26, 41

- Acquired by descent, 26, 45
- Acquired under parol agreement, 26, 45
- Actual possession under void deed, 26, 44
- Animus as an element of adverse possession, 26, 43
- Bad faith accompanied by actual possession, 26, 43, 44
- Concealed fraud, 26, 45
- Fraud generally, 26, 45
- Honest belief of disseisor, 26, 43

How acquired, 26, 45

- Necessity of actual possession, 26, 43, 44
- Necessity of adverse possession, 26, 43
- Purpose of disseisor, 26, 41
- Question for the jury, 1, 278
- Time, 26, 44
- Homestead, assignment of, 1, 278
- Husband's deed to wife, of property, 1, 278
- Improvements made by party claiming, 1, 294
- Instrument purporting to pass title, 1, 276
- Invalid conveyance of title, 1, 285
- Invalid sheriff's deed, 1, 286
- Junior and senior grants, 1, 288, 289
- Lost deed, 1, 283

Modes of Acquisition, 26, 48*Descent*, see **SUCCESSION**.*Purchase*, see **REAL PROPERTY**.**Curtesy**

- Whether it falls under purchase or descent, 26, 48

Dower

- Whether it falls under purchase or descent, 26, 48
- General classification, 26, 48
- Naked possession alone, 1, 292
- Necessity of written instrument, 26, 37, 40, 41, 45
- Necessity that claim of title should be good, 1, 286, 287
- Notoriety, 26, 41, 45
- Occupancy both by claim and owner, 1, 286
- Partial conflict of possession, 1, 289
- Payment of taxes, 1, 284; 26, 45, 46
- Possession necessary under, 1, 293
- Possession of part of tract, 26, 41
- Sale of life estate, 1, 278
- Showing intent of entry, 26, 41
- Tax Deed**, 1, 286; 25, 704; 26, 46
 - Bona fide, 25, 705
 - Deed void on its face, 25, 704
 - In general, 25, 704
 - Question of law or fact, 25, 705
 - Quitclaim deed, 25, 705
 - Tax certificates, 25, 705
- Trespass, 26, 586
- Two persons in constructive possession, 26, 39
- Unaccompanied by *pedis possessio*, 26, 41
- Under a mistake, 1, 281
- Under parol agreement, 1, 279
- Under Statutes**, 26, 46
 - Of California, 26, 48
 - Of Colorado, 26, 48
 - Of Georgia, 26, 48
 - Of Illinois, 26, 45, 46
 - Of Louisiana, 26, 48
 - Of New Jersey, 26, 48
 - Of New Mexico, 26, 48
 - Of North Carolina, 26, 48
 - Of Pennsylvania, 26, 48
 - Of Tennessee, 26, 48
 - Of Wisconsin, 26, 48
- Void and defective titles generally, 26, 46

- Void bond of title, 1, 277
 Void decree of court, 1, 277
 Void judgment of court, 1, 278
 Void patent, 1, 286
 Void patent of certificate, 1, 277
 What constitutes, 1, 277, 285, 286
What Is Not
 What does not constitute, 1, 278
 Without color of title, 1, 292
COLLUSION, see **DIVORCE**; **PARTIES TO ACTIONS**.
COMBAT, see **PRIZE FIGHT**.
 Mutual combat, 16, 15
COMBINATIONS, see **TRUST AND TRADE COMBINATIONS**.
 In patent law, see **INVENTION**.
COME, 3, 314
 "Come to person . . . from the part of his father," 3, 314
 Come to reside, 3, 314
 Come to settle, 3, 314
 Coming to market, 3, 314
COMFORT, 3, 314
COMITY
 For comity of nations, see **CONFLICT OF LAWS**.
COMMENCEMENT
 Commencement of a building, 3, 314
COMMERCE, 25, 28; 26, 227
 See **INTERSTATE COMMERCE**.
COMMERCIAL EXCHANGE, see **TRADE, BOARD OF**.
COMMERCIAL TRAVELERS, 3, 315
 See **AGENCY**.
 See generally, **HAWKERS AND PEDDLERS**.
 As peddlers or merchants, 3, 317
 Constitutionality of tax on drummers, 1, 347; 6, 34; 11, 548; 13, 522; 25, 481
 Distinguished from hawkers and peddlers, 1, 347; 9, 308
 Distinguished from merchant, 1, 347
Drummers
 Definition, 3, 315; 6, 34
 Express companies, 13, 523
 Infringement of patent by selling patented article, 10, 750
 Innkeeper's liens on samples, 11, 44
License, 13, 522
 Constitutionality, 1, 347; 6, 34; 11, 548; 13, 522; 25, 481
 Interstate commerce, 13, 522
Powers and Duties of, 3, 315
 Authority to receive payment for goods, 1, 355; 3, 315
 Power to receive payment for goods where he has possession of them, 3, 316
Sale of Intoxicating Liquors by, 11, 745
 Prohibition state, 11, 745
 Whether merchants, 15, 306
COMMERCIAL TREATIES, see **TREATIES**.
COMMISSION, see **OPEN COMMISSION**; **PROFITS À PRENDRE**.
 Definition, 1, 396
 In commission, 10, 323, 325
 Records, 20, 505
COMMISSIONERS, see **RAILROAD COMMISSIONERS**.
 For poor, see **POOR AND POOR LAWS**.
 In insolvency, see **INSOLVENCY**.
 Incompatible offices, 19, 562*
COMMISSION MERCHANTS OR FACTORS, 3, 317
 See **AGENCY**.
 As to agency in general, see **SET-OFF**.
 Acceptance of account of factor as a discharge, 3, 333
 Acting for both parties, 3, 319, 330
 Acts to protect third person advancing money on goods consigned to factor, 3, 323
 As agents for both parties, 3, 319, 330
 As general agents, 3, 345
 Attachment of principal's goods for factor's debts, 3, 334, 345
 Authority to sell on credit, 1, 371
 Authority to take negotiable note in payment, 1, 371
 Bankrupt acts, 3, 339
 Bought and sold notes, 3, 319
 Clerk, 3, 323
 Commission merchants discharge in insolvency, 11, 227
 Commissions, 3, 339
 Forfeiture, 3, 340
 Common carriers as factors, 3, 318
 Conditional sales, 21, 632
 Consignments Distinguished from Sales, 21, 520
 Contract one of bailment, 21, 520
 Del credere commission, 21, 520
 Examples, 21, 520, 521
 Factor bound to pay the consignor a fixed price, 21, 521
 Intention of the parties, 21, 521
 Sale or return, 21, 519
 When contract one of sale, 21, 521
 Definition of factor, 3, 317; 13, 586
 Del Credere Commissions, 3, 340; 21, 520
 Factor's liability where he collects and remits negotiable paper, 3, 341
 Necessity of being in writing, 3, 340
 Principal debtor or surety, 3, 340
 Suit, 1, 410
 Title to unpaid purchase-money in principal, 3, 341
 When factor becomes liable under, 3, 341
 Delegation of authority, 3, 331, 368
 Distinguished from brokers, 2, 572; 3, 318
 Duties, 3, 325
 Becoming himself purchaser of principal's goods, 3, 330
 Place of sale, 3, 326
 Price, 3, 327
 Sales on margins, 3, 326
 Time of sale, 3, 327
 To account, 3, 332
 To act in good faith, 3, 330
 To Obey Instructions, 3, 325
 Disobedience through mistake or to promote the interests of principal, 3, 325

COMMISSION MERCHANTS OR FACTORS—*Cont'd*

Duties—*Cont'd*

To Obey Instructions—*Cont'd*

Measure of damages for disobedience, 3, 329

Usages and customs as a defense for disobedience, 3, 325

When disobedience will be justified, 3, 328

Where instructed to insure, 3, 325

Where principal's orders are not clear, 3, 329

To use diligence in collecting notes, 3, 320

To use reasonable skill and diligence, 3, 330

Embezzlement, 6, 464, 474

Factor disputing principal's title, 3, 330

Factors' Acts, 3, 323; 21, 572

As affecting liability of factor to his principal, 3, 323

Bailees, 3, 323

How far they extend protection to third persons, 3, 323

To whom they apply, 3, 323

Warehousemen, 3, 323

Factor's clerks as factors, 3, 323

Factors' Rights, 3, 333

To be indemnified for all losses, 3, 341

Fraudulent Sales

Factor as bona fide holder, 8, 840

Garnishment, 8, 1186

Instruction, examples of, 11, 273

Insurable interests, 11, 317

Interest, 3, 332; 5, 528²⁸; 11, 396; 27, 1010

Interstate commerce, 11, 549

Liability of commission merchant for foreign plant, 1, 404

Liability of factor where he discounts notes taken in payment, 3, 321

Liens, 3, 333; 13, 586

Advances, 3, 334; 13, 588

Agreements inconsistent with lien, 13, 587

Assignment of bill of lading, 3, 336

At common law, 13, 586

Commissions, 13, 588

Conditional delivery, 13, 589

Constructive possession, 3, 336

Death of consignor, 13, 588

Delivery to carrier as delivery to factor, 3, 336

Duties paid by factor, 13, 588

Enforcement of Factor's Lien, 13, 589

Enforcement by factor, 13, 589

Proceeds of goods, 13, 589

Replevin, 13, 589

Sale after reasonable notice, 13, 589

Sale of goods, 13, 589

Suit in equity, 3, 338

Expenses, 13, 588

Extending to proceeds of sale, 3, 337

Factor accepting draft on faith of goods consigned, 3, 334

How Lost, 3, 337

Attachment or levy, 3, 337

By act of factor, 3, 337

Principal tendering amount due, 3, 337

Sale by principal, 3, 337

Insolvency of factor, 13, 587

Insurance agents, 13, 587

Lien upon insurance money, 13, 588

Losses, 13, 588

Nature of debt secured, 13, 588

Necessity that goods be in factor's possession, 3, 335

Of purchasing factor, 3, 335

Personal privilege, 3, 339

Proceeds of goods, 13, 589

Property committed to factors for specific purpose, 13, 587

Sale, 13, 589

Set-off of debt due to buyer from principal, 3, 342

Special or general ownership, 3, 334

Statutory rights of factors, 13, 589

Stoppage in transitu, 13, 589

Suit in equity to enforce, 3, 338

Surrender of goods, 13, 589

To what sums it extends, 3, 334

To whom the lien extends, 13, 586

Waiver, 3, 337; 13, 588

By voluntary surrender, 3, 337

By wrongful selling or pledging of the property, 3, 338

Where factor still retains control over the goods, 3, 337

When lien attaches, 13, 588

Where bill of exchange drawn against the goods is discounted by bank, 3, 336

Where general balance of account is against factor, 3, 335

Where property is seized under attachment before it reaches consignee, 3, 336

Where there is a mere agreement to ship goods, 3, 336

Whether transferable, 3, 339

Who is a factor, 13, 586

Necessity of demand before suit by principal, 3, 332

Personal liability of, 3, 343

Powers of Commercial Agents, 3, 319

Barter, 3, 321

Buying in their own name, 3, 320

Extent of power defined by usage, 3, 319

How conferred, 3, 319

Implied power to do whatever is usual or necessary, 3, 319

Pledge, 3, 321

Pledge of goods to extent of factor's lien, 3, 322

Power of factor to insure the goods himself, 3, 324

Power to insure in his own name, 3, 324

Power to sell for lower price than instructions authorized, 3, 327

Principal's knowledge of usage, 3, 320

Revocation of authority, 3, 324

Selling in their own name, 3, 320

Selling on credit, 3, 320

Taking notes in payment, 3, 320
 To deliver goods of principal in payment of his own debts, 3, 322
 To sell goods of different principals in one sale, 3, 345
 To use his own discretion, 3, 329
 To warrant, 3, 324
 When sale must be for cash, 3, 321
 Where factor has lien upon goods to full extent of their value, 3, 322
 Where they have made advances on goods, 3, 327, 328
 Principal bound by contract of, 3, 345
 Principal's personal liability to, 3, 338
 Principal's right to interest, 3, 332
 Protecting his own interests after demand, 3, 327
 Ratification, 3, 329
Relation of Factor to Third Parties, 3, 342
 Factors of foreign principals, 3, 343
Rights of Principals, 3, 344
 Factor of several principals, 3, 345
 Principal's goods in factor's hands appearing to belong to factor, 3, 344
 To follow goods as long as they can be distinguished, 3, 344
 Where factor becomes a bankrupt, 3, 345
Sales
Rights of Bona Fide Purchasers, 21, 572
 Exchange instead of sale, 21, 572
 Purchase without knowledge of factor's relation to the goods, 21, 572
 Sale in payment of agent's own debts, 21, 572
Statutes Protecting Purchasers, 3, 223; 21, 572
 Brokers, 21, 573
 In Canada, 21, 572
 Indicia of title, 21, 572
 In England, 21, 572
 In United States, 21, 572
 Person must be a factor or agent, 21, 572
 Possession of the goods, 21, 572
 Purchaser buying from factor without knowledge of his real character, 21, 572
 Warehousemen, 21, 574
 Wharfingers, 21, 573
 Where agent exceeds his authority, 21, 572
 Where purchaser acquires title, 21, 572
 Selling goods to cover expenses and advances, 3, 327
 Set-off in suit against buyer for principal's goods, 3, 342
Stoppage in Transitu
 Exercise of the right by, 23, 904, 905
 Subagent, 3, 331, 332
Suit Against Buyer
 Who may maintain, 3, 342
 Suit by factor in his own name, 3, 342
 Suit by undisclosed principal, 3, 342
Trover or replevin by factor where goods are wrongfully taken from him, 3, 342

Undisclosed Principal
 Liability of, 3, 343
 Suit by, 3, 342
Usages and Customs
 As a defense to disobedience to instructions, 3, 325
Usury, 27, 1010
 Advances upon credit of consignments, 27, 1010
 Compensation for selling, 27, 1010
 Examples, 27, 1010-1012
 Failure to make consignments, 27, 1011
 Usury on advances, 27, 1010, 1011
 Warehousemen as factors within the factors' acts, 3, 323
 When brokers or factors, 2, 573
 When entitled to interest for advances, 5, 528²⁶; 11, 396
 Whether a partnership is constituted, 17, 858
 Whether they act in a fiduciary capacity, 7, 957
COMMISSIONS TO TAKE TESTIMONY
 See DEPOSITIONS.
 Stay of proceedings, 23, 529
COMMITMENT, see MITTIMUS; PRELIMINARY EXAMINATION.
 Habeas corpus, 9, 186
Penalty for
 Imprisonment for non-payment of fine, 3, 796
COMMITTEE
 Provisional committee, 19, 299
COMMITTEE OF LUNATICS, see INSANITY.
As to purchase by committee with funds of lunatic, see IMPLIED TRUSTS.
COMMODATUM, see BAILMENT.
COMMON, 3, 346
See PROFIT A PRENDRE.
Tenancy in, see JOINT TENANTS AND TENANTS IN COMMON.
 Common assurances, 3, 347
 Common control, 3, 346
 Common drunkard, 9, 258
 Common gaming table, 3, 346
 Common labor, 3, 347
 Common of pasturage, 9, 358
 Common pleas, 3, 347
 Common proceeding, 3, 347
 Common sewer, 3, 347
 Common thief, 3, 347
 Common tools, 3, 347
 In annexation act, 26, 112
 Uses, 19, 1062
COMMON ACCOUNTS, see ASSUMPSIT.
COMMON BARRATOR, see BARRATRY.
COMMON CARRIERS, 10, 601
See CARRIERS OF GOODS; CARRIERS OF PASSENGERS; CARRIERS OF LIVE STOCK; EXPRESS COMPANIES; SHIPS AND SHIPPING; STREET RAILWAYS; STRIKES.
For connecting carriers, see CONNECTING CARRIERS.
 Boom companies as, 2, 475

COMMON CARRIERS—Cont'd

Enforcement of Contracts Which Would

Prevent Discharge of Railroad's Duty

Carrier's duty, 8, 929

Forwarding merchants, 8, 574

Forwarding merchants distinguished from, 8, 577

Inevitable accidents, 10, 601

Lateral or branch railroads, 12, 947

Liability compared with that of inns and innkeepers, 11, 52

Negligence, 16, 427

Ordinary care, 16, 427

Telegraphs and Telephones, 25, 747

Whether insurer, 25, 748

Whether they can contract against liability, 25, 749

Trade-marks, 26, 241

Trespass on the case, 26, 708

Whether telegraph companies are common carriers, 8, 609

Whether tug is a common carrier, 26, 88

Who Are

Ferry-men, 2, 782

COMMON COUNCIL, see MUNICIPAL CORPORATIONS.**COMMON DRUNKARD, see DRUNKENNESS; HABITUAL DRUNKARDS.****COMMON FORM, see PROBATE.****COMMON GAMBLERS, see GAMING.****COMMON LAW, 3, 347**

Definition, 3, 347

English common law, 3, 348

Federal courts, 3, 348

How far adopted in America, 3, 348

In America, 3, 347

Permanency, 3, 348

Presumed existence, 3, 348

Scope, 3, 348

COMMON OF FISH, see FISH AND FISHERIES.**COMMON OF PISCATORY, see FISH AND FISHERIES.****COMMONS, 3, 346***See PROFIT A PRENDRE.*

Approval of, 1, 640

COMMON SCHOOLS, 3, 346*See SCHOOLS.***COMMON SCOLD**

Indictment, 16, 966

Nuisances, 16, 957

COMMONWEALTH'S ATTORNEYS, see DISTRICT ATTORNEY.**COMMUNICATE, 3, 349; 4, 104**

Converse equivalent to, 4, 104

COMMUNICATION, 3, 349

Witnesses, 29, 629

COMMUNITY, 3, 349**COMMUNITY PROPERTY, 3, 350***See generally, MARRIAGE SETTLEMENTS; SEPARATE PROPERTY OF MARRIED WOMEN.***Advancements**

Resulting trusts, 10, 20

Agreement of parties, 3, 354

Characteristics, 3, 350

Community compared with a partnership, 3, 354

Conventional community, 3, 350

Crop growing at time of dissolution of marriage, 3, 351

Definition, 3, 350

Earnings of husband and wife, 3, 353

Equal interest of husband and wife in the community, 3, 357

Homestead selected from, 9, 430

Improvements upon separate estate, 3, 352

Increase of animals, 3, 350

Increase of profits of separate estate, 3, 352

Increase of separate property, 3, 351

Intention of the parties, 3, 356

In what states the doctrine is recognized, 3, 354

Legal community, 3, 350

Life insurance policy taken out by husband in favor of wife, 3, 353

Onerous title, 17, 191

Origin and history, 3, 354

Partition, 17, 693

Presumptions, 3, 354

Admissibility of parol evidence in rebuttal, 3, 355

Against whom they may be rebutted, 3, 355

Burden of proof, 3, 357

Conveyance by husband to wife, 3, 356

Declarations of husband, 3, 356

Property acquired during the existence of the community, 3, 354

Property in possession of either spouse during coverture, 3, 355

Rebuttal, 3, 355

Recitals in deeds, 3, 356

Sufficiency of proof to overcome, 3, 357

Where the property is purchased in name of wife with property of husband, 3, 356

Property purchased during marriage, 3, 350

Property standing in name of both, 3, 350

Public lands, 3, 353

Rights of Creditors, 3, 364

Debts of husband, 3, 364

Judgment against both husband and wife, 3, 365

Liability for debt contracted after dissolution of marriage, 3, 365

Liability for wife's ante-nuptial debts, 3, 364

Priority over surviving heirs, 3, 365

Rights of Heirs

Application of court to restrain survivor from wasting property, 3, 363

To one-half of the community property, 3, 363

Rights, Powers and Liabilities of the Husband, 3, 357

Deed of husband passing community realty, 3, 358

Disposal of property by husband, 3, 358

Divorce, 3, 359

Husband's gift of property, 3, 358

- Liability for debts, 3, 358
- Management and control of the property, 3, 358
- Widow bound by his estoppel, 3, 359
- Will of husband, 3, 359
- Rights, Powers and Liabilities of the Survivor, 3, 361**
 - Assignment, 3, 363
 - Community debts, 3, 361
 - Settlement of community estate, 3, 362
 - To at least one-half of community property, 3, 361
 - Will, 3, 363
- Rights, Powers and Liabilities of the Wife, 3, 360**
 - Award of alimony out of it, 3, 361
 - Divorce effecting division of property, 3, 361
 - During coverture, 3, 360
 - Upon assignment by husband, 3, 361
- Separate and community property distinguished, 3, 351
- Statutes taking effect only in absence of agreement between parties, 3, 354
- What property is separate and what community, 3, 350, 351
- Wife's right passive during coverture, 3, 358
- COMMUTATION, 3, 365**
 - Commutation of fares, 3, 365
 - Commutation of imprisonment, 3, 365
- COMMUTATION OF TAX, see TAXATION.**
- COMMUTATION TICKETS, see TICKETS AND FARES.**
- COMPACT, 3, 365**
- COMPACTS BETWEEN STATES, see STATES.**
- COMPANY, 3, 366**
 - Incorporated company, 3, 366
 - Joint stock company, 3, 366
 - Manufacturing company, 3, 366
 - Persons composing the company, 3, 366
 - Said company, 3, 366
 - Ship's company, 3, 366
 - The company, 3, 366
 - Trading or other public company, 3, 366
 - Transportation company, 3, 366
 - Turnpike company, 3, 366
- COMPARATIVE NEGLIGENCE, 3, 367**
 - See CROSSINGS.
- Carriers of Passengers**
 - Person endeavoring to escape from imminent peril, 2, 749
- Cases disapproving the theory of, 2, 749
- Definition, 3, 367
- Degrees of Negligence, 3, 368, 374**
 - Whether there are, 4, 21
- Diligence synonymous with care, 3, 368
- Doctrine denied by the courts in most states, 3, 376
- Doctrine in Georgia, 3, 375; 4, 96
- Doctrine in Illinois, 3, 375
- Doctrine in Kansas, 3, 375
- Doctrine in Kentucky, 3, 375; 4, 99
- Doctrine in Oregon, 3, 375
- Doctrine in Tennessee, 3, 375; 4, 97
- Evidence of custom prevailing where plaintiff was employed, 3, 373
- Failure to instruct as to the doctrine, 3, 374
- Fires caused by operation of railways, 8, 19
- Gross negligence, 3, 368
- How the doctrine arose, 3, 374
- Instructions to jury, 3, 369
- In the United States supreme court, 3, 376
- In what states it obtains, 2, 749; 3, 375
- Ordinary negligence, 3, 368
- Proximate Cause, 3, 372**
 - Where the slight negligence of plaintiff is proximate cause of injury, 3, 372
- Questions of law and fact, 3, 374
- Reckless and wanton distinguished from willful, 3, 372
- Review of questions of law and fact by appellate court in Illinois, 3, 374
- Slight negligence, 3, 368
- Special rules, 3, 373
- When Not Applicable to Children, 3, 373**
 - When child is incapable of exercising ordinary care, 3, 373
- When Plaintiff Can Recover, 3, 369**
 - Plaintiff's slight negligence proximate cause of his injury, 3, 372
 - When his negligence is not proximate cause of his injury, 3, 370
- Willful injury, 3, 372
- When Plaintiff Cannot Recover, 3, 370**
 - Failure to use ordinary care, 3, 371
 - Preponderance of negligence insufficient, 3, 372
 - Where defendant's negligence was slight, 3, 370
 - When supreme court will deny recovery as matter of law, 3, 374
 - Where it prevails, 2, 749; 3, 375
 - Willful injuries distinguished from gross, 3, 372
- COMPARISON OF HANDWRITING, 3, 376**
- COMPELLED, 3, 377**
- COMPENSATION, 3, 378**
 - See LIQUIDATED DAMAGES.
 - Distinction between compensation and profits, 3, 380
 - For delay, 3, 380
 - In civil law, 3, 380
 - In contract, 3, 379
 - Just, 3, 378
 - Of brokers, 3, 378
 - Of executors, 3, 379
 - Of guardians, 3, 379
 - Of public officers, 3, 379
 - Of receivers, 3, 379
 - Of servants, 3, 379
 - When synonymous with fee, 7, 820
- COMPETENCY, 3, 380**
 - See WITNESSES.
- COMPETENT, 3, 380**
 - Competent authorities, 3, 380
 - Competent clerk, 3, 380
 - Competent court, 3, 380

COMPETENT—*Cont'd*

- Competent evidence, 3, 380
- Competent jurisdiction, 3, 380
- Competent party, 3, 381
- Competent persons, 3, 381
- Competent to dispose by will, 3, 381
- Competent witness, 3, 380
- Oath or other competent proof, 3, 381

COMPLAIN, 3, 381**COMPLAINANT**, 3, 381**COMPLAINT**, 3, 381

See DECLARATION.

- Act complained of, 3, 381
- Complaint must be in writing, 3, 382
- Neglect to make, 3, 381
- When complaint includes indictment, 3, 382

COMPLETE, 3, 382

- Canals completed, 3, 385
- Complete cargo, 3, 383
- Complete inventory, 3, 383
- Completely issued and negotiated, 3, 382
- Complete purchaser, 3, 383
- Machinery to be furnished complete, 3, 383
- Street completed, 3, 384
- When house is completed, 3, 383
- When railroad completed, 3, 384

COMPOSITION WITH CREDITORS, 3, 385, 386

See ASSIGNMENT FOR BENEFIT OF CREDITORS; BANKRUPTCY.

See generally. INSOLVENCY.

- Agreement of creditors to join in deed, 3, 387
- Application of rule that agreement to accept a sum less than the full amount due of a liquidated debt is not valid, 3, 386
- Assurance by creditor that he will agree to any arrangement which other creditors might make, 3, 388
- Authority of partner, 3, 387
- Binding upon creditor, 3, 387

Composition with a Portion of Creditors, 3, 389

- Condition that agreement shall be inoperative unless signed by all creditors must be expressly declared, 3, 389

Validity of composition with a single creditor, 3, 389

Validity of composition with several creditors, 3, 389

Creditor bound by amount inserted in composition due him, 3, 392

Debtor Must Act in Good Faith, 3, 391; 11, 200

- False representations, 3, 391
- False representation that another creditor agreed to compromise, 3, 392
- False representations to one creditor that all creditors will agree if he will, 3, 392

Debtor's performance of his part of agreement, 3, 389

Definition, 3, 385

Discharge of sureties, 3, 395

Duty and Liability of Debtor, 3, 395

- Provisions of composition must be strictly complied with, 3, 395
- Revival of the original debt where provisions of composition are not complied with, 3, 395
- What will amount to a breach of the composition, 3, 396

Duty of creditor to protect debtor against prior assignee, 3, 394

Effect of Failure to Obtain Assent of All Creditors, 3, 390

Necessity of proof that all creditors have assented, 3, 391

How effected, 3, 387

Induced by fraud, 3, 391; 11, 200

Liability of sureties, 3, 390

Necessity that agreement be in writing, 3, 387

Necessity that composition be under seal, 3, 387

New promise, 3, 399

Parol evidence to show that composition was void unless signed by all creditors, 3, 390

Preferences, 3, 396–398, 870

Other creditors not bound by the agreement, 3, 870

Recovery of money and securities given and paid in pursuance of, 3, 870

Retention of Sureties, 3, 395

Surety's right to be indemnified by principal debtor, 3, 395

Secret Agreements with Creditor, 3, 396

Agreement void in toto, 3, 399

Money paid by debtor may be recovered back, 3, 399

Necessity that money received under composition be returned, 3, 398

Revival of the original demand where creditor is thus deceived, 3, 397

Securities for preference void, 3, 398

Validity of, 3, 396, 399

Where a stranger without the knowledge of debtor makes an agreement with creditor, 3, 398

Where the secret agreement is to procure the creditor further security, 3, 397

Waiver of forfeiture by creditor, 3, 396

What Debts Are Included, 3, 392

Where creditor signs composition leaving amount of his debt in blank, 3, 392

Where debtor gives his consent to withdrawal of a creditor, 3, 388

Where debtor has made assignment for benefit of creditors, 3, 387

COMPOUNDING OFFENSES, 3, 399; 4, 656

Advertising rewards, see REWARDS.

Suppression of evidence, see SUPPRESSION OF EVIDENCE.

Acknowledgment of satisfaction for injury, 3, 401

Agreement not to prosecute under the bastardy act, 3, 401; 4, 658

Agreement to secure pardon, 3, 404

Assault, 3, 402

Assumpsit

Actual commission of crime compounded, 4, 656

To recover money paid over, 1, 887

Compounding a Felony, 4, 657

Agreement to use influence, 4, 658

Compromising a bastardy suit, 3, 407; 4, 658

Definition, 3, 399

Indictable offenses, 4, 657

Permitting reference, 4, 658

Power of individuals to compromise offenses, 4, 658

Punishable by fine and imprisonment, 4, 657

Speaking to prosecutor, 4, 658

Who is regarded as an accessory at common law, 4, 657

Compounding a misdemeanor, 3, 400, 406; 4, 658

Compounding information on penal statutes, 3, 402

Compromising suits of criminal conspiracy, 4, 594

Contracts Made in Consideration of, 2, 366;

3, 402, 403, 879; 4, 657-659

Mortgage given to compound felony void, 4, 657

Note given to procure discharge of thief from arrest without agreement to prevent prosecution, 3, 405

Note after conviction on suggestion by the court, 4, 657

Note given to satisfy prosecution, 4, 657

Where money for which note was given is actually due, 3, 403

Where note is partly given to compound the offense, 3, 403

False pretenses, 7, 711

Forgery, 4, 656

Mere failure to prosecute, 4, 656

Merely receiving back one's goods, 4, 656

Misdemeanors of personal nature, 3, 401

Pleading

Plea that a bond was given in consideration of agreement to compound offense, 3, 404

Private misdemeanor, 2, 367

Record of conviction as prima facie proof against compounder, 4, 656

Taking back goods without showing favor to thief, 3, 399

Taking rewards for helping to recover stolen goods, 3, 406

What constitutes a crime, 4, 656

When offense may be compounded, 4, 659

When offense may not be compounded, 4, 659

Where compounder afterwards prosecutes, 4, 656

Where offense is in whole or in part of a public nature, 3, 401

Where party injured might recover damages in an action for the offense, 4, 659

Where person is under arrest, 4, 659

COMPOUND INTEREST, see INTEREST.

COMPROMISE, see ACCORD AND SATISFACTION; COMPOSITION WITH CREDITORS.

As valid consideration for contract, 3, 837

Reformation of Instruments, 15, 668

Family compromises, 15, 668

Mistake of fact, 15, 668

Mistake of law, 15, 668

When equity will interfere, 15, 668

Specific Performance, 22, 995

Adequacy of consideration, 22, 996

Capable of enforcement, 22, 995, 996

Examples, 22, 996

Favored in equity, 22, 995

Trusts and trustees, 27, 137

COMPTROLLER OF THE CURRENCY

National banks, 16, 157

COMPULSION, 3, 407

See CRIMINAL LAW; DURESS.

COMPUTATION OF TIME

Day and date of an instrument, 5, 82

Dies Non Juridicus

When day of performance falls upon

Sunday, 5, 89

Election cases, 6, 410

Exclusion of day of date, 5, 82

First and last days of a period, 1, 321

Five days inclusive, 5, 85

For three weeks successively, 5, 84

Fractions of a Day, 5, 89

Exceptions to general rule, 5, 90

Judgments entered upon same day, 5, 89

Where two persons claim same land from a common source, 5, 90

Whether included or excluded, 5, 89

From an act done, 5, 83

How Reckoned

Day, 5, 82

From the date, or day of date, 5, 82

Instruction to prevent a forfeiture, 5, 83

Omission of non-judicial days, 5, 88

Statute of Frauds, 8, 669

"Year" within which contract is to be performed, 8, 694

Twenty-eighth and twenty-ninth of February during leap year, 5, 91

Under statutes and rules of court, 5, 83

Until, 4, 295

Until first, 5, 84

COMPUTE, 3, 407

CONCEAL, 3, 407

See CONCEALMENT OF BIRTH.

"Concealed" not synonymous with "lying in wait," 3, 407

CONCEALED WEAPONS, 3, 408; 29, 36

Burden of proof as to concealment, 3, 410, 414

Carried about the person, 3, 410

"Concealed"

Meaning of term, 3, 408, 410, 417

Constitutionality of act providing for forfeiture of weapons, 3, 408

Constitutionality of Statutes Forbidding, 3, 408, 409, 726

Indefiniteness of description of weapon, 3, 409

CONCEALED WEAPONS—Cont'd**Indictment**

Necessity of expressing intent, 3, 415

Intent, 3, 414

Necessity of expressing, in indictment, 3, 415

Merger in assault, 15, 366

Municipal corporations, 15, 1191

Necessity of proof of concealment, 3, 411

Police power, 18, 758

Statutory Exemptions, 3, 411

Burden of proof, 3, 410, 414

Officers of the Law, 3, 411

Necessity that officer should be actually engaged in executing process, 3, 412

Person threatened with bodily harm, 3, 412

Person upon his own premises, 3, 414

Travelers, 3, 411

Statutory offense, 3, 408

Travelers

Who are, within the statutory exemptions, 3, 411

What is concealment, 3, 408, 410, 417

What Weapons Are Included, 3, 409

Brass knuckles, 3, 409

Imperfect weapon, 3, 409

Pistol, 3, 409

Unloaded pistol, 3, 409

"War arms," 3, 409

Where weapon is carried for any other object save to be used in fight, 3, 414

CONCEALMENT, see DECEIT; FRAUD; INSURANCE.*Rescission of Contract, see RESCISSION.***CONCEALMENT OF BIRTH, 3, 416**

Definition of birth, 2, 422

Evidence of, 3, 417, 418

Indictment, 3, 418, 419

Necessity of allegation that child was a bastard, 3, 417

Necessity that child be born alive, 3, 416

Purely statutory nature of offense, 3, 416

Secret disposition, 21, 994

Statutes forbidding, 3, 416

Strict interpretation of the statutes, 3, 416

What constitutes the offense, 3, 416, 417

What is a child within the statutes, 3, 417

CONCEPTION, 3, 420**CONCERN, 3, 419; 14, 616****CONCERNED**

Concerned in the loss, 3, 420

Covenant not to be concerned in a business, 3, 419

For whom it may concern, 3, 420; 8, 87

CONCERNING

"Of and concerning," 17, 35

CONCLUSION*Indictment, see INDICTMENT.***CONCLUSIVE**

Final and conclusive, 7, 965

Proof

Definition, 7, 46

CONCURRENT

Concurrent promises, 19, 283

CONCURRENT JURISDICTION, see JURISDICTION.*United States courts and state courts, see UNITED STATES COURTS.***CONDEMNATION, 3, 420***Condemnation of lands, see EMINENT DOMAIN.**Condemnation proceedings, see EMINENT DOMAIN.*

Condemnation and confiscation distinguished, 3, 421

Condemnation of money, 3, 421

CONDITION, 3, 422; 5, 457*See CONDITIONAL SALES; CONTRACT; DEEDS; LEASE.**For condition of bond, see BOND.**Wills, see WILLS.*

Conditional contract, 3, 423

Condition and limitation distinguished, 3, 423; 19, 1048, 1049

Condition of a bond, 2, 463

Condition of Goods

Logs, 19, 1100

Condition precedent, 3, 423; 6, 901; 10, 101, 103, 117

Conditions precedent and subsequent distinguished, 3, 423

Condition subsequent, 3, 423; 6, 901

Easements, 19, 1050

Effect of, upon negotiability of bill or note, 2, 322

Estate on Condition, 6, 900*Conditions in restraint of marriage, see ILLEGAL CONTRACTS.*

Conditions subsequent, 3, 423; 6, 901

Definition, 6, 900

Distinguished from trusts, 6, 905

Enforcement of forfeiture, 6, 904

Examples of condition, 6, 900-905

Interference by equity, 6, 904

Intoxicating liquors, 6, 903

Necessity of express words, 6, 901

Performance, 6, 903

Performance becomes impossible, 6, 902

Precedent, 3, 423; 6, 901

Reservation to grantor, 6, 904

Reservation to stranger, 6, 904

Right of entry for breach, 6, 903

Time for performance, 6, 903

Void conditions, 6, 902

Waiver of performance, 6, 904

Whether right of entry is in estate, 6, 903

Good condition, 8, 1357

Laches, 12, 597

Leases, 19, 1050

Proviso, 19, 298

Real Property**At Common Law, 19, 1043**

To create or enlarge estates, 19, 1043

To Defeat Existing Estates, 19, 1043

Devices upon trust, 19, 1046

Effect of assignment of mortgage title, 19, 1044

Enforcement in equity, 19, 1045, 1046

- Estate limited over on breach of conditions, 19, 1044
 Express, 19, 1043
 Nomenclature, 19, 1047
 No part of limitation, 19, 1043
 Restrictions in the nature of easements, 19, 1045
 Statute of quia emptores, 19, 1047
 Unalienable right of entry, 19, 1044
 Whether estate is ipso facto determined upon breach, 19, 1044
 Whether reversionary interests, 19, 1047
 Repugnant, 19, 1051
Right of Way, Grant of, 19, 847
 Action for damages for breach, 19, 853
 Breach of condition precedent, 19, 853
 Breach of condition subsequent, 19, 852
 Building of fences, 19, 851
 Conditions subsequent and covenants, 19, 849
 Covenants running with the land, 19, 850
 Examples, 19, 846, 847
 Failure to perform conditions, 19, 847
 Failure to perform conditions precedent, 19, 852
 Grantor neglecting to avail himself of breach, 19, 854
 Instances of grants of right of way on conditions, 19, 847
 Re-entry, 19, 852
 Relief in equity, 19, 853
 Specific performance, 19, 852
 Stipulation as to location of depots, 19, 851
 What is a sufficient compliance with conditions, 19, 848
 Where performance does not necessarily precede the vesting of estate, 19, 849
 Whether condition is a precedent or subsequent, 19, 847
Warranty
Conditions Precedent Distinguished from Implied Warranty, 10, 101
 Condition relates to kind of thing sold and implied warranty to quality, 10, 104
 Confusion produced by confounding condition precedent with implied warranty, 10, 103
 Definition of condition precedent, 10, 101
 Implied warranties, 10, 117
 Sale of chattels as being of a particular kind or description, 10, 102
 Whether condition precedent and implied warranty can exist at the same time, 10, 104
 Turned into a limitation, 19, 1049
 Waiver for breach, 28, 569
 Warranty distinguished from, 28, 739
 Working a forfeiture, 8, 444
CONDITIONAL LIMITATIONS
Conditions in deeds of conveyance, see DEEDS.
- Limitations After a Fee**, 20, 922
 Fee reduced to life estate, 20, 923
 Fee simple entirely defeated, 20, 922
 Partial though not total exclusion of preceding fee, 20, 923
CONDITIONAL SALES, 3, 424; 21, 628
See CHATTEL MORTGAGES.
 Absolute delivery a waiver of conditions, 3, 435; 21, 484
 Agreement that title shall remain in vendor, 3, 426
Attachment, see infra, RIGHTS OF THIRD PARTIES.
 Bailments distinguished from, 21, 630
Bona fide purchasers, see infra, RIGHTS OF THIRD PARTIES.
 Cash payment as condition precedent, 21, 484
 Change of absolute sale into conditional sale by subsequent agreement, 3, 425
Chattel Mortgages Distinguished from, 3, 425; 21, 632
 Cases of conditional sales, 3, 425
 Conditional sale not favored, 3, 425
 Construction of the instrument, 21, 632
 Examples, 21, 632
 Extinguishing the debt, 3, 425
 In general, 3, 425; 21, 632
 Intention of the parties, 21, 632
 Necessity, 3, 425
 No words of conveyance, 21, 632
 Test, 3, 425
 Where there is no debt, 21, 632
Concurrent Conditions, 21, 629
 Examples, 21, 644-647
 In general, 21, 644
 Party seeking to enforce contract must show performance on his part, 21, 645
Payment and Delivery, 3, 430; 21, 644
 "Cash on delivery," 3, 430
 In general, 3, 430
 Presumption, 3, 430; 21, 645
 Where no time of payment is specified, 3, 430
 Presumption, 3, 430; 21, 645
 Readiness to perform, 21, 646
 Where nothing is specified as to payment, 21, 645
 Condition that the article sold shall be "satisfactory" to the vendee, 3, 433
 Condition that title is not to pass until price is paid, 3, 429
 Conflict of laws, 19, 717
 Consignments distinguished from, 21, 632
 Consignment to sell, 3, 426
Contract of "Sale or Return," 3, 433
 Nature of, 3, 433
 Vendee misusing property, 3, 434
Creditors, see infra, RIGHTS OF THIRD PARTIES.
 Criteria and requisites of, 3, 424
 Definition, 3, 424; 21, 628
Delivery
See infra, PRECEDENT CONDITIONS.
 As waiver of conditions, 3, 435; 21, 484

CONDITIONAL SALES—Cont'd**Delivery—Cont'd**

Partial failure of, 3, 431

To buyer, 3, 429

Delivery concurrent with payment, see *infra*, CONCURRENT CONDITIONS.

Disguised as leases, 3, 426; 21, 629

Distinction between absolute and conditional sale, 3, 424

Effect of delivery where sale is for cash on delivery, 3, 431

Effect of warranty, 3, 425

Effect of warranty upon title, 3, 425

Execution, see *infra*, RIGHTS OF THIRD PARTIES.

How intention to be gathered, 21, 628

Impossibility of Performance, 21, 653

Causes beyond control of promisor, 21, 653

Inability to perform, 21, 653

Legal impossibility, 21, 653

Physically impossible, 21, 653

Real impossibility, 21, 653

Whether it excuses, 21, 653

Installment Sales, 3, 431

Acceptance of past due installments, 3, 435

Contract to build vessel, 3, 431

Default in accepting and settling for installments, 3, 431

Instances of, 3, 425

Intention, 21, 628

Of parties governed as to time when title passes, 3, 428

Parol evidence as to, 21, 630

Leases Distinguished from, 3, 426; 21, 629

Attempt to disguise conditional sales as leases, 3, 426; 21, 630

Bona fide purchasers, 21, 630

Examples, 3, 426

Implied intent, 21, 629

In general, 3, 426; 21, 629

Intent that title should pass, 21, 629

Question of intent, 21, 629

Sales disguised as leases, 3, 426; 21, 629

Lord Blackburn's two rules, 3, 428

Mutual conditions, see *infra*, CONCURRENT CONDITIONS.

Not favored, 3, 425

Oral Condition, 3, 426

Attached to written conveyance, 3, 426

Partial failure of delivery, 3, 431

Partial payments, 3, 432

Payment, see *infra*, PRECEDENT CONDITIONS.*Payment concurrent with delivery*, see *infra*, CONCURRENT CONDITIONS.**Precedent Conditions**, 3, 427; 21, 628, 633

Condition partly performed, 21, 635

Conditions as to place of performance, 21, 643

Conditions as to time, 21, 643

Constructive delivery, 21, 634

Delivery, 3, 429

Delivery by Installments, 3, 431; 21, 635

Examples, 21, 635, 636

Failure as to time of delivery, 21, 636

Failure to comply with terms, 21, 635

First installment not in compliance with terms of contract, 21, 635

In general, 21, 635

Intention of parties, 21, 636

Delivery with intention of passing title, 21, 635

In general, 21, 633

Intention of parties, 3, 428; 21, 635

Lord Blackburn's two rules, 3, 427, 428

Measurement, 21, 634

Negligence in separating goods, 21, 635

Notice as, 21, 644

Payment, 3, 429

By cash, 21, 638

By check or draft, 21, 638

By Installments

Condition that title shall remain in owner until purchase-money is paid, 21, 640

Effect on previous payments of failure to pay installments, 21, 642

Examples, 21, 642

Failure to pay, 21, 641

Forfeiture for failure to pay installments, 21, 641, 642

Generally, 21, 640

Goods to be manufactured, 21, 641

Intention to abandon contract, 21, 641

Possession given to purchaser, 21, 641

Rescission of contract, 21, 641

Waiver of forfeiture for failure to pay installments, 21, 642

By Note, 3, 429; 21, 639

Buyer becoming insolvent, 21, 640

Note forged or worthless, 21, 640

Note itself does not satisfy indebtedness, 21, 639

Sale conditioned for buyer to give note, 21, 639

When title passes, 21, 639

Check dishonored, 21, 638

Examples, 21, 637, 638

In general, 21, 636

Non-performance of condition, 21, 637

Possession given to purchaser, 21, 637

Replevin by the owner, 21, 637

Sale to third party, before performance of condition, 21, 637

Waiver, 21, 651

When title vests in buyer, 21, 636

Property increasing in value, 21, 634

Property lost or destroyed, 21, 634

Right of parties to insert, 21, 485

Sales to Arrive, 3, 432; 21, 643

Capacity of vessel over-estimated, 21, 644

Conditional nature of the sale, 21, 643

Examples, 21, 643, 644

- Goods not of kind and quality stipulated for, 21, 643
- Goods to be delivered between two dates, 21, 644
- Sale of cargo, 21, 644
- Time of arrival, 21, 644
- Time of sailing specified, 21, 644
- When title passes, 21, 643
- Seller's interest, 21, 633
- Seller's right to retake possession, 21, 633
- Separating or measuring, 3, 428
- Separation, 21, 634
- To be fulfilled by purchaser, 3, 429
- To be performed by vendor, 3, 427
- Reasonable time within which article must be returned, 3, 434
- Recording Acts**, 3, 426; 20, 537; 21, 654
 - As against creditors and bona fide purchasers, 21, 654
 - Effect of failure, 21, 654
 - Examples, 20, 538
 - Generally, 20, 537
 - In Georgia, 21, 654
 - In Iowa, 21, 655
 - In Kansas, 21, 655
 - In Maine, 21, 655
 - In Minnesota, 21, 655
 - In Missouri, 21, 655
 - In Nebraska, 21, 655
 - In New Hampshire, 21, 655
 - In New Jersey, 21, 656
 - In New York, 21, 655
 - In North Carolina, 21, 655
 - In South Carolina, 21, 656
 - In Texas, 21, 656
 - In Vermont, 21, 656
 - In Virginia, 21, 657
 - In West Virginia, 21, 657
 - In Wisconsin, 21, 657
 - Necessity, 21, 654
 - Statute requiring conditional sale to be recorded, 20, 538; 21, 654
 - Subsequent creditors and purchasers, 20, 538
 - When not clear whether instrument is chattel mortgage or a conditional sale, 20, 538
 - Whether statutes are retroactive, 21, 657
 - Whether within the general provisions of the statute, 20, 537
- Refusal to Perform Condition**, 21, 652
 - As breach of contract, 21, 652
 - Effect, 21, 652
 - Must be distinct and unequivocal, 21, 652
 - Seller's rights, 21, 652
 - Replevin by vendor, 3, 434
 - Re-taking property, 3, 434
 - Rights and remedies of conditional vendor, 3, 434
 - Rights of parties to insert their own conditions, 21, 485
- Rights of Third Parties**, 3, 436; 21, 653
 - Bona Fide Purchasers**, 3, 436; 21, 658
 - Condition precedent, 21, 658
 - Condition subsequent, 21, 658
 - Conflicting authorities, 21, 660
 - In general, 21, 658
 - Notice, 21, 661
 - Sale disguised as lease, 3, 427
 - Title of bona fide purchaser, 21, 658
 - Under recording acts, 21, 654
 - Conditional sales called "leases," 3, 437; 21, 629
 - Conflict of authority, 3, 436
 - Creditors**, 21, 657
 - Attachment by, 21, 657
 - Colorable conditional sale, 21, 657
 - Execution by purchaser's creditors, 21, 657
 - Mere device to hinder buyer's creditors, 21, 657
 - Purchaser's creditors, 21, 657
 - Replevin by seller, 21, 657
 - Examples, 3, 436, 437
 - Execution against vendee, 3, 437
 - In absence of fraud, 21, 653
 - In general, 3, 436; 21, 653
 - Recording*, see *infra*, RECORDING.
 - Right of third purchasers where sale is disguised as a lease, 3, 427
 - Right to retake property, 21, 661
 - Seller's rights, 21, 653
 - Validity, 21, 653, 654
 - Where conditional sales are treated as chattel mortgages, 3, 437
 - Where vendee has possession and sells to bona fide purchaser, 3, 436
- Right to retake property, 21, 661
- Rolling Stock of Railroad**, 19, 717
 - Acknowledgment and record, 19, 717
 - Intention of the parties, 19, 717
 - Lex rei sitæ, 19, 717
 - Statutes regulating, 19, 717
 - Validity of conditions, 19, 717
- Rules of construction, 21, 628
- Sale absolute in its inception changed into a conditional sale, 3, 424
- Sale and Return**, 3, 433
 - Where party returns property after time fixed for return, 3, 434
 - Sale for cash on delivery, 3, 430
 - Sale "to arrive," 3, 432; 21, 643
 - Sale with right of repurchase, 3, 426
 - Seller's interest subject to levy and sale on execution, 3, 435
 - Subsequent condition, 21, 629
 - Test as to whether property vests in vendee, 3, 424
- Vendor's liability in trespass for retaking goods, 3, 434
- Vendor's right to increase of animals, 3, 435
- Vendor's right to replevin upon breach of condition, 3, 434
- Vendor's right to retake property, 3, 434
- Vendor's right to sue for price upon breach of condition, 3, 434
- Waiver of Condition**, 3, 429, 435; 21, 650
 - Absolute and unconditional delivery, 21, 650

CONDITIONAL SALES—*Cont'd*

Waiver of Condition—*Cont'd*

- Acceptance of past due installments, 3, 435
- Custom of trade, 3, 435
- Custom of trade to deliver, 3, 435
- Delivery, 3, 435
- Delivery without requiring performance of condition, 21, 650
- Examples, 3, 435, 436; 21, 651
- Implied, 3, 435; 21, 650
- In general, 21, 650
- Payment, 21, 650, 651
- Presumption, 3, 435
- Question of fact, 21, 651
- Refusal to accept performance of condition, 21, 652
- Waiver of forfeiture, 3, 432
- Where payment and delivery are to be concurrent, 3, 430
- Where something remains to be done to the subject of the sale, as weighing, counting, measuring, etc., 3, 428
- Where the article sold is yet to be manufactured, 3, 428
- Where the subject of the sale is to be separated from bulk, 3, 428

CONDONATION, see **DIVORCE**.

CONDUCT, 3, 438

- Conducting actions or suits, 3, 438
- Disorderly, 5, 692
- Right of fishery as it has been heretofore conducted, 3, 438

CONFECTIONERY

- Distinguished from chocolate, 3, 234

CONFEDERACY, 3, 438

See **CONSPIRACY**.

Confederate States, 12, 313

- Act in aid of rebellion, 12, 313
- Act of congress, 12, 313
- Act of legislature, 12, 313
- Courts of, 12, 313
- Whether a de facto government, 8, 1380-1386

CONFEDERATE MONEY, see **MONEY**.

CONFEDERATE NOTES, see **MONEY**.

CONFESSIOAL, see **PRIVILEGED COMMUNICATIONS**.

CONFESSION OF JUDGMENT, 12, 1497; 28, 685

- Against husband and wife, 12, 149s
- Appeal, 12, 480, 484, 487
- As to surety for contingent liability, 12, 1497
- Attorney's authority to confess, 12, 1497
- Attorney's fees, 12, 1497
- By agent, 12, 1497
- By attorney, 1, 957; 12, 1497
- By One Partner, 17, 1042; 12, 149s
- Collateral attack on judgment, 17, 1045
- In England, 17, 1043
- In New York, 17, 1043
- In Pennsylvania, 17, 1043
- Merger of original obligation, 17, 1044
- Parol assent, 17, 1045
- Power of partner in general, 17, 1042

Proof that confession was unauthorized, 17, 1045

Release of non-assenting partners, 17, 1044

Remedy in equity, 17, 1045

Restraining execution, 17, 1044

Seal, 17, 1043

Subsequent ratification, 17, 1045

Validity as against partner who executed the power, 17, 1044

Warrant of attorney to confess, 17, 1042

Warrant signed by all partners, 17, 1043

Where no individual names are given, 17, 1044

Where partner has absconded, 17, 1044

Where there is no suit pending, 17, 1042

Whether judgment can be corrected on appeal, 17, 1045

Collateral attack, 12, 1497; 17, 1045

Confessed in statute, 12, 1497

Confession for too great an amount, 12, 1497

Consent of judgment creditor, 12, 1497

Corporations, 17, 178

Debt not due, 12, 1497

Entry, 12, 1497

Filing of verified statement of liability, 12, 1497

Fraudulent sales, 8, 854

Infants, 12, 87

In general, 17, 149

Joint executors and administrators, 11, 1020

Judgment debtor takes advantage of substantial errors, 12, 1497

Jurisdiction of court, 12, 1497

Justice of the peace, 12, 1497, 470

Limited partnership, 13, 829

Married women, 12, 89, 149s; 14, 663

Money due before judgment, 12, 1497

Money judgment, 12, 1497

On bond given by married women, 12, 1497

Partners, 12, 149s; 17, 1042

President of corporation, 17, 131

Replevin bail, 12, 1497

Res judicata, 21, 267

Statement, 12, 1497

Balance of account, 12, 1497

Defective, 12, 1497

Goods sold, 12, 1497

Insufficient signing, 12, 1497

Judgment upon indefinite, 12, 1497

Money lent, 12, 1497

Non-compliance with statute, 12, 1497

Of consideration, 12, 1497

On promissory note, 12, 1497

Signed by less than whole number of defendants, 12, 1497

Sufficiency of jurat, 12, 1497

Sufficient verification, 12, 1497

Whether judgment debtor admitted at law, 12, 1497

- Whether judgment debtor admitted facts, 12, 149^v
- Without, 12, 149^w
- Statutory authority, 12, 149^t
- Supplementary Proceedings**
- After injunction order, 24, 629
- Contempt, 24, 664
- Tort, 12, 149^r
- Treasurer of corporation, 17, 134
- Treasurer's authority, 17, 134
- Trusts and trustees, 12, 149^s; 27, 136
- Warrant of Attorney**, 28, 685, 687
 - Authority, 28, 685
 - Cause of action, 28, 686
 - Compliance with Statute**, 28, 688
 - Action regularly commenced, 28, 690
 - Declaration, 28, 689
 - Entered by clerk, 28, 689
 - Finality, 28, 689
 - Strictness, 28, 688
 - Vacation, 28, 689
 - When statutes do not apply, 28, 689
 - Where not allowed, 28, 689
 - Compliance with Warrant**, 28, 690
 - Before note matures, 28, 690
 - Examples, 28, 690-693
 - Intention of parties, 28, 691
 - Negotiability of judgment notes, 28, 691
 - Strictly pursued, 28, 690
 - Time, 28, 690
 - Consent of creditor, 28, 693
 - Effect of the Confessed Judgment**, 28, 706
 - Examples, 28, 706, 707
 - Examples, 28, 685-687
 - Executed by married women, 12, 149^t
 - For What Judgment May Be Confessed**, 28, 697
 - Certainty, 28, 698
 - Debt barred by statute of limitations, 28, 698
 - Examples, 28, 697-699
 - Future advances, 28, 698
 - New and distinct engagements, 28, 698
 - Torts, 28, 698
 - Unconditional amount, 28, 697
 - Jurisdiction**, 28, 687
 - Appear upon record, 28, 687
 - Court's jurisdiction limited, 28, 687
 - Effect of want of, 28, 687
 - Estoppel, 28, 688
 - In one court, or in a particular state, 28, 687
 - Nature of warrant, 28, 685
 - Open court, 28, 686
 - Parties to the Confession**, 28, 693
 - Clerk, 28, 694
 - Corporation, 28, 695
 - Death, 28, 694
 - Disability, 28, 694
 - Examples, 28, 693-697
 - Husband and wife, 28, 696
 - Infants, 28, 695
 - Joint debtors, 28, 694
 - Married women, 28, 696
 - Parent and child, 28, 694
 - Partners, 28, 694
 - Public officers, 28, 694
 - Trustee, 28, 695
 - Who capable party, 28, 693
 - Ratification**, 28, 693
 - Relieving Against the Judgment**, 28, 703
 - Amendment, 28, 706
 - Appellate court, 28, 703
 - Conditions, 28, 706
 - Entry, 28, 703
 - Examples, 28, 703-706
 - Failure to comply with statute, 28, 705
 - Fraud, 28, 703
 - Irregularities, 28, 705
 - Release of errors, 28, 705
 - Substantial errors, 28, 703
 - Requisites of warrant, 28, 685
 - Revocation, 28, 687
 - Seal, 28, 687
 - The Affidavit**, 28, 699
 - Compliance with statute, 28, 699
 - Examples, 28, 699
 - The Judgment**, 28, 700
 - Attorney's fee, 28, 701
 - A year and a day, 28, 702
 - Collateral security, 28, 703
 - Compliance with statute, 28, 701
 - Entry in judgment book, 28, 700
 - Entry of another judgment upon same warrant, 28, 702
 - Excess, 28, 700
 - Founded on unauthorized instrument, 28, 700
 - Functus officio, 28, 703
 - Merger, 28, 703
 - Statute of limitations, 28, 702
 - Validity between the parties, 28, 701
 - Voidable as to creditors, 28, 701
 - The statement, 28, 699
- CONFESSIONS**, 3, 439
 - See* **DECLARATIONS**.
 - Acts of, 3, 439
 - Admissibility, 3, 440, 441
 - Admissibility a question for the court, 3, 464
 - Admissions**
 - By prosecutor, 3, 490
 - By silence, 7, 53
 - Divorce**, 3, 442; 5, 828
 - Admissibility, 5, 828
 - Confessions obtained by fraud, 5, 828, 829
 - Proof**, 5, 828
 - Admissibility, 5, 828
 - Confessions obtained by fraud, 5, 828, 829
 - Whether granted on confessions alone, 5, 828
 - Whether granted on confessions alone, 5, 828
 - Of third party as evidence for accused, 3, 484
 - As evidence against others than parties making them, 3, 482
 - Burden of proof, 3, 496

CONFESSIONS—Cont'd

By agents, 3, 490
 By children, 3, 489
 Charge of bigamy as admission of marriage which proved to be void, 3, 492
 Classes of, 3, 445
 Conclusiveness, 3, 492
Confessions Obtained by Questioning
 Necessity that prisoner be informed that he need not criminate himself, 3, 484-487
 Coroner's inquest, 3, 488
Corpus Delicti, 1, 182; 3, 447
 Proof of, 3, 449
Corroboration, 3, 447
 Corpus delicti, 3, 447, 449
 Necessity of, 3, 445-447
 What corroboration will be sufficient to prove crime, 3, 447
Credibility a question for the jury, 3, 465
 Declarations accompanying the delivery of stolen property, 3, 448
 Declarations in presence of accused, 3, 492-494
 Definition, 3, 439
 Degree of credit to be given to, 3, 440
Deposition of Witness
 Silence of prisoner during examination of witness, 3, 493
Divorce, 3, 442; 5, 528
 Cruelty, 5, 798
Duress, 3, 469
Embezzlement, 6, 499
 Evidence for prisoner as well as against him, 3, 491
 Evidence given in a former trial, 3, 489
 Facts ascertained in consequence of inadmissible confessions, 3, 481
 Facts discovered in consequence of confessions improperly obtained, 7, 69
Forgery, 8, 528
 Ground of admissibility, 3, 440
Homicide
 Confession by co-defendant, 9, 702
 Confession must be taken as a whole, 9, 698
 Corpus delicti, 9, 729
 General rule as to admissibility, 9, 697
 Joint indictment, 9, 698
 Must be voluntary, 9, 697
 Must be taken as a whole, 9, 698
 Person to whom confession is made, 9, 697
 Sufficiency and weight, 9, 730
Incest, 10, 347
Inducements
 Burden of proof, 3, 496
 By offer of pardon, 3, 477
 By persons not in authority, 3, 463
 By promised immunity from prosecution, 3, 477
 Held out with reference to a different charge, 3, 456
Inferred from Silence, 3, 492
 Misnomer, 3, 494

Silence in a judicial proceeding or hearing, 3, 495
 In presence of police, 3, 457
 Instances where the confessions were held not to be obtained by threats or inducements, 3, 472-476
 Instruction, examples of, 11, 268
 Language held to be an inducement, 3, 466
 Necessity of negating any promise or inducement, 3, 495
 Necessity that they be held out by person in authority, 3, 456
 Obtained by exhortation, 7, 68
 Obtained by inducement of threats, 7, 68
 Religious inducements to confess, 3, 455
 Threats and inducements rendering confession inadmissible, 3, 449, 451
 What constitutes, 3, 452, 466
Where Held Not to Have Ceased, 3, 479
 Subsequent confessions, 3, 482
 Where held to have ceased, 3, 477
Inferred from demeanor, 3, 492
Larceny, 12, 859, 860
 Illegally obtained, 12, 860
 Promise to pay, 12, 860
 Threats, 12, 860
 Made during intoxication, 3, 442
 Made under mistake, 3, 442
 Made under promise of secrecy, 7, 70
 Made upon oath, 7, 69
 Made when under arrest, 3, 470
Marriage, 14, 526
 Mode of introducing confessions, 3, 495
 Must be free and voluntary, 3, 449
 Nature and effect, 3, 445
 Necessity of corroboration, 3, 445
 Necessity that it be spontaneous, 3, 466
 Necessity that statement of third party must have been clearly heard before any inference can be drawn from silence of prisoner, 3, 494
 Necessity that whole confession be taken together, 3, 491
 Obtained by artifice or deception, 3, 481
 Obtained by questioning, 3, 484
 Obtained in the course of legal proceedings, 3, 489
 Obtained upon preliminary examination of accused, 3, 484
 Of a crime not charged in indictment, 3, 441, 495
Of Adultery, 3, 442; 5, 828
 By wife, 3, 442-445
 Of co-conspirator, 4, 634
 Of infants, 4, 685
 Of other crimes than that charged, 3, 441, 495
 Plenary judicial confession, 3, 445
 Plenary judicial confession sufficient to found a conviction, 4, 310
Preliminary Examination
 Necessity that prisoner be informed that he need not answer, 3, 484
Vol. I.

Silence at a judicial proceeding, 3, 495
 Silence of prisoner during examination, 3, 493
 Where accused is compelled to answer under oath, 3, 488
 Presumption of truth of statement against interest, 3, 440
 Prisoner's right to prove all that was said, 3, 492
 Removal of inducement by threat, 7, 69
 Submission of confession to jury where the court is in doubt whether it was obtained by inducement, 3, 466
Subsequent, 3, 482
 General admissibility of, 3, 482
 Presumption that influence of threats or promises continues, 3, 482
 Taken down in writing, 3, 496
 Threats or promises, 3, 464; 12, 860
 To the clergy, 3, 495
 Uncorroborated, 3, 445
 Uncorroborated confessions insufficient to authorize conviction, 4, 309
 Violence of mobs, 3, 470
Voluntary
 See infra, INDUCEMENT.
 Questions of Law and Fact, 19, 629
 Examples, 19, 630, 632
 Inducement to confess, 19, 630
 Massachusetts cases, 19, 630
 Review in appellate court, 19, 632
 Whether confession a question of law, 19, 632
 What confessions are not admissible in evidence, 3, 451
 What threats will render confession inadmissible, 3, 449, 451
 When admissible, 3, 472
 When involuntary, 7, 68
 Where the confession, though not voluntary, points out facts which may lead to a conviction, 3, 451
 Where witness called to prove confession does not remember all that was said, 3, 447
 Who are persons in authority, 3, 459; 7, 69
 Who may prove a confession, 3, 447
 With respect to conspiracy, 3, 483
 Words spoken in sleep, 3, 442
CONFIDENCE, 3, 497
 Confidence game, 3, 497
CONFIDENTIAL COMMUNICATIONS, *see* PRIVILEGED COMMUNICATIONS.
CONFINE
 Confine a woman, 3, 497
CONFINEMENT, 3, 497
 Actual confinement, 3, 497
CONFIRMATION, 3, 498
 Of judicial sales, *see* JUDICIAL SALES.
 Confirmation of assessment, 3, 498
CONFISCATION, *see* INSURRECTION.
 Condemnation and confiscation distinguished, 3, 421
CONFISCATION OF PROPERTY, *see* WAR.

CONFLICT OF LAWS, 3, 499

See FOREIGN CORPORATIONS; FOREIGN EXECUTORS AND ADMINISTRATORS; TESTAMENTARY CAPACITY, *for the law governing capacity to make a will*.

As to the law governing divorce, *see* DIVORCE.

Foreign judgments, *see* JUDGMENTS.

Judgments in courts of sister states, *see* JUDGMENTS IN SISTER STATE.

Insolvency, *see infra*, BANKRUPT AND INSOLVENCY.

On high seas, *see* INTERNATIONAL LAW.

Pleadings and Proofs, *see* STATUTES.

Recording acts, *see* RECORDING ACTS.

Service of process, *see* SERVICE OF PROCESS; PUBLICATION.

Usury, *see* USURY.

WILLS

As to the law that governs making a will, *see* WILLS.

Acceptances, 3, 580, 592

Action for causing death, by what law governed, 5, 127

Action of covenant where the instrument is considered as a sealed instrument in one state but not in the other, 4, 501

Ambassador or a public minister, 3, 510

Arrest and Imprisonment

Lex fori, 13, 286

Assignment, *see infra*, FOREIGN ASSIGNMENTS.

Assignment for Benefit of Creditors, 3, 573, 613, 615

See infra, FOREIGN ASSIGNMENTS.

Assignment of real estate, 3, 616

Assignments giving preferences, 3, 617

Assignments which contravene the law of the situs, 3, 616

Attachment of personal property in another state, made with notice of assignment, 3, 620

Attachment of personal property with notice of assignment, 3, 620

Choses in action, 3, 616

Statutes which regulate mode of executing and administering, 3, 617

Validity, 3, 615

Assignment of Choses in Action, 3, 571

According to the law of domicile, 3, 571

Assignment made by creditor residing in a foreign country, 3, 571

Domicile of creditor, 3, 571

Necessity of notice to debtor, 3, 571

Assignment of property in transitu, 3, 616

Assignment of ships at sea, 3, 616

Attainder, 3, 516, 537

Authority of court having jurisdiction of person to act upon his property in another state, 3, 509

Bankrupt and Insolvent Laws, 3, 613; 11,

176
 Assignee representative of assignor, 3, 628

CONFLICT OF LAWS—Cont'd**Bankrupt and Insolvent Laws—Cont'd**

Assignment valid by laws of state in which it is made, 3, 613
 Attachment of personal property in another state, made with notice of the assignment, 3, 620
 Bankrupt's effects following his person, 3, 615
 Collision with local lien, 3, 620
 Conflict between federal bankrupt laws and state laws, 3, 629, 630
 Contracts made and to be performed in state of discharge, 3, 624; 11, 177
 Contracts made and to be performed out of state granting discharge, 3, 624
 Contracts with citizens of other states, 11, 177
 Conveyances under foreign bankrupt and insolvent laws, 3, 618
Conveyance Under Foreign Bankrupt Laws, 11, 182
 Rule in the United States, 11, 182
 Subsequent to attachments, 11, 182
 Discharge as bar to suit by creditor of another state in federal courts, 3, 625
 Discharge in one state as bar to an action in another state, 3, 625
 Discharge in one state as bar to an action on contract made in another state, 3, 625
 Effect of bankruptcy upon subsequent execution, 3, 622
 Effect of foreign bankrupt discharges, 3, 622
 Effect of foreign discharge of person from arrest, 3, 627
 Effect of foreign discharge on note indorsed to bona fide holder before maturity, 3, 627
 Extraterritorial effect of state law, 11, 176
 Federal bankrupt laws and discharge, 3, 629
 Foreign discharge no defense against creditor not domiciled in country granting discharge, 3, 623
 General rules as to priorities, 3, 621
 Involuntary assignment of property situated in another state, 3, 572
 Non-resident voluntarily making himself a party, 11, 177
 Operating to transfer title to the assignee as against resident creditors, 3, 615
 Participation in bankrupt proceedings, 3, 623
 Power of states to pass, 3, 623
 Priority between lien creditors and assignees in bankruptcy, 3, 620
 Questions between local bankruptcies, 3, 621
 Reciprocal relation of creditors, 3, 621
 Relation of foreign bankrupt to attaching creditors, 3, 618
 Remedy of assignee in bankruptcy governed by *lex fori*, 3, 628

Removal of the property of debtor beyond the reach of creditor who is resident of another state, 3, 614
 Rights of assignee, 3, 627; 11, 177
 Rights of attaching creditors where property is situated, 3, 618
 Series of bankruptcies in different states, 3, 621
 State insolvent law discharging contract, 3, 622
 Statute of limitations, 3, 621
 Substitution of assignee, 3, 629
 Suit against assignee in federal court, 3, 629
 Suit by assignee in his own name, 3, 628, 629
 Title of assignees in bankruptcy, appointed in a sister state, 3, 618
 Transfer of property by foreign bankrupt assignment as against attaching creditors, 3, 618
 Validity of assignment of personalty, 3, 613
 Voluntary appearance, 11, 177
 Where assignment is fraudulent by the *lex fori*, 3, 614
 Where bankrupt's business transactions are impeached by assignees, 3, 621
 Where foreign discharge may be pleaded, 3, 626
 Where parties are all subjects of state in which assignment is made, 3, 613
 Whether foreign voluntary assignments and foreign bankrupt assignments are upon the same footing, 3, 615
Bastardy, 2, 129; 3, 566, 642
Bills and Notes, 3, 585
 Acceptance, 3, 580, 592
 Acceptor and indorser residing in different states, 3, 592
 Action by indorsee, 3, 594
 Assignment, 3, 588
 Bills drawn in one state, and accepted, indorsed or discounted in another, 3, 591
 Bills made in one state but payable in another, 3, 592
 Damages, 3, 595
 Days of grace, 3, 587, 593; 5, 528²⁷⁰
 Defenses, 3, 590, 596
 Demand, 3, 587
 Discount, 3, 590
 Effect of foreign discharge on note indorsed to bona fide holder before maturity, 3, 627
Indorsement, 3, 587
 Place where indorsement was delivered, 3, 587
 Place where indorsement was made, 3, 587
 Interest, 3, 586, 595
 Law of place where note first becomes binding, 3, 585
 Liability of drawer of a bill payable in another state, 3, 592
 Liability of indorser, 3, 589, 595

- Liability of Parties**, 3, 585
 Lex loci contractus, 3, 586
 Where note is payable without any specified place, 3, 586
Negotiable note made payable to bearer transferable in a foreign country, 3, 589
Negotiability, 3, 589, 594
 Notes executed in one state and made payable or indorsed in another, 3, 588
 Notice of dishonor, 3, 587, 593
 Operation of a bill of exchange, 3, 591
 Protest, 3, 587, 593
 Right of indorsee to sue in his own name, 3, 589
 Rights of action against maker or acceptor, 3, 588
 Rights of bona fide purchaser, 3, 585
 Rights of original parties, 3, 585
 Stamps, 3, 590
 Suits by administrators and their assignees, 3, 589
 Surety notifying creditor to pursue debtor, 3, 590
 Transfer, 3, 593
 Usury, 3, 586
 What is a foreign bill, 3, 591
 Where cause of action arises, 3, 594
Binding force of laws of one state in another, 3, 504
Bottomry Bond, 2, 492
 What law governs, 2, 493
Capacity of corporations to take lands, 3, 642
Capacity to contract, 3, 573
Chattel Mortgages, 3, 552, 570
 By what law governed, 3, 190
Checks, 3, 591, 596
 Operating as an assignment of a particular fund, 3, 596
Comity of Nations, 3, 503
 Contracts injurious to a nation or its subjects, 3, 555
 Corporations, 3, 505
 Decisions of courts, and constructions of statutes, 3, 504
 Discharge of insolvents, 3, 506
 Foreign charters, 3, 510
 Foreign contracts, 3, 506
 Foreign laws which would be prejudicial to the government, 3, 514
 How far the laws of one state are respected in another, 3, 504
 Laws of a sister state, 3, 504
 Married women, 3, 506
 Meaning of the term, 3, 503
 Railroads, 3, 505
 Surrender of fugitive through comity, 7, 601
 Transfer of personal property, 3, 507
 Voluntary act, 3, 505
 Where the laws of a foreign state are contrary to the policy of the government, 3, 506
 Where the laws of a foreign state are prejudicial to the government's interest, 3, 506
Committee for lunatic, 3, 659
Common Carriers
 Law of place of performance, 2, 836
 Lex loci contractus, 2, 834
 Presumption as to law governing, 2, 836
Conditional sales, 19, 717
Constitutional Law, 22, 139
See DUE PROCESS OF LAW.
 Examples, 22, 140
 Service by publication, 22, 139
 Upon what constitutionality depends, 22, 140
Contracts, 3, 509, 542
 Arrest on foreign, 3, 577
 Authentication, 3, 558
 Between citizens and foreigners made in foreign countries, 3, 555
 Between citizens of one state made in another, 3, 555
 By master of a vessel, 3, 574
 By resident of one state made to be performed in another, 3, 545
 By subjects residing abroad, 4, 558
 By what law validity of contract is determined, 3, 543
 Capacity to contract, 4, 573
Construction, 11, 520
 Contract made in one place to be performed in another, 11, 521
 Instrument affecting personal property, 11, 521
 Intention of parties, 11, 520
 Law of domicile, 11, 521
 Law of place where instrument was made, 11, 520
 Contract made in one state and intended to have effect in another, 3, 563; 11, 520
Covenants, 3, 563
 Discharge by insolvent law, 3, 622
 Discharge by lex loci contractus, 3, 546
 Distinction between contracts which exclude personal liability and those which bind the person, 3, 578
 Effect to be given to contract according to laws which gave it validity, 3, 577
 Enforcement in another state of, valid where made, 3, 554
For Insurance, 3, 551
 Generally, 3, 551
 Made in one state upon property in another state, 3, 551
For Loan of Money
 Conveyance of lands to secure payment of loan, 3, 551
 Lex loci contractus, 3, 550
 Usury, 3, 550, 551
 Where loan is secured by mortgages on lands in another state, 3, 550
For Sale of Intoxicating Liquors, 3, 556
 Sale valid by laws of state where made but invalid by laws of state where delivered, 3, 556
 Where transaction is completed in one state where sale is legal, 3, 557
For smuggling, 3, 558

CONFLICT OF LAWS—Cont'd**Contracts—Cont'd**

- Form, 3, 558
- Form and nature, 3, 576
- Founded on political or moral turpitude, 3, 556, 558
- If valid where made, valid everywhere, 3, 553
- If void and illegal where made, void and illegal everywhere, 3, 552
- In a foreign country for illicit cohabitation, 3, 558
- In fraud, etc., of the law of a country, 3, 556
- Injurious to a nation or its subjects, 3, 555
- Interpretation**, 3, 543, 575
 - By what law governed, 3, 559
 - Intention of parties, 3, 560
 - Interpreted by usage and custom, 3, 561
- Laws of the place where it is executed, 3, 857
- Laws subsisting at time and place of making of contract entering into and forming part of it, 3, 546
- Lex loci contractus governing though performance is demanded elsewhere, 3, 546
- Made and to be performed in state of bankrupt's discharge, 3, 624
- Made and to be performed out of state granting bankrupt's discharge, 3, 624
- Made by letter, 3, 857
- Made in one state to be performed in another, 3, 561
- Operation of, 3, 575
- Opposed to national policy, 3, 558
- Payable in foreign money, 15, 708
- Proof, 3, 558
- Relating to Personal Property**, 3, 552
 - Chattel mortgage of a vessel, 3, 552
 - Chattel mortgages, 3, 552
 - Contract made in one state where property is, and performance is to be made in another state, 3, 552
- Remedies, 3, 576
- Rights of parties, 3, 545
- Rules of interpretation, 3, 561
- To be performed partly in one state and partly in another, 3, 545
- Validity, 3, 575
- Valid where suit is brought though void where made, 3, 553
- What Deemed Place of Contract**, 3, 546
 - Where contract is forbidden by both laws, 3, 546
 - Where no reference is made to the place of performance, 3, 546
 - Where there is an agreement to perform an act at the particular place, 3, 546
- What law governs remedies, 3, 544
- Where citizens reside or trade in a foreign country, 3, 545
- Where completed, 3, 551
- Where contract conflicts with the laws of another country, 3, 556

- Where contract plainly refers to a foreign country for its execution, 3, 545
- Where no place of performance is designated, 3, 562
- Where remedy forms no part of a contract, 3, 578
- Whether governed by place where contract is made or place where contract is executed, 3, 542
- Which are immoral, 3, 558
- Counterclaim**, 3, 579
- Days of grace, 3, 587, 593; 5, 528²⁷⁰
- Debts of decedents, 3, 644
- Decisions of foreign courts, 3, 509
- Defense arising from matters *ex post facto*, 3, 579
- Defense which is good by *lex loci contractus*, 3, 579
- Definition, 3, 501
- Depositions, 5, 582
- Devises for charitable purposes, 3, 642
- Discharge**, 3, 579
 - By law of place where contract was made, 3, 581
 - Effect of foreign bankrupt discharges, 3, 622
 - Effect of provision against impairment of obligations of contracts upon discharge of contracts in insolvency, 3, 582
- In Bankruptcy**, 3, 581, 582
 - Discharge which relieves debtor from imprisonment but does not relieve his property, 3, 581
- Insolvent laws discharging contract, 3, 622
- Of contract by law of place where it was not made, 3, 582
- Under insolvency law, 3, 580
- Where contract is governed by general principles of international law, 3, 582
- Where contract is made in foreign country, 3, 582
- Where creditor participates in bankruptcy proceedings, 3, 623
- Disposition of personal property, 3, 567
- Distinctive features of real property, 3, 564
- Drafts, 3, 591
- Election, 5, 919
- Estates acquired by operation of law, 3, 566
- Evidence**
 - Questions of, 3, 578
- Executions**, 3, 527
 - Form of, 3, 579
- Executors and Administrators**
 - What law determines what constitutes assets, 7, 254
- Extraterritorial Force of Laws**, 3, 508
 - Business capacity of infants, 3, 518
 - Contracts, 3, 509
 - Disabilities of coverture, 3, 518
 - Disabilities of creed and caste, 3, 517
 - Disabilities of idiocy and lunacy, 3, 518
 - Disabilities of infamy and attainder, 3, 515

- Disabilities of infants, 3, 517
- Disabilities of slaves, 3, 516
- Disabilities of spendthrifts, 3, 518
- Foreign revenue laws, 3, 508
- Foreign statutes, 3, 508
- Judicial decisions of foreign states, 3, 509
- Laws discharging bankrupt, 3, 622
- Laws made in regard to non-resident subjects, 3, 511
- Laws relating to the personal capacity and to the civil condition of the subject, 3, 513
- Laws relating to the state and capacity of persons, 3, 512
- Municipal laws, 3, 514
- Penal laws, 3, 536
- Penal statutes, 18, 272
- Penalties, 3, 537
- Statutes destroying capacity, 3, 515
- Statutes protecting capacity, 3, 519
- Statutes respecting civil death, 3, 516
- Supremacy of domicile, 3, 514
- Fellow Servants**
 - Whether cause of action accruing under the statute of one state may be enforced in another state, 7, 858
- Foreign army or fleet, 3, 510
- Foreign Assignments**, 8, 281; 11, 179
 - By what law form of assignment governed, 8, 281
 - Debts and choses in action, 8, 284
 - Form of assignment, 8, 281
 - Goods following owner, 8, 283
 - Goods in transit, 8, 283
 - Lex situs, 8, 283
 - Marriage transfer, 8, 283
 - Reason for rule of transfer of goods, 8, 282
 - Ship at sea, 8, 283
 - Transfer of goods, 8, 282
 - When both parties reside in same state or county, 8, 283
 - When parties select some other law by contract, 8, 283
- Foreign Assignments for Benefit of Creditors**, 3, 571; 8, 284
- Involuntary Assignments**, 3, 572; 8, 284
 - Assignee or receiver taking possession of property in foreign jurisdiction, 8, 284
 - Domestic creditors, 8, 285
 - English rule, 8, 286
 - Extraterritorial effect of, 8, 284
 - Foreign creditors, 8, 285
 - Suit by assignee, 8, 284
- Voluntary Assignments**, 8, 286
 - Assignment contrary to policy of lex rei sitæ, 8, 283
 - Exceptions as to real estate, 8, 287
 - Rule as to validity, 8, 286
 - What is a voluntary assignment, 8, 286
 - Where possession has changed, 8, 288
 - With preferences, 3, 571
- Foreign Charters**, 3, 510
- Statutes**
 - Prejudicial where they are sought to be enforced, 3, 506
- Foreign Guardians**, 3, 656
 - Appointed from state of domicile, 3, 656
 - Bonds, 3, 657
 - Duty to account for funds received in a foreign state, 3, 657
 - How constituted, 3, 656
 - Necessity of reappointment in state where real property is situated, 3, 659
 - Power over domicile of ward, 3, 658
 - Power over immovable property of ward, 3, 658
 - Power over personal property of ward, 3, 658
 - Power over person of ward, 3, 657
 - Power over property of ward, 3, 658
 - Rights and powers of guardians, 3, 657
 - Rights over immovable property of their ward, 3, 657
- Foreign Judgments**, 3, 521, 584
 - Contravening principle of *lex loci contractus*, 3, 528
- In Personam**, 3, 530
 - Duty of government to execute, 3, 530
 - Merger of the cause of action, 3, 530
 - Suit upon the foreign judgment, or upon the original cause of action, 3, 530
 - When set up as a bar to an action, 3, 530
 - Where foreign tribunal had no jurisdiction, 3, 530
- In Rem**, 3, 528
 - Conclusiveness, 3, 529
 - Fraudulent judgments, 3, 528
 - Necessity of notice, 3, 528
 - Proceedings against debts, 3, 529
 - Proceedings by creditor against property of a debtor in hands of third party, 3, 529
 - Where defendant does not appear in the suit, 3, 529
 - Where matter in controversy is immovable property or land, 3, 528
 - Where matter in controversy is movable within jurisdiction of court pronouncing judgment, 3, 528
 - In rem and in personam, 3, 527
- Foreign money, 15, 708
- Foreign revenue laws, 3, 508, 514, 556
- Foreign statutes, 3, 508
- Gambling Contracts**, 8, 1021
 - Proof of validity where made, 8, 1021
 - Transactions legal where made, 8, 1020
- Garnishee**
 - Negotiable instruments, 8, 1173
- Garnishment**, 3, 523; 8, 1254
 - Binding effect of judgment in another state, 8, 1255
 - Comity, 8, 1254
 - Dependent upon the law of the forum, 8, 1254
 - Domicile of garnishee, 8, 1255

CONFLICT OF LAWS—Cont'd**Garnishment—Cont'd**

- Enforcement of foreign garnishment laws, 8, 1254
- Extraterritorial force of exemption laws, 8, 1253, 1254
- Judgment of another state must show compliance with statute, 8, 1255
- Law of domicile, 8, 1255
- General principles, 3, 502
- Goods stolen in one state and taken into another, 3, 538

Illegal Contracts**What Deemed Place of Contract**

- Consignor's contract to indemnify consignee, 3, 548
- Contract to indemnify party for advances made in another state, 3, 547
- Drawer's liability governed by what law, 3, 548
- Instrument executed in one state and payable in another, 3, 548
- Place where contract first becomes binding, 3, 547
- Place where contract is delivered, 3, 547
- Where contract is made partly by mail and partly by agent of one of the parties, 3, 547

Indorsements, 3, 580

- By what law governed, 3, 580, 583

Infamy, 3, 516, 537**Infancy, 3, 580****Infants**

- Age of majority, 10, 614
- Disabilities of, 3, 517
- In international law, 3, 501
- In interstate jurisprudence, 3, 501
- Interest, 2, 331, 332, 562; 11, 382

See INTEREST.*See infra*, USURY.**By What Law Governed**

- Where allowed by way of damage, 3, 578
- On bills and notes, 3, 586
- Rate, 11, 417**
 - Contract at either, 11, 417
 - Generally, 11, 418
 - Higher than allowed by laws of either state, 11, 418
 - Interest or damages, 11, 421
 - Place of contract, 11, 418
 - Place where suit is brought, 11, 421
 - Rate of interest in another state question for jury, 11, 421
 - Where place of payment is not expressed or implied, 11, 420
- Where allowed by way of damage, 3, 578

Intoxicating Liquors

- Intent of purchaser and knowledge and aid of vendor, 3, 557

Judgment**And Execution**

- Lex fori, 13, 286
- Form of, 3, 579

Jurisdiction of Action, 3, 519**Concurrent, 3, 525**

- Between admiralty and state courts, 3, 526
- Court first obtaining jurisdiction, 3, 525

Conflict of, 3, 524

- Bankruptcy, 3, 524
- Circuit court interfering with jurisdiction of state court, 3, 524
- Controversies between citizens of different states, 3, 525
- Discharge of prisoners, 3, 525
- Habeas corpus, 3, 525
- State and federal, 3, 524
- State court enjoining an action in circuit court of the United States, 3, 524

- State court interfering with jurisdiction of circuit court of United States, 3, 524

- State legislature suspending process in federal courts, 3, 524

- Determined by special laws of each particular state, 3, 519

- Garnishment of wages, 3, 523

- Patents, 3, 520

- Priority, levies and attachments, 3, 527

- Suit pending in another state, 3, 520

- Suits for negligence causing death, 3, 521

- Suits on foreign statute, 3, 522

Want of, 3, 519

- Collateral attacks, 3, 521
- Pleading in an action on a foreign judgment, 3, 521

- Where the subject-matter of the suit is strictly local, 3, 519

Jurisdiction of the government generally, 3, 502**Jurisdiction to try offenses, 3, 539**

- Law governing order of payment of debts of decedents, 5, 238

Law of Domicile

- Governing majority, 3, 515
- Governing personal property, 3, 514, 567

- Party capable of performing an act in his own country, 3, 515

- Legitimacy, 2, 129; 3, 566, 642

Letters of Credit, 3, 597; 13, 250

- Governed by law of country of drawee, 3, 597

Lex domicilii, 3, 573**Lex Fori, 13, 575; 13, 286**

- As governing bills and notes, 2, 332

- Competency of witnesses, 2, 332

- Determining admissibility of evidence, 2, 332

- Governing the forms of proceedings, rules of evidence, etc., 3, 514

- Governing the remedy, 3, 561, 563

- Interest, 3, 578

- Questions of evidence, 3, 578

- Statutes of limitations, 2, 333

Lex loci, 13, 286

- Lex Loci Contractus**, 3, 513, 542; 13, 286
 Bills of exchange and promissory notes, 2, 329
 Contract discharged by, 3, 546
 Governing contract, by resident of one state made to be performed in another, 3, 545
 Governing contract for loan of money, 3, 550
 Governing form, proof and authentication of contracts, 3, 558
 Governing interpretation of contracts, 3, 544
 Governing rights of parties, 3, 545
 Governing though performance is demanded elsewhere, 3, 546
 Governing validity of contract, 3, 543
 Interpretation, 3, 559
 Judgment contravening, 3, 528
 What deemed place of contract, 3, 546
 Where no place of performance is designated, 3, 562
- Lex Loci Rei Sitæ**, 3, 514, 563; 13, 287
 As applied to bills and notes, 2, 331
 Distinctive features of real property, 3, 564
 Governing capacity to take real estate, 3, 566
 Governing conveyances of real property, 3, 565
 Governing estates acquired by operation of law, 3, 566
 Governing immovables not land, 3, 567
 Governing nature and extent of interest in real property transferred, 3, 566
 Personal property, 3, 567
 Real property, 3, 563
- Lex Loci Solutionis**
 As applying to bills and notes, 2, 331
- Limitation of Actions**, 3, 583; 13, 768
 Claim barred by law of state where suit is brought, 13, 768
 Extraterritorial force, 13, 768
 Foreign corporation, 8, 398, 399
 Foreign judgments, 3, 584
 Lex fori, 13, 768
- Statute Providing that the Bar of State Where Action Accrued Shall Apply**, 13, 769
 Between residents of foreign states, 3, 585; 13, 769
 Cause of action accruing abroad, 13, 769
 Intermediate states, 13, 769
 Where statute does not specify cause of action shall not accrue abroad, 13, 769
 Suits concerning realty, 13, 768
- Limited Partnership**, 13, 818, 819
 Construction of contract, 13, 819
 Liability of special partner, 13, 819
- Lis pendens**, 13, 892
- Lost Will**
 Foreign wills of realty, 13, 1143
 Jurisdiction, 13, 1145
- Law of place of domicile, 13, 1144
 Mode of administration, 13, 1145
- Lotteries**, 8, 1002
- Marriage**, 3, 598
Divorce granted in different state, see DIVORCE.
 Capacity to marry, 3, 599
 Ceremonies, 14, 516
 Determination as to whether the lex loci was complied with, 3, 598
 Exceptions to general rule that a marriage valid in one state is valid everywhere, 3, 601
 Governed by lex loci contractus, 3, 598
 Of persons leaving the state to avoid laws of their domicile, 3, 600
 Rights dependent on, 3, 598
 Validity of, 3, 598
 Where marriage is incestuous, 3, 601
 Where marriage is polygamous, 3, 601
 Where marriage is prohibited by the positive laws of the country, 3, 601
- Marriage Settlements**, 14, 551, 567
 As to effect, 14, 552
 As to real estate, 14, 552
 Invalid as to form in one place, valid in another, 14, 551
 Invalid at place of contract, 14, 551
 Postnuptial settlements, 14, 567
 Prohibited by law of forum, 14, 551
 Removal into state where contract is not in form, 14, 551
 Valid where made, 14, 551
- Married Women**, 3, 575
Contracts, 3, 575; 14, 618
 As to immovables, 14, 618
 As to movables, 14, 618
 As to validity of, 14, 618
 Conveyances, 3, 575
 Personal property of, 3, 575
 Status of, 3, 518
 Suits of, 3, 575
- Wills**, 14, 603
 Law at time of death, 14, 604
 Law at time of execution, 14, 604
 Law of domicile, 14, 603
 Personality, 14, 603
 Real estate, 14, 603
- Master and servant, 14, 786
- Merchandise contracted to be delivered in a place where its sale is prohibited, 3, 556
- Mortgages**, 3, 567
 Assignment, 15, 851
- Mutual Insurance**, 16, 50
 Law of situs, 16, 50
- Natural allegiance, 3, 511
- Nature of contract, 3, 559
- Official Bonds**
 What law governs their construction, 2, 466g
- Parties to Actions**, 17, 658
 Assignees under foreign bankrupt laws, 17, 658
 Determined by lex fori, 17, 658
 Examples, 17, 658
 In general, 17, 658

CONFLICT OF LAWS—Cont'd**Parties to Actions—Cont'd**

Practice in United States courts in absence of statutes, 17, 659

United States courts, 17, 659

Partition

Sale instead of division, 17, 808

Patents, 10, 753

Payment, 3, 580

Penal Laws and Offenses, 3, 535

Felony or misdemeanor begun in one county and completed in another, see JURISDICTION.

Accessories, 3, 537

Attempts, 3, 538

Continuing offenses, 3, 538

Goods stolen in one county and taken into another, 3, 538

Homicide

Where blow is struck in one country and victim dies in another, 3, 538

Jurisdiction to try offenses, 3, 539

One nation executing penal laws of another, 3, 536

Penalties, 3, 537

Punishing crimes committed under the laws of another state, 3, 536

Territorial limitation of criminal laws and sentences, 3, 536

When crimes committed in one country will be punished in another, 3, 537

Pendency of Suit in Foreign State, 3, 535

As a defense in a subsequent suit, 3, 535

Pleaded in abatement, 3, 535

Where debtor has been sued by his creditor in one state, 3, 536

Personal capacity, 3, 512

Personal Property

Alienation or disposition of, 3, 568, 574

Character of, 3, 574

Doctrine that movables follow the person, 3, 568

Governed by law of domicile, 3, 574

Pledge, 3, 574

Situs of, 3, 574

Title to, 3, 574

Transfer of stock, 3, 574

Trusts of, 3, 574

When subject to the law of situs, 3, 570

Personal status, 3, 573

Persons acting in *autre droit*, 3, 644

Pleadings and Proofs, 3, 539

Act of congress regulating proof o. law, records, etc., of a sister state, 3, 542

Authenticated copies of foreign laws, 3, 541

Best evidence required, 3, 541

Certified copies of recorded instruments, 3, 541

Exemplified copy, 3, 541

Foreign laws, 3, 539

Foreign unwritten laws, customs and usages, 3, 542

Manner of proof, 3, 541

Printed copies of foreign laws, 3, 542

Proof governed by *lex fori*, 3, 540

Public seal of a foreign sovereign, 3, 542

Seal of a foreign court, 3, 542

Seal of a sister state, 3, 542

Powers, 3, 573**Execution, 18, 920**

Alteration of the law, 18, 920

In general, 18, 920

Lex rei sitæ, 18, 920

Situs and domicile of owner different, 18, 920

Presumption

That common law obtains in a sister state, 3, 504

That Foreign Law Corresponds to the *Lex Fori*, 3, 540; 19, 46

Common law, 19, 47

Crimes *malum in se*, 19, 47

In general, 19, 46

Jurisprudence springs from a different source, 19, 46

Peculiar idiosyncrasies, 19, 46

Penal statutes, 19, 47

Statute law, 19, 47

Probate

Change of domicile, 19, 173

Statutory enactments, 19, 173

Valid under the law of his domicile, 19, 173

Promissory note executed in one state and indorsed in another, 3, 582

Railroads

In actions for torts, 19, 930

Railroad Securities

Conditional sales, 19, 717

Real Property

Assignment for benefit of creditors, 3, 616

Capacity of foreign corporation to take, 3, 566

Capacity of grantor and grantee governed by *lex rei sitæ*, 9, 19

Capacity to take, 3, 566

Conveyance, 3, 565

Deed, 3, 565

Descent, 3, 565

Devise, 3, 564

Governed by *lex loci rei sitæ*, 3, 563

Immovables not land, 3, 567

Incumbrances, 3, 567

Nature and extent of interest transferred, 3, 566

Wills, 3, 565

Receivers

Auxiliary receiver in another jurisdiction, 20, 66

Comity, 20, 65, 67

Application of principles of, 20, 67

In general, 20, 65

Suits by Receivers in Foreign Courts, 20, 242

Creditor residing in foreign jurisdiction, 20, 244

Examples, 20, 242, 243

In general, 20, 242

- Jurisdiction, 20, 243
- Property once vested in receiver, 20, 244
- Recognition, 20, 242
- When recognized under, 20, 67
- Defendant's residence in another state, 20, 66
- General rule, 20, 65
- Mingling of goods, 20, 188
- Property controlled need not be within the jurisdiction, 20, 66
- Qualification of statement, 20, 66
- Railroad passing through two states, 20, 67
- Suing receiver, 20, 252
- Suits by Receivers in Foreign Courts,** 20, 241
 - Examples, 20, 241
 - General rule, 20, 241
 - Judgment, 20, 246
 - Leading case, 20, 241
 - Property removed to foreign jurisdiction, 20, 242
 - Statutory receivers, 20, 246
 - When receiver has title by assignment, 20, 245
 - Whether receiver appointed by one jurisdiction is entitled to recognition by another, 20, 65
- Re-exchange**
 - Drawer's liability, 20, 642-644
- Remedies, 3, 576**
 - Governed by *lex fori*, 3, 561, 563; 13, 286
 - Mode of enforcement of a contract, 3, 578
 - Of assignee in bankruptcy, 3, 628
 - Statute of limitations, 3, 583
 - When they form part of contract, 3, 578
 - Where contract does not bind the person, 3, 578
 - Where laws of two states are brought into conflict, 3, 578
- Rights of expatriation and naturalization, 3, 513
- Rights to regulate property, 3, 513
- Rules governing the recognition of foreign laws, 3, 507
- Sale, 3, 569**
 - At civil law, 3, 569
 - Necessity of delivery, 3, 569
 - Of lottery tickets, 3, 556
 - Valid according to *lex loci contractus*, but invalid according to *lex loci rei sitæ*, 3, 569
- Seals, 21, 905**
 - Action of covenant, 21, 905
 - Burden of proof and authentication, 21, 906
 - Legislative forms of verification of instruments, 21, 907
 - Lex fori*, 21, 905
 - Mode and time of suing, 21, 905
 - Necessity of seal under protest of bill or note, 21, 906
 - Notarial seals, at common law, 21, 907
 - Public instruments, 21, 907
 - Statutes authorizing public seal, 21, 910
 - Whether scroll has same effect as seal, 21, 906
- Separate Property of Married Women**
 - Property brought from abroad, 22, 41
- Set-off, 3, 579; 22, 238**
 - Belongs to the remedy, 22, 238
 - Foreign statute extinguishing debt, 22, 239
 - Lex fori*, 22, 238
- Ships, 8, 283
- Sovereign subject, 3, 510
- Sovereignty and jurisdiction of nations, 3, 502
- Specific Performance**
 - Aliens, 22, 918
 - Foreign contract, 22, 920, 921
 - Foreign contract which could not be enforced in country where entered into, 22, 921
 - Property within jurisdiction of court, 22, 920
 - Stock in foreign corporation, 22, 920
- State's Jurisdiction**
 - Over acts done within its territory, 3, 502
 - Over contracts within its boundaries, 3, 502
 - Over property within its boundaries, 3, 502
 - Status of married women, 3, 575
 - Statute of frauds, 8, 659
- Statutes**
 - Giving action for negligence resulting in death, 3, 508
 - Regarding lotteries, 3, 509
- Stock**
 - Sale of stock, 23, 673
- Stockholders**
 - Enforcement of Statutory Liability in Foreign Jurisdictions, 23, 890**
 - Examples, 23, 890
 - In general, 23, 890
 - Jurisdiction Where Liability Imposed by a Foreign Statute Will Be Enforced, 23, 891**
 - Federal courts, 23, 891
 - In Connecticut, 23, 892
 - In Georgia, 23, 892
 - In Kansas, 23, 892
 - In Minnesota, 23, 891
 - In Missouri, 23, 892
 - In New York, 23, 892
 - In Pennsylvania, 23, 892
 - Jurisdiction Where Liability Imposed by a Foreign Statute Will Not Be Enforced, 23, 892**
 - In Illinois, 23, 893
 - In Maine, 23, 893
 - In Massachusetts, 23, 893
 - In New Hampshire, 23, 893
 - In West Virginia, 23, 893
 - Lex domicilii*, 23, 890
 - Liability penal or contractual, 23, 890

CONFLICT OF LAWS—Cont'd**Stockholders—Cont'd****Enforcement of Statutory Liability in****Foreign Jurisdictions—Cont'd**

Penal liability has no extraterritorial force, 23, 890

Remedies strictly local, 23, 894

Service of process outside the state, 23, 890

Subpœna, 24, 164

Succession, 24, 425

Extraterritorial effect of statutes of legitimation, 24, 427

Immovable property, 24, 426

Leasehold interest, 24, 427

Movables, 24, 425

Personal property, 24, 425

Power of state to prescribe rules governing, 24, 425

Real estate, 24, 426

Servitudes and easements, 24, 427

Succession not a vested right, 24, 427

What constitutes real property, 24, 427

Where property is vested by laws of succession, 24, 428

Succession Taxes

As to domicile and situs, see **SUCCESSION TAXES**.

Suits in actions for negligence resulting in death, 3, 521

Sunday

Validity of contract, 24, 568

Supremacy of states, 3, 508

Suretyship, 24, 773

Tender, 3, 580

Testamentary capacity, 3, 574

Transfer of Property, 3, 502

Personal, 3, 507

Trusts and trustees, 27, 8

Upon whom the laws of a state are binding, 3, 510

Usury, 27, 971

Accommodation paper, 27, 975

Contract made and to be performed in one state secured by mortgage in another, 27, 974

Contract payable elsewhere, 27, 972, 974

Discount, 27, 975

Evidence of debt made payable in another state, 27, 972

Good faith of parties having contract payable in another state, 27, 972

Higher rate of interest in another state, 27, 972

Judicial notice of foreign laws, 27, 976

Location of security, 27, 975

No place of payment specified, 27, 974

On bills and notes, 3, 586

Presumption that foreign statutes are same as local, 27, 976

Whether contract is usurious, 27, 971

Validity of contract where made, 3, 552

What law governs a bond, 2, 460

Whether an instrument executed with a scroll is a deed, 3, 576

Wills, 3, 630

Change of domicile, 19, 173

Statutory enactments, 19, 173

Valid under the laws of his domicile, 19, 173

CONFORMITY**Mandamus**

Alternative writ, 14, 214

CONFUSION OF DEBTS, 3, 660**CONFUSION OF GOODS, 1, 54; 3, 660; 7, 358***See* **ACCESSION**.

Agent depositing principal's money with his own, 1, 385

Agent's goods with those of principal, 1, 384

Agent's salary, forfeiture of, 1, 399

Attachment of, 1, 921

By fault among the parties, 11, 1066

Elevators, 28, 668

Depositor owner of portion of mass, 28, 669

Examples, 28, 668-670

Title to grain, 28, 668

Executors and Administrators, 7, 234, 358

Actual loss, 7, 359

Good faith of executor, 7, 358

Liability of executor, 7, 358

Separation after mingling, 7, 359

Guardian mingling ward's funds with his own, 9, 119

Logs and Lumber, 13, 1036

Burden of proof, 13, 1037

Compensation, 13, 1037

Logs distinctly marked, 13, 1036

Recaption, 19, 1100

Statutory provisions, 13, 1037

When doctrine applicable, 13, 1036

Where logs have been sawed into lumbers, 13, 1037

Willful confusion, 13, 1037

Without fault of either party, 13, 1036

Mingling of Husband's and Wife's Property, 14, 573

Where wife's money is ascertainable, 14, 573

Where wife's property is not ascertainable, 14, 574

Wife as *cestui que trust*, 14, 574

Wife's separate estate, 14, 574

Necessity of demand in *trover*, 5, 528*r*; 5, 528*z*³

Pledged goods, 1, 58; 3, 186; 5, 528*y*; 15, 752

Recaption, 19, 1098, 1100

Commingled mass practically the same as the separate constituents, 19, 1100

Dividing commingled mass proportionately, 19, 1099

Examples, 19, 1098-1100

Goods intermixed of equal value, 19, 1099

Inextricably confused by the wrongdoer, 19, 1098

Suing for value taken, 19, 1099

Taking property of wrongdoer as well as one's own, 19, 1098

- When wrongdoer may be deprived of his property, 19, 1098, 1099
 Replevin, 20, 1063, 1064
 Tenancy in common, 11, 1066, 1075
Trover
 Measure of damages, 26, 835
Trusts and Trustees, 27, 160
 Compensation, 27, 188
 Confusion held to be conversion, 27, 161
 Depositing funds in his own name, 27, 160
 Embezzlement, 27, 163
 Examples, 27, 160-163
 Improper use of funds, 27, 162
 Interest, 11, 836; 27, 162
 Liability of trustee for conversion, 27, 161
 Liability to creditors of trustee, 27, 161
 Presumption that he drew out his own funds, 27, 160
 Profits, 27, 162
 Property, 1, 60
 Putting funds beyond trustee's control, 27, 160
 Removal, 27, 163
Trustee Commingling Trust Funds with His Own, 11, 835
 By taking title in his own name, 11, 836
 Devastavit, 11, 836
 Investment in trustee's own name, 11, 836
 Liability for interest and loss, 11, 835; 27, 162
 Using trust funds in his own business, 11, 835
 Trust following investment, 27, 162
Warehouse and Warehouseman, 2, 883; 28, 668
 Examples, 28, 668-670
 Grain, 28, 668
 Title to goods, 28, 668
 Without fault, 11, 1066
CONGREGATION, 3, 660
Congregation met for religious worship, see DISTURBING MEETINGS.
CONGRESS
As to the constitutional power of congress, see CONSTITUTIONAL LAW.
Congressional elections, see ELECTIONS.
 Power of house of representatives to declare a seat vacant, 6, 421
 Power of, in counting electoral votes, 6, 314
CONJUNCT
 Conjunct capture, 2, 730
CONNECTING CARRIERS, 2, 859
Lien, see FREIGHT; CARRIERS OF LIVE STOCK; RAILROADS.
 Action against receiving carrier, 2, 867
As Partners, 2, 874; 7, 858; 17, 92
 Carriers constituting a through line, 2, 875
 Charter power, 2, 877
 Communion of profit, 2, 876; 17, 858
 Division of profit without charter power to form partnership, 2, 877
 Payment of freight to last carrier constituting partnership, 2, 874
 Periodical settlements, 2, 874
 Stipulations that rates of freight will be the same on each road, 2, 874
 When connecting carriers are partners, 2, 877
Whether a Partnership Is Constituted, 17, 858
 Agents and servants jointly employed, 17, 858
 Agreement to divide compensation merely, 2, 876; 17, 858
 Examples, 17, 858
 Where capital is a joint fund, 17, 858
 As warehousemen, 2, 880
Baggage, 19, 919
 Burden of proof to show delivery to connecting carrier, 19, 919
 Conflict of authority, 19, 920
 Connecting but independent lines, 19, 919
 Examples, 19, 919, 920
 In Georgia, 19, 920
 In Kansas, 19, 920
 In Ohio, 19, 920
 In Tennessee, 19, 920
 In Wisconsin, 19, 920
 Joint liability, 19, 919
 Line on which loss occurred, 19, 919
 Burden of proof where place of loss is unknown, 2, 872
 Carrier must show that goods passed his connecting line uninjured, 2, 867
Carrier's Liability Beyond His Own Line, 2, 859, 860
 In Alabama, 2, 861
 In Connecticut, 2, 863
 In Florida, 2, 861
 In Georgia, 2, 861
 In Illinois, 2, 861
 In Indiana, 2, 863
 In Iowa, 2, 862
 In Kansas, 2, 862
 In Kentucky, 2, 862
 In Maine, 2, 863
 In Maryland, 2, 863
 In Massachusetts, 2, 863
 In Michigan, 2, 864
 In Minnesota, 2, 864
 In Mississippi, 2, 864
 In Missouri, 2, 865
 In New Hampshire, 2, 862
 In New York, 2, 864
 In North Carolina, 2, 864
 In Pennsylvania, 2, 864
 In Rhode Island, 2, 864
 In South Carolina, 2, 862
 In Tennessee, 2, 862
 In United States courts, 2, 864
 In Vermont, 2, 864
 Necessity of contract to transport, 2, 861
 Receipt of goods addressed to point beyond line, 2, 862

CONNECTING CARRIERS—Cont'd**Consignment, 2, 787**

For the consignment of vendor as passing the goods, see SALES.

Consignor's authority to stipulate as to the terms of transportation, 2, 834

Forwarding merchants, 8, 582

Incomplete, 2, 808

Carrier's liability, 2, 808

Order of transmission, 2, 793

Powers of agents to accept, 2, 805

Presumption from, 2, 810

Retention of control, 2, 808

What Constitutes, 2, 803

A deposit of goods in carrier's warehouse, 2, 804

Consignment to authorized agent, 2, 805

Delivery of articles at or near the point from which the railroad runs its trains, 2, 807

Necessity of delivery into actual custody of the carrier, 2, 807

Placing goods upon depot platform and notifying agent, 2, 808

Taking goods upon barge or lighter by direction of ship's agent, 2, 804

Wayside deposits, 2, 808

Whether bill of lading is essential to, 2, 810

Who are agents authorized to receive, 2, 805

Who are agents not authorized to receive, 2, 807

Contract for through transportation, 2, 866

Contract limiting liability inures to the benefit of intermediate carriers, 2, 871

Definition, 19, 780

Delivery, 2, 885

Duty of carrier to deliver to, 8, 582

Excessive freight, 8, 937, 938

Inference of through Contract, 2, 868

Naming place of destination in bill of lading, 2, 868

Rebutting inference, 2, 868

In Relation to Freight, 8, 927

Connecting carriers paying illegal back charges, 8, 927, 928

Liability of receiving carrier where subsequent carriers charge a higher rate than that contracted for, 8, 927

Interstate commerce, 8, 921

Liability for through transportation in spite of special contract, 2, 869

Liability of last company, 2, 873

Limitation of liability to carrier's own route by contract, 2, 866

Obligation of carrier to notify consignor of obstructions, 2, 871

Payment of antecedent charges, 8, 927, 928, 975

Power of Railroads to Contract with Other Roads, 19, 812

Branch road, 19, 813

Change of gauge, 19, 815

Contract for the use of one road, 19, 814

Division of freight, 19, 814

Division of profits, 19, 813

Extensions, 19, 813

Giving up control of road, 19, 814

Implied power, 19, 812

Liability for injury by connecting carrier, 19, 813

Permanence of traffic arrangements, 19, 815

Stage road, 19, 813

Steamship line, 19, 813

Surrender of franchise, 19, 814

Traffic arrangements, 19, 813

Use of road for carriages, 19, 814

Presumption as to, 8, 582

Presumption where goods were in good condition when delivered to first carrier, 2, 873

Rule in Muschamp's case, 2, 859

Telegraphs and Telephones

Liability, 25, 821

Burden of proof, 25, 823

Duty to receive dispatches, 25, 823, 824

English rule as to liability, 25, 822

Evidence of partnership arrangement, 25, 823

Liability of common carrier, 25, 821

Liability of receiving company, 25, 822

Receiving company receiving price in advance, 25, 822

Special agreement, 25, 823

Stipulation against liability, 25, 822

Stipulations binding on connecting line, 25, 823

Tickets and Fares, 25, 1085

Extent of Liability, 25, 1085

English doctrine, 25, 1086

Original carrier as agent of connecting carrier, 25, 1086

Original carrier liable, 25, 1086

Partnership arrangement, 25, 1087

Ultra vires, 25, 1088

Transportation of cars of other companies, 2, 871

Usages and customs governing connecting delivery, 2, 870

What is delivery to, 2, 869

When liability begins, 2, 869

Whether carriers or forwarders, 8, 582

CONNIVANCE, see DIVORCE.

CONQUEST

War, 28, 633

CONSANGUINITY, 3, 661

See AFFINITY AND CONSANGUINITY; SUCCESSION.

And affinity distinguished, 3, 661

Collateral, 3, 310

CONSCIENCE, 3, 661

Conscience and principle distinguished, 3, 661

CONSCIOUS, 3, 662

Conscious of what he is doing, 3, 662

CONSENT, 3, 662

See INTENT.

Consent to disqualified judge acting, see JUDGE.

Jurisdiction acquired by, see JURISDICTION.

Marriage, see MARRIAGE.

Abduction, 12, 519

Accessory, 1, 64

As a bar to action, 1, 180

As an element of contract of deposit, 5, 572

Assault, 1, 784

Burglary

Entry by consent in, 2, 671

Capacity of the consenter to give, 3, 664

Death

Person has no right to consent to infliction of, 3, 666

Decoys, 2, 671; 3, 665

Definition, 3, 663

Distinguished from submission, 1, 785

Evidence, 3, 667

Excuses only act consented to, 3, 665

Extended meaning of "volenti non fit injuria," 3, 663

Fighting by mutual agreement, 1, 785

General rules, 4, 686

Incest, 10, 341

In criminal cases, 3, 662

Inevitable accident, 3, 664

Insane persons, 3, 664

Intercourse by man having infectious disease with a woman, 3, 665

Intercourse with married woman under pretense of being her husband, 1, 785

Intoxicated persons, 3, 665

Kidnapping, 12, 519

Limits of, 3, 663

Master and Servant

Consent to injury, 14, 911

Mayhem, 3, 666; 14, 994

Mutual consent, 16, 15

No right to consent to infliction of death, 3, 666

No right to consent to injury constituting a breach of the peace, 3, 667

Obtained by fraud, 3, 665

Of children to criminal intercourse, 3, 665; 19, 948

Of Party Injured

When a defense, 3, 662

Of woman to adultery not essential, 1, 213

Ouster jurisdiction by consent, 12, 305

Powers, 18, 977

Practicing Fraud or Deception

To obtain consent to indecent assault, 1, 805

Prize Fight, 19, 159

Examples, 19, 159, 160

Volenti non fit injuria, 19, 159

Whether a bar to civil action, 19, 159

Public welfare, 3, 665

Rape, 1, 785; 19, 951

Child under ten years, 3, 665; 19, 948

Connection with a woman while asleep, 19, 951

Female within the age of consent, 19, 951

Incapacity to give consent, 19, 951, 952

Insane woman, 19, 952

Intoxicated woman, 19, 951

Reluctantly given, 19, 951

Representations that intercourse is a part of medical treatment, 19, 952

Surgical operation, 19, 952

Unconscious woman, 19, 951

Right to consent to bodily injury for surgical purposes, 3, 666

Right to consent to bodily injury short of mayhem, 3, 666

Robbery, 21, 424

Seduction

Defenses, 3, 156; 21, 1028

Under the statutes, 21, 1023, 1025

Self-defense, 9, 603

Sexual intercourse, 1, 784

Sodomy, 22, 829

Surgical operation upon person incapable of assent, 3, 666

To being put in danger, 3, 667

When given freely, 3, 665

CONSEQUENTIAL, 26, 700

Distinguished from immediate, 26, 700

CONSIDERATION, see CONTRACT; TRUSTS AND TRUSTEES; BONDS.

As to what consideration is necessary to make one bona fide purchaser, see BONA FIDE PURCHASER.

In deeds, see DEEDS.

Of bill or note, see BILLS AND NOTES.

Presumption of, see SEALS.

Suretyship, see SURETYSHIP.

For bill of sale, 2, 276

CONSIGNATION, 3, 667

CONSIGNED, 3, 667

CONSIGNMENT, see CARRIERS OF GOODS; CONNECTING CARRIERS.

Incomplete Consignment

Instructions to await further orders from consignor, 2, 809

CONSOLIDATE, 3, 668

Consolidated company, 3, 668

Consolidation of actions, see ACTIONS; JOINDER OF ACTIONS.

Justice of the peace, 12, 455

Collision between vessels, 16, 359

CONSOLIDATION OF CORPORATIONS, see CORPORATIONS; RAILROADS.

CONSPIRACY, see CRIMINAL CONSPIRACY.

Witnesses, 29, 631

CONSTABLES, 3, 669; 22, 565

See generally, SHERIFFS.

Antiquity of the office, 22, 565

Arrest Without a Warrant, 22, 566

Breach of peace committed in constable's presence, 22, 566

Demanding aid of third person, 22, 567

Felony, 22, 566

Immediate breach of the peace, 22, 566

Taking prisoner before magistrate, 22, 567

At common law, 22, 565

Deputies, 5, 638; 22, 566

Duties, 22, 565

Duties similar to those of sheriff, 22, 567

CONSTABLES—Cont'd

- Election, 22, 568
- Extortion, 7, 587
- Fees, 22, 569
- Garnishment, 8, 1143
 - City marshal, 8, 1144
- Holding another office, 22, 569
- Incompatible offices, 19, 562 π
- In United States, 22, 566
- Liability of surety, 22, 569
- Liability on official bond, 22, 568
- Ministerial officer of justice of the peace, 22, 566, 568
- Oath, 22, 566
- Policemen, 22, 566
- Residence, 22, 566
- Sale of office, 22, 568
- Scope of liability, 22, 569
- Scope of power, 22, 567, 568
- Service of process, 22, 109, 567
- Special constables, 22, 568
- Term of office, 22, 565
- Whether elective, 22, 565

CONSTITUTION, 3, 669, 670, 671**CONSTITUTIONAL LAW, 3, 670**

See COLORED PERSONS; CONSULS AND AMBASSADORS; ELECTIONS; EX POST FACTO LAWS; GAME AND GAME LAWS; IMMIGRATION; INSURRECTION; INTERSTATE COMMERCE; JUDGMENT OF SISTER STATE; LOCAL ASSESSMENTS; PENSION; POLICE POWER; PUBLIC OFFICERS; QUARANTINE; RELIGIOUS LIBERTY; SEARCHES AND SEIZURES.

Actions against states, see STATES.

Chinese, see CHINESE.

Citizenship, see CITIZENSHIP.

Collateral inheritance tax, see SUCCESSION TAXES.

Compact between states, see STATES.

Constitutionality of laws directed against blasphemy, see BLASPHEMY.

Constitutionality of public statutes concerning drains, see DRAINS AND SEWERS.

Constitutionality of restrictions and of retaliatory statutes, see FOREIGN CORPORATIONS.

Constitutionality of revenue and tax laws, see TAXATION.

Constitutionality of Sunday laws, see SUNDAY.

Constitutional provision that no one shall be twice put in jeopardy, see JEOPARDY.

Disqualification from Office

As an ex post facto law, see EX POST FACTO LAWS.

Due process of law, see DUE PROCESS OF LAW.

Effect of the constitutional amendments upon the elective franchise, see ELECTIONS.

Eleventh amendment, see STATES.

Executive power to pardon, see PARDON.

Exemption of witness from testifying against himself, see WITNESSES.

Ex post facto laws, see EX POST FACTO LAWS.

Extradition of fugitives between states, see EXTRADITION.

Freight regulations, see FREIGHT.

Fugitives from justice, see EXTRADITION.

Imprisonment for debt, see IMPRISONMENT FOR DEBT.

Information

As to constitutional and statutory prohibition against proceedings by information, see INFORMATION.

Insolvency

As to the constitutionality of state laws, see INSOLVENCY.

Judge, see JUDGE.

Licenses, see LICENSES.

Miscegenation, see MISCEGENATION.

Municipal aid, see MUNICIPAL AID.

Navigable Waters

As to jurisdiction over inter-state waters, see NAVIGABLE WATERS.

Navigation, see NAVIGATION.

Registration of vessels, see SHIPS AND SHIPPING.

Relation between states, see STATES.

Religious liberty, see RELIGIOUS LIBERTY.

Competency of witnesses, see WITNESSES.

Sunday laws, see SUNDAY.

Rights of citizens of other states, see CITIZENSHIP.

Searches and Seizures

As to unreasonable searches and seizures, see SEARCHES AND SEIZURES.

State laws, see STATE LAWS.

Summary proceedings, see SUMMARY PROCEEDINGS.

Sunday

As to constitutionality of Sunday laws, see SUNDAY.

Witnesses

Evidence tending to criminate witness, see WITNESSES.

Abolition of slavery, 22, 795

Admission of States into the Union, 23, 74

Contracts of all the states, 23, 76

Division of one state into two or more, 23, 76

Equal footing with original states, 23, 75

Existence of territorial courts, 23, 76

Extinction of territorial governments, 23, 75, 76

In general, 23, 74

Power of congress, 23, 74

Provisional jurisdiction of territorial courts, 23, 76

Unconditional admission into the union, 23, 75

Affidavits of merit, 15, 371

Amendment, see *infra*, ESTABLISHMENT AND AMENDMENT OF CONSTITUTIONS.

Amendments of Constitution

First ten amendments restrictive upon federal government, 3, 691; 6, 842

Appointments, 3, 686**Bankruptcy**

Power of congress to pass laws, 2, 67

Bills of Credit, 3, 690; 15, 709

Borrowing money, 15, 709

Certificates, 15, 709

Confederate treasury notes, 15, 709

Constitutional provisions, 15, 709

Corporations, 3, 690; 15, 709

Distinguished from coupons within the constitutional prohibition against the emission of bills of credit, 4, 432

Individuals, 15, 709

Issued by a banking corporation, 3, 690

Municipal warrants, 15, 1218

Notes used by a bank by authority of a state, 15, 709

Receivable in payment of taxes, 15, 709

What is, 3, 690

What Is Meant by

Emitting bills of credit, 15, 709

City ordinances conflicting with constitution of United States, 3, 674

Civil Damage Acts

Constitutionality of, 3, 257

Civil rights and guaranties, 3, 713

Concurrent and exclusive powers of congress, 3, 702

Constitutional provision requiring the legislature to establish a uniform system of town and county government, 3, 693

Constitutional rules of state comity, 3, 707

Constitution of United States, 19, 449

As supreme law of the land, 3, 690

Powers not expressly granted to the United States, 19, 449

Powers reserved to state, 19, 449

Construction, 3, 678; 19, 450**Construction and Interpretation of Constitutions, 3, 678; 19, 450**

Adopted provision which has received a settled judicial construction, 3, 679

Ambiguity, 3, 679

Contravention of common law, 3, 680

Debates of convention, 3, 680

Every intendment is in favor of the constitutionality of an act, 3, 674

Expediency, 3, 679

History of the instrument, 3, 679

Implied power given by constitution for necessary performance of a duty, 3, 680

Intent of framers, 3, 679

Object of construction, 3, 678

Popular and technical meaning of terms, 3, 679

Principle of stare decisis, 3, 680

Prospective or retrospective operation, 3, 680

Where constitution differs from bill of rights, 3, 680

Where the words convey a definite meaning involving no absurdity or contradiction, 3, 679

Whether provisions are directory or mandatory, 3, 680

Contraction of state debt, 3, 691

Courts, 19, 454

Constitutional courts, 3, 693; 19, 454
Judges chosen in manner different from that prescribed by the constitution, 19, 455

Legislature exercising judicial functions, 19, 454

Taking notice of journals of legislature, 3, 675

Who may exercise judicial functions, 19, 454

Criminal Cases, 3, 729; 4, 813

Ex post facto laws, see *EX POST FACTO LAWS*.

Trial by jury, see *infra*, **RIGHT TO TRIAL BY JURY**.

Power of the legislature to authorize district attorney to pass upon continuances, 4, 835

Presentment or indictment, 3, 729

Right of accused to be heard in person and by counsel, 3, 735

Right of accused to be present at trial, 4, 817

Right of person accused to have process to compel the attendance of witnesses, 4, 813

Right to a copy of indictment and list of grand jurors, 4, 815

Right to a day in court, 4, 814

Right to a fair trial, 4, 813, 822

Right to a severance, 4, 816

Right to be confronted by witnesses, 3, 734; 4, 814; 7, 658

Right to be present at trial, 3, 735; 4, 815

Right to compel election between counts, 4, 816

Right to public trial, 4, 812

Right to speedy trial, 3, 732; 4, 812, 813; 9, 203

Waiver of rights, 4, 817

Witnesses and evidence, 3, 734

Cruel and Unusual Punishment, 3, 736; 4, 722, 736; 19, 570

Disfranchisement and forfeiture of citizenship, 4, 722, 725

Fine and imprisonment, 4, 722

Twice punished for same offense, 3, 736

Whether the federal provision affects the states, 3, 736

Whippings, 3, 736; 4, 722

Curative statutes, recording acts, 20, 567

Definition, 3, 670

Delegation of Legislative Power, 3, 698

As to the time when the statute shall take effect submitted to a popular vote, 3, 701

Conferring upon municipality the right to make ordinances, 3, 699

Division of counties, 3, 699

CONSTITUTIONAL LAW—Cont'd**Delegation of Legislative Power—Cont'd**

- General principle, 3, 698
- Local option, 3, 700; 13, 990
- Location of county seat, 3, 700
- Private act of incorporation dependent on acceptance of incorporators, 3, 699
- Submission of a city charter to a popular vote, 3, 699
- Submission of a general law to a popular vote, 3, 700
- Directory or mandatory provisions, 3, 680
- Distinction between legislative and judicial action, 3, 681
- Division of power, 13, 222

Divorce

- Legislature's power to grant, 3, 683
- Documentary evidence, 3, 735
- Draft laws, 15, 404
- Dying declarations, 3, 735
- Education, constitutional provisions guaranteeing, 6, 159

Ejectment

- Constitutionality of statutes allowing improvements in the action of ejectment, 6, 245*bb*

Election of United States senator, 3, 707

Embargo, 6, 449

Eminent domain, 6, 517

Encroachments of judiciary, see *infra*, LIMITATIONS AS TO JURISDICTION.

Encroachments of Legislative on Judicial,

- 3, 681; 13, 222; 19, 454
- Declaratory laws, 3, 682
- Dissolving injunctions, 3, 683
- Legislature authorizing guardian or trustee to sell real estate of ward, 3, 683
- Legislature authorizing guardian to sell the real estate of his beneficiary, 3, 683
- Legislature granting appeal, 3, 682
- Legislature granting new trial, 3, 682
- Legislature legalizing judicial proceedings, void for want of jurisdiction, 3, 695
- Legislature's power to control judgment of courts, 3, 682
- Opening judgments, 3, 683
- Power of legislature to grant divorce, 3, 683
- Questions belonging properly to legislative department, 3, 684
- Statute which undertakes to determine questions of law and fact, 3, 681
- Where revocation of a charter is dependent upon the happening of some particular event, 3, 682

Encroachments on Executive Department,

- 3, 685, 686; 19, 451
- Appointments, 3, 686
- Executive's construction of statutes, 3, 686
- Limitation by legislature, of power conferred upon executive department by constitution, 3, 685

Mandamus to governor, see GOVERNOR.

Pardons, 3, 687

Power of appointment, 3, 685

Establishment and Amendment of Constitutions,

- 3, 671
- Amendment as prescribed by constitution, 3, 672
- Amendment by a state, 3, 671
- Amendment by convention, 3, 672
- Establishment by territories, 3, 671
- Majority of electors ratifying an amendment to constitution, 3, 672
- Right of people to ratify or reject constitution framed by constitutional convention, 3, 672
- When amendment becomes operative, 3, 672

Estoppel to deny constitutionality, 3, 676

Examples of legislative authority, 13, 222, 223

Exclusive jurisdiction, 12, 291

Executive powers, see GOVERNOR; PRESIDENT.

Appointment to office, 3, 686

Encroachment upon, 3, 685

Heads of executive departments, 3, 689

President's power as commander-in-chief of army and navy, 3, 688

Removal from office, 3, 686

Suspension of habeas corpus, 3, 688

Treaties, 3, 688

Federal Judicial Power,

3, 704

See UNITED STATES COURTS.

Fellow Servants

Statute rendering employer liable, 7,

862

Fine in absence of defendant, 7, 993

Fines on alienation, 7, 993

First ten amendments not applying to

states, 3, 691; 6, 842

Forfeiture

By attainder, 8, 444

Fourteenth and Fifteenth Amendments,

3,

726

As to conferring elective franchises, 3,

729

Equal protection of laws, 3, 727

Miscegenation, 3, 729

Public school system, 3, 728

Repeal of statute of limitations, 13,

697

Service on juries, 3, 727

State regulation of business, 3, 727

Freedom of speech, 3, 713; 13, 513

Grand Juries,

9, 1

Federal provision applies only to federal offenses, 9, 2

State provisions, 9, 1

Habeas Corpus, see HABEAS CORPUS.

Speedy trial, 9, 203

Heads of departments, 3, 689

House of correction, 9, 785

Implied power given by constitution for

necessary performance of a duty, 3, 680

Impounding stock, 10, 187

Imprisonment or fine, 21, 1077

Judicial Notice

- Amendments, 12, 156, 161
- Constitution of United States, 12, 161
- Constitutions of states, 12, 161

Jurisdiction of court fixed by constitution, 3, 694

Legal tender acts, 15, 704

Legislative acts not irrevocable, 3, 691

Legislative duties imposed upon courts, 3, 684

Legislative power, 13, 222

"Liberty," 13, 505

Liberty of conscience, see RELIGIOUS LIBERTY.

Liberty of speech, 3, 713; 13, 513

Liberty of the press, 13, 510

Limitations as to Jurisdiction, 12, 252

Suit against a state, see STATES.

Suit against United States, see UNITED STATES.

Executive Officers, 12, 253

Compelling payment of wages, 12, 254

Compelling state treasurer to deliver up bonds, 12, 256

Discretionary powers, 12, 253

Jurisdiction of state courts over state officers, 12, 256

Jurisdiction over state governors by consent, 12, 256

Ministerial powers, 12, 254

State courts over state governors, 12, 255

United States court over state officers, 12, 254

What are and what are not executive duties, 12, 256

Judiciary Department Over Legislative, 3, 684; 12, 259

Compelling legislation, 12, 257

Incorporation of villages, 12, 259

Political questions, 12, 258

Regulations of secretary of the treasury, 12, 259

Restraining legislation, 12, 257

What are political questions, 12, 258

Jurisdiction over president of United States, 12, 252

Legislative Over the Executive and Judiciary Departments, 12, 258

Congress of United States, 12, 260

Imposing duties upon judges, 3, 684; 12, 261

Jurisdiction of United States supreme courts, 12, 260, 261

Power of State Legislature Over State Courts, 12, 264

State courts, 12, 262

State statutes creating new cause for action, 12, 262

Lis pendens, 13, 892

Local option, 11, 617; 13, 990

Local, special and class legislation, see STATUTES.

Mandamus to governor, see GOVERNOR.

Miscegenation, 8, 559, 563

Municipal Corporations, 15, 963

Alternation in mode of levying taxes, 15, 987

Annexation and consolidation, 15, 1007

Apportionment of debts and property, 15, 1022

Approval by legislature, 15, 963

Assent of two-thirds of legislature, 15, 963

In general, 15, 986

Legislative control, 15, 978

Liability for property destroyed by fire, 15, 1162

Miscellaneous provisions, 15, 963, 964

Prohibition to levy tax, 15, 987

Provision Forbidding Creation by Special Act, 15, 959

What is special act, 15, 960

Special Legislation, 15, 978

Absolute prohibition against private legislation, 15, 979

Amendment of city charter, 15, 980

Classification, 15, 981

According to population, 15, 981

Judicial notice, 15, 985

Limited number of cities having specified population, 15, 981, 982

Other classification than by population, 15, 983

Population, how shown, 15, 983

Constitutional provision against, 15, 978

Examples of, 15, 979

Boundaries of wards, 15, 981

Changing classification, 15, 980

Extending limits, 15, 979

Legalizing special election, 15, 980

Licensing power, 15, 980

Location of county seat, 15, 980

Power to issue bonds, 15, 980

Power to light streets, 15, 980

Removal of police, 15, 979

Special charter, 15, 980

Street improvements, 15, 979

Taxation, 15, 980

When court will interfere, 15, 978

Statute providing that claim shall be presented for payment, 15, 1193

Whether charter void in toto, 15, 964

Municipal Securities, 15, 1308

Law of state at time of issue of bonds, 15, 1310

Provision for payment, 15, 1308

Subsisting remedies, 15, 1309

Virginia bond cases, 15, 1310

National bank act, 16, 145

Nature and boundaries of legislative power, 3, 689

Oath of allegiance, 3, 714

Obligation of Contracts, 3, 741; 17, 4

See infra, STATUTE OF LIMITATIONS.

Charter as a contract, see CORPORATIONS.

Exemption from taxation, see TAXATION, CORPORATE.

Exemption from taxation, see TAXATION, CORPORATE.

CONSTITUTIONAL LAW—Cont'd**Obligation of Contracts—Cont'd**

For franchises as contracts, see FRANCHISES.

An act of legislature forbidding a city to levy taxes to pay judgments against it, 3, 749

Application of provision to municipal corporations, 3, 745

Application of provision to public corporations, 3, 745

Appraisement laws, 3, 756

Change expedient for public economy, 3, 750

Change in charter where accepted by corporation, 3, 744

Change in direction of railroad, 3, 745

Compacts between states, 23, 104

Condemnation of exclusive bridge franchise, 3, 748

Consolidation of one company with another, 3, 745

Contract of the state with corporation, 3, 741

Contract to Which State Is a Party

Compromise or offer on part of state, 3, 749

Corporate elections, 3, 742

Corporate powers which are protected, 3, 742

Corporations subject to general laws, 3, 743

Definition, 3, 559, 825; 17, 4

Departure by a state from the express terms of its contracts, 3, 750

Discharge of contracts, 3, 752

Divorce, 3, 753

Eminent domain, 6, 606

Examples, 17, 4

Exemption from execution, 3, 756

Exercise of police power, 3, 747

Finding floating debt, 3, 749

Grant construed strictly against corporation, 3, 746

Grant of exclusive rights and privileges, 3, 746

Grant, when revocable, 3, 742

Insolvency Laws, 3, 752; 11, 175

Abolition of imprisonment for debt, see IMPRISONMENT FOR DEBT.

Debts contracted after law was passed, 11, 175

Debts contracted before law was passed, 11, 175

Interest, 3, 751

Judgments, 3, 753

Laws affecting construction of contracts, 3, 752

Laws affecting marriage, 3, 753

Laws changing terms of contract, 3, 751

Laws dispensing with requirement of due notice to drawers, etc., of bills and notes, 3, 751

Laws having a prospective operation only, 3, 741

Laws impairing validity of contracts, 3, 752

Laws requiring conveyances to be recorded, 3, 752

Legislative contracts with private persons, 3, 748

Legislative interference with contracts between individuals, 3, 751

License, 13, 517

Municipal Securities, 15, 1251, 1308

Law of state at time of issue of bonds, 15, 1310

Provision for payment, 15, 1308

Subsisting remedies, 15, 1309

Virginia bond cases, 15, 1310

Police power, 18, 760

Power of majority of corporators to accept amendment, 3, 744

Prohibition in federal constitution, 3, 741

Prohibitory liquor laws, 3, 747

Relief of municipality from its debts by revocation of its charter, 3, 746

Remedies, 3, 753

Statute of limitations, see infra, STATUTE OF LIMITATIONS.

Against corporations, 3, 743

Appraisement laws, 3, 756

Changes in modes of procedure in civil actions, 3, 754

Exemptions from execution, 3, 756

Laws abolishing imprisonment for debt, see IMPRISONMENT FOR DEBT.

Special or extraordinary remedies, 3, 754

State laws, 3, 754

Statutes regulating joinder of parties to suits, 3, 754

Statutes taking away a remedy, 3, 754

Substitution of a remedy, 3, 754

Where new remedy is practically worthless, 3, 754

Where parties expressly include remedy in a contract, 3, 753

Whether remedy is part of contract, 3, 753

Removal of causes, 20, 1001

Repeal of statutes, 23, 508

Sheriff's Sales, 22, 654

Change in time to redeem, 22, 654

Conduct of the sale, 22, 654

Examples of retroactive statutes, 22, 654, 655

Rights of purchaser determined by law in force at creation of contract, 22, 654

Statutes changing the remedy, 22, 654

Statutes tending to prevent a sacrifice, 22, 654

States, 3, 741, 749, 750; 23, 79

Statute providing for service of process on a corporation in a manner conflicting with charter, 22, 117

Statutes authorizing the redemption of property sold upon foreclosure of a mortgage, 3, 751

- Statutes imposing a personal liability on stockholders, 3, 743
- Stay Laws**, 23, 545
- Contracts by which debtor has waived right to stay, 23, 548
- Contracts made after passage of act, 23, 546
- Examples, 23, 545
- Indefinite or unreasonable stay, 23, 546
- Late war, 23, 545
- Nature of the laws, 23, 545
- Violation of obligations of contract, 23, 545
- War of 1812, 23, 545
- Taking franchise under power of eminent domain, 3, 748
- Taxation**, 25, 14, 47
- Amending and repealing statute, 25, 53
- Change in character or object of corporation, 25, 53
- Change in method of taxation, 25, 50
- Charter stipulations, 25, 48
- Concessions in favor of the state, 25, 51
- Concessions to governmental agencies, 25, 48
- Concessions to municipal corporations, 25, 47
- Conditions imposed, 25, 50
- Consideration for grant, 25, 49
- Doubt as to contract, 25, 50
- Excise tax, 25, 51
- Exemptions, 25, 53
- Exemptions from taxation, 25, 48
- Federal prohibition, 25, 47
- General law repealing all inconsistent acts, 25, 53
- Increase of tax on old subject, 25, 51
- In general, 25, 47
- Limitation upon enforcement of a right, 25, 50
- Municipal taxation, 25, 590, 591
- Obligations of the state, 25, 47
- Redemption statutes, 25, 410
- Reservation of right to repeal, 25, 52
- State or municipal obligations receivable as taxes, 25, 49
- Statute in nature of contract, 25, 47
- Taking away the remedy, 25, 49
- Tax on contract between individuals, 25, 51
- Tax upon a new subject, 25, 51
- Tax upon creditor, 25, 52
- Tax upon income, 25, 51
- To what rule applies, 25, 48
- What amounts to impairment of contract, 25, 50
- Usury laws**, 3, 752
- Virginia coupon cases, 3, 749
- What are radical changes in a charter, 3, 745
- What is the obligation, 17, 4
- What statutes are unconstitutional, 3, 751
- When consent of corporation to change in its charter may be inferred, 3, 744
- Whether contract includes the term "executed contract," 3, 825
- Whether divorce impairs, 5, 746
- Whether donation by citizens towards erection of buildings of a county seat constitutes a contract that buildings shall not be removed, 4, 403
- Whether permission accorded to sue the state is a contract, 3, 750
- Whether the appointment or election of an officer is a public contract, 3, 750
- Obscene matter in the mails, 17, 8
- Opinions of the Justices**, 17, 215
- Examples, 17, 215, 217
- In general, 17, 215
- Refusal of the justices to deliver an opinion, 17, 216
- Subjects upon which opinions have been asked, 17, 215, 217
- Pardons, 3, 687
- Patent Law**, 18, 23
- Right of State**, 18, 65
- Examples, 18, 65
- Marking notes given for patent rights, 18, 65
- Statutes of limitation, 18, 66
- To forbid sale of patented article, 18, 65
- Personal Examination**
- Requiring defendant in homicide to make impression with his foot for comparison, 9, 709
- Pilots, 18, 444, 445
- Postal regulations, 18, 844
- Powers of Congress**, 3, 701
- Pensions*, see **PENSIONS**.
- Bankruptcy, 3, 704
- Dependent upon express grant of constitution or necessary implication, 3, 701
- Exclusive legislation over purchased territory, 3, 706
- Federal taxation, 3, 705
- Implied, 3, 701
- Legal tender, 3, 705
- National corporations, 3, 706
- Naturalization laws, 3, 705
- Patents and copyrights, 3, 705
- Punishment for contempt, 3, 707
- Punishment of counterfeiting, 3, 705
- Regulations of commerce, 3, 702
- Removal of causes, 3, 704
- Right to decide upon extent of powers delegated, 3, 701
- To borrow money, 3, 705
- To declare war, 3, 706
- To raise and support armies, 3, 706
- When exclusive, 3, 701
- Powers of Judiciary to Determine the Constitutionality of Statutes**, 3, 673
- See **STATUTES**.
- Every intendment is in favor of the constitutionality of an act, 3, 674
- Inferior courts, 3, 673

CONSTITUTIONAL LAW—Cont'd**Powers of Judiciary to Determine the Constitutionality of Statutes—Cont'd**

Judicial notice of legislative journals, 3, 675

Legislature not to judge, 3, 673

Motives of legislators, 3, 675

Must be a clear violation of constitution, 3, 674

Origin of, 3, 673

Preamble, 3, 673

Presumption from lapse of time, 3, 673

Right and duty of judicial tribunals, 3, 673

Rule that a constitutional question will not be decided until the full bench is present, 3, 676

Statute contrary to spirit of constitution, 3, 674

Powers of Legislature, 3, 689

Amendment of journals, 3, 692

Controverted election and qualification of its members, 3, 691

Legislative control of municipal corporations, 3, 692

Local, special, and class legislation, 3, 695

Over courts established by the constitution, 3, 693

Over jurisdiction of a court where jurisdiction is fixed by constitution, 3, 693

Power of congress to confer jurisdiction upon state courts, 3, 694

Privilege of members from arrest, 3, 692

Special sessions, 3, 692

To abolish constitutional offices, 3, 750

To compel witnesses to attend and testify before the house, 3, 692

To confer jurisdiction upon federal courts, 3, 694

To declare judicial proceedings void for want of jurisdiction, 3, 695

To delegate its powers, 3, 698

To dispose of revenues of the state, 3, 691

To impose non-judicial duties upon judicial officers, 3, 695

To prescribe a form of process at variance with that delegated by state constitution, 3, 695

To reduce salary or compensation of public officer, 3, 750

To regulate courts, judges and jurisdiction, 3, 693

To repeal acts of former legislature, 3, 691

Presentment or Indictment, 3, 729

Sufficiency of, 3, 730

Process

Form of, 3, 695

Provision that "all laws of a general nature shall be uniform in their operation," 3, 697

Provision that citizens of one state shall be entitled to all privileges and immunities of the others, 3, 252

Publication, notice by, 16, 810

Quartering of soldiers, 3, 714

Questions of law and fact, 19, 639, 647

Railroad fence laws, 7, 910

Reconstruction, 3, 672

Referees**Constitutionality of Compulsory References, 20, 664**

Action at law, 20, 664

Equity cases, 20, 664

Federal court, 20, 664

Generally, 20, 665

In California, 20, 665

In Colorado, 20, 666

In Iowa, 20, 666

In Kansas, 20, 666

In Minnesota, 20, 666

In Missouri, 20, 666

In Nebraska, 20, 667

In New Hampshire, 20, 667

In New York, 20, 666, 667

In North Carolina, 20, 668

In Ohio, 20, 668

In Oregon, 20, 668

In Vermont, 20, 668

In Wisconsin, 20, 669

Scope of constitutional provisions, 20, 665

Seventh amendment, 20, 665

State courts, 20, 665

Regulation of Commerce, 3, 704; 18, 444, 445

See INTERSTATE COMMERCE; NAVIGABLE WATERS; NAVIGATION; TAXATION.

Bridges over navigable streams, see BRIDGES.

Shipping regulations, see SHIPS AND SHIPPING.

Embargoes, 3, 703

Immigration, 3, 703

On what waters, 3, 702

Pilotage, 3, 703

Registration of vessels, 3, 702

What embraced by, 3, 702

Whether congress's power is exclusive, 3, 703

With foreign nations, 3, 702

Removal from Office

Constitutional power of executive, 3, 687

Removal of Causes

Civil rights, 20, 1024

Constitutionality of law forbidding foreign corporations to do business in the state unless they will waive right to remove suit, 20, 1011

Statute providing that foreign corporations shall be deemed domestic corporations in all suits, 20, 1011

Statute requiring secretary of state to revoke license of foreign corporation upon bringing suit in federal court, 20, 1011

Suits and prosecutions against revenue officers and officers acting under the election laws, 20, 1025

- Repealing clause in a, 3, 678
Retroactive laws, see RETROACTIVE LAWS.
Right of Action, 17, 474
 Entering judgment, 17, 474
 Issuing execution, 17, 474
 Onerous conditions, 17, 475
 Right of petition, 3, 713
Right to Trial by Jury, 3, 719, 822; 25, 957
 See SUMMARY PROCEEDINGS.
 Admeasurement of dower, 3, 721
 Affidavit of defense, 3, 724
 Agreed case, 24, 142
 Assessment of damages by court, 3, 723
 Capital crimes, 25, 957
 Challenges to jurors, 3, 731
 Change of venue, 3, 732
 Claims against government, 3, 721
 Clause in federal constitution applies to courts of United States only, 3, 719
 Collection of taxes, 3, 720
 Commitment of children to house of correction, 17, 401
Constitutionality of Compulsory References, 3, 722; 20, 664
 Action at law, 20, 664
 Equity cases, 20, 664
 Federal court, 20, 664
 Generally, 20, 665
 In California, 20, 665
 In Colorado, 20, 666
 In Iowa, 20, 666
 In Kansas, 20, 666
 In Minnesota, 20, 666
 In Missouri, 20, 666
 In Nebraska, 20, 667
 In New Hampshire, 20, 667
 In New York, 20, 666, 667
 In North Carolina, 20, 668
 In Ohio, 20, 668
 In Oregon, 20, 668
 In Vermont, 20, 668
 In Wisconsin, 20, 669
 Scope of constitutional provisions, 20, 665
 Seventh amendment, 20, 665
 State courts, 20, 665
 Constitutional provision, 3, 719
 Contempt of court, 3, 721
 Contested elections, 3, 721
 Continuances, 3, 732
 Conversion of a legal right into an equitable one, 3, 722
 Counterclaim, 22, 434, 435
 Divorce proceedings, 3, 721
 Due process of law, 6, 49
 Eminent domain, 3, 720; 6, 613
 Equity cases, 3, 720
 Habeas corpus, 9, 203
In Criminal Cases, 3, 731; 4, 812
 Jury of the vicinage, 3, 732
 Right to impartial jury, 3, 731
 Where jury may be obtained in appellate court, 3, 733; 4, 812
 In general, 25, 957
 I-D—17
- Injunction proceedings against elevated railroads, 23, 1085
 Inquisition of lunacy, 3, 721
 Insolvent laws, 3, 721
Intoxicating Liquors, 11, 597
 Constitutional guaranty, 11, 597
 Examples, 11, 598
 Nuisance, 11, 598
 In what cases the right is secured, 3, 720
 Issue in chancery, 28, 437
 Jury fees, 3, 724
 Jury must consist of twelve men, 3, 731; 4, 813
 Justice of the peace, 3, 723; 12, 408, 409
 Local assessments, 25, 502
 Mandamus, 3, 721; 14, 225
 Meaning of the term "jury" as used in this connection, 3, 724
 Mechanics' liens, 15, 176, 195
 Misdemeanors, 12, 408, 409
 Motion for new trial, 16, 666
 Municipal corporations, 15, 978
 Order of peremptory nonsuit by court, 3, 723
 Power of territory to deny, 25, 957
 Provisions in state courts, 3, 720
 Quo warrant, 3, 721
 Remedies against sureties upon certain official bonds, 3, 721
Summary Proceedings, 3, 721, 733
 See SUMMARY PROCEEDINGS.
 Against collector, 25, 356
 Summary punishment for contempt, 3, 791
 Supplementary proceedings, 3, 721
 Taxation, 25, 55, 257
 Unauthorized discharge of jury, 3, 733
Waiver, 3, 724; 28, 589
 In civil cases, 28, 589
 Right of defendant to waive, 3, 733; 4, 817; 6, 837
 What is meant by, 3, 720
Rights of Citizens of Other States
 Corporations as citizens, 3, 252
 Guaranty of equal privileges and immunities, 3, 252
 Privileges and immunities defined, 3, 253
Right to Bear Arms, 1, 718; 3, 726
 See CONCEALED WEAPONS.
 Constitutional provisions, 3, 726
Right to Obtain Justice Without Purchase, 3, 725
 Requirement of security for costs, 3, 725
 Requirement that person claiming against tax-title shall deposit amount of purchase-money in court, 3, 725
Schools
 Bible in schools, 21, 775
 Separate schools for colored persons, 21, 766
Secret Voting
 Right to be helped, 21, 1004
 Vol I.

CONSTITUTIONAL LAW—Cont'd**Separate Provinces of Departments of****Government**, 3, 681; 19, 451**Constitution of United States**, 19, 451**Constitutions of the states**, 19, 451**Encroachment of legislative upon ju-****dicial**, 3, 681; 13, 222; 19, 454**Encroachment of One Body Upon An-**
other, 19, 452*See infra*, ENCROACHMENT.**Equal, co-ordinate, and independent**,
19, 452**Executive body**, 3, 685, 686; 19, 451**In general**, 19, 451**Judicial body**, 19, 451**Legislative body**, 19, 451**Service of Process**, 22, 127, 139*See* DUE PROCESS OF LAW.**Examples**, 22, 140**Service by publication**, 22, 139**Statute providing for manner of service**
which conflicts with charter, 22, 127**Upon what constitutionality depends**,
22, 140**Smoke ordinances**, 22, 802**Special sessions of legislature**, 3, 692**Speedy Trial**, 3, 732; 4, 812, 813**Habeas corpus**, 9, 203**Stamps on state process**, 21, 323**Stare Decisis**, 3, 678**Applying particularly to the interpre-**
tation of constitutions, 3, 681**Decisions Construing**, 23, 31**Amendment of decision**, 23, 31**Legislative sanction**, 23, 32**Palpable wrong or injustice**, 23, 31**Titles to real estate**, 23, 31**State and federal courts**, 3, 681**State Constitution****Impairing the obligation of contracts**,
3, 741**Void if in conflict with national consti-**
tution, 3, 673**States**, *see* STATES.*Relation between*, *see* STATES.*Suits against*, *see* STATES.**Statute of Limitations**, 13, 695**Affecting value without impairing ob-**
ligation, 13, 695**Bar of statute complete**, 13, 697**Divesting title to property**, 13, 695**Fourteenth amendment**, 13, 697**Impairing obligation of contracts**, 13,
695**"Property" in the bar of the statute**,
13, 697**Reasonable time given to creditor**, 13,
696**Rendering contract unenforceable**, 13,
695**Repeal of statute**, 13, 696, 697**Retroactive intent**, 13, 702, 703**Statutes**, *see* STATUTES.*As to the validity and effect of statutes*,
see generally STATUTES.*Presumption in favor of constitution-*
ality, *see* STATUTES.*Provision that acts shall contain no*
more than one subject, *see* STATUTES.*Provisions that titles shall express sub-*
ject, *see* STATUTES.*Special and local*, *see* STATUTES.**Forbidding aliens to work in mines un-**
constitutional, 1, 463**Giving compensation for improve-**
ments, 10, 244-250**Imposing liability for fires caused by**
railways, 8, 2**In conflict with constitution**, 11, 368;
13, 222**In excess of legislative power**, 13, 222**Partly void**, 3, 676; 11, 368**Requiring corporations to serve the**
public at equal rates, 8, 904**Requiring penalty for refusal to accept**
office, 19, 439**Unconstitutional in Part**, 3, 676; 11, 368**Independent provisions**, 3, 677**Legislative intent that the part should**
be treated as a whole, 3, 677, 678**Statute with single object**, 3, 677**Where totally void**, 3, 676**Stay Laws**, 23, 545**Contract by which debtor has waived**
right to stay, 23, 548**Contracts made after passage of act**,
23, 546**Examples**, 23, 545**Indefinite or unreasonable stay**, 23, 546**Late war**, 23, 545**Nature of the laws**, 23, 545**Violation of obligations of contract**, 23,
545**War of 1812**, 23, 545**Stockholders****Statutory Liability**, 23, 868, 870**As executory provisions**, 23, 870**Federal constitution**, 23, 868**Increasing liability for debts already**
incurred, 23, 868**In general**, 23, 868, 870**Leaving the remedy to be fixed by**
statute, 23, 870**Necessity of actual legislation**, 23,
870**Reduction of liability**, 23, 869**Retroactive effect of statute**, 23, 868,
869**Statutes affecting the remedy**, 23, 869**Subsequent statutes**, 23, 868**Vested rights**, 23, 868**Where the right to modify charter is**
reserved, 23, 869**Succession****Vested rights**, 24, 427, 428*Succession taxes*, *see* SUCCESSION TAXES.**Supplementary Proceedings****Provisions making disobedience pun-**
ishable as contempt, 24, 661**Suspension of habeas corpus**, 3, 714*Taxation*, *see* TAXATION.*For constitutional limitation of the*
taxing power, *see* TAXATION.**Double taxation**, 25, 68

Thirteenth, Fourteenth and Fifteenth Amendments, 3, 251

Effect of conferring citizenship upon former slaves, 3, 249, 251

Treaties

As to treaties, see TREATIES.

As supreme law, 3, 690

Unconstitutional law affording protection to public officers, 3, 678

Unconstitutional law totally void and inoperative, 3, 678

Vagrancy, 28, 38

Validity of statutes infringing constitution, 11, 368; 13, 222

Vested Rights

Divorce, 5, 746

War, 28, 614

What is an "unconstitutional law," 3, 671

When Courts Will Consider Constitutional Questions

Application for habeas corpus, 3, 676

Application of a mere volunteer, 3, 676

Generally, 3, 675

Preliminary motions or applications for provisional injunctions, 3, 676

Presence of a full bench, 3, 676

When the case may be decided on another question, 3, 676

Whether constitution operates prospectively or retrospectively, 23, 448

CONSTRAINT, 3, 762

See RESTRAINT.

CONSTRUCTION, see CONSTITUTIONAL LAW; INTERPRETATION; STATUTES; WILLS.

CONSTRUCTIVE, 3, 763

Constructive notice, see NOTICE.

Constructive presence, see ACCESSORY.

Constructive trusts, see IMPLIED TRUSTS.

Constructive delivery, 3, 763

Constructive distinguished from actual, 1, 184g

Constructive fraud, 8, 635

Constructive notice, 3, 763

CONSULS AND AMBASSADORS, 3, 764

See TREATIES.

Extradition, see generally EXTRADITIONS.

Ambassador distinguished from minister plenipotentiary, 3, 765

Bonds of, 3, 766

Chargés d'affaires, 3, 765; 11, 444

Classes, 11, 442

Consular Courts, 3, 768

Administrative and judicial power of, 3, 769

In what countries the United States has consular courts, 3, 769

Judicial power of foreign consuls in United States, 3, 770

Ordinary jurisdiction of consuls, 3, 770

Who are consuls, 3, 769

Who are ministers, 3, 769

Consular officers, 3, 766

Consuls, 3, 769

As minister, 15, 617

May take acknowledgment, 1, 144

Criminal offenses, 11, 444

Definition of ambassador, 1, 524; 3, 764

Definition of ambassador extraordinary, 3, 765

Definition of consul, 3, 764

Definition of ordinary ambassador, 3, 765

Diplomatic and consular officers, 3, 767

Diplomatic officers, 3, 766

Domicile, 5, 981

Duties of consular officers, 3, 767

Envoys, 3, 765; 6, 655; 11, 444

Exemptions from service of process, 3, 772, 775; 22, 162

Extradition

Complaint by representative, 7, 624

Free from local jurisdiction, 11, 443

Habeas corpus, 9, 166, 168, 235

Immunities and Privileges

Exemption from local jurisdiction, civil and criminal, 3, 510

Of Ambassadors, 3, 772

Ambassador's household and attachés, 3, 773

Assaults on ambassadors, 3, 772

Entering into trade, 3, 775

Exemptions from suits, 3, 773

Legal process, 3, 772; 22, 162

Necessity of registry by attaché, 3, 773

Privilege from arrest, 1, 524, 727; 3, 772; 10, 234

Right of party to defend himself against an assault by an ambassador, 3, 773

Sending ambassador home, 3, 773

When exemption ceases, 3, 773

Of Consuls, 3, 774

Exemption from jurisdiction of state courts, 1, 727; 3, 775; 10, 234; 22, 162

Tacit engagement of sovereign as to safety and liberty of consul, 3, 775

Whether greater than that of any other non-resident, 3, 774

Judicial power of foreign consuls in the United States, 3, 770

Judicial power of ordinary consuls, 3, 770

Jurisdiction of United States courts, 3, 766

Letter of credence, 13, 237

Letters of recall, 11, 445

Liability to be sued, 17, 476

Master of a Vessel

Appointment, 14, 959

"Ministers," 3, 769; 11, 443; 15, 617

Parties to actions, 17, 476

President's authority to appoint, 3, 767

Provision as to uniforms, 3, 766

Provisions of the United States constitution, 3, 766

Residence, 6, 279

Right of consul to intercede in behalf of his countrymen, 3, 770

Right to sue, 17, 476

Sending ambassador home, 3, 773

Supplementary proceedings, 24, 608

Termination of the mission, 11, 445

CONSULS AND AMBASSADORS—Cont'd**United States Commissioners**

Power to Carry into Effect Awards of

Foreign Consuls, 27, 553

Examples, 27, 553

Statute or treaty stipulations, 27, 553

United States Courts, 27, 584

Jurisdiction over consuls, 3, 775

Supreme court's original jurisdiction, 27, 638

United States statutes, 3, 766

Waiver of privilege, 10, 235

Whether deemed enemies after outbreak of war, 11, 479

CONSUMPTION

Loan for consumption, 13, 978

CONTAGIOUS DISEASE

Negligence, 16, 418

CONTAGIOUS DISORDERS, see BOARDS OF HEALTH, etc.; HEALTH; QUARANTINE.**CONTAINED**

In a barn, 2, 127

CONTANGO, 23, 701**CONTANGO-DAY, 23, 701****CONTEMPLATION, 3, 776**

Of bankruptcy, 2, 67; 3, 776

Of insolvency, 3, 776

CONTEMPT, 3, 777; 9, 214*See generally, SUMMARY PROCEEDINGS.**See OBSTRUCTING JUSTICE.***Alimony**

Enforced by proceedings of, 1, 483

Appeal and review, 1, 619; 3, 800, 802

Attachments for, 1, 730

Attacking Judgments, 9, 214

Bail, 9, 212

Bankrupt refusing to be examined, 2, 75

By attorneys, 1, 945; 3, 782

Acts which have been held contempt, 3, 782

Disrespectful language, 3, 782

Filing indecent petitions for divorce, 3, 782

Malpractice, 3, 782

Procuring bail, 3, 782

Publishing strictures on opinion of the court, 3, 782

By clerks and other officers, 3, 781

By county commissioners, 3, 782

By inferior judges or magistrates, 3, 781

By jurymen, 3, 782

By Parties to a Suit, 3, 784

Acts which have been held contempt, 3, 784

Bringing an action in name of a fictitious person, 3, 784

Disobedience of a rule or order of court, 3, 784

Disobedience to an injunction, 3, 785

Disobedience to awards of arbitrators, 3, 785

Interfering with course of justice, 3, 784

Non-payment of costs, 3, 784

By Persons Bearing No Relation to the Court, 3, 785

Acts which have been held contempt, 3, 785, 787

By interfering with process of court, 3, 786

By speaking or writing contemptuously of court, 3, 786

Carrying off a ward in chancery, 3, 787

Disobedience of an order of court, 3, 785, 793

Instances of what are not contempts, 3, 788

Insulting language to a judge, 3, 785

Interference with property over which court has supervision, 3, 787

Publications, 3, 786

Publishing an article attributing falsehood to persons who have made affidavit, 3, 787

Rioters and strikers stopping trains in the hands of receivers, 3, 787

Striking attorney in court room, 3, 785
By sheriffs, bailiffs, clerks, and other officers of the court, 3, 781**By Witnesses, 3, 783**

Insolent demeanor, 3, 783

Not attending when subpoenaed, 3, 783

Refusal to be sworn, 3, 783

What acts constitute contempt, 3, 783

Classification of, 9, 214

Corporations, 4, 258

Costs, 3, 803

Criminal contempt, 9, 214

Definition, 3, 777, 780; 9, 214

Disbarment of attorney for, 1, 946

Disobedience to an order of the court for summary payment, 3, 786

Disobedience to peremptory mandamus, 3, 781

Distinction between direct contempts and contempts in facie curiæ, 3, 790

Due process of law, 5, 51

False imprisonment, 669-671

Fine a judgment in criminal cases, 9, 215

Grand juror, 3, 787

Habeas Corpus, 9, 203, 214

Acts not constituting contempt, 9, 218

Attacking decrees, 9, 216

Attacking judgments, 9, 216

Attacking orders, 9, 216

Attack on commitment, 9, 219

Commitment by legislative body, 9, 217

Commitment for an indefinite time, 9, 218

Commitment for longer time than fixed by statute, 9, 217

Conflict of authority, state and federal, 9, 218

Cost, 9, 219

Court without authority, 9, 218

Disobedience to subpoena, 9, 216

Due process of law, 9, 218

English rules, 9, 217

Failure to set forth facts from which contempt arose, 9, 219

- Fine, 9, 219
- Illustrations, 9, 216
- Judgments of superior and inferior courts, 9, 217
- Jurisdiction, 9, 215, 220
- Legislative bodies, 9, 218
- Modifying judgment, 9, 217
- Order in supplementary proceedings, 9, 216
- Orders in alimony, 9, 216
- Order which court had no authority to make, 9, 216
- Prisoner must have notice of order, 9, 217
- Publications during trial, 9, 219
- Record, 9, 220
- Review of evidence, 9, 220
- Statement of facts in order of commitment, 9, 219
- Twice in jeopardy, 9, 217
- Unconstitutional law, 9, 217
- Void orders, 9, 217
- What must be set out to warrant commitment, 9, 219
- What will be examined into, 9, 215
- When prisoner liable to discharge, 9, 216
- Impeachment of judge for abuse of power, 3, 801
- Imprisonment for debt, 10, 217
- Indictment for, 3, 794
- Inferior courts, 9, 218
- Inherent Power of Courts**, 3, 799; 9, 215
- To punish for, 3, 780
- Injunction**
 - See infra*, VIOLATION OF INJUNCTION.
 - Supplementary Proceedings**, 24, 664
 - Confessing judgment, 24, 664
 - Corporations, 24, 664
 - Examples, 24, 664-666
 - How long injunction order remains in force, 24, 666
 - Permitting violation, 24, 664
 - Service of injunction, 24, 664, 665
 - Subsequently acquired property, 24, 666
 - Title to property not in judgment debtor, 24, 665
- Instances of What Are Not Contempts**
 - Acting against erroneous order of court, 3, 788
 - Disobedience to court which has no jurisdiction, 3, 788
 - Examples, 3, 789, 790
 - Offense to court where there is another remedy, 3, 788
 - Refusal of governor to obey subpœna, 3, 789
 - Where refusal to obey is assertion of a constitutional right, 3, 789
- Intention of the party, 3, 799
- Jeopardy, 11, 937
- Judicial sales, 12, 234
- Jurisdiction**
 - Necessity of, 3, 788
- Justices of the Peace**, 3, 801; 12, 500
 - Commitment for contempt, 12, 500
 - Enforcement of punishment, 12, 500
 - Power of justices, 12, 500
 - Requiring surety for good behavior, 3, 801
 - What is contempt, 12, 500
- Legislative**, 3, 777; 9, 215
 - Habeas corpus, 9, 217, 218
- Mandamus**, 14, 129, 240
- Mandamus** to restore attorney disbarred for, 1, 948
- Necessity of a warrant, 3, 791
- Newspapers**, 13, 512; 16, 495
 - Case denying right, 16, 496
 - Criticising matter actually pending, 16, 497
 - In America, 16, 496
 - In Arkansas, 16, 498
 - In Connecticut, 16, 498
 - In England, 16, 496
 - In Florida, 16, 498
 - In Illinois, 16, 497
 - In Indiana, 16, 498
 - In Iowa, 16, 498
 - In New Hampshire, 16, 498
 - In New Jersey, 16, 498
 - In North Carolina, 16, 498
 - In Ohio, 16, 498
 - In Oregon, 16, 497
 - In United States court, 16, 499
 - In West Virginia, 16, 497
- Non-payment of costs, 3, 803
- Notary public, 9, 215; 16, 770
- Of commissions to take deposition, 5, 600
- Of Legislature**, 3, 777; 9, 214, 215
 - Inferior legislatures, 3, 780
 - Legality of punishments for contempt examined by supreme court, 3, 778
 - Power of senate and house of representatives to punish for contempt, 3, 778
 - Power to punish for contempt, 3, 777
 - Warrant of arrest, 3, 779
- Of public wrong, 9, 215
- Of United States courts, 3, 796
- Officers**
 - Failure to produce books, 17, 171
- Pardon for, 3, 797
- Pardoning power of president, 3, 796
- Patent Law**, 18, 120
 - Advice of counsel, 18, 121
 - Colorable charges, 18, 121
 - Counsel's fees, 18, 121
 - Examples, 18, 121, 122
 - Mitigating circumstances, 18, 121
 - Practice on contempt, 18, 121
 - Terms of injunction, 18, 121
 - Violation of injunction, 18, 120
- Penalty for**, 3, 795
 - Classes of commitment for contempt, 3, 795
 - Fine or imprisonment at discretion of court, 3, 795
 - Imposition of fine as a judgment, 3, 796
 - Period of imprisonment, 3, 796
 - When looked upon as a civil execution, 3, 797
 - When not punitive, 3, 797
- Power of congress to punish for, 3, 707

CONTEMPT—Cont'd**Power of Court to Punish for, 3, 799; 9, 215**

- Appeal and review, 3, 800
- Discretion of judge, 3, 800
- Impeachment, 3, 801
- Inferior courts, 3, 801
- Inquiry as to jurisdiction of lower courts, 3, 802
- Justices of the peace, 3, 801
- Limitations of power, 3, 800
- Presumption, 3, 800
- Review of punishment imposed by inferior courts, 3, 802
- Statutes restricting, 3, 800, 802
- To compel performance of some order or decree of court, 3, 799
- To indicate dignity of court, 3, 799
- What courts possess this, 3, 799
- Where court acts ministerially, 3, 802

Power of Legislature, 9, 215

- Imprisonment terminates with close of legislative session, 3, 779
- In England, 3, 779

Probate

- Suppression of will, 19, 178

Proceedings in, 3, 790; 12, 189

- Attachment issued on judge's own motion, 3, 791
- Commitment, 3, 792
- Constructive contempts, 3, 791
- Contradicting defendant's answers under oath, 3, 794
- Direct contempts, 3, 790
- Discretion of judge as to awarding an attachment, 3, 791
- Erroneous order, 3, 794
- Indictment for contempt, 3, 794
- Interrogatories, 3, 792, 793
- Necessity of arrest or summons, 3, 792
- Necessity of a warrant, 3, 791
- Necessity of setting out cause of commitment of a warrant, 3, 795
- Personal service of rule to show cause why attachment should not issue, 3, 791
- Right to be heard, 3, 793
- Rule to appear and answer, 3, 791
- Summary punishments, 3, 790
- When brought before courts by affidavit, 3, 791
- When final judgment can be rendered, 3, 794
- When party may be discharged as insolvent, 3, 794
- Where there is a violation of injunction, 3, 792
- Process of, to compel discovery in equity, 1, 601
- Publication, 3, 786
- Publication of Proceedings of Court, 13, 320, 322**
- Proceedings before grand jury, 13, 320, 322
- Purging, 3, 793, 797; 10, 1010; 24, 660**
- Conclusiveness of defendant's oath, 3, 793, 794, 798

Explaining words apparently scandalous or offensive, 3, 798

Intention of party, 3, 799

Mere disavowal of intentional wrong, 3, 798

Motive or intent in disobedience, 3, 798

Necessity of appearing at court in person, 3, 798

Privilege of, 3, 797

What is sufficient, 3, 797

Where private right is to be enforced, 3, 798

Receivers

Attachment to enforce receiver's rights, 20, 116

Committal, 20, 144

Examples, 20, 114, 115

Failure to comply to an order to pay money into court, 20, 124

Injunction to restrain trespassing, 10, 1012; 20, 144

Interference with, 20, 114

Interference with possession, 20, 115, 141

Irregularity of appointment, 20, 142

Knowledge of appointment of receiver, 20, 115

Proceedings in state court in contempt of federal court, 20, 68

Punishable by attachment, 20, 114

Punishment, 20, 144

What court will entertain proceedings, 20, 143

When party liable for contempt, 20, 114

Refusing to seal a bill of exceptions, 3, 781

Replevin, 20, 1065

Res judicata, 21, 238

Rests within the jurisdiction of the court, 1, 946

Right of trial by jury, 3, 721, 794

Sequestration, 22, 94

Disturbance of sequestrator, 22, 99

Sheriffs, 3, 781; 22, 553, 554

Acts which have been held contempt, 3, 781

Execution of process, 22, 554

For default, sheriff's default, 22, 553, 554

Refusing to serve, 3, 781

Remedy against sheriff, 22, 553

Serving a writ improperly, 3, 781

Specific criminal offense, 9, 215

Statutory contempt, 9, 214

Subpena, 24, 171

Succession taxes, 24, 484

Suits against insane persons, 11, 127

Summary Punishments, 3, 790

Whether an infringement of guaranty of a trial by jury, 3, 721, 791-794

Supersedeas, 24, 598

Supplementary Proceedings, 24, 659

Constitutionality of provisions, 24, 661

Construction of statutes, 24, 659

Examples, 24, 659-662

Failure to Attend for Examination, 24, 662

- Authorized order, 24, 662
- Examples, 24, 662
- Service, 24, 662

Failure to Turn Over Property, 24, 666, 667

- Debtor of judgment debtor, 24, 669
- Demand by attorney, 24, 667
- Demand for compliance, 24, 667
- Examples, 24, 666, 667
- Necessity of order, 24, 666
- Order appointing receiver, 24, 668
- Order requiring payment, 24, 666
- Order to satisfy judgment, 24, 668
- Property not in possession of party, 24, 668

Inability result of design, 24, 660**Punishment, 24, 669**

- Attachment, 24, 670
- By what judge, 24, 669
- By whom administered, 24, 669
- Clear case must be made out, 24, 670
- Disobedience of order to pay costs or specified sum of money, 24, 670
- Duration of imprisonment, 24, 674
- Extent of Punishment, 24, 671**
 - Amount of indemnity, 24, 672
 - Costs and actual expenses, 24, 672
 - Fines, 24, 671
 - Imprisonment for debt, 24, 673
 - Indemnifying complainant, 24, 671
 - Proof of damages, 24, 671
 - Proving costs, 24, 673
 - Regulated by statutes, 24, 671
 - Where no actual loss or injury has been produced, 24, 672

- Notice to offender, 24, 670
- Order to show cause, 24, 670
- Procedure, 24, 670
- Referee, 24, 669

Purged of contempt, 24, 660**Refusal to Answer, 3, 783; 24, 663**

- Examination of books and documents, 24, 663
- Examples, 24, 663, 664
- Production of documents, 24, 663
- Whether punishable as contempt, 24, 663

Statutory provisions, 24, 659**Suing receiver without leave of court, 24, 700****Trivial violation, 24, 660****Unable to comply with order, 24, 660****Violating Injunction, 24, 664**

- Corporations, 24, 664
- Examples, 24, 664-666
- How long injunction order remains in force, 24, 666
- Permitting violation, 24, 664
- Service of injunction, 24, 664, 665
- Subsequently acquired property, 24, 666
- Title to property not in judgment debtor, 24, 665

Violation as Contempt

- Confessing judgment, 24, 664

Surrogates' courts, 24, 992**United States commissioners, 27, 550****United States courts, 27, 619****Violation of Injunction, 10, 1008***See infra*, SUPPLEMENTARY PROCEEDINGS.

- Acts enjoined pending appeal, 10, 1013
- Advice of counsel, 10, 1011
- Attachment for contempt, 10, 1013
- Attorneys, 10, 1012
- Extent of fine imposed, 10, 1014
- Illustrations of what constitute violation, 10, 1008
- Indemnity to opposite party, 10, 1009, 1010
- Interference with status of property, 10, 1012
- Jurisdiction, 10, 1010
- Jurisdiction of special judge, 10, 1010
- Laches, 10, 1013
- Motion to commit, 10, 1013
- Motive, 10, 1010
- Notice, 10, 1011
- Proof of violation, 10, 1008, 1013
- Punishable as contempt, 10, 1008
- Punishment for breach, 10, 1013
- Purging a contempt, 10, 1010
- Receiver of railroad, 10, 1012; 20, 144
- When punishment authorized, 10, 1008
- Where court had no jurisdiction, 10, 1010
- Where injunction should not have been granted, 10, 1009

Will

- Suppression of will, 19, 178

CONTENTION, 3, 803**CONTENTS, 3, 803**

- Unknown in bill of lading, 2, 227

CONTEST, 3, 803

- Contested elections, 3, 803; 17, 51

CONTIGUOUS, see ADJOINING.

- Adjacent and contiguous synonymous, 1, 190

Contiguous proprietors, 3, 803**CONTINGENT, see REMAINDERS; WILLS.****Contingent demand, 3, 804****Contingent expense, 3, 804****Contingent liability, 3, 804****CONTINGENT FEES, see CHAMPERTY AND MAINTENANCE.****CONTINGENT REMAINDERS, see REMAINDERS.****CONTINGENT USES, 27, 912****CONTINUANCES, 3, 804***See* DISCONTINUANCE.**Absence of Counsel, 3, 808**

- Absence in the legislature, 3, 809

- Absence of one of several counsels, 3, 808

- Betrayal of counsel, 3, 809

- Business engagements of counsel, 3, 808

- Death of counsel, 3, 808

- Illness of counsel, 3, 808

- When continuance will be granted for, 3, 808, 809

- With papers in the case, 3, 808

CONTINUANCES—Cont'd

Absence of Witnesses, 3, 809
 Accounting for, 3, 812
 Affirmative showing that the absent witnesses can and will be produced, 3, 809
 Attempt to secure depositions of seafaring witnesses, 3, 810
 Due diligence, 3, 809
 Due diligence to be shown, 3, 819
 Materiality and admissibility of evidence, 3, 809
 Time allowed for service of subpoena, 3, 820
 When continuance will be granted for, 3, 809
 Where adverse party admits the testimony of, 3, 820
 Where person relied on promise of witness to be present at trial, 3, 810
Absence or Inability of Party, 3, 811
 Accounting for, 3, 812
 Death of party, 3, 811
 In the military service, 3, 811
 When ground for continuance, 3, 811
 Where the absence is upon public business or in the public service, 3, 811
Affidavit, 1, 313; 4, 839
 Absent witness, 3, 806
 Admissibility of evidence at trial, 9, 711
 An application for, 3, 805
 Certainty, 3, 807
 Construed strictly against applicant, 3, 807
 Counter-affidavits, 3, 807
 Defendants, 3, 807
 Due diligence by party applying, 3, 807
 Necessity of, 4, 839
 On account of absent witnesses, 3, 806
 Showing good cause of action or defense, and that it is not made for delay, 3, 807
 Showing that facts expected to be proved by absent witness cannot be otherwise proven, 3, 806
 Showing that testimony of absent witness is material, 3, 807
 What affidavit should set out, 4, 839
 What statements it must contain, 3, 806
 Where, based on information from others, 3, 806
 Where continuance is asked on ground of surprise, 3, 813
 Where facts stated in an affidavit will be taken as true, 3, 806
Agreements of Counsel, 3, 815
 Necessity of writing, 3, 815
 Whether sufficient, 3, 815
Alterations or Amendment of Pleadings, 3, 816
 Materiality of, 3, 816
 Nearness to time of trial, 3, 817
 Substantial amendment to a petition, 3, 816
 Surprise, 3, 817

Application for, 3, 805
Affidavit, 3, 805, 806
 Counter-affidavits, 3, 807
 How and when made, 3, 805
 Should be made before trial, 3, 805
Avoiding by Admission, 3, 820; 4, 839
 Adverse party admitting testimony of absent witness, 3, 820
 Necessity that adverse party admits that the facts be absolutely true, 3, 820
Bill of Exceptions
 Upon refusal to grant, 2, 219
 Constitutionality of, 3, 732
 Counsel not ready, 4, 839
 Counter-affidavits, 3, 807
 Criminal conspiracy, 4, 638
 Definition, 3, 804
 Depositions, 5, 599
Diligence, 3, 819
 Subpoena, 3, 820
 What must be shown, 3, 819
 When continuance is asked on account of absent witness, 3, 819
 Discretion of court, 3, 805, 818; 4, 836
 Divorce cases, 5, 766
 English practice, 4, 837
Grounds for, 3, 732, 808
 Absence of counsel, 3, 808
 Absence of party, 3, 811
 Absence of witnesses, 3, 809
 Agreements of counsel, 3, 815
 Amendments to pleadings, 3, 816
 Causes which have been held insufficient, 3, 817
 Inability to understand nature of oath, 3, 817
 Loss or absence of papers, 3, 815
 Mistake, 3, 817
 Nearness to time of crime, 3, 813
 Newly-discovered evidence, 3, 814
 Popular excitement, 3, 812
 Public holiday, 3, 813
 Surprise, 3, 813
 To await depositions, 3, 815
 To await determination of other proceedings, 3, 816
 To enable parties to procure evidence, 3, 814
Habeas corpus, 9, 210
Homicide, 9, 654
 Adjourned term, 9, 656
 Defendant unable to obtain counsel, 9, 656
 Materiality of evidence, 9, 655
 Prosecution admits truth of facts to which absent witnesses are expected to testify, 9, 654
 Surprise, 9, 655
To Procure Witnesses, 9, 654
 For purpose of change of venue, 9, 654
 Where it is improbable that witness will ever attend, 9, 655
 Witnesses have not been summoned, 9, 655

In Criminal Cases**Affidavit**, 4, 839

What affidavit should set out, 4, 839

Counsel not ready, 4, 839

Cumulative evidence, 4, 835

Discretion of the court, 4, 836

Discretion of the court arbitrarily exercised, 4, 837

English practice, 4, 837

Illness of counsel or defendant, 4, 836

Infant witness, 4, 836

Not a matter of right, 4, 836

Refusal when a ground for reversal, 4, 837

Right of prosecuting attorney to pass upon application for continuance, 4, 835

Time to prepare defense, 4, 836

Where state admits that evidence of witnesses would be such as is claimed, 4, 839

Witnesses residing out of state, 4, 835

Injunctions, 10, 1007**Justice of the Peace**, 12, 408, 442-445

Absence of justice, 12, 444

Affidavit, 12, 443

Deposition of facts to which absent witness would testify, 12, 443

Entry upon docket, 12, 444

Materiality of evidence, 12, 443

Waiver of defects, 12, 444

Want of material testimony, 12, 443

When a party may have, 12, 443

Without consent of party, 12, 443

Larceny, 12, 831**Loss or absence of papers**, 3, 815**Mandamus**, 14, 114**Misdemeanors**, 12, 408**Mistake**, 3, 817**Nearness to time of crime**, 3, 813**Newly-Discovered Evidence**, 3, 814

After trial has commenced, 3, 814

Discovery of material witness in another state, 3, 814

Due diligence required, 3, 814

When continuance allowed for, 3, 814

Where there is no time to take a deposition, 3, 814

New Trial**Continuance of Motion for**, 16, 662

By agreement of counsel, 16, 662

By order of court, 16, 662

Continuance without application, 16, 663

For cause shown, 16, 663

Suspension of judgment, 16, 663

Where not disposed of, 16, 663

Whether motion must be determined at term in which made, 16, 663

Continuance or Postponement

Vacating judgment, 16, 663

Failure to Ask for Continuance

Absence of witnesses, 16, 540

Lost documents, 16, 547

Lost records, 16, 547

Newly-discovered evidence, 16, 564

Surprise, 16, 542

Surprise as to evidence, 16, 542

Not a matter of right, 4, 836

Perjury, 18, 305

Popular Excitement

Public excitement, 3, 812

Second continuance, 3, 812

Public holiday, 3, 813

Record, 20, 481

Refusal when a ground for reversal, 4, 837

Review of Discretionary Action in Regard to Granting Continuances, 3, 818

Improper granting of a continuance subject to review, 3, 818

Improper refusal to grant continuance as matter of error, 3, 818

Long delays, 3, 818

Presumption that court properly exercises its discretion, 3, 819

Refusal to grant after cause is at issue, 3, 818

Several continuances, 3, 818

Where the court's decision is reviewable, 3, 818

Second Continuance

On ground of popular excitement, 3, 812

Service of Process

Application as waiver of defects in service, 22, 169

Statutory regulations, 3, 804**Surprise**, 3, 813; 16, 542

Alterations or amendment of pleadings, 3, 817

Unexpected testimony, 3, 813

When continuance will be allowed for, 3, 813

To await depositions, 3, 815

To Await Determination of Other Proceedings, 3, 816

Determination by an administrator to await ascertainment of solvency of estate, 3, 816

When continuance allowed on this ground, 3, 816

Where cross-actions are pending, 3, 816

Where land is attached by several creditors, 3, 816

To Enable Party to Procure Evidence, 3, 814

Due diligence, 3, 814

Materiality of evidence, 3, 814

Unforeseen accident or casualty, 3, 805

Warrants, 28, 734

CONTINUATION, 23, 701**CONTINUE**, 3, 822

Continuous, 3, 822

CONTINUING

Continuing guaranty, 3, 822

Continuing trustee, 3, 822

CONTINUOUS*Continuous easement*, see EASEMENT.

Continuous carriage, 3, 822

CONTRABANDS OF WAR, see INTERNATIONAL LAW.

CONTRACT, 3, 823*Act of God*, see **ACT OF GOD.***Agency*, see **AGENCY.***Dealings by agent against his duty*, see **AGENCY.***Assignments*, see **ASSIGNMENTS.***Assumpsit*, see **ASSUMPSIT.***Bill of lading*, see **BILL OF LADING.***Breach of promise*, see **BREACH OF PROMISE OF MARRIAGE.***Building contracts*, see **WORKING CONTRACTS.***By letter*, see **LETTERS.***By mail*, see **LETTERS.***By what law governed*, see **CONFLICT OF LAWS.***Carrier limiting his liability*, see **CARRIERS OF GOODS.***Carriers of passengers*, see **CARRIERS OF PASSENGERS.***Catching bargain*, see **CATCHING BARGAIN.***Compacts between states*, see **STATES.***Conditions*, see **DEEDS.***Conflict of laws*, see **CONFLICT OF LAWS.***Corporations*, see **CORPORATIONS.***Constitutional provision against the impairment of contracts*, see **CONSTITUTIONAL LAW.***Contracts of service*, see **MASTER AND SERVANT.***Contracts under seal*, see **BONDS; DEEDS; MERGER.***Estoppel*, see **ESTOPPEL.***Limitation of actions*, see **LIMITATION OF ACTIONS.***Priority of specialty debts*, see **DEBTS OF DECEDENTS.***Deposit*, see **DEPOSIT.***Drunkenness as a defense*, see **DRUNKENNESS.***Duress*, see **DURESS.***Fraud on marital rights*, see **HUSBAND AND WIFE.***Frauds, statute of*, see **FRAUDS, STATUTE OF.***Gambling*, see **GAMBLING CONTRACTS.***Gifts*, see **GIFTS.***Guaranty*, see **GUARANTY.***Illegal*, see **ILLEGAL CONTRACT.***Impossibility*, see **IMPOSSIBLE CONTRACTS.***Impossible*, see **IMPOSSIBLE CONTRACTS.***Indemnity*, see **INDEMNITY CONTRACT.***Insurance*, see **INSURANCE.***Interest*, see **INTEREST.***Intoxicating as a defense*, see **DRUNKENNESS.***Joint or several*, see **JOINDER OF PARTIES.***Lease*, see **LEASE.***License*, see **LICENSE.***Liquidated damages*, see **LIQUIDATED DAMAGES.***Lobbying contracts*, see **ILLEGAL CONTRACTS.***Marriages*, see **MARRIAGE.***Married women*, see **MARRIED WOMEN.***Merger*, see **MERGER.***Novation*, see **NOVATION.***Nudum pactum*, see *infra*, **CONSIDERATION.***Obligation*, see **OBLIGATION OF CONTRACT.***Parol evidence*, see **PAROL EVIDENCE.***Payment*, see **PAYMENT.***Penalties*, see **LIQUIDATED DAMAGES.***Promise to leave by will*, see **WILLS.***Public policy, for contracts against*, see **ILLEGAL CONTRACTS.***Railroads*, see **RAILROADS.***Rescission*, see **RESCISSION.***Restraint of trade*, see **RESTRAINT OF TRADE.***Retroactive laws*, see **RETROACTIVE LAWS.***Reward*, see **REWARD.***Salvage*, see **SALVAGE.****Satisfactory***Proposal to furnish a satisfactory article*, see **SATISFACTORY.***Shipping articles*, see **SEAMEN.***Subscriptions*, see **SUBSCRIPTIONS.***Subscription to stock*, see **STOCK.***Sunday*, see **SUNDAY.****Telegraphs and Telephones***As to contract by*, see **TELEGRAPHS AND TELEPHONES.***Tender*, see **TENDER.****Third Party***As to whether a third party can enforce a contract made for his benefit in his own name*, see **PARTIES TO ACTION.***Towage*, see **TOWAGE; TUGS AND TOWS.***Ultra vires*, see **ULTRA VIRES.***Undue influence*, see **UNDUE INFLUENCE.***United States*, see **UNITED STATES.***Usury*, see **USURY.***Vendor and purchaser*, see **VENDOR AND PURCHASER.***Warranty*, see **WARRANTY.****Wills***Agreements to devise*, see **WILLS.***Agreements to leave property by will*, see **DEBTS OF DECEDENTS; WILLS.***Working contracts*, see **WORKING CONTRACTS.***Abandonment of*, 1, 6**Acceptance of Proposal**, 3, 842, 852*See infra*, **PROPOSAL.***Acceptance by telegraph*, see **TELEGRAPH AND TELEPHONE.***Communication of acceptance by mail*, see **LETTERS.***Agreement to put the contract into writing*, 3, 854*Communication of*, 3, 856*Complete though expressing dissatisfaction*, 3, 854*Conditional*, 3, 852*Conduct*, 3, 853*Contract dating from*, 3, 857

Vol. I.

- Effect of acceptance where there is a conditional agreement to put contract into writing, 3, 855
 Necessity of unqualified, 3, 852
 Necessity that it be communicated to the proposer, 3, 856
 To sell lands subject to the title being approved by the solicitors, 3, 854
Act of God, excuse for performance, 1, 174
Agreement consists of offer and acceptance, 3, 841
 Agreement not to sue, 5, 196
 Agreement which contemplates civil injury to third persons, 3, 870
 Ambiguities in, 1, 541
 Assent, meaning of term, 1, 823
Benefit of third person, see *infra*, **FOR BENEFIT OF THIRD PERSON**.
Bilateral contracts, 2, 199
Bilateral and Unilateral Contracts
 When the offeree becomes bound, 3, 847
Breach, 3, 908
 By renunciation, 3, 904
 Discharge of contract by, 3, 903
 Effect of, 3, 909
 Effect of accepting substantial performance, 3, 923
 Election between rescission and keeping the contract alive, 3, 906
 Entire contracts, 3, 916
 Forms of, 3, 903
 Impossibility created by one party, 3, 907
 In minor matter, 3, 922
 In vital matter, 3, 914
 Liability of stranger for procuring breach, 3, 863
 Time an essence of the contract, 3, 915
Capacity of Parties, 3, 862
 Agents, see **AGENCY**.
 Corporations, see **CORPORATIONS**.
 Drunkenness, see **DRUNKENNESS**.
 Infants, see *infra*, **INFANTS**.
 Lunatics, see *infra*, **INSANITY**.
 Married women, see **MARRIED WOMEN**.
 Charter, see *infra*, **FRANCHISE**.
Classification of common-law contracts, 3, 825
Conditions, 3, 909
 Concurrent, 3, 910, 915
 Impossible, 3, 897, 899
 Precedent, 3, 911
 Examples, 3, 911-913
 Payment, 3, 913
 What is, 3, 913
 Subsequent, 3, 909
Conditions of Proposal, 3, 846
 Absence of express stipulation as to time, 3, 846
 Place of acceptance, 3, 846
 Time within which proposal is to be accepted, 3, 846
Confederate money, 15, 706, 707
Consideration, 5, 196
 Agreement to accept a smaller sum in payment of a larger, see **PAYMENT**.
 Gambling considerations, see **GAMBLING CONTRACTS**.
 Marriage as a consideration, see **MARRIAGE SETTLEMENTS**.
 Promise by a woman when single to perform a previous promise when married, see **HUSBAND AND WIFE**.
 Promise to pay a debt which has been barred by statute of limitations, see **LIMITATION OF ACTIONS**.
 Adequacy, 3, 831
 Agreements not to sue, 5, 196
 Change of contract, 3, 890
 Compromise of disputed claims, 3, 831, 837
 Definition, 3, 831
 Examples of what has been held to be a sufficient, 3, 831-834
 Existing debt, 3, 839
Forbearance to Exercise a Right, 3, 831, 836
 Forbearing to sue, 3, 837
 Promise not to prosecute a demand which has no existence in law or fact, 3, 837
 Good consideration, 8, 1357
 Invalid patent right, 3, 832
 Moral obligation, 3, 838, 840
Natural Love and Affection, 16, 234
 As consideration to support a deed, 16, 234
 Brother and sister, 16, 234
 Collateral consanguinity, 16, 234
 Definition, 16, 234
 Executory contract, 16, 234
 Husband and wife, 16, 234
 Parent and child, 16, 234
 Recitals in deed, 16, 235
 Necessity, 3, 830
 Necessity of, to contracts under seal, 3, 827
 Obligation which could be enforced in equity, 3, 839
 Parol evidence to prove failure, 7, 91
 Past, 3, 838
 Past performance of services, 3, 838
 Patent right, 3, 832
 Pecuniary consideration, 18, 256
 Promise of an additional consideration where a party refuses to perform his contract, 3, 836
 Promise of reward to an officer for arresting a criminal, 3, 835
Promise to Do What One Is Already Bound to Do, 3, 834
 By contract with third person, 3, 836
 Debt already due, 3, 835
 Promise of public officer to perform his duty, 3, 835
 Promise to pay a debt barred by a discharge in bankruptcy, 3, 840
 Promise to pay a debt barred by statute of limitations, 3, 840

CONTRACT—Cont'd**Consideration—Cont'd**

Promise to pay a debt which has been released, 3, 841

Promise to which one is already bound, 3, 831

Questions of law and fact, 19, 637

Recoupment, 22, 361

Rescission for Inadequacy, 21, 34

Examples of inadequacy, 21, 34-36

Inadequacy coupled with other facts, 21, 35

In general, 21, 34

Mental weakness and inadequacy, 21, 35

Sale, 21, 53

Subsequent Promise, 3, 838

Warranty after sale, 3, 839

Subsequent promise operating as waiver of defense, 3, 840

Construction, 3, 867; 11, 368

See INTERPRETATION.

Agreement to be taken as a whole, 11, 368

All the parts taken together, 3, 868

Ambiguous words construed most strongly against person introducing them, 11, 370

A question for the court, 11, 241, 242

Compared with wills in statute, 11, 522

Construction which makes contract legal, 11, 371

Contemporaneous writings, 11, 371

Definition, 3, 559

Effect to be given to every part of contract if possible, 11, 515

Error of parties, 3, 869

Instrument partly written and partly printed, 11, 371

Intent at time contract was made, 11, 369

Latent ambiguities, 11, 369

Omitted words, 11, 371

Parol evidence as to latent ambiguities, 11, 369

Practical interpretation, 11, 369

Presumed to embody final intent, 11, 369

Question for court, 3, 867

Reasonable, 3, 868

Subject-matter and surrounding circumstances, 11, 369

Supported rather than defeated, 11, 371

Void and voidable, 28, 476

Where the conveyance of a contract is partly written and partly oral, 3, 868

Words receiving their usual and obvious meaning, 11, 369

Continuing

Discharge, 3, 894

Contracting, 8, 89

Contract not to be concerned in a business, 3, 419

Contracts of Record, 3, 830

Judgments, see JUDGMENTS.

Recognizance, see RECOGNIZANCES.

Examples, 3, 830

How discharged, 3, 830

Peculiarities, 3, 830

Contracts Under Seal

See BONDS; DEEDS.

Discharge of, 3, 892

Estoppel, 3, 828

Gratuitous, 3, 827

Illegal consideration, 3, 828

Necessity of consideration, 3, 827

Peculiarities incident to, 3, 827

Proposal and acceptance, 3, 859

Right of one not a party to sue upon, 3, 866

Specific performance of voluntary contract, 3, 827

Validity of contracts in restraint of trade, 3, 827

Debt contracted, 5, 157

Definition of legal rights, 3, 824

Delay in performance, 3, 380

Demand necessary to support an action, 1, 181

Dependent Upon Personal Performance

Excused for death or incapacity, 1, 174

Discharge, 3, 889

See PAYMENT; RESCISSION.

Impossibility, see IMPOSSIBLE CONTRACTS; LANDLORD AND TENANT.

Acceptance of a promissory note by creditor, 3, 896

At option of either party, 3, 894

Breach by renunciation, 3, 903

Breach in vital matter, 3, 914

By agreement, 3, 889

By breach, 3, 903

By performance, 3, 895

Change of parties, 3, 892

Change of terms, 3, 890

Continuing contract, 3, 894

Contracts Under Seal, 3, 892

Discharge by parol, 3, 892

Discharge of simple contract by parol, 3, 893

Effect of change in law, 3, 898

Express agreement that the non-performance of a certain term shall discharge the contract, 3, 916

Form of new agreement, 3, 893

Meaning of term, 3, 889

Negotiable instruments, 3, 890

New and inconsistent contract, 3, 891

Non-existence of subject-matter, 3, 897

Non-fulfillment of a specified term, 3, 893

Occurrence of a particular event, 3, 894

Outbreak of war, 3, 898

Payment of less than is due, 3, 895

Personal capacity of parties, 3, 902

Provision for, 3, 893

Rule as to executed contracts, 3, 890

When discharge must be in writing, 3, 893

Where contract is required by statute of frauds to be in writing, 3, 893

Discharge by Operation of Law

Alteration of a written instrument,
see ALTERATION OF INSTRUMENTS.

Appointing debtor executor, see EXECUTORS AND ADMINISTRATORS.

Bankruptcy, see BANKRUPTCY.

By judgment of the court, see JUDGMENTS.

By lapse of time, see LIMITATION OF ACTIONS.

Marriage, see MARRIAGE.

Merger, see MERGER.

Arrest for debt, 3, 929

By Act of Parties Released, 3, 928

Accord and satisfaction, 3, 928

Arbitration and award, 3, 928

Distinction between bilateral and unilateral, 3, 846

Distinguished from Torts

Negligence, 16, 416

Injury to passengers, see CARRIERS OF PASSENGERS.

Breach of contract which is also a tort, 16, 416

Duty arising from contract or agreement, 16, 424

Waiving contract and suing in tort, 16, 416

Where action ex delicto may be maintained for breach of contract, 16, 424, 425

Effect of Death Upon, 5, 136

Where contract can be executed by personal representative, 5, 136

Where contract is strictly of personal nature, 5, 136

Election, 6, 251

Enlistment, 15, 399

Entire Contracts, 3, 916

Acceptance of Partial Performance, 3, 920

Quantum meruit, 3, 921

Quantum valebant, 3, 921

Recovery on implied promise to pay for part completed, 3, 920

Examples, 3, 916-920

Partial performance, 3, 916, 917

When a contract is entire or several, 3, 919

Executed

Whether included under the term contract, 3, 825

Executed and executory contracts distinguished, 3, 824

Executory

Definition, 3, 825; 10, 104

Express and implied agreements, 3, 842

Forbearance, 3, 848

To Exercise a Right

Agreement to give time, 3, 836

For Benefit of Third Persons, 3, 863; 16, 884; 17, 528

Assumption of mortgage debts, see MORTGAGE.

As to whether third person can enforce in his own name, see PARTIES TO ACTIONS.

Action by personal representative of promisee, 7, 264

American rule, 16, 885

Assignment of lease, 16, 894

Common-law rule, 16, 884

Contract under seal, 16, 888

Conveyance to promisee, 16, 891

Deposit of property for benefit of third person, 3, 865

Examples, 17, 528, 529

Grantee of mortgagor who has assumed mortgage, 17, 529

In Alabama, 16, 886

In California, 16, 886

In Colorado, 16, 886

In Florida, 16, 886

In Illinois, 16, 886

In Iowa, 16, 886

In Kansas, 16, 886

In Kentucky, 16, 886

In Louisiana, 16, 886

In Maine, 16, 886

In Minnesota, 16, 886

In Missouri, 16, 886

In Nebraska, 16, 887

In Nevada, 16, 887

In New Jersey, 16, 887

In New York, 16, 887

In North Carolina, 16, 887

In Ohio, 16, 887

In Oregon, 16, 887

In Pennsylvania, 16, 887

In South Carolina, 16, 887

In Virginia, 16, 887

In Wisconsin, 16, 887

Insurance, 16, 896

Reasons for the rule, 16, 889

Rescission, 3, 865; 16, 888

After third parties right has become fixed, 16, 888

Before third person has assented, 16, 888

Simple contracts, 17, 528

Statute of fraud, 16, 895

Statute of limitations, 16, 890

Suretyship, 16, 894

Under the codes, 17, 529

Undisclosed agency, 16, 885

Where contract is under seal, 17, 529

Where promisee holds money or other property, 16, 890

Where third party may sue, 3, 863; 17, 528

Whether third person may maintain an action, 16, 884

Forfeiture, 8, 444

Formal and informal, 3, 825

Franchises, 8, 620

See CORPORATIONS; TAXATION CORPORATE.

Consideration necessary to support contract with state, 8, 621

Criticism of rule, 8, 620

General rule, 8, 620

Granted Subject to Police Power, 8, 621

Abolition of business, 8, 623, 624

Bell ringing, 8, 623

CONTRACT—Cont'd**Franchises—Cont'd****Granted Subject to Police Power—Cont'd**

- Cattle-guards, 8, 622
- Crossings, 8, 623
- Fences, 8, 622
- Fire communicated from locomotive, 8, 622
- Freights and fares, 8, 622
- Legislature cannot bargain away police power of state, 8, 621
- Mismanagement of ferries, 8, 624
- Monopoly, 8, 624
- Negligence causing deaths, 8, 622
- Nuisance, 8, 623
- Penalties for non-performance of public duty, 8, 622
- Police power generally, 8, 622
- Prices charged by water and gas companies, 8, 624
- Remedial legislation, 8, 622
- Sign-boards, 8, 623
- Whistling, 8, 623
- Working hours of minors and women, 8, 624

Municipal aid, 8, 621**Reservation of Right to Amend or Repeal,**

- 8, 627, 634
- By constitutional provisions, 8, 634
- By general law, 8, 634
- Conditioned upon misuse or abuse, 8, 634
- Exemption from taxation, 8, 628
- Legislative interference, 8, 628
- Legislative provisions increasing liability of stockholders, 8, 630
- Limitations, 8, 630**
 - As to contracts, 8, 632
 - As to property, 8, 632
 - Consent of stockholders, 8, 632
 - Debts and mortgages, 8, 633
 - Generally, 8, 630
 - Impairing vested right of stockholders, 8, 631, 632
 - Instances of, upon legislative power, 8, 633, 634
 - Not an arbitrary power, 8, 631
 - State appropriating property, 8, 632, 633
 - Taking away copyrights, 8, 632
 - Vested property rights, 8, 632

Monopolies, 8, 620

- General law, 8, 620
- Purpose of reservation, 8, 627
- Rebuttal of presumption that franchise is irrevocable, 8, 628
- Right of legislature, 8, 634
- Right to fix charges, 8, 628
- What franchises may be controlled, 8, 628

Rights protected by principle, 8, 620**Right to charge more than usual rate of interest, 8, 620****Right to fix charges on public road, 8, 620****Subject to Legislation Affecting Remedies, 8, 624****Eminent domain proceedings, 8, 625****General rule, 8, 624**

- Jurisdiction, 8, 624, 625
- Limitation of actions, 8, 624
- Service of process, 8, 625
- Summary remedies, 8, 624

Implied from conduct, 3, 860**Implied Promises, 3, 860**

- Between parent and child, 3, 860, 861
- Contract implied by a law to perform a duty, 3, 860
- From conduct, 3, 860
- Gratuitous services, 3, 861
- Gratuitous services under mistake of fact, 3, 861
- Presumption may be rebutted, 3, 860
- Services rendered to one without his knowledge, 3, 861
- Where work is done and service is rendered, etc., at request of another, 3, 861

Inducing third party to break his contract with complainant, 5, 331**Infants, 10, 628****Departing from terms of contract, 10, 669****Distinction between contract and tort, 10, 669****Infant's right to avoid his acts, 10, 628****Prejudicial acts, 10, 628****Ratification and Avoidance, 10, 644**

- Affirmance by agent, 10, 648
- By whom new promise may be made, 10, 647, 648
- Declaration to stranger, 10, 647
- Distinguished from debt barred by the statute of limitation, 10, 645
- Effect of express acts, 10, 647
- Examples, 10, 645
- Express promise, 10, 645
- Fraudulent representation as to age, 10, 670

Ignorance of law, 10, 648**Implied ratification, 10, 645****Indication to abide by the award of arbitrators, 10, 646****Infant not aware of rights, 10, 648****Infant's power to ratify, 10, 646****Iowa statute, 10, 649****Lord Tenterden's act, 10, 649****Necessity of disaffirmance, 10, 647****Necessity of expressed contract, 10, 644, 645****Necessity of expressed disaffirmance, 10, 647****Necessity of new promise, 10, 645****New promise, 10, 645****New York doctrine, 10, 646****Promise to pay a certain sum in settlement, 10, 645****Ratification and suit brought, 10, 649****Ratification defined, 10, 646****Ratification in writing, 10, 649****Restoration of Consideration****At law, 10, 656****Avoidance of partnership, 10, 656****Effect of retention, 10, 654****Necessity, 10, 654**

- Right of action to recover, 10, 654
- Use and occupation, 10, 656
- Wasted consideration, 10, 655
- Silence, 10, 647
- Statute forbidding disaffirmance, 10, 674
- Suing to set aside transaction, 10, 647
- When act amounts to a ratification, 10, 644
- Right to Avoid Personal Privilege**, 10, 637
 - Assignee in insolvency, 10, 638
 - Examples, 10, 638
 - Maker of note refuses payment to infant indorser, 10, 638
 - Others for their own benefit, 10, 637
 - Privies in blood, 10, 638
 - Privies in estate, 10, 638
 - Sureties and indorsers for infant, 10, 638
 - Third persons, 10, 637
 - Whether privilege passes to heirs of infant, 10, 638
 - Whether privilege passes to personal representatives of infant, 10, 638
 - Who may take advantage of, 10, 637
- Time of avoidance, 10, 643
- Tort connected with contract, 10, 669
- Trading contracts, 10, 639
- Voidable acts, 10, 637
- Void or Voidable**, 10, 628
 - Executed contracts, 10, 636
- Injunctions**, 10, 937
 - See RESTRAINT OF TRADE.
 - Contract must be certain, 10, 940
 - Contract must be free from doubt, 10, 939
 - Discretion of court, 10, 940
 - Erection of buildings, 10, 938
 - General rule as to when granted, 10, 940
 - Injury from violation must be irreparable, 10, 939
 - Liquidated damages, 10, 940
 - Restrictive covenants not implied, 10, 940
 - Resuming trade in vicinity after good will has been sold, 10, 940
 - To restrain breach, 10, 937
 - Usurious contracts, 10, 938
 - What is meant by irreparable injury, 10, 939
- Insane Persons**, 11, 132
 - After the finding of an inquisition of insanity, 11, 134
 - Cases in which restitution has been held not necessary, 11, 133
- Contracts for Necessaries**, 11, 134
 - Board, nursing, etc., 11, 135
 - Costs and counsel fees, 11, 135
 - Necessaries furnished to wife of lunatic, 11, 135
 - Validity, 11, 134
 - What covered by the word "necessaries," 11, 135
- Delusion unconnected with contract, 11, 132
- General rule as to validity, 11, 132
- Partial unsoundness, 11, 132
- Whether voidable or void, 11, 132
- Interstate commerce, 11, 545
- Judgment as, 12, 60
- Liability of agent upon contract in his own name, 1, 392
- Mail Contract**, 18, 866
 - Bond of mail carrier, 18, 867
- Compensation of Contractors**, 18, 867
 - Additional services, 18, 868
 - Fines, 18, 868
 - How fixed, 18, 867
 - Railroads to which the United States has furnished aid, 18, 869
 - Reductions by postmaster-general, 18, 867
 - Statutory provision, 18, 868
- Construction of contracts, 18, 866
- Discontinuance of mail service, 18, 867
- Notice of change of terms, 18, 867
- Performance, 18, 866
- Power of postmaster-general, 18, 846, 866
- Mandamus, 14, 104
- Maritime, 1, 197, 198; 14, 318
- More or less, 15, 723
- Mutuality of contract, 16, 108
- Nature of**
 - Definition, 3, 559
- Non-Performance**, 3, 908
 - Entire contracts, 3, 916
 - Performance prevented by the action of the other party, 3, 908
- Parent and Child**
 - Contracts Transferring Parental Right**, 17, 373
 - Agreement with the mother, 17, 374
 - Contracts against public policy, 17, 373
 - Court refusing to restore custody to parent, 17, 374
 - Examples, 17, 373-378
 - Interest of child, 17, 374
 - Interference by court, 17, 373
 - Mother transferring her rights to the father, 17, 374
 - Parent losing control through no fault of his own, 17, 378
 - Parent's right, 17, 373
 - Relinquishment of right, 17, 375
 - When contract will be enforced, 17, 375-378
 - Whether breach of contract is actionable, 17, 374
 - Whether contract bars parent from regaining custody, 17, 373
- Perpetuities**, 18, 355
 - Examples, 18, 355-357
 - Exceptions to the rules, 18, 356, 357
 - In general, 18, 355
 - Right incident to reversion, 18, 356
 - Right of entry, 18, 355
 - Right vested in character, 18, 356
 - Right which is merely a remedy, 18, 356
 - Void conditions, 18, 356
 - Whether rights created by contracts are governed by rules against perpetuities, 18, 355

CONTRACT—Cont'd**Persons Affected by Contract***Assignment*, see **ASSIGNMENT**.

Conveyance of mortgaged property to a person who assumes mortgage debt, 3, 866

General rule, 3, 863

Liability of a stranger in tort for procuring breach of contract, 3, 863

Rescission of contract for the benefit of third person, 3, 865

Suit by stranger, 3, 863

Where one of the parties to contract promises to pay debt due by another to third person, 3, 865

Where, upon dissolution of a partnership, partner gives bond for payment of firm's debts, 3, 866

Proposal and Acceptance, 3, 842, 852

Agreement making estimate of engineer conclusive, 3, 846

Continuing offer, 3, 844

Proposal must not be illusory, 3, 844

Time-table as an offer, 3, 843

Tradesman's agreement to supply on certain terms such goods as customer may order, 3, 844

Proposal by Conduct, 3, 858

Sending an order for goods to a merchant, 3, 858

Whether sufficient, 3, 858

Proposal to Unascertained Person, 3, 846*Bidding at auction*, see **AUCTIONS AND AUCTIONEERS**.*Letters of credit*, see **LETTERS OF CREDIT**.*Offers of reward*, see **REWARD**.

Necessity that proposal be accepted by ascertained person, 3, 846

Questions of Law and Fact, 19, 635, 639

Acceptance, 19, 639

Consideration, 19, 637

Contract in writing, 19, 635

Date, 19, 636

Delivery, 19, 637

Escrow, 19, 639

Mixed questions of law and fact, 19, 638

Questions of fact, 19, 637

Questions of law, 19, 637

True rule, 19, 638

Effect, 19, 636

Existence, 19, 636

Express contract, 19, 635

Functions of court, 19, 635

Implied contracts, 19, 639

Instructions, 19, 636

Interpretation, 19, 648

Oral evidence, 19, 636

Partnership, 19, 636

Question for the court, 19, 636

Question for the jury, 19, 636

Seal, 19, 637

Signature, 19, 637

Reasonable time, 19, 1090, 1091

Receivers

In general, 20, 235

Repeal of Statute, 23, 505

Contract against public policy, 23, 505

Examples, 23, 505, 506

In general, 23, 505

Obligation of contract, 23, 505

Where statute has become part of contract, 23, 505

Rescission, see **RESCISSION**.**Res Gestæ**, 21, 118

Declarations after transaction has been concluded, 21, 119

Examples, 21, 118-120

Terms of settlement, 21, 119

When admissible, 21, 118

Revocation, 3, 850

Death of proposer, 3, 851

Necessity that revocation be communicated before acceptance, 3, 851

Proposal before acceptance, 3, 850

Where the proposer gives a definite time for acceptance, 3, 850

Rights in personam and rights in rem, 3, 824

Satisfaction

Contract of teacher, 21, 762

Working contracts, 29, 928

Satisfactory, 3, 433; 21, 714

Cases holding a reasonable compliance sufficient, 21, 715

Distinction between articles involving taste, fancy, etc., and those of mechanical utility, 21, 714

General rule, 21, 714

Sale or return, 3, 433; 21, 648, 649

Severable, 3, 925

Breach of one party on any one item, 3, 925

When severable, 3, 925

Where contract relates to separate matters, 3, 927

Simple, 3, 830

Classification, 3, 841

Instrument under a corporate seal, 4, 245

Specialties, 3, 825See *infra*, **CONTRACTS OF RECORD**; **CONTRACTS UNDER SEAL**.

Merger, 15, 352

Modification by oral contract, 15, 355

Subject-matter, 1, 174

To build, when title passes, 2, 601

To Pay in Coined Dollars, 15, 705See **PAYMENT**.

Constitutionality of state statutes providing that judgment shall be entered for specie stipulated for in contract, 15, 705

Whether fulfilled by payment of debts in legal tender, 15, 705

Whether payment in gold may be implied, 15, 705

Whether payment must be in specie, 15, 705

Unilateral and bilateral, 3, 846

Void and voidable, 28, 476

Waiver, 28, 537

Consideration, 28, 538

- Contracts Under Seal**, 28, 539
 Common-law rule, 28, 539
 Consideration, 28, 540
 Examples, 28, 539, 540
 In equity, 28, 539
 Parol executory agreement, 28, 540
- Contracts Within Statute of Frauds**, 28, 541
 Contracts for sale of land, 28, 541
 Dispensation of performance, 28, 541
 Examples, 28, 541-543
 In general, 28, 541
 In Massachusetts, 28, 542
 Part performance, 28, 543
 Total discharge, or rescission, 28, 543
 To what rule applied, 28, 542
 Where new agreement would not be within the statute, 28, 542
 Whether new agreement must be in writing, 28, 541
 Examples, 28, 537-539
 In general, 28, 537
 Non-performance, 28, 538
 Proof, 28, 538
 Simple contracts, 28, 537
 Subsequent agreement, 28, 538
- War**, 11, 462; 28, 608
 In aid of civil war, 28, 608
 Insurance contracts, 28, 606
 Validity, 28, 606
- Weights and Measures**, 29, 56
 Contract for different standard, 29, 57
 Examples, 29, 56-58
 Presumption that standard weights and measures are used, 29, 56
 Whether the term "contract" includes an executed contract, 3, 825
- Writing**
 Agreement to put contract into, 3, 854
 Writing contract over blank signature, 5, 329
- CONTRACT OF HIRE**, see **MASTER AND SERVANT**.
- CONTRACTOR**, 3, 822
 See **WORKING CONTRACTS**; **MASTER AND SERVANT**.
As to the carrier's liability for acts of independent contractor, see **CARRIERS OF PASSENGERS**.
 General contractor, 29, 855
 Infringement of patents by, 10, 749
 Libel and slander, 13, 358
- CONTRARY**, 4, 1
 Contrary intent, 4, 1
 Contrary to law, 4, 1
- CONTRIBUTION**, 4, 1
 See **GENERAL AVERAGE**; **JETTISON**; **LEGACIES AND DEVISES**.
 See generally **SUBROGATION**.
Accommodation Indorsers, 4, 6; 24, 812
 Parol evidence to show the accommodation, 4, 7
 Among heirs, 5, 259
 Assumpsit, 4, 2
- Between Wrongoers**, 4, 12; 10, 1073; 15, 347
 City's right for contribution against abutting owner, 4, 14
 Knowledge that act was unlawful, 4, 13
 Test for determining whether there shall be contribution, 4, 13
 Where knowledge of wrong is presumed, 4, 13
 Where one does an act in which other does not join, but is liable for damage, 4, 14
 Where parties are not in *pari delicto*, 4, 13
 Wrongoers by inference of law, 4, 13
 By what courts enforceable, 4, 2
 Death of one of two or more parties jointly liable, 5, 196
 Definition, 4, 1; 6, 719
 Destruction of collateral security, 5, 192
 Devisees, 4, 11
 Directors, 4, 7
 Equitable jurisdiction, 4, 2
 Executors and administrators, 7, 328
- Guardian and Ward**
 Sureties on guardian's bond, 9, 141
 Heir, 4, 11
 Heir and legatee, 5, 259
 Indorsers, 4, 7
 Interest, 5, 528²⁸
- Joint Owners of Property**, 4, 7; 13, 602
 For expenses incurred for the common benefit, 4, 7
 Improvements, 4, 8; 11, 1132
 Necessity of request that tenant in common shall join in repairs, 4, 8
 Partition where improvements have been made, 4, 9
 Repairs, 4, 7; 11, 1132
 Rule in Massachusetts, 4, 8
 Taxes and incumbrances, 4, 9
- Joint Tenants and Tenants in Common**, 4, 7; 13, 602
 Assumpsit, 11, 1129
Equitable Remedy, 11, 1131
 Improvements, 4, 8; 11, 1132
 Payment of common charge, 11, 1132
 Repairs, 11, 1132
- Joint tortfeasors, 4, 12; 15, 347; 17, 1073
 Judgment against co-surety, 12, 100
 Legatees, 4, 11; 5, 29
- Libel and Slander**
 Joint publication, 13, 372
 Voluntary payment, 13, 763
- Mortgages**
 Contribution by widow, 5, 900
Contribution in Case of Redemption, 15, 830
 Contribution in inverse order, 15, 831
 Conveyance of part and retention of part, 15, 831
 Conveyance of whole of lands, 15, 831
 Conveyances without covenant of warranty, 15, 831
 Equity for contribution, 15, 831

CONTRIBUTION—Cont'd**Mortgages—Cont'd****Contribution in Case of Redemption—Cont'd**

- Examples, 15, 831
- Grantee of mortgagor, 15, 831
- Ratable contribution, 15, 831
- Several parcels with incumbrances upon all, 15, 831
- When right exists, 15, 830
- Where equities are unequal, 15, 831
- Purchasers of land subject to a mortgage, 15, 839
- Whether widow is entitled to contribution, 5, 901

Mutual insurance, 16, 105**Owners of Party-Walls, 4, 9**

- Additions to party-wall used by co-owner, 4, 10
- Destruction by fire, 4, 10

Partition, 17, 753**Partition Fences, 7, 898**

- Agreement to dispense with fence, 7, 898
- Allowing land to lie open as a common, 7, 899
- Fence more expensive than required by statute, 7, 898
- Line in dispute, 7, 898
- Line not conforming with boundary, 7, 898
- New York statute, 7, 899
- Obligation to contribute a chose in action, 7, 899
- Rights by prescription, 7, 900
- Town and city lots, 7, 899
- Unimproved lands, 7, 899
- What is land "in common," 7, 899
- When land subject to contribution, 7, 899
- Who are bound to contribute, 7, 898

Partnership, 4, 6; 17, 933, 1215

- Equity, 4, 6
- In case of insolvency of co-partner, 17, 1215
- Partner compelled to pay outstanding debts, 4, 6
- Payment to employees, 17, 1008
- Removal of partner from out of jurisdiction of court, 17, 1216
- Statute of limitations, 17, 1148
- Sub-partners, 17, 933

Torts, 4, 12; 15, 347; 17, 1073

- Breach of duty resting upon partnership, 17, 1073
- Rule that wrongdoers cannot have contribution, 17, 1073
- Where individual partner is liable, 17, 1074
- Where partner knew that the act was illegal, 17, 1073

Part owners of ships, 4, 8**Party-Walls, 18, 13**

- Addition made use of by adjoining owner, 18, 14
- Agreement mentioned in deed, 18, 15
- Duty to contribute, 18, 13

- Express agreements, 18, 14
- Implied agreement, 18, 13
- In absence of agreement, 18, 13
- Landlord and tenant, 18, 16
- Nature of right, 18, 17
- Parol contract, 18, 14
- Repairs, 18, 15
- Statute, 18, 14
- Whether covenant personal contract, 18, 15
- Whether covenant runs with the land, 18, 15

Receivers

- Surety, 20, 168

Res Judicata

- Surety or principal, 21, 170
- Where parties are not joined, 21, 152

Stockholders, 14, 306**Stockholders of a corporation, 4, 7****Subrogation**

- Devisee paying debt of testator, 24, 279
- Government's right of priority, 24, 220, 221
- Where surety releases his right to contribution, 24, 203

Suretyship, 4, 4; 24, 809

- Buying claim at discount, 24, 811
- Compromise by, 4, 3
- Costs and expenses of suit, 4, 3

Co-sureties Alone Liable, 24, 811

- Accommodation indorsers, 24, 812
- Parol evidence to show relation, 24, 812
- Sureties for the same person in the same transaction, 24, 811
- Sureties not under the same obligations, 24, 811

Death of surety, 4, 3; 24, 817**Discharge from liability by release of principal, 4, 3****Effect of discharge in bankruptcy, 24, 818****Holding collateral securities, 5, 192****In equity, 24, 810****In law, 4, 4; 24, 810****Insolvent co-surety, 24, 810****Joinder of, in an action against co-surety for contribution, 4, 2****Liability of estate of a deceased co-surety for contribution, 4, 3; 24, 817****Loss or release of security by co-surety, 24, 816****Necessity of previous demand, 4, 3****Necessity that payment should have been compulsory, 4, 3****Original surety and surety in legal transaction, 24, 813****Payment where the cause of action is barred, 4, 4****Removal of co-surety from state equivalent to insolvency, 4, 4****Rights of co-surety to contribution, 24, 809****Securities taken by one to indemnify himself against joint liability, 4, 5****Statute of limitations, 4, 3; 24, 817**

Sureties entitled to indemnity given co-surety, 24, 815
 Sureties liable on different instruments, 24, 813
 Surety of surety, 24, 815
 Surety paying less than whole debt, 24, 811
 Upon different official bonds, 4, 5
 When payment is deemed compulsory, 4, 5
 When statute of limitations begins to run, 4, 3; 24, 817
 When the right arises, 4, 2
 Where bound by different instruments, 4, 4
 Where contract is entered into at the request of co-surety, 24, 817
 Where creditor takes a bond for his debt and also for his liability as surety, 4, 6
 Where surety releases principal, 24, 816
 Whether, must show insolvency of principal, 4, 4
 Whether surety in legal proceedings must contribute to original surety, 24, 813
 Wrongful payment by co-surety, 24, 815

Taxation

Co-tenants, 25, 280

Terre tenants, 4, 11

Trespass, 26, 579

Innocent party, 26, 579

When enforceable between legacies, 1, 12

Whether founded on contract, 4, 1

CONTRIBUTORY NEGLIGENCE, 4, 15

See CARRIERS OF PASSENGERS; COMPARATIVE NEGLIGENCE; COUPLING CARS; CROSSINGS; FELLOW SERVANTS.

As to who have been held servants, see MASTER AND SERVANT.

Proximate and remote cause, see PROXIMATE AND REMOTE CAUSE.

Railway crossings, see CROSSINGS.

Accident, 4, 41

And negligence in combination, 4, 41

Aggravation of Injury by Plaintiff's Negligence, 4, 31

May lead to apportionment of damages, 4, 31

Whether bar to recovery of damages, 4, 31

Apportionment of Damages, 4, 90

At common law, 4, 90

Disease as mitigation of damage, 4, 91

Enhancement by disease, 4, 90

Where plaintiff's subsequent negligence has enhanced injury, 4, 90

As a defense of suit for injury by vicious animal, 1, 583

As Mitigation of Damages

Where negligence is proximate cause of injury, 15, 688

Assault and battery, 1, 784; 4, 18

Blindness and Deafness, 4, 79; 24, 103

Effect of, on doctrine of negligence, 4, 80

Whether it relieves from duty of ordinary care, 4, 80

Burden of Proof, 4, 91, 93, 941; 16, 455

Malpractice, 14, 82

Master and servant, 14, 869, 871, 971

Presumption of negligence, 4, 91

Proof required of plaintiff when burden on defendant, 4, 92

Upon party on whom duty of care lies, 4, 93

When plaintiff's evidence shows contributory negligence, 4, 92

When held on defendant, 4, 91

When held on plaintiff, 4, 91

Carriers of Passengers

Action arising in contract but sounding in tort, 4, 32

Burden of proof, 4, 33

Carrying Beyond Destination, 25, 1117, 1118

Averments in complaint, 25, 1119

Child jumping from train, 25, 1118

Examples, 24, 1118, 1119

Jumping off train, 25, 1118

Leaving train at station, 25, 1117

Compliance with reasonable rules and regulations of, 4, 56

Diseased condition as evidence of contributory negligence, 4, 34

Diseased condition must be traced to injury, 4, 33

Excused from liability, 2, 748

Liability for all natural consequences of injury, 4, 32

Liability, if negligence not shown to be cause of disease, 4, 33

Ordinary care must have been exercised by, 2, 748; 4, 54, 55

Passenger putting himself in a dangerous place, 4, 57

Passenger's right to rely on carrier's appliances, 4, 55

Passenger voluntarily going into danger, 4, 56

Person endeavoring to escape from an inconvenience, 2, 749

Plaintiff jumping from car from fear of collision, 4, 49

Question for jury, 4, 33

Surgical treatment enhancing effects of injury, 4, 34

Where diseased condition arose from defendant's negligence, 4, 33, 34

Casual connection of elements, 4, 24

Cattle Killed by Railroad, 7, 931

Animals running at large, 7, 929

Animals technically trespassing, 7, 931

Cattle not lawfully on adjoining lands, 7, 933

Cattle running at large in violation of statute, 7, 929, 932

Cattle straying without owner's fault, 7, 932

Company liable unless injury is result of owner's act, 7, 932

CONTRIBUTORY NEGLIGENCE—Cont'd**Cattle Killed by Railroad—Cont'd**

- Letting cattle stray at large, 7, 932
- Railroad owning land, 7, 931
- Rule in Kansas, 7, 933
- Rule in Massachusetts, 7, 933
- Rule in Michigan, 7, 933
- Rule in Minnesota, 7, 933
- Rule in Nebraska, 7, 933
- Rule in New Hampshire, 7, 933
- Rule in Vermont, 7, 933
- States where common law prevails, 7, 933
- Where company not bound to fence, 7, 923

Children, see *infra*, OF CHILDREN.

Combined and concurrent causes, 16, 441

Comparative negligence, 10, 678

Crossings, 19, 886

Danger created by wrongful act of defendant, 4, 37

Danger Incurred in Discharge of Duty, 4, 38

Injury when in danger because of public duty, 4, 39

Private duty of imperative obligation, 4, 39

Where danger is apparent, 4, 38

Where ordinary care would not have avoided injury, 4, 39

Where risks of injury are assumed, 4, 39

Whether discharge of duty can constitute contributory negligence, 4, 38

Danger Incurred to Save Life, 4, 37

Negligence a question for the jury, 4, 37

Person saved non sui juris, 4, 38

Whether negligence of saved is imputable to savior, 4, 37

Defendant's knowledge of danger, 4, 40

Defendants putting plaintiff in danger, 4, 48

Definition, 4, 941; 10, 674

Degrees of, 4, 21

Whether there are, 4, 21

Difficulties in application of rule, 4, 16

Dogs, 1, 585

Drunkenness, 4, 78; 11, 87; 16, 411; 24, 103

Elements of, 4, 18

Erroneous Conduct of Plaintiff Caused by Defendant, 4, 48

Where plaintiff's negligence combined with that of defendant to put him in a position of peril, 4, 50

Examples, 10, 675

Explosion of gas, 7, 521

Fellow Servants

Statutes, 7, 862

Fires Caused by Operation of Railways, 8, 16

Buildings erected near line, 8, 16

Duty as to woodland, 8, 16

Duty to keep ground free from dry grass and weeds, 8, 16

Examples of what would have and what would not have been held contributory negligence, 8, 16-19

Failure to provide suitable fire-breaks, 8, 16

Failure to remove wheat stubble, 8, 17

Failure to take precautions against negligence of railway, 8, 16

Permitting pane of glass to be out of window, 8, 18

Permitting roof to be in condition to take fire easily, 8, 17

Question of fact, 8, 18

Reasonable exertions to extinguish fire, 8, 18

Warehouse allowing its windows to be open, 8, 17

Gas Companies, 8, 1275

Duty to give notice where gas is escaping, 8, 1276

Entering sewer full of gas, 8, 1275

Explosions, 7, 521

Instances, 8, 1275, 1276

Permitting servant to enter room full of gas, 8, 1275

Turning on gas in house during repairs, 8, 1275

When inferred, 8, 1275

Georgia, Rule in, 4, 95

Decisions before the statute, 4, 95

Not comparative negligence, 4, 96

Statute, 4, 95

To what cases applicable, 4, 96

Where plaintiff's negligence is proximate, 4, 97

Held established as matter of negligence, 4, 923

Highways, 4, 57; 9, 396

See infra, STREETS AND SIDEWALKS.

Applicability of the doctrine, 9, 396

Children Playing in Street, 9, 400

Proof that child was not guilty of negligence, 9, 401

Right of child to use of street, 9, 400

Very young child unattended, 9, 401

Choice between various dangers, 9, 397

Defective eyesight, 9, 398

Deliberately incurred risk, 9, 396

Deviation, 9, 399

Driving horses, 9, 397

Ice and snow, 9, 399

Imputable negligence, 9, 396

Instances of contributory negligence of passenger, 9, 397

Knowledge of the danger, 9, 397, 398

Negligence of driver when he is not servant of passenger, 9, 398

Person using highway not bound to anticipate danger, 9, 399

Recovery where danger is known, 9, 398

Right of city to debar public from using streets, 9, 398

How the elements must combine, 4, 24

Illegal Conduct of Plaintiff, 4, 50, 67**As Contributory Negligence**

Where plaintiff can make out a case of negligence independent of illegal contract, 4, 51

- Where plaintiff is compelled to found his action in his own violation of law, 4, 51
- Where the illegal conduct is not proximate cause of injury, 4, 51
- Whether illegal conduct is negligence per se, 4, 50
- Illinois, rule in, 4, 95
- Imputable, 4, 82**
- Bars when a proximate cause of injury, 4, 82
- English courts, 4, 83
- Hartfield v. Roper*, 4, 87
- Infants, 4, 83, 87, 89; 10, 676**
- Actual negligence of parent, 10, 677
- Age of child, 10, 677
- Child of two unattended, 10, 677
- Child of three, 10, 677
- Child of four, 10, 677
- Child of six, 10, 677
- Child old enough to exercise reasonable care, 10, 677
- Circumstances of parent or guardian, 10, 678
- Comparative negligence, 10, 678
- Origin of the rule, 10, 676
- Permitting child to be alone, 10, 677
- Regard to lack of discretion of child, 10, 678
- Terms of doctrine, 10, 677
- When rule not applicable, 10, 676
- In Iowa, 4, 83
- In Wisconsin, 4, 83
- Little v. Hackett*, 4, 87
- Of parents, 4, 87
- Parent barred when child not, 4, 88
- Pennsylvania rule, 4, 83
- Question of imputability for jury, 4, 88
- Thorogood v. Bryan*, 4, 84
- United States courts, 4, 83
- What is, 4, 82
- What must have appeared to make negligence imputable, 4, 82
- When child used due care, 4, 88
- Where child is injured through contributory negligence of parent or guardian, 4, 83
- Where child is sui juris, 4, 89
- Where held imputable to child, 4, 87
- Where held not, 4, 88
- Where passenger is injured by contributory negligence of carrier, and of third person, 4, 82
- Whether negligence of carrier is attributable to passenger, 4, 83
- Indefiniteness of rule, 4, 16
- Inevitable accident causing injury, 4, 41
- Injury Enhanced by Disease, 4, 31**
- Action arising in contract but sounding in tort, 4, 32
- Aggravating a prior disease, 4, 31
- Apportionment of damages, 4, 90
- Burden of proof, 4, 33
- Defendant developing a latent tendency to disease, 4, 31
- Defendant's liability for consequences of disease alone, 4, 32
- Defendant's negligence causing disease, 4, 31
- Disease as mitigation of damages, 4, 90
- Diseased condition as evidence of contributory negligence, 4, 34, 90
- How damages are apportioned, 4, 31
- Leading directly to disease, 4, 31
- Liability for all natural consequences, 4, 32
- Liability, if negligence not shown to be cause of disease, 4, 33
- Measure of damages, 4, 31
- Question for jury, 4, 33
- Special liability when defendant owes a special duty to plaintiff, 4, 32
- Surgical treatment enhancing effects of injury, 4, 34
- When liable for aggravation, 4, 32
- Where diseased condition arose from defendant's negligence, 4, 33, 34
- Where no apportionment of damages can be made, 4, 32
- Whether diseased condition must be traced to injury, 4, 33
- Inns and Innkeepers, 11, 63, 80**
- Confinement to period while party a guest, 11, 81
- Definition of ordinary care, 11, 81
- Exposure of goods to unnecessary peril, 11, 82
- Failure to comply with rules of inn, 11, 82
- Failure to fasten window, 11, 83
- Failure to lock or bolt door, 11, 83
- Intoxication of guest, 11, 81
- Keeping valuables in room, 11, 82
- Locking but failing to bolt, 11, 84
- Lock on door out of repair, 11, 84
- Massachusetts statute, 11, 80
- Omission to use key, 11, 84
- Showing negligence of guest, 11, 80
- Statute declaratory of common law, 11, 80
- Supplementary facts to failure to bolt, 11, 85
- Theft by fellow guest, 11, 83
- Unnecessary display of articles, 11, 82
- Want of ordinary care by guest, 11, 80
- Where guest is taking exclusive care of goods, 11, 80
- Whether failure to lock or bolt door is negligence per se, 11, 83
- Whether guest must have been grossly negligent, 11, 80
- Intoxication as an Element of, 4, 78; 16, 411; 24, 103**
- Circumstances to be considered upon the question of due care, 4, 79
- Evidence of negligence, 4, 79
- Intoxication of guest, 11, 81
- Ordinary care required of intoxicated person, 4, 79
- Voluntary incapacity as an excuse, 4, 79
- Where defendant had notice of plaintiff's intoxication, 4, 79
- Where intoxication is proximate cause of injury, 4, 79

CONTRIBUTORY NEGLIGENCE—Cont'd**Intoxication as an Element of—Cont'd**

Whether intoxication is contributory negligence per se, 4, 78

Kansas, Rule in, 4, 99

Comparative negligence, 4, 99

Gross and slight negligence, 4, 99

Kentucky, Rule in, 4, 99

Comparative negligence, 4, 99

Gross and slight negligence, 4, 99

Statute, 4, 99

Landlord and tenant, 12, 691**Lord Campbell's act, 4, 81****Mail agents, 13, 1204****Malpractice, 14, 81**

Burden of proof, 14, 82

Patient relying on own judgment, 14, 82

Physical weakness of patient, 14, 82

Whether bar to recovery, 14, 81

Master and Servant, 4, 58; 14, 861

See FELLOW SERVANTS.

Assumption of risks as contributory negligence, 4, 59

Attempt to board moving train, 14, 867

Brakeman killed by overhead bridge, 14, 868

Burden of proof, 14, 869, 871

Care required in use of appliances, 14, 870

Day laborer riding on engine pilot, 14, 865

Due care must be shown, 14, 871

Duty to employ and retain competent servants, 4, 65

Duty to guard against danger of which servant has not been notified, 4, 64

Duty to instruct an immature and inexperienced servant, 4, 59, 61

Duty to provide for safety of servant, 4, 58, 63

Employee under charge of master mechanic, 14, 862

Engineer running at high speed, 14, 863

Equal knowledge of master and servant, 14, 862

Examples, 14, 862-866

Exposing servant to unusual dangers, 4, 66

Extraneous risks, 4, 59

Failure to ask for assistance, 14, 864

Failure to avoid elevator well-hole, 14, 866

Failure to leave handcar with promptness, 14, 865

Failure to look for hidden danger, 14, 870

Failure to step off track to avoid injury, 14, 865

Failure to warn servant of unusual dangers, 4, 59

Flying switch contrary to order, 14, 864

Handling machine in careless manner, 14, 864

Ignoring warning of danger, 14, 866

Imminent peril of employee, 14, 868

Infants, 4, 42; 14, 861

Jumping from moving train, 14, 865

Knowledge of danger, 14, 870

Laborer in woolen factory, 14, 870

Machinery, 14, 909

Failure to notify master, 14, 909

Implied notice, 14, 910

In plaintiff's own care, 14, 909

Inspection, 14, 909

Notice of defects, 14, 909

Notice to vice-principal, 14, 910

Use of appliances, 14, 909

What is notice to company, 14, 910

Master's duty to inspect and repair machinery, etc., 4, 63

Master's duty to make and promulgate rules, 4, 64

Master's duty to provide suitable appliances, 4, 60, 62

Mounting moving engine with patent defects, 14, 865

Negligence of plaintiff, 14, 869

Negligence through terror, 14, 868

Presumption where servant is killed while on duty, 14, 871

Projecting person beyond side of car, 14, 864

Proof necessary to establish, 14, 869

Proximate and remote cause, 14, 869

Questions of Law and Fact, 14, 868

Brakeman killed by overhead bridge, 14, 868

Examples, 14, 868, 869

Walking over train, 14, 869

Where evidence is conflicting, 14, 868

Where facts are undisputed, 14, 868

Reasonable diligence of employee as to tools and machinery, 14, 867

Recovery notwithstanding servant's negligence, 14, 867

Remaining in dangerous place, 14, 866

Risks assumed by servant, 4, 58

Running contrary to rules, 14, 862

Servant must have been in fault, 14, 862

Servant's control over work, 14, 862

Slight want of care, 14, 870

Speed in running over switches, 14, 862

Switchman between two tracks, 14, 864

The Ross case, 4, 61

Unnecessarily mounting boiler, 14, 865

Volunteer signaling train, 14, 865

When assumption of risks does not bar servant, 4, 59

Whether master can delegate his duty and avoid liability, 4, 66

Modification of the doctrine in Tennessee, 3, 375

Nature of defense, 4, 19

Necessity that plaintiff's negligence be proximate, 4, 18

Negating, 16, 455

Negligence of defendant, 4, 18

No defense where defendant might have avoided the injury, 4, 679

No presumption of, 4, 940

Of Children. 3, 373; 4, 42; 10, 674; 14, 861; 19, 933, 934

Allowance made for childish instincts, 4, 45

As trespassers, 4, 53

Care required of a child employee, 4, 44

Care to be exercised toward a child, 4, 46

"Due care" of a child not that of an adult, 4, 44

Highways, 9, 400

Imputability when defendant could have avoided inflicting injury, 4, 89; 10, 676

Imputability where child is sui juris, 4, 89

Imputable Negligence, 4, 83, 87, 89; 10, 676

Age of a child, 10, 677

Child of two unattended, 10, 677

Child of three, 10, 675, 677

Child of four, 10, 675, 677

Child of six, 10, 675, 677

Child old enough to exercise reasonable care, 10, 677

Circumstances of parent or guardian, 10, 678

Comparative negligence, 10, 678

Origin of the rule, 10, 676

Permitting child to be alone, 10, 677

Regard to lack of discretion of child, 10, 678

Terms of doctrine, 10, 677

When rule not applicable, 10, 676

Imputable negligence of parents, 4, 87; 10, 677

Imputable when child uses due care, 4, 89

Infants of tender years, 4, 43

Injury from risks assumed by child, 4, 47

Liability for sudden act of child, 4, 46

Master and servant, 14, 861

Minor may be guilty of negligence as matter of law, 4, 47

Ordinary care, 4, 42, 43

Parent barred when child not, 4, 88

Question for jury, 4, 45

Question of imputability for jury, 4, 88

Question of ordinary care, 4, 89

Recovery when injured by uncomprehended dangers, 4, 45

Street railway, 23, 1019, 1026

Turn-table cases, 4, 45, 53; 10, 675; 27, 348

When care of child question for the jury, 4, 43

When ordinary care of child question for jury, 4, 46

Where child is a trespasser, 4, 47

Where defendant is not negligent, 4, 46

Where held imputable to child, 4, 87

Where minor employee fully realizes the risks he is taking, 4, 47

Who are not wholly responsible, 4, 43

Of Decedent, 4, 81

Decedent's negligence to be determined by ordinary rules, 4, 82

Statutes effective only if decedent would have had action, 4, 81

Whether action will lie where decedent was guilty of contributory negligence, 4, 82

Ordinary Care

Carriers of passengers, 4, 54

Children, 4, 42, 43

Defendant's liability where plaintiff is not at fault, 4, 23

Degree of care which must be used, 4, 22

Meaning of term, 4, 22; 25, 809

Of a passenger, 4, 55

Person of ordinary care and prudence, 4, 23

Test of, 4, 22

Varying with the circumstances of case, 4, 42

Want of, 4, 22, 23

Contemporaneous with negligence of defendant, 4, 21

Necessity that it be proximate cause, 4, 24

Preceding negligence of defendant, 4, 21

Succeeding negligence of defendant, 4, 21

Where plaintiff and defendant are in privity, 4, 54

Where there is no privity between parties, 4, 67, 68

Passenger railway stations, 2, 761

Peculiar modifications of doctrine, 4, 95

Person non compos mentis, 4, 48

Plaintiff and Defendant in Privity, 4, 54

Ordinary care, 4, 54

Plaintiff a trespasser, 4, 51

Plaintiff jumping from car from fear of collision or accident, 4, 49

Plaintiff's ignorance of the danger, 4, 34

Plaintiff's negligence must have been proximate cause of his injury, 3, 370

Plaintiff's Previous Knowledge of the Danger, 4, 34

Exercise of due care question for the jury, 4, 36

Exposure to a known danger not always negligence, 4, 36

Knowledge of danger not negligence per se, 4, 35

Person exposing himself to known danger assumes ordinary risks, 4, 36

Presumption from exposure to known danger, 4, 36

Reason to apprehend danger, 4, 35

Plaintiff's remote negligence, 4, 19

Presumption

As to prudence in avoiding danger, 19, 64

Of care prevails, 4, 940

Of negligence, 4, 91, 92; 23, 1014

Of ordinary care, 4, 91, 92

Stop, look and listen, 19, 64; 23, 1027

Vol. I.

CONTRIBUTORY NEGLIGENCE—Cont'd

Question of Law and Fact, 3, 373; 4, 94;

19, 302

Defective street or highway, 24, 102

Mixed, 4, 94

When the facts are disputed, 4, 94

When the facts are not disputed, 4, 94

Railroad fences, 7, 919

Reason for rule, 4, 16

Rebuttal of presumption of care, 4, 941

Sleeping cars, 22, 801

Speed of Trains, 19, 886, 936

Crossings, 19, 886

Stations (Railroad), 23, 125, 136

Willful disregard of regulations, 23, 125

Stop, Look and Listen

Presumptions, 19, 64; 23, 1027

Street Railways, 23, 1011

Arm projecting from window, 23, 1016

Boarding and leaving car while in motion, 23, 1012

Duty to stop car for passengers, 23, 1012

Getting on or off passengers, 23, 1011

Injury to Persons on or near the Track, 23, 1024

Crossing track in front of approaching car, 23, 1026

Duty to exercise ordinary care, 23, 1024

Imputable negligence, 23, 1028

Injury to children, 23, 1019, 1026

Line crossing a railroad, 23, 1028

Passenger struck while leaving car, 23, 1025

Person standing on track in discharge of duty, 23, 1025

Proximate cause of injury, 23, 1024

Questions of law and fact, 23, 1024

Standing on track, 23, 1025

Stop, look and listen, 19, 64; 23, 1027

Where a bar to recovery, 23, 1024

Willful injury, 23, 1025

Negligence of car company and third parties, 23, 1016

Negligence per se, 23, 1012

Passenger Riding on Platform, 23, 1013

Approaching platform when nearing destination, 23, 1015

Crowded car, 23, 1014

Effect of published rules and regulations, 23, 1015

Examples, 23, 1013-1015

Invitation of conductor, 23, 1015

No objection on part of conductor, 23, 1015

Presumption of negligence, 23, 1014

Question for the jury, 23, 1013

Streets and Sidewalks, 4, 57; 24, 102*See infra*, HIGHWAYS.

Degree of care required, 24, 102

Effect of blindness, 24, 103

Effect of intoxication, 24, 103

Effect of knowledge by plaintiff of defect, 24, 103

Effect of violation of ordinance, 24, 103

Effect of violation of Sunday laws, 24, 103

Liability of municipality, 24, 102

Pleading, 24, 104

Questions of law or fact, 24, 102

Telegraphs and Telephones, 25, 808

Addressee having reason to suspect that a mistake has been made, 25, 810

Clear writing, 25, 809

Definite address must be given, 25, 809

Duty to make injury as light as possible, 25, 809

Examples, 25, 808-811

Guessing at the intended meaning, 25, 810

Loss of profits from expected sales, 25, 851

Message written by operator, 25, 811

Ordinary care, 25, 809

Tennessee, Rule in, 4, 97

Distinction between rule in Tennessee and general rule, 4, 97

Gross and slight negligence, 4, 97

Plaintiff's negligence proximate cause, 4, 98

Plaintiff's remote negligence in mitigation, 4, 97, 98

Proximate contributory negligence as a bar, 4, 98

Railroad's absolute liability, 4, 98

Railroad's liability where it has no time to comply with the statute, 4, 99

Statute said to be declaratory, 4, 99

Where doctrine of comparative negligence prevails, 4, 97

Time-tables, 26, 16

Towage, 26, 91

Travelers on Streets and Highways, 4, 57; 9, 396; 24, 102

Non-contractual special duty, 4, 57

Using defective highway with knowledge of defects, 4, 57

Want of ordinary care, 4, 58

When guilty of contributory negligence, 4, 57

Turn-tables, 4, 45, 53; 10, 675; 27, 348

Usages and customs, 27, 899

Various definitions of, 4, 17

Various statements of rule, 4, 15, 16

Violation of positive law as affecting negligence, 4, 67

Voluntary exposure (life and accident insurance), 28, 484

Want of Ordinary Care, 4, 20

Where person is suddenly required to adopt a perilous alternative, 4, 24

Warranty, 28, 850

When defendant could have avoided inflicting injury, 4, 88

Where plaintiff has suddenly to adopt a perilous alternative, 4, 48

Where plaintiff's act or omission is a mere antecedent occasion or condition, 4, 19

- Where rights and duties are equal, 4, 67
 Where there is no privity, 4, 67
Willful Injuries, 4, 80
 Liability for remote consequences, 4, 81
 Liability of willful wrongdoer, 4, 81
 Negligence no excuse for willfulness, 4, 81
 Whether contributory negligence is defense to an action for, 4, 80
 Willfulness negatives negligence, 4, 80
Willful torts, 16, 395
CONTROL
 Cognizance and control, 3, 306
 In interstate commerce law, 11, 560
CONTROVERSY, 4, 100
 Amount in, 4, 100
 Counterclaim, 4, 101
 Mandamus to cancel appeal, 4, 101
 Costs, 4, 100
 Divers controversies, 1, 660
 Judgment, 4, 101
 Matter in controversy, 14, 977
 Sum in controversy on appeal, 4, 100
CONVENIENCE, 4, 101
CONVENIENCES, 4, 101
CONVENIENT, 4, 101
 As is most, 4, 102
 As may be most, 4, 102
 Just or convenient, 12, 382
 Necessary and convenient, 16, 371, 372
 Payable as, 4, 102
 With all convenient speed, 4, 101, 102
CONVENIENTLY, 4, 103
 As soon as conveniently may be, 4, 103
CONVENTIONAL, 4, 103
 Conventional estates, 4, 103
 Conventional services, 4, 103
CONVENTIONAL SUBROGATION, see SUBROGATION.
CONVERSE
 Equivalent to communicate, 4, 104
CONVERSION, see EQUITABLE CONVERSION; TROVER AND CONVERSION.
Of perishable property where there is a bequest for life with remainder over,
 see LEGACIES AND DEVISES.
 Demand and refusal as evidence of conversion, 19, 65
Evidence of
 Demand and Refusal
 In statute covering whole subject-matter, 19, 65
 Presumptions, as to repugnant statute, 19, 65
 Repeals by implications are not favored, 19, 65
 So far as repugnancy exists, 19, 65
 Issue, 11, 906
 Lunatic's property, 11, 123
 Trusts and trustees, 27, 162
 What constitutes conversion by express companies, 7, 574
CONVEY, 4, 128
 Give, grant, and, 4, 130
 Grant, bargain, sell, and, 4, 130
 Power to, 4, 130
 Sold and conveyed, 4, 131

- CONVEYANCE**, 4, 132
 See ABSTRACT OF TITLE; ACKNOWLEDGMENT; CONVEY; CORPORATIONS; DEEDS; FRAUDULENT CONVEYANCES; MORTGAGES; REAL PROPERTY; TRUST DEEDS; USES; WILLS.
As to the capacity of grantor and grantee to make and receive conveyances,
 see GRANTOR AND GRANTEE.
 Assignment of mortgage, 4, 136
 Charter-party, 4, 137
 Declaration of trust, 4, 137
Estate in Fee Simple, 6, 876
 Necessity of the word heirs, 6, 876
 Gift of personality, 4, 134
 Governed by *lex loci rei sitæ*, 3, 565
 Implies no covenants, 4, 137
 In recording acts, 20, 532
 Lawful deed of, 4, 137
 Leases, 4, 137
 Mortgages, 4, 134
 Public or private, 4, 138
 Quitclaim deed, 4, 137
 Release, 4, 136
Under Indictments
 Assignment of error, 6, 825
 Will as a, 4, 133
CONVEYANCING, 4, 138
 See ABSTRACT OF TITLE; DEEDS; REAL PROPERTY; TRUST DEEDS; USES.
CONVICTED, 4, 139
 See CONVICTION.
 Every person convicted of felony, 4, 139
CONVICTION, 4, 139, 140; 21, 1066
 Abiding, 4, 145
 An adjudication that accused is guilty, 4, 142
 Conviction and attainer distinguished, 4, 145
 Donating final judgment, 4, 140
CONVICT LABOR SYSTEM, see PRISONS.
CONVICTS, see PRISONS.
 Injuries to, 14, 875
CONVOY, 4, 146
COOLING TIME, 4, 146; 9, 543
CO-OPERATION
 In patent law, 11, 796
 Partnership, 17, 866
COPARCENARY, 4, 146; 6, 244
 See PARCENARY.
CO-PARTIES, 4, 146
COPPER
 Manufacture of, 14, 259
COPY, 4, 146
 In the sense of copyright, 4, 147
COPYHOLD, 4, 147
 Forfeiture, 8, 444
COPYRIGHT, 4, 147
 See LITERARY PROPERTY; TRADE-MARKS.
 Advertising cards, 3, 140; 4, 155
 Aliens, 1, 462
Assignment, 4, 158, 161
 Agreement to assign by parol, 4, 161
 Of existing copyright as assignment of the renewal, 4, 161

COPYRIGHT—Cont'd**Assignment—Cont'd****Of the Manuscript**

As an assignment of the right to renewal, 4, 161

Sale of stereotype plates as, 4, 161

Sale under execution, 4, 161

Burden of Proof

Proof of title to copyright, 4, 165

Where validity of copyright is disputed, 4, 165

Conferred by statute only, 4, 148

Dedication to the Public, 4, 148, 149

Memorization of a play, 4, 149

Permission to make a copy of the manuscript, 4, 149

Publication as, 4, 148

Publishing pictures of a painting, 4, 150

Representation of a play, 4, 149, 150

Definition, 4, 147

"Dramatic composition," 6, 29

Duration of, 4, 157

Engraving, 6, 645; 10, 930

Equitable and legal title to, 4, 158

Execution, 7, 129

Executors and administrators, 7, 257

How Acquired, 4, 159

Necessity of complying with statute, 4, 159

Statutory requisites, 4, 159

When publication must follow the filing of title page, 4, 159

In Chart, 3, 139; 4, 153; 10, 926

Adapting old map to correct principles, 3, 139

At common law, 3, 139

Creditor's bill to reach, 3, 140

Designer and drawer, 3, 140

Donee of a chart may obtain copyright, 3, 140

Judicial sale of plates as passing copyright, 3, 140

Original work, 3, 139

Pleading, 3, 140

Reducing chart to smaller scale, 3, 140

Statutory right, 3, 139

What are charts within copyright law, 3, 140

Who is entitled to copyright, 3, 140

Indecent publications, 4, 156; 10, 925

Infringements, 4, 162, 163

See infra, INJUNCTIONS.

Burden of proof, 4, 165

By agent, 3, 140

Damages, 3, 140

Fair Use, 4, 166; 10, 925

Abridgment, 4, 167

Extracts made for review, 4, 166

Honest intention, 4, 166

Translation of a copyrighted work, 4, 167

Value rather than quantity as a test of, 4, 166

What is, 4, 166

Where additional matter is appended to matter taken, 4, 166

Injunction, 4, 164; 10, 921

A bona fide abridgment, 10, 923

Acquiescence, 10, 927

Allegations in bill, 10, 927

Circumstances considered by court, 10, 928

Compliance with statutory conditions, 10, 924

Delay in ascertaining rights, 10, 928

Delay when ignorant of piracy, 10, 928

Directory, 10, 922

Discretion of court, 10, 922

Engravings, paintings, etc., 10, 930

External appearance, 10, 926

Fair use, 4, 166; 10, 925

How piracy determined, 10, 925

Inadequacy of relief at law, 10, 922

Indecent plays, 4, 156; 10, 925

Infringement abroad, 10, 923

Interlocutory, 10, 928

Irreligious, immoral, or obscene works, 10, 922

Jurisdiction of equity, 10, 922

Legal title, 10, 927

Law reports, 10, 926

Libelous publication, 10, 924

Literary productions distinct from copyright, 10, 928

Maps and charts, 3, 129; 4, 164; 10, 926

Mistake of a year in notice of entry required to be printed on title page, 10, 924

Musical compositions, 10, 926

Name or title of book, 10, 925

Of book made to resemble a copyrighted book's external, 10, 926

Permanent, 4, 168; 10, 928

Plaintiff's work itself a piracy, 10, 922

Printed diary, 10, 927

Private letters, 10, 930

Quantity and value of selections, 10, 924

Reference to master, 10, 925

Same sources of information, 10, 924

Temporary, 4, 167

The unauthorized use of lectures, 10, 928

Use of slips in compiling new directory, 10, 923

Violation of covenants, 10, 925

Penalties, 4, 162

Abatement, 4, 163

Compelling defendant to produce in evidence his books of account, 4, 163

Damages, 4, 163

Discovery by court of equity, 3, 140

For infringement of copyright of maps, charts, etc., 4, 163

What is an infringement, 4, 163

Period of limitations, 4, 165

Pleading, 3, 140

- Proof of**, 4, 165
 Clerical and typographical errors, 4, 165
 Similar citation of authorities, 4, 165
 Where two authors are engaged in work of same character, 4, 165
- What Is**
 Maps, 3, 129; 4, 164; 10, 926
 Music, 4, 164
 Not confined to literal repetition, 4, 163
 Substantial copy, 4, 164
 Where book partly infringes, 4, 165
- Injunctions**, 4, 167
See infra, INFRINGEMENT.
- Account of profits**, 4, 168; 10, 921
- Permanent**, 4, 168; 10, 928
 Where injury is slight, 4, 168
- Temporary**, 4, 167
 Necessity that case should be decided in court of law, 4, 167
 Where injury to plaintiff will be less if refused than injury to defendant if granted, 4, 167
 Where there is reasonable doubt as to plaintiff's right, 4, 167
- Labels**, 12, 531
- Laches**
Breach of Copyright, 12, 582
 Delay which will bar, 12, 582
 Knowledge of infringement, 12, 583
 Presumption of abandonment, 12, 582
 Unreasonable delay, 12, 582
- Liability to**, 4, 161
- Literary merit**, 4, 156
- New editions**, 4, 152, 160
- Notice of**, 4, 160
- Opera**, 17, 212, 213
- Originality**, 4, 156
 Musical composition, 4, 156
 Where two authors use same common materials, 4, 156, 165
- Partnership**, 17, 861
- Penalties**
 Construed strictly, 3, 140
 For infringement, 4, 162
- Photograph**, 18, 423
- Pictures**, 18, 442
- Piracy**, 18, 461
- Powers of congress**, 3, 705
- Property in Manuscript**, 4, 148
Letters, see LETTERS.
 At common law, 4, 148
 Memorization of a play, 4, 149
 Publication of a play acquired by phonographic reports, 4, 149
 Rights of assignee in equity, 4, 148
- Quality of publications**, 4, 156
- Reference to a master**, 14, 930-932
- Renewal**, 4, 161
- Statutes**, 13, 918
- Title page of book**, 4, 159, 160
- Title to**
 In suits for infringement, 4, 165
 Translation of a copyrighted work, 4, 167
- What May Be Copyrighted**
 Abridgments, 4, 154
 Abstracts of titles, 4, 152
 Advertisements, 3, 140; 4, 155
 Annotations consisting of common materials, 4, 153
- Books**, 4, 151
 Copyright of text, notes, illustrations, etc., 4, 152
 Horn book, 4, 151
 New editions, 4, 152
 Of chronology, 4, 153
 Roll of parchment, 4, 151
 Single sheet of paper, 4, 151
 Title, 4, 152
 What are books within the statute, 4, 151, 152
 Which exist only in manuscript, 4, 152
 Which partly consist of matter that cannot be legally protected, 4, 152
- Calendars**, 4, 153
- Catalogues**, 4, 153
- Charts, photographs, etc.**, 3, 139; 4, 155; 10, 926
- Collections of statistics**, 4, 153
- Compilations**, 4, 152
 From public documents, 4, 153
 Mere copy of old matter without new arrangement, 4, 154
 Of prose, proverbs, quotations, etc., 4, 154
 To what extent protected, 4, 153
- Daily price current**, 4, 152, 156
- Dictionaries**, 4, 153
- Directories**, 4, 153
- Foreign books**, 4, 152
- General miscellaneous compilations**, 4, 153
- Itineraries, road and guide books**, 4, 153
- Judicial decisions**, 4, 154
- Law reports**, 4, 154
- Maps and charts**, 3, 139; 4, 153; 10, 926
- Mathematical tables**, 4, 153
- Musical and dramatic compositions**, 4, 155
- New editions of books**, 4, 152
- Newspapers**, 4, 155
- Plays**, 4, 155
- Public statutes**, 4, 154
- Statute**, 4, 151
- Translations**, 4, 152
- Who Entitled to**, 4, 157
 Assignees, 4, 157
 Authors, 4, 157
 Citizens or residents, 4, 157
 Employers and employees, 4, 158
 Foreigners, 4, 157
 Holding copyright in trust, 4, 158
 Non-residents, 4, 158
- CORAL**
 Coral cut or manufactured, 14, 259
- CORAM NOBIS**, see ERROR, WRIT OF.
- CORD**, 4, 169
- CO-RESPONDENT**, 21, 287

CORN, 4, 170; 11, 370; 14, 330

Corn Crib

Burning of

Arson, by statute, 1, 763

Corn, fodder, meat and other provisions on hand, 4, 170

Outstanding crop of, 4, 170

CORNERS, 4, 170, 171

See COMBINATION IN RESTRAINT OF TRADE; FORESTALLING THE MARKET.

CORONER, 4, 171; 23, 701, 746

See generally, JUDGES.

Abolition in Illinois, 4, 174

As Sheriff, 4, 181; 7, 122; 22, 527

Ex-officio sheriff on vacancy, 4, 181

Process executed by de facto coroner, 4, 181

Sales of property by coroner, 4, 182

Service of process, 4, 181

Where sheriff is interested in the matter, 4, 181

Authority to employ a physician, 4, 367

Burying person who has died a violent death, before coroner sat upon body, 5, 118

Confessions made at inquest, 3, 488

Conservators of the peace, 4, 174

Coroner's court, 4, 176

Coroner's jury, 4, 176, 179

De facto, 4, 173, 181

Deputy, 5, 637

Power of coroner to appoint, 4, 175; 5, 637

Different kinds, 4, 171

Duration of office, 4, 175

Duty

To hold an inquest, 4, 174

To inquire into felonies, 4, 175

To inquire into treasure trove, 4, 175

To inquire into wrecks, 4, 175

Expenses, 4, 182

Extortion, 7, 587

Fees, 4, 182

Where body is removed from county before inquest, 4, 183

Where deceased dies a natural death, 4, 182

Where several persons are killed at same time and in same manner, 4, 182

History, 4, 171

Judicial duties, 4, 174, 179

Jury, 4, 176, 179

Compelling attendance of jurors, 4, 179

Compensation, 4, 179

Qualification of jurors, 4, 179

Justice of the peace acting as, 4, 174; 12, 506

Liability, 4, 175; 12, 38

For malfeasance and misfeasance, 4, 175

Ministerial duties, 4, 175

Oath of office, 4, 173

Obstructing justice, 17, 20

Office of

In America, 4, 173

Official bond, 4, 173

Powers and Duties

Generally, 4, 174

Corpus Delicti

Presumptive evidence, 4, 310

Privilege from arrest, 5, 175

Prohibition, 19, 278

Qualifications

In America, 4, 173

In England, 4, 172

Remuneration

In England, 4, 172

Rights and liabilities, 4, 175

Salary, 4, 182

Service of process, 22, 109

Sheriff, 22, 527

Sheriff's sales, 4, 181; 7, 122; 22, 596

Sunday

Inquest, 24, 575

The Inquest, 4, 177

Appointment of surgeon, 4, 179

Attestation of the inquisition, 4, 177

Binding over material witnesses and

arresting accused, 4, 180

Coroner personally summoning jury, 4, 178

Coroner's authority judicial, 4, 179

Definition, 4, 177

Discretion of coroner as to holding, 4, 178

Duty of coroner, 4, 177

Inquisition signed by coroner and jury, 4, 180

More than one inquest on the same body, 4, 178

Necessity of viewing the body, 4, 178

Object of, 4, 177

One inquest on several dead bodies, 4, 178

Proceedings on, 4, 179

Subpœnas for witnesses, 4, 179

Using testimony of witness against him at a future trial, 4, 180

Verdict, 4, 180

Viewing the body, 4, 178

What the inquisition must contain, 4, 177

Where person dies in one county and is buried in another, 4, 179

Virtute cartæ sive commissionis, 4, 171

Virtute electionis, 4, 172

Virtute officii, 4, 171

Whether testimony given at a former trial is admissible, 9, 337

CORPORAL, 4, 183

Corporal punishment, see SCHOOLS.

Corporal imbecility, 4, 183

Corporal oath, 4, 183

Corporal punishment, 4, 183; 19, 569

CORPORATIONS (PRIVATE), 4, 184

See AMOTION; BONDS; BOOM COMPANIES; BUILDING AND LOAN ASSOCIATIONS; BY-LAWS; CARRIERS OF GOODS; CARRIERS OF LIVE STOCK; CARRIERS OF PASSENGERS; COUNTIES; DIRECTORS; DISFRANCHISEMENT; DIVIDENDS; ELEVATED RAIL-

ROADS; EMINENT DOMAIN; EXPRESS COMPANIES; FOREIGN CORPORATIONS; FRANCHISES; GAS COMPANIES.

See generally, JOINT STOCK COMPANIES; SOCIETIES AND CLUBS.

See MANUFACTURING CORPORATIONS; MEETINGS; MUNICIPAL CORPORATIONS; NATIONAL BANKS; NATIONAL CORPORATIONS; OFFICERS OF PRIVATE CORPORATIONS; PIPE LINES; QUO WARRANTO; RAILROADS; RELIGIOUS SOCIETIES; SAVINGS BANKS; STOCK; STOCKHOLDERS; STREET RAILROADS; TRADE COMBINATIONS AND CORPORATE TRUSTS; ULTRA VIRES.

As to mortgage, sale, etc., of franchises, *see* FRANCHISES.

As to the power of corporations to mortgage property, *see* MORTGAGES.

Fiduciary relation of officers, *see* DIRECTORS.

Meetings, *see* MEETINGS.

Particular corporations, *see* BANKS.

Production of documents, *see infra*, BOOKS.

Religious, *see* RELIGIOUS SOCIETIES.

Removal of officers, *see* AMOTION; OFFICERS.

Stockholders, *see* STOCKHOLDERS.

Taxation, *see* TAXATION (CORPORATE).

Abuse of corporate privileges, 1, 49

Accommodation instruments by, 2, 351; 4, 226

Accumulated surplus, 1, 142

Acknowledgment, the proper person to make, 1, 159

Actions by and Against, 4, 274

Abatement by dissolution, 4, 276

Assumpsit against, 1, 187; 4, 277

Attachment, 1, 898; 4, 278, 288

Debt against, 5, 167

Execution, 4, 288

False imprisonment, 4, 279

For fraudulent representations, 4, 279

For mesne profits, 4, 279

Garnishment, 4, 278

General liability to suit, 4, 277

General right to sue, 4, 274

Illegal distress, 4, 279

Indictment, 4, 279, 592, 682

Injunction, 4, 275

Instances of rights to sue, 4, 275

Jurisdiction of federal courts, 4, 276

Jurisdiction over consolidated corporations, 4, 272q

Libel, 4, 275

Malicious prosecution, 4, 279

Necessity of proving incorporation, 4, 286

On contract, 4, 277

Parties to actions, 4, 280-283

Pleading and evidence, 4, 284-288

Practice in actions by and against consolidated company, 4, 272q

Right to support a suit out of corporate funds when itself not a party, 4, 276

Service of process, 4, 283

Suits for torts, 4, 278

Trespass for mesne profits, 4, 279

Where plaintiff is member of corporation, 4, 280

Admissions, 17, 100

Admissions of officers, 9, 349

Adoption of a foreign corporation by another state, 4, 272p

Affidavit by, 1, 308

Agents

See OFFICERS.

Corporations

Where agent's authority to convey land is under seal, 4, 239

Necessity of acting through, 1, 334

Notice to, as binding corporations, 1, 421

Ratification, 1, 429

Aggregate, 4, 186

Annual Report, 17, 115, 116

Answer, 17, 118

Bad faith, 17, 117

Complaint, 17, 118

Fraudulent purpose, 17, 117

Ignorance, 17, 117

Intent, 17, 117

Liability of directors for failing to file, 17, 116

Purpose for which reports are required to be filed, 17, 116

Statutory requirement, 17, 116

What is sufficient compliance, 17, 117

What officer liable, 17, 117

Whether corporation must file report, 17, 115

Who has right of action against directors, 17, 117

Appointment of agent, 1, 338

Arbitration, 1, 649; 4, 275

As members of building and loan associations, 2, 616

Assault by, 1, 809; 4, 254, 255, 279

Assignment for Benefit of Creditors, 1, 846; 4, 220; 17, 123

Appointment of officer of corporation as assignee, 1, 851

By majority of directors, 17, 124

Effect of, 17, 123

Of shares of stock, 4, 220

Power of directors, 17, 124

Preferences, 4, 220

Association

Definition, 1, 881

Assumpsit against, 1, 887; 4, 277

Attachment, 1, 898; 4, 278, 288

Service of, 4, 283

Attorney, appointment of, 1, 953

Bankrupt act, 2, 81

Bill in Equity

Against, 6, 746

As parties, 6, 741

Bill of discovery, party to, 2, 204

CORPORATIONS (PRIVATE)—*Cont'd*

Bills and Notes, 2, 335, 351; 4, 223; 16, 482; 17, 129

Accommodation instruments, 4, 226

Acquiescence, 4, 228

Authority of Officers and Agents, 17, 144

Cashier of bank, see **BANKS AND BANKING**.

Authority expressly conferred, 17, 145

Bona fide holder, 4, 227; 17, 147, 148

Business manager of corporation, 17, 145

Course of business, 17, 148

Estoppel, 17, 147

Examples, 17, 145, 146

Execution, 17, 146

General agent of corporation, 17, 144

Implied authority, 17, 145

In general, 17, 144

Officer denying his own authority, 17, 147

Parol evidence, 17, 147

Personal liability of officers, 17, 146

President, 17, 129

Presumption, 17, 145

Presumption as to corporate power, 17, 148

Signature, 17, 146

Treasurer, 17, 133

To transfer negotiable instruments, 17, 147

Unauthorized by charter, 17, 148

Validity of negotiable instruments, 17, 147

Bona fide holders, 4, 227; 17, 147, 148

Classes of corporations which have been held entitled to issue, 4, 224

Corporate seal, 2, 335

Distinction between the liability of a corporation and of an individual, 4, 226

Implied power of insurance companies to issue, 4, 224

Implied power of manufacturing companies to issue, 4, 224

Implied power of mill companies to issue, 4, 224

Implied power of mining companies to issue, 4, 224

Implied power of railroad companies to issue, 4, 224, 225

Implied power to issue, 4, 223

Laches, 4, 228

Liability of corporation for, 4, 226

Paper marked with corporate name, 2, 335

Power of salvage companies to issue, 4, 225

Power to draw and accept drafts and bills of exchange, 4, 225

Power to indorse, 4, 225

Power to issue, 4, 223-229

Power to issue bonds, 4, 225

Power to issue, co-extensive with power to contract debts, 4, 223

President's authority, 17, 129

Ratification, 4, 228

Right to receive for debts due, 2, 351

Stockholder's injunction against unauthorized issue of or use of corporate funds, 4, 229

Transfer of, 2, 351

Treasurer's authority, 17, 133

Unauthorized transfer of negotiable securities, 4, 229

When party dealing in corporation securities is chargeable with notice as to corporation's power under its charter to issue such securities, 4, 227

Where security is regular on its face but issued for an illegal purpose, 4, 227

Body Corporate

Definition of, 2, 441

Books

As evidence, 2, 4670

Inspection, 19, 231

Action for refusal to allow inspection, 19, 234

Agents, 19, 234

Attorney, 19, 233, 234

Books considered private with regard to strangers, 19, 231

Deposits of banking corporation, 19, 231

Examples, 19, 233-240

Extent of the right, 19, 233

In New York, 19, 239

Banking corporations, 19, 240

General provisions, 19, 239

Mandamus, 4, 290; 14, 155; 19, 234

Affidavits, 19, 236

For inspection before trial, 19, 234

In general, 19, 234

Making demand, 19, 236

Necessity of demand, 19, 236

Reasons must be clear, 19, 235

Refusal of demand, 19, 236

To whom writ is directed, 19, 237

Where suit is pending, 19, 234

Whether writ issues as a matter of course, 19, 235

Who are necessary parties, 19, 237

Not exercisable at pleasure, 19, 232

Object of, 19, 233

Right of strangers to inspect, 19, 231

Scope of the right, 19, 233

Shareholder or stockholder employed as counsel for adverse party, 19, 233

Statutes relating to the production of documents, 19, 239

Strangers, 19, 237

Bill of discovery, 19, 238

Criminating one's self, 19, 238

How inspection obtained, 19, 238

In general, 19, 237

In New York, 19, 239

Secondary evidence, 19, 237

Vol. I.

- Statutes relating to production of documents, 19, 238-241
 Stranger a defendant in a suit brought by corporation, 19, 237
 When inspection may be had, 19, 232
 Parol evidence, 20, 521
Record, 20, 520
 As between members of corporation, 20, 520
 Conclusiveness, 20, 521
 Rebuttal by parol testimony, 20, 521
 Subject of private nature, 20, 519
 Whether best evidence of facts recorded, 20, 520
 Whether books prove themselves, 20, 520
 Subpœna duces tecum, 24, 175
Borrowing Money, 4, 222
 Amount which may be borrowed, 4, 223
 Banks, 4, 222
 For proper corporate purpose, 4, 223
 Implied power to borrow money in transaction of corporation's legitimate business, 4, 222
 President's authority, 17, 128
 Presumption that the borrowing was in the regular course of business, 4, 222
 To issue irredeemable securities, 4, 223
Building Contracts, 29, 860
 Implied contracts, see **WORKING CONTRACTS**.
 Agent rendering himself personally liable, 29, 862
 Authority, 29, 860
 Authority of agent, 29, 861
 Compliance with statutory requirements, 29, 861
 Exclusive use and benefit of corporation, 29, 864
 Public works, 29, 861
 Unincorporated religious association, 29, 864
 Whether corporation bound by contract, 29, 860
 Whether corporation may enter into contract, 29, 860
 Capacity of, to commit crime, 4, 682
Capacity to hold real estate, see *infra*, **REAL PROPERTY**.
Certificate or Articles of Association, 4, 194
 Must contain what, 4, 195
Change of Name
 Effect on subscriptions, 23, 828
Change of Venue
 Right to apply for, 3, 102
Charter, 3, 682, 697
 Acceptance, 3, 142
 Power to derive from, 8, 594
 Proof of, 3, 141, 143
 Scire facias to forfeit, 21, 879
 Strict construction, 23, 396
 Waiver of forfeiture by state, 28, 568
Charter as a Contract, 4, 209, 298; 19, 891
 As to construction of statute imposing an additional liability upon stockholders, see **STOCKHOLDERS**.
 Additional duties, 19, 892
 Amendment or repeal of charter, 19, 892
 Cases in which railroad corporations have been protected from adverse legislation by their charter, 19, 891
 Charter of state bank making its paper receivable for debts of state, 3, 749
 Charter provision permitting railroad to fix freights, 8, 914
Charter Provision Permitting Railroad to Fix Freight Rates
 Maximum rates, 8, 916
 Power of courts in the absence of statutory regulations, 8, 916
 Power of legislature, 8, 915
 Power to regulate, not power to destroy, 8, 917
 Provision permitting a maximum rate, 8, 914
 Provision permitting railroad to fix reasonable rates, 8, 914
 Statutes prohibiting all discrimination, just or unjust, 8, 917
 Subsequent act inflicting greater penalties, 8, 916
 Where legislature fixes improper rates, 8, 916
 Dissolution by act of legislature, 4, 298
 Due process of law, 19, 892
 Examples, 19, 891-894
 Forfeiture of charter, 3, 742
 General rule, 4, 209; 19, 891
 Grant of exclusive right, 4, 209
 Liability to new duties, 19, 892
 Passenger trains, 19, 893
 Police power of states, 4, 212
 Reasonable regulations which do not materially interfere with privileges granted, 4, 210
Reservation of Power to Amend and Repeal, 3, 742; 4, 211, 272c, 272m, 299; 19, 892
 Necessity of express legislation to repeal, 4, 211
 Reservation by general law, 4, 211
 Taking corporate property by right of eminent domain, 4, 212
 Restrictions, 19, 891
 Rights of mortgagees, 19, 892
 Several members of corporation, 19, 891
Street Railways, 23, 945
 Change in mode of taxation, 23, 946
 Condition that charter shall be subject to amendment or repeal, 23, 946
 Improving or repairing streets, 23, 946
 In general, 23, 945
 Statutes imposing a duty to repair, 23, 985

CORPORATIONS (PRIVATE).—Cont'd**Charter as a Contract.—Cont'd**

Subsequent changes in statute or constitution of state granting, 4, 210

Taxation, 25, 52

Vested rights, 19, 892

Whether state can impose an absolute liability, 19, 893

Citizenship, 3, 252; 4, 207; 27, 588, 654

See infra, DOMICIL.

Within the fourteenth and fifteenth amendments, 3, 728

Citizenship of corporators, 4, 195

Civil, 4, 188

Classification, 4, 186

Classification as to duties, 8, 590

Comity, 4, 206

Conflict of laws, 3, 505

Consolidation, 4, 272ⁱ

Exemptions from taxation, see TAXATION.

Assent of stockholders, 4, 272^l

Assent of stockholders where the consolidation is contemplated in the original contract of subscription, 4, 272^l

Authority of legislature to consolidate, 4, 272ⁱ

By ratification of unauthorized, 4, 272^k

Charter authority for, 4, 272^k

Company fixing the terms in absence of statute, 4, 272^l

Compensation to stockholders for unauthorized, 4, 272^m

Complying with statutory requirements, 4, 272^k

Creditors, 4, 272^o

Definition, 4, 272ⁱ

Dissenting stockholders enjoining unauthorized, 4, 272^m

Enforcement of choses in action held by one of old companies, 4, 272^q

General laws permitting, 4, 272^k

Implied assent of stockholders, 4, 272^l

Interpretation of joint act of several states consolidating corporations, 4, 272^q

Interstate, 4, 272^p

Jurisdiction, 4, 272^q

Federal courts, 4, 272^q

State courts, 4, 273

Liability and duties of consolidated company, 4, 272ⁿ

Limitation of liability of consolidated company, 4, 272^o

Liens upon old company, 4, 272^p

Mode of, 4, 272^k

Necessity of Assent of Stockholders, 4, 272^l

See STOCKHOLDERS.

To immaterial changes, 4, 272^l

When sanctioned by statute, 4, 272^l

Where state reserves the right of altering and amending charter, 4, 272^m

Necessity of some action of legislation authorizing it, 4, 272^l

New corporation considered as a distinct corporation in each state co-

operating in the consolidation, 4, 272^p

Of parallel and competing roads, 4, 274

Practice in actions by and against consolidated company, 4, 272^q

Presumption that statutory require-

ments have been complied with, 4, 272^k

Reorganization, 4, 272ⁱ

Rights and remedies of dissenting stockholders, 4, 272ⁿ

Rights, privileges, and franchises of consolidated company, 4, 272ⁿ

Statutes of consolidated company, 4, 272ⁿ

Statute passed before consolidation, 4, 272^k

Suit against consolidated company upon cause of action existing against one of original corporations, 4, 272^q

Survival of old companies, 4, 272^o

Unauthorized, as relieving stockholder from his subscription, 4, 272^m

Unauthorized, releasing subscribers to bonds, 4, 272^m

Where duties of old company attach to new, 4, 272^o

Whether consolidation effects the dissolution, 4, 272ⁱ

Whether power to consolidate includes power to lease, 4, 272^k

Whether suits against one of corporations abate by, 4, 272^q

Conspiracy

Liability for, 4, 257, 266, 592

Construction of Charter, 4, 207

Exemptions from taxation, see TAXATION.

Ambiguity resolved in favor of the public, 4, 208

Charters to be fairly and reasonably construed, 4, 215

Enumeration of powers implies exclusion of all others, 4, 208

Exclusive rights not favored, 4, 213

Exemption from usury laws, 4, 215

General principles, 4, 207

Grant to one company of rights and privileges of another, 4, 215

In favor of public where charter confers right of eminent domain, 4, 214

In favor of public where power claimed under charter would create a nuisance, 4, 214

Monopolies, 4, 214

Powers in derogation of common right, 4, 212

Turnpike companies, 4, 214

Construction of statutes, 4, 272^a**Contempt of Court**

Liability for, 4, 258

Contracts, 4, 245

See ULTRA VIRES.

Building contracts, see *infra*, BUILDING CONTRACTS.

Directors, 17, 101

- Implied power to make such contracts as will further objects of corporation's creation, 4, 245
- Necessity of corporate seal, 4, 242
- Powers compared with authority of an individual, 4, 245
- Ratification, 4, 246, 247
- Conveyances by Corporations, 4, 238**
 - Acknowledgment of corporate deeds, 4, 242
 - Appointment of agent to convey, 4, 239
 - Deed signed by all the corporators but not in the statutory mode, 4, 241
 - Executions through an agent, 4, 238
 - General authority of an agent to make, 4, 239
 - How deed is proved, 4, 241
 - Necessity that agent have authority under corporate seal, 4, 243
 - Reformation of deed in equity, 4, 241
 - Statute of frauds, 4, 242
 - Use of Corporate Name and Seal**
 - Necessity that conveyance be under corporate name and under corporate seal, 4, 240
 - Whether agent's authority must be under seal, 4, 239
- Conveyance to Corporation**
 - Fee simple estate, 6, 876
- County commissioners as corporations or quasi corporations, 4, 374
- Creation, 4, 190; 8, 587, 593**
 - See infra*, INCORPORATION.
 - Altering charter where creation by special statute is forbidden, 4, 191
 - Appertains to sovereignty, 4, 190
 - Constitutionality of general corporation laws, 4, 192
 - Delegation of, 4, 192
 - Existing by prescription, 4, 192
 - Implied from grant of powers by constitution, 4, 190
 - Power of congress, 4, 191
 - Power of state legislatures, 4, 191
 - Restriction of, 4, 191
 - Special statutes creating corporations, 4, 191
 - Territorial legislatures, 4, 191
- Creditors**
 - Bills against, 4, 578
- Criminal Liability, 4, 267, 279, 592, 682**
 - See infra*, ASSAULT; INDICTMENT; RAILROADS.
- Debts**
 - Director's Liability, 17, 113**
 - Amount of recovery, 17, 115
 - Debts for which directors are personally liable, 17, 113
 - Debts for which liability is incurred, 17, 114
 - Enforcement in equity, 17, 114
 - Examples, 17, 113-115
 - Failure to file annual report, 17, 115
 - Indebtedness exceeding the capital stock, 17, 113
 - In general, 17, 113
 - Liability to creditors as a whole, 17, 114
 - Liability to individual creditor, 17, 114
 - Making corporation assume debts, 17, 113
 - Object of statutes, 17, 115
 - Statutory personal liability, 17, 113
 - What must be shown in order to recover, 17, 115
 - Where liability can be enforced, 17, 114
- Decett**
 - Liability for, 4, 255
- Dedication to public by corporation, 5, 399**
- Deeds by, 1, 159**
- Deeds of**
 - Acknowledgment, 1, 159
- Deed to a corporation which was never created, 9, 40**
- De Facto**
 - Collateral attack upon, 4, 198
- Defective or Illegal Incorporation, 4, 197**
 - Collateral attack upon validity of incorporation, 4, 198
 - Corporation defending on the ground of defects in its organization, 4, 200
 - Cure of defects, 4, 198
 - Enabling statutes, 4, 198
 - Organization and existence necessary to assumption of corporate franchises, 4, 197
 - Quo warranto, 4, 198
 - When held to be a partnership, 4, 199; 17, 866
 - Who estopped to deny incorporation, 4, 199, 201
- Definition, 4, 185; 25, 625**
- Denial of corporate existence by one who deals with, 3, 142**
- Devises to, 4, 217, 235**
 - Distinction between statutes restricting power of testator and those regulating the power to hold real property, 4, 235
 - Effect of prohibition against taking property by devise in the state of corporation's creation and devises of property in another state, 4, 235
 - Where charter authorizes corporation to take by purchase and the statute of wills excludes bodies corporate, 4, 235
 - Whether a corporation is a person within the statute of wills, 4, 235
- Directors' Meetings**
 - Where may be held, 4, 207
- Dissolution, 4, 294**
 - Abatement of actions by, 4, 276
 - Appointment of receiver, 4, 302
 - By Act of Legislature, 4, 298**
 - Charter as a contract, 4, 299
 - Reservation of right to repeal conditionally, 4, 300
 - Reservation of right to repeal or amend charter, 4, 299

CORPORATIONS (PRIVATE)—Cont'd**Dissolution—Cont'd**

By death of all the members, 3, 142;
4, 301

By Expiration of Time Limited in Charter, 4, 294

Construction of "until," 4, 295

When majority can wind up business of corporation, 4, 295

Whether corporations can be continued by unanimous consent of shareholders, 4, 295

Whether period can be shortened, 4, 295

By Failure of Integral Part of Corporation, 3, 142; 4, 301

Appointment of receiver, 4, 302

Insolvency, 4, 302

Proceedings under United States bankrupt act, 4, 302

By Forfeiture of Franchise, 3, 143; 4, 302

At whose instance the suit to determine forfeiture must be, 4, 302

Jurisdiction of court of equity, 4, 304

Misuser or nonuser of franchise, 4, 304

Quo warranto, 4, 303

Scire facias, 4, 303

What wrongful acts will authorize the forfeiture of charter, 4, 306

Where corporation has become insolvent, 4, 305

Where corporation neglects to perform its duties, 4, 305

By non-compliance to some charter requirement, 4, 295

By nonuser, 4, 297

By Surrender of Franchise to State, 3, 142; 4, 296

Acceptance by state, 3, 142; 4, 296

Neglect to elect officers, 4, 297

Nonuser of its franchises for a long time, 4, 297

Classification of the ways in which dissolution may happen, 4, 294

Concentration of corporate shares in one person, 4, 298

Definition, 4, 294

Director's power to wind up, 17, 108

Disposal of all the corporate property, 4, 297

Effects of, 4, 306

Appointment of trustees and receivers, 4, 308

Collecting assets and paying debts, 4, 308

Continuation of company after dissolution for the purpose of prosecuting and defending suits, 4, 308

In equity, 4, 307

Statutes governing, 4, 307

Upon debts of corporation, 4, 306

Upon property of corporation, 4, 307

Upon suits of corporation, 4, 306

Failure to Elect, 3, 142; 17, 51

Destroying the object of the institution, 17, 50

Effect, 17, 49

Election of trustees to keep corporation in existence, 17, 50

Receiver, 17, 51

Surrender of rights, 17, 50

Whether it works dissolution of corporation, 17, 50

Forfeiture, 3, 143; 4, 302

Fraud against the state, 3, 143

Insolvency, 3, 142; 4, 302; 11, 205

Parties, 8, 634k

Power of the majority, 4, 297

Proceedings under United States bankrupt act, 4, 302

Upon the happening of a contingency prescribed by charter, 4, 295

Where corporation has become insolvent, 4, 305

Whether consolidation effects, 4, 272i

Domicil of, 4, 206; 8, 296

See infra, CITIZENSHIP.

Office in the state where it is chartered, 4, 207

State which created it, 4, 206

Where corporation exercises its functions in more than one county, 4, 206

Where corporation has received charters from two states by concurrent legislation, 4, 207

Where it exercises its corporate functions, 4, 206

Ecclesiastical, 4, 187

Effect of an agreement of a majority of members before incorporation, 1, 432

Ejectment by, 6, 242

Eleemosynary, 4, 188

Equitable liens, 13, 612

Escheat, 6, 856

Escrow

Delivery to officer, 6, 862

Estoppel

Corporation defending on ground of defects in its organization, 4, 200

Denying regularity of organizations, 7, 8

One who has taken part in the organization, 4, 200

When persons are estopped from denying a valid incorporation, 4, 199

Where corporation has formed an unauthorized partnership, 4, 248

Execution

Applying for receiver, 4, 288

Franchises, 4, 288

General liability of property to, 4, 288

Property essential to performance of public corporate duties, 4, 288

Executors and administrators, 7, 172, 176; 19, 199

Exemplary Damages, 4, 258, 259; 5, 23

For libel, 4, 256; 13, 448

For mere omission of duty, 4, 259

Whether liable for, 4, 258

False imprisonment, 4, 254, 279; 7, 684; 19, 516

Foreclosure of Mortgages

When necessary parties, 8, 217

Vol. I.

- Foreign Attachment**, 8, 298
See infra, GARNISHMENT.
 Corporation having agent in state, 8, 302
 Corporation operating in different states, 8, 300
 Corporations included in term non-residents, 8, 298
 Domicil of a corporation, 8, 299
 Doing business in state, 8, 299
 Funds payable in another state, 8, 301
 Garnishment of foreign corporations, 8, 300
 Garnishment where corporations are non-residents, 8, 301
 Garnishment where goods are in transit, 8, 301
 National banks, 8, 298
 Passenger's trunk, 8, 301
 Rights of residents, when conferred by statute, 8, 298
 When a corporation is foreign, 8, 298
 When corporation not liable, 8, 302
 Whether an agent or trustee of railroad company may be garnishee, 8, 302
Forfeiture, *see infra*, DISSOLUTION.
 Charter, 10, 967
 Of franchise, 4, 302-306; 8, 445, 634*k*
 Question cannot be raised collaterally, 8, 634*l*
Fraud
 Liability for, 4, 259
 Act within the scope of agent's authority, 4, 261
 Bank's liability for fraud of its agents, 4, 262
 Director's reports, 4, 265
 False bills of lading, 4, 261
 Fraud in the issuance of stock certificates, 4, 264
 Fraudulent representations of the financial condition of company, 4, 265
 Instances of liability of corporations for fraud, 4, 264-266
 Issuing stock as full paid at less than its par value, 4, 266
 Misrepresentation to subscribers for stock as to matters contained in the company's charter, 4, 261
 Power of receivers to collect subscriptions to stock procured by fraud, 4, 262
 Prospectus, 4, 265
 Where agent has acted beyond the scope of his authority, 4, 261
 Where corporation derived no benefit from fraud, 4, 262
 Where corporation was ignorant of its agent's fraud, 4, 260
 Matters of pleading and practice, 4, 266
Garnishment, 8, 1130
 See infra, FOREIGN ATTACHMENT.
 General rule, 8, 1130
 Whether a "person" within the statute, 8, 1130
Guardians, 9, 94
 "General agent," 22, 119
 Grant to one company of rights and privileges of another, 4, 215
Guaranty, 4, 221
 Guaranty by a railroad company to a steamboat company that its earnings would amount to so much, 4, 221
 Guaranty of dividend of stock of an elevator company by a railroad company, 4, 221
 Having right to raise money by taxation, 8, 588, 589
 How created, 4, 192
Incorporation by Special Charter, 4, 193
 Acceptance, 4, 193
 Grant of corporate power, 4, 193
 How acceptance of charter should be signified, 4, 193
 Legislative recognition of corporation as existing, 4, 193
 What words are requisite, 4, 193
 When corporation begins to exist, 4, 193
Incorporation Under General Laws, 4, 194
 Acknowledgment and signature of certificate, 4, 195
 At what time the corporators become a corporation, 4, 196
 Certificate or articles of association, 4, 194
 Certificate stating the names and number of directors, 4, 195
 Citizenship of corporators, 4, 195
 Compliance with statutory provisions, 4, 197
 Conditions precedent, 4, 197
 Contents of certificate of articles of association, 4, 195
 Corporation for one purpose organized under a law permitting incorporation for other purposes, 4, 195
 Giving a note as payment of the required proportion of capital stock, 4, 196
 Payment of a portion of capital stock, 4, 196
 Powers obtained by the incorporation, 4, 194
 Provisions of the general laws, 4, 194
 Public notice of intention to apply for a charter, 4, 196
 Subscription, 4, 194
Indictment, 4, 267, 279
 Against corporations for misfeasance, 4, 683
 Against quasi corporations for neglect to repair road, 4, 267
 Compelling corporation to produce its papers, 4, 270
 For acts authorized by its charter which would otherwise be nuisances, 4, 271
 For evading stamp acts, 4, 270
 For failure to give warnings or signals at crossings, 4, 269
 For libel, 4, 270, 683; 13, 449

CORPORATIONS (PRIVATE)—Cont'd**Indictment—Cont'd**

- For misfeasance, 4, 682
- For neglecting to repair highways, 4, 269, 683
- For obstructing highways, 4, 269, 683
- For obstructing navigation, 4, 268
- For various offenses, 4, 267, 269-272
- Generally, 4, 267
- Liability of corporations for lessee's nuisance, 4, 272a
- Liability under statute, 4, 271
- Necessity of notice to support, for want of repair of highways, 4, 269
- Nuisances, 4, 267, 272, 683
- Period of limitation, 4, 272
- Proceedings to enforce remedy by, 4, 272a
- Sabbath breaking, 4, 270
- Setting forth defendant's obligation for an offense which consists of an omission, 4, 272a
- When corporate name is given, 4, 272
- Whether performance of corporate duty can be specifically enforced by, 4, 272a
- While in the hands of a receiver, 4, 270
- Infringement of patents by, 10, 749

Injunctions, 10, 953

See DIRECTORS; INJUNCTIONS; STOCKHOLDERS.

- Abuse of power, 10, 953
- Actions by corporation for, 4, 275
- Change of corporate powers, 10, 957
- Consolidation of company, 10, 957
- Corporate name, 10, 958
- Creating a monopoly, 10, 954
- Destruction of franchise, 10, 956
- Deviation from original undertaking, 10, 955
- Diligence required, 10, 958
- Discretion of court, 10, 956
- Ecclesiastical corporations, 10, 956
- Election of officers, 10, 957
- English authorities, 10, 954
- Enterprise not contemplated by charter, 10, 954
- Examples, 10, 953, 954
- Expulsion of members, 10, 956
- Illegal stock, 10, 958
- Misappropriation of funds, 10, 953
- Negligence in exercise of corporate powers, 10, 954
- Refusal to defend suits, 10, 953
- To compel railroad to complete its road, 8, 619
- Trust relationship, 10, 953
- Ultra vires, 10, 958
- Unauthorized issue of shares, 10, 953
- Use of funds for unauthorized purpose, 10, 954
- Violation of, 10, 959
- Violation of duty, 10, 953
- What must be shown, 10, 955
- When enjoined, 10, 953

Insolvency

See *infra*, DISSOLUTION; RECEIVERS.

- Preference of directors, 17, 122
- Interstate commerce, 11, 544
- Joinder, 11, 1015w**
 - Corporate officers, 11, 1015w
 - Of an individual and corporation, 4, 254
 - Statutory and common-law liability, 11, 1015m
 - Statutory liability of stockholders, 11, 1015w
 - Stockholders, 11, 1015w
- Joint stock companies distinguished from, 11, 1039; 25, 625
- Joint Tenancy or Tenancy in Common**
 - Tenancy in common, 11, 1069, 1074
 - With a natural person, 4, 231
- Judgment, 17, 177
- Judgment against extinct corporations, 12, 87
- Judicial Notice, 12, 155**
 - Authority of officers, 17, 143
- Lay corporation, 12, 965
- Lease**
 - By railroad companies, see RAILROAD COMPANIES.
 - Execution, 12, 997
 - Lessee disputing corporation's authority, 12, 997
 - Mistake of name of corporation, 12, 998
 - Powers of directors, 17, 105
 - Right of corporation to lease, 12, 997
 - Rights of lien holders, 12, 997
 - Rights of stockholders, 12, 997
 - Whether power to consolidate includes power to lease, 4, 272k
- Legal existence of, outside of state creating, 4, 185
- Liability**
 - Criminal, see *infra*, INDICTMENT.
 - For torts, see *infra*, TORTS.
 - To taxation, see TAXATION (CORPORATE).
 - As to contracts, 4, 245-248
 - For acts of promoters, 4, 201
 - For Fraud**
 - Representations, 4, 265
 - For negotiable paper, 4, 223-229
 - Generally, 4, 207
 - To indictment, 4, 267
 - Upon deceptive prospectus, 8, 797
- Libel and Slander, 4, 256; 13, 448**
 - Action against corporations for, 4, 279
 - Action by corporation for, 4, 275; 13, 448
 - Exemplary damages against corporations, 4, 256; 13, 448
 - Express malice, 4, 256
 - Indictment for, 4, 270, 683; 13, 449
 - Liability of corporations for libel, 4, 256; 13, 448
 - Municipal corporations, 13, 449
 - Privileged communications, 13, 449
 - Slander, 13, 449
 - Slander by servants, 13, 449
 - Slander of title, 13, 449

- Unincorporated trading company, 13, 448
- Lien on stockholders' shares*, see STOCK.
- Liens**, 4, 272*b*
 - Creditor's lien on capital stock, 13, 612
 - Equitable liens, 13, 612
- Malicious Prosecution**, 4, 257; 14, 39
 - Action against corporations for, 4, 279
 - Early view, 14, 39
 - Later views, 14, 40
 - Liability of corporations, 4, 257; 14, 39
 - Ultra vires, 14, 39
- Mandamus**, 4, 289; 8, 615; 14, 152
 - See RAILROAD COMPANIES.
 - Religious corporations*, see RELIGIOUS SOCIETIES.
 - Admission to society, 14, 154
 - Affixing seal, 14, 153
 - At motion of private persons, 8, 618
- Books and Records**, 4, 290; 14, 155; 19, 234
 - Books of trading corporations, 14, 156
 - Demand and refusal, 14, 156; 19, 236
 - Inspection of books, 2, 290; 14, 156
 - Surrender of books, 14, 155
- Controversies of private corporations, 14, 152
 - Discretion of attorney general, 8, 617
 - Duty created by contract, 4, 289
 - Duty imposed by statutes, 14, 152
 - Election of officers, 14, 155
 - General rule as to transfer of stock, 14, 157
 - Instances of, when mandamus lies to railroad company, 8, 616
 - Necessity of previous demand upon the corporation, 4, 291
 - Railroad companies, 8, 615
 - Reinstatement of member, 14, 153
 - Rights and duties must be legal, 8, 617
 - To compel a corporation to recognize a person as a member, 4, 289
 - To compel an act forbidden by injunction, 4, 291
 - To compel directors to call a meeting for election of officers, 4, 289
 - To compel exhibition of corporate books, 4, 290; 14, 156; 19, 234
 - To compel issuance or transfer of certificates for specific shares of stock, 4, 291
 - To compel operation of railroad, 8, 615, 616
 - To compel railroad to exercise duties as carriers of goods, 8, 615
 - To issue certificates of stock, 14, 158
 - To reinstate or admit to office directors, 4, 289
 - To whom writ should be addressed, 4, 291
 - Transfer of stock, 14, 157
 - When court will interfere, 14, 152
 - When court will not interfere, 14, 152
 - When it lies to corporations, 4, 289-291
 - Where specific duties are imposed on corporations, 4, 289
- Master and Servant**, 14, 760
 - Liability of corporation, 14, 805
- Mechanics' Liens**, 15, 22
 - Whether corporation is subject to lien, 15, 22
 - Whether corporation may acquire lien, 15, 22
- Meetings*, see MEETINGS.
- Member of corporation, 15, 261
- Mining Corporations**, 15, 613
 - Acts authorizing the incorporation, 15, 613
 - Contracts, 15, 615
 - Deed of mining corporation, 15, 616
- Directors and Officers**, 15, 613
 - Director's meetings, 15, 613
 - Statutes, 15, 614
 - Easements, 15, 614
 - Forfeiture of stock, 15, 615
 - Generally, 15, 613
 - Liability of stockholders, 15, 615
 - Powers, 15, 615
 - Subscriptions, 15, 614
 - Whether a manufacturing corporation, 15, 613
- Misnomer**, 4, 204; 16, 137
 - Contracts, 4, 204
 - Devise or bequest to corporation, 4, 205
 - Pleading, 4, 204
- Moneyed corporations, 15, 710
- Mortgages**, 4, 236; 15, 744; 17, 103
 - Decree of foreclosure where part of the property is situated in another state, 4, 273
 - Mortgagees, 15, 744
- Powers of Directors**, 17, 103
 - Foreclosure, 17, 104
 - In absence of charter or statute prohibition, 17, 103
 - In general, 17, 103
 - Mortgage to themselves, 17, 104
 - Provision in by-laws, 17, 104
 - Quorum, 17, 104
 - Regular meeting of directors, 17, 104
 - When directors may mortgage, 17, 103, 104
- Mortmain**, 4, 232; 5, 431
 - Devises to corporations, 4, 235
 - In England, 4, 232
 - In Pennsylvania, 4, 233
 - In the United States, 4, 232
- Municipal corporation distinct from private, 8, 590
- Name**, 4, 188, 203; 16, 135
 - Acquired by usage, 4, 204
- Change of**, 4, 204; 16, 137
 - Change by suit, 16, 137
 - Effect on identity, 16, 138
 - Effect thereof, 16, 138
 - How change is effected, 16, 137
- Contract entered into under assumed, 4, 204
- Corporate name in indictment, 4, 272
- Estoppel, 16, 140
- How acquired, 4, 203
- In general, 16, 135

CORPORATIONS (PRIVATE)—Cont'd**Name—Cont'd**

- Misnomer, 4, 204; 16, 137
- Necessity of, 4, 204
- Necessity that conveyance be in corporate, 4, 240
- Pleadings should be in name of corporation, 4, 287
- Right to adopt a name where none is given in charter, 4, 204
- Right to exclusive use of, 4, 206
- Rule in regard to foreign corporations, 16, 140
- Statement of names, 16, 136
- Suit, 16, 135
- Suit by corporation when its name has been changed, 4, 205
- Variance, 16, 136
- Variance in Corporate Names, 16, 141**
 - Grants, 16, 141
 - Judgment, 16, 141
- When corporation exists by prescription, 4, 204

Neglect to elect officers, 4, 297

Notice

- Director's, 17, 99**
 - See DIRECTORS.
 - Director having private knowledge acting as member of board, 17, 99
 - Information communicated to board of directors, 17, 99
 - Knowledge inferred from circumstances, 17, 99
 - Knowledge not communicated by director to his associates, 17, 99
 - Notice given of director officially, 17, 99
 - Notice given of director privately, 1, 422; 17, 99

Of Officers and Agents, 17, 139**See DIRECTORS.**

- Fraud of officer or agent, 17, 143
- Generally, 17, 139
- In course of official duty, 17, 140, 141
- Knowledge acquired by president, 17, 140
- Notice after relationship has ceased, 17, 141
- Notice of Agent's Authority, 17, 142**
 - Agent acting within apparent scope of his authority, 17, 142, 158
 - By-laws, 17, 143
 - Foreign corporations, 17, 142
 - In general, 17, 142
 - Secret instructions, 17, 142
- Notice to agent is notice to corporation, 17, 139
- Notice to corporation, 17, 140
- Notice to president, 17, 140
- Officer acting for himself, 17, 140
- Officer dealing with corporation, 17, 140
- Private notice, 17, 141
- When notice to officer is notice to corporation, 17, 140
- Whether courts will take judicial notice of agent's authority, 17, 143

Oaths

- Capacity to take, 4, 249
- Obligation of contracts, see infra, CHARTER AS CONTRACT.*

Ordered to abate a nuisance, 4, 272a

Parties to Actions, 4, 280; 17, 653

- By whom suit of corporation should be brought, 4, 280
- Defense by stockholders, 4, 283
- Essential pleading in suit by stockholder showing that corporation is not controlled by defendant, 4, 282
- Joinder of corporation as party defendant where the suit is by stockholder, 4, 282
- Refusal by corporation must be shown in pleadings where suit is by stockholder, 4, 281
- Suit by stockholders, 4, 280
- Suit by stockholder upon refusal of directors to sue, 4, 282
- When corporation may be made defendant, 4, 283
- When stockholders may be made defendants, 4, 283

Partnership, 17, 867, 926

- Business after expiration of charter, 17, 868
- Business not authorized by charter, 17, 867
- Corporation as a Partner, 4, 248; 17, 926; 26, 351**
 - Capacity from statute, 17, 927
 - Connecting carriers, 17, 927
 - Individual liability, 17, 927
 - In general, 17, 926
 - Liability, 17, 927
 - Power to become a partner, 17, 926
 - Ultra vires, 17, 927

Promoters, 17, 868

- Whether Defective Incorporation Constitutes, 4, 199; 17, 866**
 - Business not authorized by charter, 17, 867

Examples, 17, 866-868

General rule, 17, 866

Intention to assume liability, 17, 866

Officers, 17, 866

Parties supposing themselves to be incorporated, 17, 866

Person, see infra, WHETHER PERSON INCLUDES CORPORATION.

Place, 4, 189

Pleading and Evidence, 4, 284

- Attachment, 4, 288
- Corporate seal, 4, 288
- Demurrer where legal incapacity of corporation to sue appears on the record, 4, 286
- How corporate existence defacto is proved, 4, 287
- Name of corporation, 4, 204
- Necessity of averment of incorporation, 4, 285
- Necessity of, in suit by stockholder showing that corporation is not controlled by defendant, 4, 282

- Necessity of specific denial of incorporation, 4, 286
 Null tiel corporations, 4, 286
 Pleading should be in name of corporation, 4, 287
 Verification of evidence, 4, 288
 Where under the general issue incorporation must be proved, 4, 286
- Powers**
 Charter the measure of, 4, 207
 Contract beyond purpose and scope of corporation's charter, 4, 208
 Exercise of all powers conferred by statute, 4, 216
 Generally, 4, 207
 General powers as to property, 4, 217
 Implied powers resulting from charter, 4, 208
 Incidental, 4, 216
 Lending credit to another, 19, 730
 Limitation of corporate powers to those granted by charter, 4, 190, 209
 Miscellaneous, 4, 248-250
 Obtained by incorporation under general law, 4, 194
 Of state to confer privileges, 8, 593
 Ordinary corporate, 4, 188
 Right to sue and be sued, 4, 189
 Specific grant of certain powers as an implied prohibition of others, 4, 190
 Succession by corporate name, 4, 188
To Acquire Property, 4, 217
 Personal, 4, 217
 To lease, 4, 219
 To maintain salvage suit, 4, 250
To Make By-laws, 4, 190
 See BY-LAWS.
To Mortgage Property, 4, 236; 15, 744; 17, 103
 Corporate franchises, see FRANCHISES.
 Manufacturing corporations in New York, 4, 237
 Restriction as to mortgages, 4, 237
 When the power exists, 4, 236
To Pledge, 4, 218
 Stock issued by itself, 4, 219
To Take Property by Bequest, 4, 217
 At common law, 4, 217
 Bequest of money for relief of indigent residents of a town, 4, 217
 Bequests in trust for religious usage, 4, 218
 Examples of bequest which have been sustained, 4, 217
 Where corporation purchased shares of stock of another corporation, 4, 249
Prescription, 4, 204
 Corporation existing by, 4, 192
Presumptions, 19, 50
 As to the innocence of its intention, 4, 217
 In favor of the corporate existence, 4, 287; 19, 52
 Of validity of corporate organization, 4, 200
 Private, 4, 186
- Probate and letters of administration, 19, 199
Promoters, 4, 201
Dealing with Property for Own Benefit
 Constructive trusts, 10, 76
 Liability for deceit, 8, 804
Liability of Corporation for Acts of, 4, 201
 Acceptance of the benefit of a contract, 4, 201
 Before incorporation, 4, 201
 By charter, 4, 201
 Equitable, 4, 202
 Ratification after incorporation, 4, 201
 Prospectus containing false representations, 5, 333
Public, 4, 186
 Distinguished from private, 4, 187; 8, 590
 Public character and duties, 8, 587, 588
Public Lands
 Pre-emption, 19, 317
Quasi Corporations, 4, 188
 Definition, 4, 188
 What are, 4, 188
Quasi-municipal corporations, see MUNICIPAL SECURITIES; COUNTIES; SCHOOLS; TOWNS AND TOWNSHIPS.
 Quasi-public character, 8, 588
 Quasi-public corporations, 8, 590
Quo Warranto, 4, 291; 19, 684
 Against whom information should be filed where corporate existence is in issue, 3, 294
 At the instance of a private citizen, 4, 293
 At whose instance it is brought, 4, 293
 Effect of judgments of ouster, 19, 684
 Equity proceedings substituted for, 4, 291
 Forfeiture; 8, 445
 Illegal occupation of corporate offices, 4, 293
 Information, 19, 681
 Nonuser of franchises, 4, 292
 Special code proceedings, 4, 291
 To enforce forfeiture of franchise, 4, 303
 Usurpation or illegal user of franchises, 4, 292
 When the writ lies, 4, 291
 Where there is an adequate legal remedy, 4, 294
 Ratification of contracts made before corporate existence, 4, 201
Real Property, 28, 81
 See ULTRA VIRES.
 Charter forbidding acquisition, 28, 81
 Implied power, 28, 82
 Power to acquire, 3, 642; 4, 189, 230, 238; 9, 43; 23, 47; 28, 81
 To alienate property, 4, 220; 9, 39
 Where charter authorizes, 28, 81
Receivers, see RECEIVERS; RECEIVERS OF RAILROADS.
 Subscriptions, see SUBSCRIPTIONS.

CORPORATIONS (PRIVATE)—*Cont'd*

Recognition by state of corporate existence, 4, 193, 198

Recording Acts

Deeds, 20, 541

Place of record, 20, 549, 550

Release

Claim for personal injuries, 20, 761

Removal of Causes, 20, 988, 993

Citizenship, 20, 994

Reorganization, 4, 272i, 272o

Representations, 4, 265; 17, 100

Residence, see *infra*, DOMICILE.

"Residence," 21, 123, 124

Res Judicata, 21, 147

Corporation and Its Members, 21, 181

Officers of corporation, 21, 181

Personal responsibility of stockholders, 21, 181

Where stockholder bound by judgment against corporation, 21, 181

Whether there is privity between corporation and its members, 21, 181

Resulting trusts, 10, 47

Revocation of Charter

Whether the happening of an event, upon which the power to revoke a charter depends, is a question to be decided by the legislature or the courts, 3, 682

Rights of corporation determined by law in force when it came into being, 4, 209

Right to Sue and Be Sued, 17, 481

Right to sue and be sued in general, 17, 481

Stockholders, 17, 481

Suits against stockholders, 17, 481

Sale of Property

President's authority, 17, 128

Scire facias to forfeit charter, 21, 879

Scroll, 4, 242

Seal, 4, 242; 21, 910

Agreement authorizing a private seal, 21, 910

As signature, 1, 390

Burden of proof, 4, 244

Character of, 4, 242

How proven, 2, 467p

Incident to the corporation, 4, 242

Limited partnership, 21, 910

Necessity of, to contract, 1, 159; 2, 351

Necessity that agent affixing seal have authority under, 4, 243

Necessity that conveyance be under, 4, 239

Necessity that seal be affixed to any act of the corporation, 4, 242; 21, 911

Necessity that seal be placed to instrument by one duly authorized, 4, 244

Officer's Power to Use Seal, 17, 149

In general, 17, 149

Mandamus, 17, 150

President, 17, 149

Presumption that officer did not exceed his authority, 17, 150

Who is proper officer, 17, 149

Peculiar to corporation, 21, 910

Power to act without, 4, 242; 21, 911

Presumption as to genuineness of seal, 21, 912

Prima facie evidence that officers did not exceed their authority, 4, 244

Prima facie presumption that it was affixed by proper authority, 4, 243

Private seal adopted as corporate seal, 21, 911

Proof of corporate, 4, 288; 21, 911

Ratification of the use of, 4, 244

Right to custody of corporate seal, 21, 911

Scroll, 4, 242

Seal as evidence of assent, 21, 912

To ancient documents, 1, 566

Unincorporated persons, 21, 910

Validity of deed without corporate seal, 21, 911

Where a wafer or other seal may be adopted, 21, 911

Whether instrument under corporate seal imports a consideration, 4, 245

Whether or not the seal has been duly affixed, 21, 912

Whether seal of corporation or agent, 1, 386

Whether seal of corporation renders instrument a specialty, 4, 244

Sequestration, 22, 95

Examples, 22, 95-97

In general, 22, 95

To enforce judgment against corporation, 22, 95

Service of Process Upon, 4, 283; 22, 116, 184

Foreign corporations, see FOREIGN CORPORATIONS.

Absence of superior appearing in return, 22, 125

Actions by officers against a corporation, 22, 119

Agent provided by statute, 22, 185

At common law, 22, 116

Character of agency, 22, 184

Chief or subordinate officers, 22, 125

Constitutionality of statutes conflicting with charter, 22, 117

Counties, 22, 127

Distringas, 22, 116

Examples, 22, 119-121

Examples of insufficient return, 22, 186-188

Examples of sufficient return, 22, 185, 186

In absence of statutory provisions, 22, 117

In general, 22, 116

Locality of service, 22, 126

Manner of service, 22, 117

Municipal corporation, 22, 126

Name of officer, 22, 184

New York statutes, 22, 117

Officer or agent upon whom service was made, 22, 184

Place of service, 22, 185

- Resignation of officer to prevent service, 22, 121
 Rule of construction, 22, 118
 School districts, 22, 127
 Service of attachment, 4, 284
Service Upon Agents, 22, 119
 Agent upon whom service is not authorized by statute, 22, 124
 Bookkeepers, 22, 123
 Compliance with statute, 22, 124
 "General agent," 22, 119
 Local agents, 22, 123
 Local express agent, 22, 123
 "Managing agent," 22, 123
 "Special agent," 22, 122
 Ticket and depot agents, 22, 123
 Service upon a mere member, 4, 284; 22, 119
 Service upon an officer who is plaintiff in suit, 22, 119
 Service upon civil engineer, 22, 120
 Service upon conductor, 22, 120
 Service upon de facto officer, 22, 119
 Service upon de jure officer, 22, 119
 Service upon directors, 4, 284; 22, 120
 Service upon highest officer found in county, 22, 120
 Service upon lessee of railroad company, 22, 121
 Service upon one not an officer of the corporation, 22, 119
 Service upon person agent for two companies, 22, 121
 Service upon receivers, 22, 120
 Service upon secretary, 22, 120
 Service upon stockholders, 22, 119, 120
 Service upon treasurer, 22, 120
 Service upon vice-president, 22, 119
 Societies and clubs, 22, 127
 Statutory regulations, 22, 117
 Sufficiency of notice, 22, 118
 Time, place and manner, 22, 184
 Towns, 22, 127
 Upon whom it should be made, 4, 284
 When return insufficient, 22, 185
 Where corporation charged with criminal offense, 22, 118
 Where corporation is "found," 22, 126
 Where railroad is operated by receivers, 22, 120
 Where statute capable of double construction, 22, 118
 Whether absence of superior officer must be shown, 22, 125
 Whether appearance could be compelled, 22, 116
 Whether full name of officer must be given, 22, 184
 Whether statutory method is exclusive, 22, 117
Societies and Clubs
 Distinguished, 22, 804
 Sole, 4, 186
 State's right to land owned by corporation in excess of corporate powers, 23, 47
Statute of Fraud
 Representations as to credit, 21, 8
 Stockholder's promise to pay, 8, 680
Statutes
 Constitutional provisions requiring that subject shall be expressed in the title, 23, 246
 Constitutional Provision that Statute Contain no More than One Subject
 Act incorporating three distinct corporations, 23, 274
 Stock exchange, 23, 749
Streets and Sidewalks
 Dedication by corporations, 24, 8
 Subpoena duces tecum, 24, 175
Subrogation
 Loan declared ultra vires, 24, 295
 Subscription, 4, 194
Subscriptions of state to another company, see STOCKHOLDERS.
Suits by
 Justice of the peace, 12, 450
 Suits in federal courts as citizens of the state where they are situated, 4, 346
Supplementary Proceedings, 24, 608
 Examined as third party, 24, 609
 Municipal corporations, 24, 608, 609
 Whether statutes apply to, 24, 608, 609
Suretyship, 24, 727
 Estoppel to deny corporate authority, 24, 748
 Estoppel to deny corporation's existence, 24, 748
Whether Corporation May Become Surety, 24, 728
 Banks, 24, 729
 Examples, 24, 727-730
 Guaranteeing bonds of another corporation, 24, 728
 Guaranteeing payment of securities which it has received, 24, 728
 In general, 24, 728
 Railroads, 24, 728
Territories
 Limitation of the right of acquisition by corporations, 25, 959
Power to Incorporate, 25, 962
 Examples, 25, 962, 963
 General incorporation laws, 25, 962
 Private charters, 25, 962
 Though owing public duty, still private corporation, 8, 590
Torts
Liability for, 4, 250, 278; 5, 12; 27, 393
 False imprisonment, see infra,
 FALSE IMPRISONMENT.
 Libel and slander, see infra, LIBEL AND SLANDER.
 Malicious prosecution, see infra,
 MALICIOUS PROSECUTION.
 Acts within the scope of agent's authority, 4, 251
 Assault and battery, 1, 809; 4, 254, 255, 279
 Bailments, 27, 395, 396
 Bank's liability for neglect of its officers, 2, 95; 4, 258

CORPORATIONS (PRIVATE)—Cont'd**Torts—Cont'd****Liability for—Cont'd**

- Carriers of passengers, 27, 394
- Conspiracy, 4, 257, 266, 292
- Deceit, 4, 255
- Examples of liability, 27, 393
- Former doctrine, 4, 250
- In general, 27, 393
- Injuries to real property wrongfully held by corporation, 27, 396
- Joinder of an individual and corporation, 4, 254
- Liability for acts of their servants, 4, 251
- Liability for fraud, 4, 259
- Liability for infringement, 4, 258
- Malicious torts, 5, 12
- Miscellaneous torts for which the corporation has been held liable, 4, 258
- Modern doctrine, 4, 250
- Railroad for acts of its conductor, 4, 251
- Railroad transporting passengers by steamer, 27, 394
- Recognition of the business by the corporation, 27, 394
- Transactions beyond corporate authority and purposes, 27, 394
- Trover and conversion*, see *infra*, **TROVER**.
- Ultra vires transaction on its face foreign to the corporate business, 4, 252
- Where the servant of corporation acts willfully, 4, 252
- Where the tort is committed in the course of an ultra vires transaction which is afterwards ratified by the corporation, 4, 252
- Whether the doctrine of ultra vires has any application, 4, 251
- Willful act of servant in course of his employment, 4, 253

Transfer

- Particular forms of transfer, 22, 673

Trespass, 26, 616

- Actions for, 4, 279

Trover

- Liability of officers or of corporations, 3, 137; 26, 779

Trusts, see TRADE COMBINATIONS AND CORPORATE TRUSTS.**Trust Deeds and Power of Sale Mortgages**

- Whether they may exercise the power, 26, 893

Trusts and Trustees

- As cestui que trusts, 4, 218; 27, 23
- Corporation as Trustee, 27, 17**
 - Charitable purposes, 3, 137; 27, 18
 - Charter provisions, 27, 19
 - Compelling execution, 27, 17
 - Corporation incompetent, 27, 19
 - Court of equity, 27, 17
 - Educational purposes, 27, 18
 - Examples, 27, 17-19

- In general, 27, 17
- Municipal corporations, 27, 18
- Purpose foreign to corporation, 3, 138; 27, 19
- Specified purpose, 27, 18
- Supplying trustee, 27, 19
- Within scope of corporate power, 27, 17
- Power of state to remove trustees, 27, 88

United States Courts, 27, 634

- Citizenship, 27, 654

Usages and Customs, 27, 881

- Contracts, 27, 881
- Examples, 27, 881, 882
- In general, 27, 881
- Validity of acts, 27, 881

Uses, 19, 1062**Usury, 27, 1029**

- Examples, 27, 1029-1031
- Indicted and punished, 27, 1029
- In general, 27, 1029
- Statutes, 27, 1030
- Subject to laws, 27, 1029
- Usury as defense, 27, 1030, 1031

Validity of charter questioned only by state, 4, 217**Vendor and Purchasers, 28, 81**

- Examples, 28, 81, 82
- In general, 28, 81
- Power to acquire and hold real estate, 3, 642; 4, 189, 230, 238; 9, 43; 23, 47; 28, 82
- Where power to hold real estate implied, 28, 81, 82

Venue

- Contract of insurance, 28, 224
- Examples, 28, 220-225
- In general, 28, 220

Votes and proceedings of persons pretending to act in the capacity of a corporation when assembled outside of state granting corporate charter, 4, 185**Warrant of Attorney**

- To confess judgment, 28, 695

Whether a corporation in which a state has an interest is public, 4, 187**Whether a state is a corporation, 8, 626****Whether Person Includes a Corporation, 8, 625; 18, 404**

- Attachments, 8, 626; 18, 405
- Contracts regulating practice or procedure, 8, 626

Damages by eminent domain, 8, 626**Fourteenth amendment, 18, 405****General rule, 8, 625; 18, 404****Held Not to Be Included in Term, 8, 626****Formation of corporations, 8, 626****U. S. confiscation acts, 8, 626****In general, 18, 404****Larceny, 8, 627****Limitation of actions, 18, 405****Not within certain tax laws, 8, 627****Other examples, 8, 626****Penalties for fraudulent claims against government, 8, 627**

- Prohibiting persons from doing a banking business, 8, 626
 Question of construction, 8, 625
 Statutes preventing nuisance, 8, 627
 Statutes protecting land from trespass, 8, 626
 Statutes relating to promissory notes, 8, 626
 Taxation, 18, 405
 Tax laws, 8, 626
 United States statutes, 18, 405
 Usury statutes, 18, 405
 Taxation, 18, 405
- Winding up**
 Building and loan association invoking chancery, 2, 627
- CORPORATOR**, 23, 781
- CORPOREAL**, 4, 309
 Corporeal possession, 4, 309
- "CORPOREAL" FOR "SOLEMN,"** 10, 546
- CORPOREAL HEREDITAMENTS**, see HEREDITAMENTS.
 Incorporeal hereditaments, 4, 309; 9, 360
- CORPSE**, see DEAD BODY.
- CORPUS DELICTI**, 4, 309
 Burden of proof, 4, 309
 Confessions, 4, 309; 9, 729
 Definition, 4, 309
 In arson, 4, 309
 In burglary, 4, 309
 In homicide, 4, 309
- Sufficiency and Weight of Evidence**, 4, 310; 9, 728
 Circumstantial evidence, 9, 728
 Confession of defendant alone, 9, 729
 Finding dead body of person murdered, 9, 729
 Necessity of direct proof, 9, 728
 Proved beyond a reasonable doubt, 9, 728
 Whether proved beyond a reasonable doubt, 4, 310; 9, 728
- CORRECT**, 4, 311
- CORRECTION**, 4, 311
 See HOUSE OF REFUGE AND CORRECTION.
- CORRESPOND**, 4, 311
- CORRESPONDENCE**, 4, 311
- CORROBORATE**, 4, 311
 See WITNESSES.
- CORRUGATED**, 4, 312
- CORRUPT**, 4, 312
 Corrupt bargain, 2, 123
 Corrupting a voter, 4, 312
- CORTICE**, 4, 312
- CO-SERVANTS**, see FELLOW SERVANTS.
- COSTS**, 4, 313; 28, 472
 See ABIDE; CHAMPERTY; FORMA PAUPERIS.
 Action against stockholders, 4, 319
 Actual cost, 1, 185
- Admiralty**
 Collision, 16, 364
 Attorney's fees, 16, 365
 Discretion of court, 16, 365
 Failure to render assistance, 16, 364
- Inevitable accident, 16, 364
 Neither to blame, 16, 364
 Vessel most in fault, 16, 364
 Where both vessels in fault, 16, 364
 Where costs should be divided, 16, 364
 Who should bear costs, 16, 364
- Against government, 4, 316
 Against parties in interest and not record, 4, 316
 Against plaintiff to bill of interpleader, 4, 318
 Against public officers, 4, 316
 Agreed case, 24, 152
 Amount in controversy, 4, 100; 12, 284, 429
- As Affected by Amount Recovered**, 4, 319
 Questions of title, 4, 320
 Tender, 4, 321
 Where defendant admits plaintiff's title, 4, 320
 Where judgment has been reduced below the statutory amount by evidence of payment, 4, 320
 Where judgment has been reduced below the statutory amount by set-off or other collateral defense, 4, 320
- Assignment of dower, 5, 926
 Assignors and assignees, 4, 319
 At common law, 4, 314
- Attorney and Client**, see CHAMPERTY.
 Advancing, 3, 79
 Charging lien for costs, 1, 971
 Fees, 16, 365
 Liability for, 1, 951; 15, 929
 On a sham plea, 1, 951
 Lien, 13, 616
 Scandal and impertinence, 1, 951; 21, 746
- Audita Querela**
 For erroneous taxation, 1, 1008
- Bill of discovery, 2, 202; 4, 323
 Bill of peace, 2, 257
 Bill of revivor to obtain, 2, 271
- Bond for**
 Record, 20, 488
- Collection of**, 4, 329
 By action, 4, 329
 By execution, 4, 329
 By personal attachment, 4, 329
- Constitutionality of requirement of security for, 3, 725
- Contempt, 3, 803; 9, 219
- County's liability for, in case of acquittal upon indictment, 4, 367
- Criminal Cases**, 4, 323; 10, 219
 Effect of pardon upon, 4, 323
 Imprisonment for debt, 10, 219
 Liability of prosecuting witness, 4, 324
 Liability of state, county, or municipal corporation, 4, 323
 Statutory liability of person affected, 4, 323
 Where pardon is granted after sentence, 4, 323
 Where pardon is granted before sentence, 4, 323

COSTS—Cont'd

- Definition, 4, 313
- De lucremento, 4, 313
- Demurrer, 5, 563
- Depositions to**, 5, 621
 - Where transaction is not bona fide, 5, 582
- Distinguished from fees, 7, 819; 19, 538
- Divorce**
 - Jurisdiction in personam and in rem, 5, 751
 - Where defendant has not been summoned, 5, 762
- Double and treble, 4, 324
- Eminent Domain**, 6, 632
 - Abandonment of proceedings, 6, 632
 - Costs of appeal, 6, 632
 - Payment as prerequisite to entry, 6, 632
 - When recoverable, 6, 632
- Error, 4, 324
- Executors and Administrators**, 4, 316; 7, 390, 408
 - Bill filed by legatee, 7, 410
 - Bills for construction, 7, 410
 - Controversy between distributees, 7, 409
 - Costs for trusts settlement, 7, 411
 - Creditors, 7, 410
 - Creditor's suit, 7, 410
 - Fraud in executor, 7, 409
 - In equity, 7, 408
 - Liability of real estate, 7, 411
 - Liability of specific legacies, 7, 411
 - Neglect of duty by executor, 7, 409
 - Next of kin, 7, 410
 - On judgment quando, 7, 391
 - Plaintiff's costs, 7, 409
 - Representative's costs, 7, 409
 - Representative's liability where he is sued, 4, 316
 - Retainer as costs, 7, 410
 - Solicitor and client, 7, 410
 - Suit for administration of assets, 7, 409
 - Trustees, 7, 411
 - When a plea of non assumpsit, 7, 391
 - When a plea of plene administravit, 7, 391
 - When assets insufficient, 7, 409
 - When costs payable out of particular fund, 7, 411
 - When executor must pay costs on his own goods, 7, 390
 - When to be paid out of estate, 7, 408
 - Where action is based upon a transaction to which he himself is a party, 4, 316
 - Where executor's administration has been blameless, 7, 409
 - Where representative sues in autre droit, 4, 316
 - Where suit is improper and vexatious, 4, 316
 - Where there are no assets applicable, 7, 411
 - Whether representative is entitled to reimbursement from estate where he pays costs, 4, 316

- Exemption from execution, 7, 134
- Fees of experts, 4, 328
- Final Judgments**, 12, 66
 - Decree reserving question of costs, 12, 67
 - Judgment for costs after dismissal, 12, 66
 - Judgment for costs merely interlocutory, 12, 66
- Fine, 7, 993
- First cost, 8, 21
- For bills to take testimony de bene esse, 2, 297
- Forcible Entry and Detainer**, 8, 176
 - Charges for constables' fees, 8, 176
 - Disregarding errors, 8, 176
- Garnishment**, 4, 318; 8, 1264
 - As between plaintiff and defendant, 8, 1266
 - Costs after garnishee is charged or discharged, 8, 1267
 - Costs incurred by negligence of garnishee, 8, 1265
 - Costs when garnishee contests, 8, 1265
 - Discretion of court, 8, 1266, 1267
 - Discretion of court upon jury trial, 8, 1266
 - Garnishee bringing action in a higher court, 8, 1265
 - Garnishee fails to disclose full amount of indebtedness, 8, 1266
 - In case of appeal, 8, 1266
 - Judgment as to cost, 8, 1267
 - Liability of intervening claimant, 8, 1266
 - Omitted items, 8, 1267
 - To whom finally taxed, 8, 1265
 - Transactions intended to hinder and delay creditors, 8, 1265
 - Travel and attendance, 8, 1267
 - When debt of garnishee is sufficient, 8, 1264
 - When garnishee charged, 4, 318; 8, 1265
 - When garnishee entitled to judgment against plaintiff, 8, 1264
 - When garnishee is entitled to reimburse himself out of property of defendant, 8, 1264
 - Where garnishee compels a third person to interplead, 8, 1265
 - Where judgment is taken upon the answer, 8, 1265
 - Whether garnishee can demand his fees in advance, 8, 1265
- Guardians ad Litem**, 4, 318
 - Personal responsibility, 4, 318
 - When required to give security for costs, 4, 325
 - Where infant elects, upon coming of age, to continue or abandon a suit, 4, 318
 - Where there is a fund in control of the court, 4, 318
- Habeas Corpus**, 9, 184
 - Different hearings, 9, 184
 - Liability of officer making arrest, 9, 184
 - Proceedings for custody of minor, 9, 184

- Husband and Wife**, 4, 319
See infra, **MARRIED WOMEN**.
 Husband's liability for cost of wife's suit at common law, 4, 319
 In suits between, 4, 319
 Libel and slander, 13, 503
 Where wife is unsuccessful in a suit against her husband, 4, 319
 Where wife's suit is alone, 4, 319
 Imprisonment for debt, 10, 219, 232
 In arbitration proceedings, 1, 687
 Included in the matter of damages, 4, 314, 315
In Equity, 4, 322; 6, 808
 Courts of equity requiring security for costs, 4, 324
 Finality of allowance of costs, 4, 323
 Necessity of express decree, 4, 323
 Resting in sound discretion of the court, 4, 322
 When both parties are partly wrong, 4, 323
 Where relief might be had at law, 4, 322
 In proceedings before auditors, 1, 1015
Infants, *see infra*, **GUARDIANS AD LITEM**.
 Liability for, 10, 682, 692
Insanity, Inquisition of, 11, 119, 120
 Counsel fees, 11, 120
 Proceedings taken without probable cause, 11, 120
 When paid out of lunatic's estate, 11, 120
 Interest on, 11, 393
 Interpleader, 11, 504
 Joint tenants and tenants in common, 11, 1142
 Jury requesting instruction as to effect of amount of verdict on, 4, 315
 Justice of the peace, 12, 411, 468, 501, 514
 Laches, 12, 608
 Liability of an assignor of choses in action where suit is brought by assignee in his name, 4, 319
 Liability of real party in interest, 4, 319
Libel and Slander, 13, 503
 Costs of former trial, 13, 503
 Husband and wife, 13, 503
 Security for costs, 13, 503
 Special costs, 13, 503
 Trial by judge, 13, 503
 Trial by jury, 13, 503
 Lis pendens, 13, 910
 Lost wills, 13, 1143
Mandamus, 14, 239
 Discretion of court, 14, 239
 Review or appeal, 14, 239
Married Women, 14, 652
See infra, **HUSBAND AND WIFE**.
 By **Husband and Wife Jointly**, 14, 652
 At common law, 14, 652
 Married women defendants, 14, 652
Married Women Plaintiffs, 14, 652
 At common law, 14, 652
 Liability of equitable separate estate, 14, 652
 Separate property, 14, 652
 Sue alone, 14, 652
 Suits by husband and wife jointly, 14, 652
 Suits in equity, 14, 652
 Modes in which married women's suits may be brought, 14, 652
Master in Chancery, 14, 955
 Decree for costs, 14, 956
 Discretion of court, 14, 955
 Dismissal without costs, 14, 955
 Examples, 14, 955
 Partial relief, 14, 956
 Prevailing parties, 14, 955
 United States courts, 14, 956
 When not granted, 14, 955
Mechanics' Liens, 15, 204
 Against whom awarded, 15, 204
 As specific lien, 15, 204
 Consolidation of claims, 15, 204
 Discretion of court, 15, 204
 Examples, 15, 204
 Statutory provisions, 15, 204
 Misdemeanors, 12, 411, 412
 Mortgagees, 4, 322
Motions, 15, 925
 Abandoned, 15, 931
 Allowing amendment, 15, 928
 Amount of costs, 15, 931
 Attendance fee, 15, 930
 Attorney's liability for, 1, 951; 15, 929
 Clerks' fees, 15, 933
Collection, 15, 931
 Collateral motions, 15, 932
 Costs abiding event, 15, 932
 Execution, 15, 931
 Order served by mail, 15, 932
 Set-off against costs awarded to other party, 15, 932
 Stay of proceedings, 15, 931
 Taxation as part of costs of action, 15, 932
 Vacation of orders, 15, 932
 Costs of a reference, 15, 925
 Default, 15, 931
 Demand for, 15, 927
 Discretion as to extra allowance, 15, 933
 Discretion of court, 15, 926
 Executor, 15, 928
 Ex parte affidavit, 15, 927
 Extra allowance, 15, 933
 Granting favor to moving party, 15, 928
 How granted, 15, 925
 Limitation of costs, 15, 930
 Motion in consequence of declaration of other parties, 15, 930
 Motion papers, 15, 927
 Motion rendered useless by other side, 15, 931
 Neglect to enter, 15, 933
 One notice, 15, 927
 Part of general costs in the action, 15, 925
 Party successful in part only, 15, 928, 929

COSTS—Cont'd**Motions—Cont'd**

- Practice, 15, 933
- Practice novel, 15, 929
- Practice unsettled, 15, 929
- Preparation of enumerated motions, 15, 931
- Prevailing party, 15, 927
- Punishment, 15, 929
- Rehearing, 15, 926
- Request for costs, 15, 930
- Scandal, 15, 929
- Setting aside default, 15, 928
- Special, 15, 926
- Subsequent terms, 15, 927
- Successful resistance, 15, 930
- Technical irregularities, 15, 929
- Unsuccessful motion, 15, 929
- Upon what dependent, 15, 925
- What are costs, 15, 925
- When granted, 15, 927
- When no costs will be granted, 15, 929
- Where the order does not determine anything, 15, 929
- Who fixes amount, 15, 926
- Without costs, 15, 930

Nature of, 4, 313**New Trial, 4, 324; 16, 589, 670**

- Costs to abide event, 16, 671
- Errors in assessing costs, 16, 513
- Justice of the peace, 12, 468
- Newly discovered evidence, 16, 670
- New trial as matter of right, 16, 670
- Payment of costs, 16, 670
- Power of court, 16, 670
- Surprise, 16, 670
- Time of payment, 16, 672
- Validity of order, 16, 671
- Verdict against evidence, 16, 670
- Waiver of payment, 16, 672

Next friends, 4, 318**Non-Payment of**

- As contempt, 3, 784, 803

Nonsuit, 16, 749

- Stay of proceedings, 16, 749

Of certiorari, 3, 67**Offer to confess judgment, 4, 321****Officers and agents of private corporations, 17, 178****Of the day, 4, 313****On appeal, 4, 324****On arrest of judgment, 4, 322****On discontinuance, 5, 678****On payment of costs, 17, 187****On pleas puis darrein continuance, 4, 321****Ordinances, 17, 271****Original cost, 17, 275****Pardon, 4, 323; 17, 327****Parties to Actions, 17, 514**

- Indemnity of nominal plaintiff, 17, 508

Legal plaintiff, 17, 508**Nominal plaintiff, 17, 514****Party having legal title, 17, 508****Use plaintiffs, 17, 514****Partition, 17, 810, 812****Attorney's Fees, 17, 814****Adversary proceedings, 17, 815****Reasonable counsel fees, 17, 814****Whether taxable as costs, 17, 814****Commissioner's fees, 17, 814****Discretion of court, 17, 812****Doweress, 17, 813****Holder of life estate, 17, 813****In absence of statutory enactments, 17, 812****Necessary disbursements, 17, 814****Proportionate to the value of interests, 17, 812****Statutory regulations, 17, 814****Where actual partition is made, 17, 815****Where one party has made unnecessary costs, 17, 812****Where parties are found not entitled, 17, 813****Where sale is had, 17, 815****Partnership****Actions for Accounting, 17, 1295****Discretion of court, 17, 1295****Partner guilty of misconduct, 17, 1295****Payment of debts, 17, 1295****Suit necessary, 17, 1295****Patent Law, 18, 118****Amendment, 18, 100****By whom taxed, 18, 120****Complainant defeated on most of his claim, 18, 118****Copies, 18, 120****Division, 18, 118****Examples, 18, 118-120****Exceptions, 18, 118****Lack of disclaimer in reissue, 18, 118****Mileage, 18, 119****Prevailing only on a side issue, 18, 118****Prevailing party, 18, 118****Printing, 18, 120****Reference, 18, 118****Security, 18, 119****Statutory right, 18, 119****To whom given, 18, 118****What may be taxed, 18, 119****Who cannot be taxed, 18, 119****Witnesses, 18, 119****Paupers, 4, 319****See FORMA PAUPERIS.****Whether plaintiff in a suit of in forma pauperis may recover costs, 4, 320****Whether they are relieved from liability when they fail in a suit in forma pauperis, 4, 319****Payment into court to save costs, 5, 62****Payment of****Upon amendment, 1, 555****Payment of money into court as security, 25, 940****Power to Grant, 4, 314****Dependent on statute, 4, 314****Prevailing party, 19, 82****Prevailing party entitled to, 4, 320****Prime cost, 19, 83****Proceedings in which court has no jurisdiction, 12, 312****Prohibition, 19, 282**

Questions of jurisdiction, 4, 314

Quo warranto, 19, 685

Real Covenants

Incurred in defending suit, 19, 1017

Receivers, 20, 90

Allowing Receiver Costs, 20, 192

Costs of appointment, 20, 194

Costs of litigation and costs of administration, 20, 193

Discharge of receiver, 20, 194

Examples, 20, 192-194

Reference of accounts, 20, 194

Sanctioned by court, 20, 194

What costs allowed, 20, 192

Liability of receiver, 20, 125

Out of fund realized by receiver, 20, 90

Surety's liability, 20, 166

Where party appeared personally, 20, 90

Where receiver improperly appointed, 20, 90

Recoupment, 22, 367

Redemption of Mortgages, 20, 625

Frivolous defense, 20, 626

Junior incumbrancer, 20, 626

Paid by plaintiff, 20, 625

Previous foreclosure, 20, 626

When defendant must pay, 20, 626

Referees, 20, 701

Report should indicate costs, 20, 701

Where costs are allowed as a matter of course, 20, 701

Where costs are discretionary, 20, 701

Reformation of instruments, 15, 655

Removal of causes, 20, 1022

Replevin, 20, 1130

Action on Replevin Bond

Judgment for costs, 20, 1142

Division of costs, 20, 1130

Examples, 20, 1130

Following judgment, 20, 1130

Replevin Bond

Costs of original suit, 20, 1147

Costs of writ of retorno habendo, 20, 1146

What costs plaintiff is entitled to recover, 20, 1146, 1147

Where judgment is apportioned, 20, 1130

Salvage, 21, 711

Demand for exorbitant salvage, 21, 711

Examples, 21, 711, 712

False or fraudulent case, 21, 711

Salvors guilty of misconduct, 21, 711

Tender to salvors, 21, 712

When no costs should be allowed to libelants, 21, 711

Where claim for salvage fails, 21, 711

Scandal and Impertinence, 1, 951; 21, 746

Liability of attorney, 21, 747

Who entitled to, 21, 746

Security for, 4, 324

Courts of equity requiring, independent of statute, 4, 324

Guardians ad Litem

When required of, 4, 325

General bond for costs, whether includes costs on appeal, 4, 324

Non-resident plaintiffs who join in an action with resident, 4, 325

Non-residents, 4, 325

Persons who are temporarily abroad, 4, 325

Plaintiffs who became non-residents after commencement of action, 4, 325

Stay of proceedings until security has been furnished, 4, 325

Suits in forma pauperis, 4, 325

Waiver of right to demand, 4, 325

When required of party in interest, 4, 325

Whether power to require rests upon statute, 4, 324

Sentence, 21, 1081

Direction that defendant stand committed until payment, 21, 1081

Examples, 21, 1081

Set-off

Judgments for Costs, 22, 454

Against judgment for damages, 22, 454

Attorney's lien, 22, 455

Claims arising in the same cause of action, 22, 455

Examples, 22, 454-456

Insolvency of defendant, 22, 455

One judgment for costs against another, 22, 454

Out of defendant's own goods, 7, 390

Sheriff's fees, 22, 560

Statute granting, strictly construed, 4, 314

Statute of Frauds

Attorney undertaking to pay his client's costs, 8, 660

Stay of a second action until costs are paid in the first, 4, 329

Stay of Proceedings, 15, 931

Conditional Stay for Non-Payment, 23, 527

Causes of action must be the same, 23, 528

Courts of another country, 23, 528

Courts of other states, 23, 528

New cause of action added, 23, 528

New parties defendant, 23, 528

One action legal and other equitable, 23, 528

Parties must be the same, 23, 528

Privity between parties, 23, 528

Second action brought in another court, 23, 527

United States courts, 23, 528

Where plaintiff has been nonsuited, 23, 528

Where plaintiff has failed in one action, 23, 527

Upon payment of debt and costs, 23, 520

Stenographers, 23, 560

Direction in open court, 23, 560

Examples, 23, 560, 561

COSTS—Cont'd**Stenographers—Cont'd**

- Fees, 23, 561
- Master in chancery, 23, 560
- Notes on former trial, 23, 562
- Statute, 23, 562
- Stipulation by party in case, 23, 561
- Trial before referee, 23, 561

Stipulation (in Admiralty) for, 23, 571

- Discretion of court, 23, 571
- Examples, 23, 571-573
- Exemption, 23, 572
- Poor suitors, 23, 572
- Proceeding in rem, 23, 572
- Seamen, 23, 572
- Stipulations for costs and damages, 23, 573

- Waiver by opposing party, 23, 573
- When required of defendant, 23, 571
- When required of libellant, 23, 571

Stockholders, 4, 319

- Whether costs are within statutory liability of stockholder, 23, 873

Subpoena in equity, 24, 180**Suit-money, 4, 319****Suits against insane persons, 11, 131****Supplementary Proceedings****Allowance to Judgment Creditor, 24, 677**

- Conditional collection, 24, 678
- Counsel fees, 24, 678
- Distinction between "costs" and "disbursements," 24, 677
- Examples, 24, 677-679
- How collectible, 24, 679
- Provisions of the New York code, 24, 677

- When amount due is paid before examination of debtor, 24, 679

- When application for allowance may be made, 24, 678

Allowance to Judgment Debtor or Third Person Examined, 24, 679

- Examples, 24, 679-681
- Provisions of the New York code, 24, 679

- When final costs may be allowed, 24, 681

- When property is not discovered, 24, 679

- Witness fees, 24, 681

Allowed as Punishment for Contempt, 24, 672

- Costs of the supplementary proceedings, 24, 673

- Counsel fees, 24, 673

- Proof of costs, 24, 673

- Where there is no actual loss or injury, 24, 672

Judgment for costs, 24, 610**Receiver's personal liability, 24, 696****Suretyship, 24, 758****Principal's Liability to Surety for Costs and Expenses, 24, 780**

- Caused by default, 24, 781

- Examples, 24, 780-782

- Unnecessary litigation, 24, 782

Taxation**Action for taxes, 25, 330****Allowance of fees to attorney as witness, 4, 327****Attorneys' fees, 4, 326****Boards of equalization and review, 25, 246****Certiorari, 25, 465****Clerk of court, 19, 562c****Collateral attack upon judgments granting costs, 4, 329****Copies of necessary documents, 4, 327****Expenses of a commission to take testimony, 4, 327****Federal courts, 4, 328****Fees and mileage of witnesses, 4, 326****Fees of officers and jurors, 4, 326****Fees of witness summoned though not examined, 4, 326****Instances of expenses taxable as costs, 4, 328****Necessity of a direct appeal from the judgment granting them, 4, 329****Patent cases, 4, 328****Printing, 4, 327****Redemption, 25, 424, 425****Stenographers' fees, 4, 327****Surveyors' fees, 4, 328****Traveling expenses, 4, 328****What allowed, 4, 326****When appeal from taxation must be taken, 4, 329****Where there are two or more defendants, 4, 328****Where there are two or more issues, 4, 328****Where witnesses are in attendance on several cases, 4, 328****Whether a final decree, 7, 968****Tender, 4, 321****After suit has begun, of amount in costs already incurred, 4, 321****Effect of tender, 25, 926****Offer to confess judgment, 4, 321****Payment of money into court as security, 25, 940****To whom and against whom granted, 4, 315****Trade Marks, 26, 517, 520****English rule, 26, 520****Examples, 26, 520-523****United States rule, 26, 522****Trusts and Trustees, 4, 317; 27, 303****Carelessness of trustee, 27, 305****Examples, 27, 303-306****Negligence of misconduct of trustee, 25, 305****Protection of trustee, 27, 305****Trustee acting in bad faith, 27, 305****Trustee acting in good faith, 27, 304****Trustee acting within line of his duty, 27, 304****Unsuccessful party, 27, 305****United States, 27, 536, 632****Examples, 27, 632, 633****Upon abatement of action by death of either party, 4, 322**

Upon compromise of cause of action and a general release, 4, 321

Upon Default

As condition precedent to reversal, 5, 496^z⁴⁶

Seeking out other party and tendering costs, 5, 496^z⁴⁷

What costs must be paid, 5, 496^z⁴⁷

View of premises, 12, 371

What statute governs, 4, 314

When title to real estate is involved, 4, 320

Where cause remanded from federal to state court, 4, 315

Where court has jurisdiction of parties though not of subject-matter, 4, 315

Where court has no jurisdiction, 4, 314, 315

Where jury is to consider, 4, 315

Where plaintiff accepts a voluntary nonsuit, 4, 321

Where plaintiff to action is dismissed on account of a change in the course of decision on the law, 4, 322

Where prisoner is to stand committed until costs are paid, 10, 203

Where suit is dismissed for want of jurisdiction, 4, 314

Whether decree directing payment of costs is final or interlocutory, 5, 375

Whether included in the term debt, 5, 149

Whether permission to prosecute an action in forma pauperis relieves a party from costs already accrued, 4, 319

Who may grant, 4, 315

CO-TENANTS

See JOINT TENANTS AND TENANTS IN COMMON; PARCENARY; PARTITIONS.

Election, 6, 673

COTTAGE, 4, 329

COTTON, 4, 330

Cloth, 21, 303

Manufacture of cotton, 14, 259

Warranty, 28, 775

COUCHANT, see LEVANT.

Levant and couchant, 13, 269

COUNCIL, 4, 330

See MUNICIPAL CORPORATIONS.

COUNSEL, 4, 330

See ATTORNEY AND CLIENT.

Counsel or procure, 4, 331

Distinguished from attorney, 15, 378

Fees

Receivers, 20, 231

Employment of counsel, 20, 331

COUNT, 4, 331

Counting upon a statute, 4, 331

COUNTENANCE, 4, 655

COUNTERCLAIM, 4, 331

See SET-OFF.

Distinguished from cross-complaint, 4, 333

Distinguished from set-off, 4, 332

COUNTERFEITER, 4, 333

COUNTERFEITING, 4, 333

See COIN.

Aiders and abettors, 4, 336

Bills, 4, 335

Buying counterfeits, 2, 703

Cheating by means of bank notes, 4, 602

Coin, 4, 334

Coin representing genuine coin on one side only, 7, 703

Definition, 4, 333

Die, 5, 667

Distinguished from false pretenses, 7, 703

Due diligence required of one receiving counterfeit money in notifying the giver, 4, 339

Fictitious cashier, 8, 492

Fraudulent sales, 8, 822

Habeas corpus, 9, 170

Importing spurious coin into the United States, 4, 333

Indictment

Allegation of the existence of bank, 4, 341

For forging treasury notes which does not give them that name, 4, 336

Naming party to whom the coin was passed, 4, 341

Slight variance, 4, 341

Whether it must set out an exact copy of the bill, 4, 341

Whether it must specifically describe counterfeit bank notes, 4, 338

Whether the description be accurately that of a counterfeit coin, 4, 338

Whether the number of ornamental devices on a bill must be set out, 4, 341

Infamous crime, 4, 646; 10, 603, 604

Issuing bank bills of a denomination that had never been issued by a bank, 4, 336

Jurisdiction

Of federal courts, 4, 334

Of state courts, 4, 334

Libel and slander, 13, 303, 337

Making notes on banks which never existed, 4, 336

Of coin not current in the United States, 4, 333

Passing, 4, 339

Passing counterfeit money while drunk, 4, 807

Payment of counterfeit note, 18, 167

Persons other than officers of a bank as witnesses, 4, 336

Possession of counterfeit bills, 8, 491

Possession of counterfeit money in one state with intent to pass it in another, 4, 337

Possession of implements, 4, 337

Possession of spurious coin or bills, 4, 337

Power of congress to provide punishment for, 3, 705

Raising the figures of a bank note, 4, 336

Scienter, 4, 333, 338, 340

Selling, 4, 339

Similitude, 8, 495

Uttering, 4, 339

A forged bank bill with intent to defraud, 4, 334

COUNTERFEITING—*Cont'd***Uttering—*Cont'd***

- At common law, 4, 334
- Evidence, 4, 341
- Passing counterfeit money by an agent, 4, 339
- Scienter, 4, 340
- Selling spurious coin, 4, 339
- What is, 4, 339
- What resemblance to the true coin is necessary to constitute the offense, 4, 339
- Whether a misdemeanor or felony, 4, 334
- Whether an infamous crime, 4, 646; 10, 603, 604
- Whether the intention to use a coin for fraudulent purposes is an element of crime, 4, 335

COUNTERPART, 4, 341; 17, 468**COUNTER-PLEA, 4, 342****COUNTERSIGN, 4, 342****COUNTIES, 4, 343**

See COUNTY COMMISSIONERS; COUNTY SEAT; MUNICIPAL CORPORATIONS; MUNICIPAL SECURITIES; SHERIFFS; POOR AND POOR LAWS; ULTRA VIRES.

As to liability of county for defective highway, see HIGHWAY.

Crime begun in one county and finished in another, see JURISDICTION.

Power of county commissioners, see COUNTY COMMISSIONERS.

Warrants, see MUNICIPAL SECURITIES.

Appeal from board of auditors, 4, 370

As Corporations, 4, 345

- At common law, 4, 346
- General powers as corporations or quasi, 4, 347
- Recognition of a county as, by legislature, 4, 345

Auditor of claims, 4, 371

Bridges, 4, 365, 366

- Burden of maintenance, 2, 545
- Duty to construct safely, 2, 553
- Duty to repair, 2, 553
- In two counties, 2, 555
- Liability to action for damages for injury by defective, 2, 558
- Ownership of, 2, 545
- Power and duty to erect, 2, 543
- Statutory liability to repair, 2, 554

Claims Against, 4, 370, 386

- Allowance by commissioners, 4, 398
- Audited at irregular meetings, 4, 397

Civil functions of, 4, 344

Constitutional Provision, see *infra*, STATUTES.

Requiring the establishment of uniform system of county government, 3, 693

Coroner's authority to employ a physician, 4, 367

Costs, 4, 323, 367

County Auditor

Embezzlement by, 6, 489

County Officers, see PUBLIC OFFICERS.

Embezzlement by, 6, 489

County palatine, 4, 344

County Treasurer

Embezzlement by, 6, 489

Definition, 4, 343

Derivation of term, 4, 343

Division, 4, 344

In the United States, 4, 344

Enforcement of judgment, 4, 372

Execution, 4, 372

Foreign attachment, 8, 297

Garnishment, 4, 372; 8, 1134

Indictments for neglect to repair roads, 4, 267

Infringement of patents by, 10, 749

Interest on claim against county, 11, 383

Involuntary quasi corporation, 15, 955

Liability, see *infra*, SUITS.

For Acts and Negligence of Officers and Agents, 4, 367

Distinction between liability of a county and a municipal corporation, 4, 367

For acts of county commissioners, 4, 396-398

For beneficial use of money, labor, or property though not formerly obligated therefor, 4, 363

For Costs

In case of acquittal upon indictment, 4, 367

In criminal cases, 4, 323

For misappropriation of funds by its officers, 4, 367

For non-performance by its officers in their official duty, 4, 367

For non-performance of duty, 15, 1143

For property destroyed by a mob, 4, 368

For Services, 4, 366

Attorney's fees, 4, 367

Physician's services, 4, 367

Voluntary services, 4, 366

For suit, 4, 369

For Torts, 4, 364

Defective bridge, 4, 365

Distinguished from municipal corporations, 15, 1143

General rule as to, 4, 364

Neglect by county of a statutory duty, 4, 364

Statutory, 4, 365

Of Officers, 4, 367

Bridges and highways, 19, 515

Limitation of actions, 13, 715

Mandamus to compel a county board to act upon a claim, 4, 370

Mandamus to compel county officers to pay a lawful debt, 4, 370

Mandamus to enforce judgment, 4, 372

Mechanics' liens, 15, 23

Municipal Corporation

Whether county is municipal corporation, 15, 953

Necessity for the consent of state to suit against, 4, 369

Obligation to keep a jail, 4, 348

- Officers**, 19, 544; 23, 253
See COUNTY COMMISSIONERS; PUBLIC OFFICERS; SHERIFFS.
As to recording officers, *see* RECORDING ACTS.
As an expert in handwriting, 9, 293
- County Treasurer**, 19, 544
Collectors of taxes, *see* TAXATION.
County clerks, *see* CLERKS.
 Accounts, 19, 545
 Acquiescence in settlement, 19, 546
 Compensation, 19, 546
 Conclusiveness of periodical settlements, 19, 545
 Custodian of public moneys, 19, 544
 Duties, 19, 544
 Examples, 19, 546-548
 How disbursements must be made, 19, 544
 Liability on official bond, 19, 544
 Method of final settlement, 19, 546
 Periodical statements, 19, 545
 Powers, duties, and liabilities, 19, 546
 Settlement as prima facie evidence, 19, 545
 Statutory enactments, 19, 546
 Surrender of public moneys to his successor, 19, 544
 Warrants, 19, 544
 Whether settlement bars action on bond, 19, 546
- Incompatible offices*, 19, 562x, 562y, 562z
- Organization or creation of**, 4, 345
- Overseer of roads as servant**, 14, 750
- Power and responsibility as to prisoners**, 4, 348
- Power of legislature over organization and creation of**, 4, 345
- Power to acquire title to real estate**, 4, 348
- Power to sell swamp lands**, 4, 347
- Presentation of claims for allowance**, 4, 370
- Presentation of claims for damages for torts**, 4, 371
- Prisons**, 4, 348
 Liability for the health of prisoners, 19, 86
- Rejection of claim by board of auditors**, 4, 370
- Remedies for enforcement of county liability**, 4, 369
- Responsibility of town for support of prisoners committed to county jail**, 4, 348
- Service of process**, 22, 127
- Statutes**
Constitutional Provisions Requiring that Subject Shall Be Expressed in Title, 23, 250
 Act to authorize the formation of new counties, 23, 251
 Act to increase boundaries, 23, 250
 County boundaries, 23, 251
- County Officers**, 23, 253
 Title insufficient, 23, 253
 Title sufficient, 23, 253
 Examples, 23, 250-253
 Germane matters, 23, 250
 Miscellaneous county matters, 23, 252
- Constitutional Provisions that Statutes Shall Contain no More than One Subject**, 23, 270
 Boundary lines, 23, 271
 County seats, 23, 270
 Examples, 23, 270, 271
- Statutory authority for suits against**, 4, 369
- Strict construction of statutes authorizing suits against**, 4, 369
- Suits Against**, 4, 347; 17, 476
 At common law, 4, 345
 By statute, 4, 346; 17, 478
 In corporate name, 4, 345
 In United States courts, 4, 370; 17, 477
 Necessity of presentation of claims, 4, 370
 When no other specific remedy is provided, 4, 371
- Suits by and Against**, 4, 394-396; 17, 478
 Cause of action not affecting township or town, 17, 481
 Name in which the county shall be sued, 17, 478
 Names in the absence of statute, 17, 479
 Nature of suits against, 17, 480
 Presentation of claim, 17, 481
 Principle applicable to counties also applicable to towns, 17, 481
 Statutes construed as to names, 17, 479
 Statutory names, 17, 479
 Upon what causes suits may be brought, 17, 479, 481
- Summons**, 24, 522
- Venue**
 In actions against a county, 4, 370
 Whether the submission of the question of division of counties to a popular vote is an unconstitutional delegation of legislative powers, 3, 699
- COUNTING-HOUSE**, 4, 342
- COUNTRY**, 4, 342; 15, 568; 21, 303
- COUNTS**, *see* ASSUMPSIT; DECLARATION (IN PLEADING).
- COUNTY COMMISSIONERS**, 4, 373
See COUNTIES.
- Powers**
Power to aid railroads, *see* MUNICIPAL AID.
- Act of one commissioner not binding upon county**, 4, 398
- Appeal from Decision of Board**, 4, 398
 County as party to appeal, 4, 400
 Where board acts judicially, 4, 399
 Where board did not act judicially, 4, 399

COUNTY COMMISSIONERS—Cont'd

- Appointment, 4, 377
- As board of health, 2, 431
- As continuing corporations, 4, 374
- As corporations or quasi corporations, 4, 374
- As trustees of property interests of their counties, 4, 388
- Bridges**
 - Power and duty to erect, 2, 543; 4, 390
- Call to meetings, 4, 376
- Care of the poor, 4, 388
- Certiorari, 3, 65
- Collateral impeachment of motives of board, 4, 376
- Compensation, 4, 387
- Complying with statutory requirements, 4, 396
- Contempt by, 3, 782
- Contracting with one of their own number, 4, 398
- County board, 2, 428
- Decision on, 12, 148e
- De facto officers, 4, 377
- Definition, 4, 374
- Discretionary and administrative acts, 4, 377
- Disqualification, 12, 44
- Duties, 4, 388
- Effect of their acts upon county, 4, 396
- Election, 4, 377
- Hearing complaints against county officers, 4, 388
- Impeachment of records of board, 4, 376
- Incompatible offices, 19, 562y
- Indictments against, 4, 394
- Liability**
 - For acts or damages in the discharge of their official duties, 4, 395
 - For allowing accounts, 4, 394
 - For misconduct or neglect of duty, 4, 393
 - For refusing to audit accounts or to raise money by taxation when directed to do so by statute, 4, 394
- Limitation in powers of county boards, 4, 389
- Mandamus**, 4, 400; 14, 203
 - Discretionary powers, 14, 204
 - Examples, 14, 204
 - To commissioners to levy a tax, 4, 401
 - To compel performance of duty, 14, 203
 - When it lies, 4, 400, 401
 - When the writ will not lie, 14, 204
 - Whether board is subject to mandamus apart from statute, 4, 400
- Meetings**, 4, 376
 - Claims audited at irregular, 4, 396
 - Contracts at irregular, 4, 397
 - Nature of the office, 4, 374
- Political entity and perpetual existence, 4, 374
- Powers**, 4, 379
 - Accounts, 4, 380
 - As a Tribunal, 4, 385
 - Appeal, 4, 386

- Authority to pass upon claims against county, and their allowance, 4, 386
- Compliance with statute, 4, 386
- Confined to those granted by statute, 4, 375
- Delegation of, 4, 398
- How far co-extensive with power of the county, 4, 379
- Investment of county funds, 4, 380
- Limitations**, 4, 389
 - As to commissioners' powers to make appropriations, 4, 392
 - Of commissioners' power to contract, lease, and sell county property, 4, 391
 - Of county commissioners' powers as to taxation, 4, 392
- Miscellaneous, 4, 383, 385
- To allow claims against the county, 4, 398
- To allow compensation for services rendered to county, 4, 380
- To amend records, 4, 384
- To appoint certain subordinate officers, 4, 383
- To build and regulate highways and ditches, 4, 385
- To change an appropriation of money, 4, 379
- To compromise a judgment, 4, 379
- To contract, 4, 380
- To contract for public printing, 4, 381
- To create debt, 4, 382
- To employ counsel, 4, 383
- To erect or rent suitable county buildings, 4, 381
- To make bills of exchange, 4, 389
- To purchase land for county purposes, 4, 381
- To remove certain officers, 4, 383
- To repair county buildings, 4, 381, 388
- To sell property for county, 4, 382
- To sell shares of stock belonging to county, 4, 380
- Removal, 4, 401
- Resignation, 4, 401
- Suits by and Against**, 4, 394
 - Intervention of taxpayer, 4, 395
 - Jurisdiction of justice of the peace, 4, 395
 - Suits against, for work done for county, 4, 397
 - Suits to recover money due county, 4, 396
 - Title of action—service, 4, 394
 - What necessary to maintain, 4, 394
- Taxation**
 - Boards of review and equalization, 25, 244
 - The board as a local legislature, 4, 377
- COUNTY OFFICERS**, see CORONERS; COUNTIES; COUNTY COMMISSIONERS; PUBLIC OFFICERS; SHERIFFS.
- COUNTY SEAT**, 4, 402
- See COUNTIES.
- Collateral attack upon selection, 4, 403

Constitutional provision that county seat shall not be changed without a majority vote of county, 4, 410, 411
 Constitutional restrictions upon power of legislature to remove, 4, 405
 Definition, 4, 402
 Delegation of power of selection, 4, 402
 Effect of removal upon property donated to county, 4, 406
 Election, 4, 409
 Fraud in election, 4, 410
 Imposition of conditions precedent to removal of, 4, 405
 Location, 4, 402
Mandamus, 14, 208
 Defenses, 6, 396
 Location, 14, 208
 Removal, 14, 208
 To compel officer to keep office at county seat, 14, 208
 Offer of building or property as an inducement to location, 4, 409
Particular Statutes and Local Decisions, 4, 413
 In Arkansas, 4, 413
 In California, 4, 413
 In Colorado, 4, 414
 In Florida, 4, 414
 In Indiana, 4, 415
 In Iowa, 4, 415
 In Kansas, 4, 414
 In Michigan, 4, 415
 In Minnesota, 4, 415
 In Missouri, 4, 415
 In Nebraska, 4, 415
 In North Carolina, 4, 416
 In Tennessee, 4, 416
 In Texas, 4, 416
 In West Virginia, 4, 416
 In Wisconsin, 4, 416
 Petition for removal, 4, 407
Power of Legislature to Remove
 In absence of statute, 4, 403
 Where citizens have made certain donations towards the expense of erecting buildings, etc., 4, 403
 Powers and duties of county officers and special commissioners, 4, 411
Removal, 4, 403
 Cannot give rise to cause of action against county, 4, 407
 Power to remove, 4, 403
 Where contract for a particular site has already been made, 4, 404
 Where former statute provided that the town should forever be the permanent seat of justice, 4, 404
 Selection appertaining to legislative department, 4, 402
 Sufficiency of petition for removal, 4, 407-409
 When proceedings to remove may be instituted, 4, 413
 Whether the submission of the question of location of a county seat is an unconstitutional delegation of legislative power, 3, 700

COUPLED WITH AN INTEREST, see POWERS.

COUPLING CARS

Contributory Negligence, 4, 426, 428

Disobedience of company's rules, 4, 427
 Examples in which employee was not held guilty of contributory negligence, 4, 427, 428

Right of employee to assume that company's apparatus was in good condition, 4, 428

When employee is guilty of, 4, 426

Duty of company to keep apparatus in sound repair, 4, 419

Duty of company to see that couplings of cars it received from another company are not defective, 4, 419

Evidence, 4, 430

Fellow Servants, 4, 429

See FELLOW SERVANTS.

Car inspector and brakeman, 4, 429

Engineer and car coupler, 4, 429

Who are, 4, 429

Who are fellow servants with car coupler, 4, 429

Who are not fellow servants with car couplers, 4, 429

Injuries by

Company's duty in regard to adoption of improved patents, 4, 418

Defects in coupling apparatus, 4, 417, 418

Double deadwoods, 4, 417

Draw-bars, 4, 417

Height of bumpers, 4, 417

Obligation of company as to cars and apparatus, 4, 417

Where the coupling of a particular car is too short, 4, 418

Liability of company where conductor or watchman is injured, 4, 422

Risks of employment, 4, 420

What injuries are not risks assumed by an employee, 4, 424, 425

What risks are assumed, 4, 420-422

Where cars are marked and set aside as damaged, 4, 422

Where defect in machinery is not obvious, 4, 423

Where servant has not sufficient capacity to know his danger, 4, 424

Where servant knows that coupling apparatus is defective, 4, 422

Which have loads projecting, 4, 423

COUPONS, 2, 322; 4, 430

See BONDS.

See generally, MUNICIPAL SECURITIES.

Action Upon, 4, 442

Connection between bond and coupon, 4, 443

Effect of mortgage conditions, 4, 443

Enforcement of coupon as an independent security, 4, 443

Form of, 4, 442

Holder's negligence in collecting, 4, 444

Jurisdiction of United States courts, 4, 444

COUPONS—Cont'd**Action Upon—Cont'd**

- Municipal coupons, 4, 445
- Necessity of production of bond, 4, 443
- Pleading, 4, 445
- Statute of limitations, 4, 444
- Suit by assignee where coupon is not negotiable in his own name, 4, 443
- Suit by holder in his own name, 4, 442
- When statute of limitations begins to run, 4, 444

As Negotiable Instruments, 2, 322, 466b; 4, 432, 437**Burden of proof, 4, 435****Coupons of Municipal Bonds**

When there is no authority to issue the bonds, 4, 438

Coupons payable to bearer negotiable though overdue, 4, 435

Days of grace, 4, 434

Effect of overdue coupons attached to bonds, 4, 438

Municipal Bonds

Bona fide holder, 4, 437

Fraud or misconduct on the part of agents of municipality—irregularities or fraud, 4, 437

Power to issue, by laws of state, 4, 437

Necessity of demand, 4, 435, 436

Necessity of presentment to charge of indorser, 4, 436

Necessity of protest, 4, 436

Negligence of purchaser as affecting his title, 4, 437

Negotiable words in coupons, 4, 433

Of municipal bonds, 4, 437

Overdue coupons, 4, 434

Presentment for payment, 4, 436

Stolen coupons, 4, 435

Suit pending at time of issue of bonds to prevent issuance, 4, 436

When taken after maturity subject to all equities, 4, 435

Where bond is negotiable but coupon contains no negotiable words, 4, 433

Connection between bond and, 4, 443

Coupon holder charged with notice of contents of bond, 4, 443

Definition, 4, 430

Distinguished from bills of credit, 4, 432

Exchange, 4, 439

Interest on Overdue, 4, 439

Abatement of, 4, 440

Effect of subsequent legislation upon right of interest, 4, 439

Exchange, 4, 439

Failure to present coupons for payment, 4, 439

Prior demand for payment, 4, 439

Rate, 4, 440

Rule as to foreign bondholders, 4, 440

What interest is allowed, 4, 439

Where bonds are made payable on demand at a particular place, 4, 440

Interest on overdue bonds, 4, 439

Interest upon, 2, 466c

Limitation of action, 4, 444; 15, 1261

Lis pendens, 4, 436

Of municipal bonds, 4, 437

Order of payment, 4, 442

Parts of, 4, 431

Payee, 4, 432

Place of payment, 4, 432

Pledge, 18, 608

Presumption that coupons were purchased in good faith, and prior to maturity, 4, 435

Priority between bonds and, 4, 442

Seal, 4, 431

Secured by Mortgage, 4, 440

Priority between bonds and coupons, 4, 442

Right of bondholder of coupon to share priority with holder of the principal debt upon foreclosure mortgage, 4, 440

Where coupons have been presented for payment and again issued by the company without knowledge of bondholder, 4, 441

Signature, 4, 431

Stolen, 4, 435

When coupon becomes payable, 4, 434

Wording and form, 4, 431

COURSE, 4, 445

Due, 6, 40

Due course of law, 4, 446; 6, 40

In account render, 1, 133

Of an action, 4, 446

Of business, 4, 445

Of the trial, 4, 446

Ordinary course of business, 17, 272

Ordinary course of the post, 17, 272

Ordinary course of things, 17, 273

Usual course of business, 27, 915

COURT HOUSE, 4, 446

See COUNTY SEAT.

COURTS OF CLAIMS, see UNITED STATES COURTS.**COURT STENOGRAPHERS, see STENOGRAPHERS.****COURTS, 4, 447**

See ATTORNEY AND CLIENT; CONSULAR COURTS; CONTEMPT; INTERPRETER; JUDGES; MANDAMUS; MUNICIPAL COURTS; PROHIBITION; QUO WARRANTO; RECORD; SOCIETIES AND CLUBS; STARE DECISIS; SURROGATE AND PROBATE COURTS; UNITED STATES COURTS.

As to new trial, see NEW TRIAL.

As to res judicata, see RES JUDICATA.

As to the power of the judiciary to determine the constitutionality of statutes, see CONSTITUTIONAL LAW.

As to the qualifications and disqualifications of a judge, etc., see JUDGES.

Courts of limited jurisdiction, see JUSTICE OF THE PEACE.

Fictitious actions, see PARTIES TO ACTIONS.

For adjournments of, see ADJOURNMENTS.

Investments*Control over*, see INVESTMENTS.*Jurisdiction*, see JURISDICTION.*Payment of money into court*, see TENDER.*Receivers*, see RECEIVERS; RECEIVERS OF RAILROADS.*Removal of causes*, see REMOVAL OF CAUSES.*Rules of courts*, see RULES.*State*, see STATE.**American**, 4, 455

Enumeration, 4, 455

Appellate

Definition, 4, 453

Application of Payments, 18, 245**Court Will Not Disturb Application Made by Parties**, 18, 246

Claim not recoverable at law, 18, 246

Examples, 18, 246

Usurious contract, 18, 246

Debt which first becomes due, 18, 247

Interest, 18, 249

Legal debts, 18, 248

Money realized on execution, 18, 247

Principal and interest, 18, 249

Rules governing application, 18, 246

Running Open Account, 18, 249

Examples, 18, 250

One item better secured than another, 18, 250

Priority of time, 18, 249

When rule does not apply, 18, 250

Several notes secured by the same mortgage, 18, 247

To debt due, 18, 248

To oldest charges, 18, 247

To Unsecured Debts, 18, 251

Examples, 18, 251, 252

Where Neither Party Makes Application, 18, 245

Examples, 18, 245, 246

Appointment and election, 4, 447

Appointment of officers, 19, 419

Business of a Court

Meaning of term, 2, 701

Circuit, 3, 240

Civil and criminal, 4, 452

Clerks of Court, see CLERKS.

Suretyship, 24, 892

Constitutional Law, 19, 454

Constitutional courts, 19, 454

Judges choosing in manner different from that prescribed by the constitution, 19, 455

Legislature exercises judicial functions, 3, 693, 694; 19, 454

Who may exercise judicial functions, 19, 454

Coroner's, 4, 176

County Courts, 12, 6

Justice of the peace, 12, 506

Courts-Martial, 15, 455

See MILITARY LAW.

Action against members, 15, 432

As a judicial body, 15, 456

By whom constituted, 15, 459

Composition, 15, 460

Conclusiveness of judgment, 15, 457

Constitutional provision regarding, 15, 456

Dismissal of officers, 15, 411

Jurisdiction, 15, 455, 458, 461

Extent as to offenses, 15, 469

Extent as to Persons, 15, 462

Army of United States, 15, 462

Civilians subjected to military

discipline by statute, 15, 469

Commencement of jurisdiction over soldiers, 15, 464

Drafted men, 15, 464

Marines, 15, 467

Marines detached from service in the army, 15, 467

Marines, status of, 15, 467, 468

Militiamen refusing to obey, 15, 467

Militia, when called into service of United States, 15, 467

Volunteers, 15, 464

What constitutes enlistment, 15, 464

Extent as to place, 15, 461

Extent as to time, 15, 469

Foreign nation with which country is at peace, 15, 461, 462

Limitation, 15, 469

Limited and special, 15, 456

President's power to order, 15, 459

Procedure, 15, 470

Arrest, 15, 470

Arrest of officers, 15, 470

Challenge, 15, 471

Charge and specification, 15, 471

Confirming power of president, 15, 473

Description of course of proceedings, 15, 470

Disapproval, 15, 472

Evidence, 15, 472

Pleading, 15, 472

Militia, 15, 467, 478, 479

Origin, 15, 455

Prohibition, 19, 277

Whether a court of record, 15, 456

Whether a criminal court, 15, 459

Definition, 4, 447

Definition of discretion, 5, 681

Delegation of authority, 19, 462

Discretion of, for punishment of crime, 4, 723

English, 4, 453

Equity, 4, 453

False Imprisonment by, 7, 668, 671

Acts in absence of jurisdiction, 7, 668

Arrest upon complaint void on its face, 7, 670

Civil arrests upon defective affidavits, 7, 669

Complaint on information of belief, 7, 670

Contempts, 7, 669, 671

Courts of limited jurisdiction, 7, 669

Vol. I.

COURTS--*Cont'd***False Imprisonment by**--*Cont'd*

Malice, 7, 670

Presumption as to jurisdiction, 7, 669

Quasi judicial tribunal, 7, 671

Responsibility for judicial acts, 7, 669

Superior courts, 7, 668

General divisions, 4, 451

Illegal Courts, 12, 312

Courts of confederate states, 12, 313

Imposition of legislative duties upon, 3, 684

Inferior, 10, 700

Inferior and superior, 4, 453

Into court, 11, 566

Judges exercising judicial power, 19, 455

Jurisdiction, see **JURISDICTION**.

General jurisdiction, 4, 453

Limited Jurisdiction, 4, 453

Distinction between courts of original and courts of special or limited jurisdiction, 4, 453

Necessity of their jurisdiction appearing upon face of their proceedings, 4, 453

Levy courts, 13, 272

Liability of county for attorney's services when appointed by court to defend a prisoner, 4, 367

Master in Chancery, see **MASTER IN CHANCERY**.

Report, 14, 938

"Next court," 16, 701

Nolle prosequi, 16, 714

Officers*Attorneys*, see **ATTORNEY AND CLIENT**.*Clerk of court*, see **CLERKS**.*Constables, bailiffs, criers*, see **SHERIFFS**.*Judge*, see **JUDGES**.

Clerk's liability for executing an order of court, 4, 450

Of Inquiry, 15, 453

By whom ordered, 15, 453

Composition, 15, 453

Definition, 15, 453

Examination of witnesses, 15, 453

Jurisdiction, 15, 453

Proceedings as evidence, 15, 454

Of law, 4, 453

Of Record, 4, 452; 12, 266

What are, 4, 452

What are not, 4, 452

Old English courts, 6, 688

Open court, 17, 194

Opinions of the Justices, 17, 215

Examples, 17, 215, 217

Refusal of the justices to deliver an opinion, 17, 216

Subjects upon which opinions have been asked, 17, 215, 217

Organization, 4, 447

President of the United States, 19, 35

Privilege of witnesses, attorneys, suitors, etc., while attending, from arrest, 1, 724

Procedendo, 19, 218, 219

Property in Custody of

Executions, 7, 129

Property taken under execution, 7, 154

Referees*Control exercised over*, see **REFEREES**.

Report, 20, 701

Reprieve, 21, 19

Rise of high court of chancery in England, 6, 688

Statutes*Presumption against intention to oust courts of jurisdiction*, see **STATUTES**.**Constitutional Provisions Requiring that****Subject Shall Be Expressed in Title**, 23, 266

Examples, 23, 266-268

General titles, 23, 266

Insufficient titles, 23, 267

Justice of the court, 23, 267

Constitutional provisions that statutes shall contain no more than one subject, 23, 272

Superior and Inferior, 12, 265

Courts not of record, 12, 266

Courts of record, 12, 266

Distinction between courts of general and limited jurisdiction, 12, 265

Distinguished, 12, 147*v*

History of distinction, 12, 265

In Arkansas, 12, 266

Inferior Courts, 12, 268

Alabama's court of commissioner of revenue, 12, 268

Court-martial, 12, 269

Justices' courts, 12, 270

Orphans' courts, 12, 269

Probate courts, 12, 269

Special courts created by state statutes, 12, 268

Surrogate courts, 12, 269

Judgments liable to review, 12, 266

Presumption as to Jurisdiction of Superior Courts Exercising Special Statutory Powers, 12, 276

Action in rem against vessels, 12, 279

Attachment Proceedings in State Courts, 12, 281

Affidavit, 12, 282

Petition, 12, 281

Presumption as to regularity when jurisdiction has attached, 12, 282

Attachment proceedings in United States, 12, 280

Bankruptcy, 12, 279

Eminent domain, 12, 279

General rule, 12, 276

Insolvency, 12, 279

Judicial powers generally, 12, 278

Judicial sale of decedent's real estate, 12, 278

Judicial sale of real estate, 12, 277

Sale for taxes, 12, 277

- Service by publication, 12, 280
- Special, 12, 276
- Summary, 12, 276
- Summary remedy to establish lost note, 12, 279
- Presumption of Jurisdiction of Superior Courts**, 12, 271
 - Appearance, 12, 273
 - Averring jurisdictional facts, 12, 274
 - Citizenship, 12, 275
 - Collateral attack upon record, 12, 274
 - Continuance of jurisdiction, 12, 273
 - Discretionary jurisdiction, 12, 273
 - Foreign judgments, 12, 273
 - General rule as to inferior courts, 12, 274
 - Jurisdictional facts, 12, 271
 - Jurisdiction must appear on record, 12, 274
 - Notice, 12, 272
 - Oath of grand jury, 12, 272
 - Petition, 12, 275
 - Pleading judgments, 12, 275
 - Preliminary examination, 12, 275
 - Presumption of regularity, 12, 275
 - Record averment as to jurisdictional fact, 12, 272
 - Record disclosing nothing, 12, 272
 - Service of process, 12, 272
 - Want of jurisdiction appearing on record, 12, 273
- Supreme Courts**, 12, 266
 - Admiralty courts, 12, 268
 - County courts, 12, 268
 - Prize courts, 12, 268
 - United States circuit court, 12, 267
 - United States district courts, 12, 267
 - United States territorial courts, 12, 267
 - Territorial jurisdiction, 12, 266
- Supreme**, 4, 453
 - Definition, 4, 453
- Term of Court**, 25, 949
 - Adjournment, 25, 951
 - Considered as one day, 25, 950
 - Correction of clerk's errors, 25, 950
 - Definition, 25, 949
 - Duration, 25, 949
 - Examination of judgments and decrees, 25, 950
 - Relation of judgment, 25, 951
 - Sunday, 26, 14
- Term used in the sense of a judge or judges, 4, 447
- Vacation, 28, 34
- War, 28, 632
- COUSIN**, 4, 462
 - First, 8, 21
- COVENANT, ACTION OF**, 4, 463
 - See **REAL COVENANTS**.
 - Action under the codes, 4, 472
 - Admitting seal, 4, 528
 - Against Whom Maintainable**
 - Action against executor by one of two joint lessees, 4, 518
 - Action against executors of vendor by assignee, 4, 518
 - Action of covenant for arrears of ground rent which accrued after death of covenantee, 4, 518
 - Action of covenant for rent, 4, 515
 - Assignee**, 4, 515, 516, 519
 - Of a lease, 4, 519
 - Who has not taken possession, 4, 520
 - Contracting parties, 4, 515
 - Covenant for rent where lease is a deed-poll, signed by lessee only, 4, 515
 - Devises, 4, 519
 - Executors and administrators, 4, 518
 - "Grant, bargain, and sell," 4, 517
 - Heirs, 4, 519
 - Married women, 4, 518
 - Mortgagee of a lease, 4, 520
 - Personal representatives, 4, 518
 - Presumptive evidence of assignment, 4, 515
 - When action joint, 4, 516
 - When action several, 4, 516
 - "And" to read as "or" in covenants, 4, 470
 - Assignee of cause of action arising from breach of covenant, 4, 513
 - Assumpsit, whether concurrent with, 4, 464
 - Bonds, 2, 467e
 - Burden of Proof**, 4, 500, 558
 - Default of defendant, 4, 558
 - Eviction, 4, 559
 - General rule, 4, 558
 - Incumbrances, 4, 559
 - Proof of plaintiff's title in an action on his covenant to convey, 4, 559
 - Where defendant pleads performance, 4, 544
 - Where plaintiff voluntarily yields possession, 4, 559
 - By Whom Maintainable**
 - Action on deed inter partes, 4, 515
 - Against grantee, where he did not sign but accepted the deed, 4, 471
 - Assignee, 4, 507, 512
 - Assignee of cause of action arising from breach, 4, 513
 - Assignee of reversion, 4, 514
 - Beneficiaries, 4, 512
 - Breach of covenant for further assurance, 4, 511
 - By one partner against another, 4, 501
 - By stranger on promise to pay a debt due him, 4, 471
 - By stranger to deed inter partes, 4, 471
 - By stranger to deed-poll, 4, 471
 - Contracting parties, 4, 505
 - Covenant for benefit of third party, 4, 472
 - Deed inter partes, 4, 506
 - Discharge in bankruptcy, 4, 505
 - Executors and administrators, 4, 510
 - Generally, 4, 505
 - Heirs and devisees, 4, 511

COVENANT, ACTION OF—Cont'd**By Whom Maintainable—Cont'd**

- Individuals composing corporation, 4, 506
- Joint action by heirs or devisees of grantee, 4, 510
- Necessity that covenantee should have executed the deed, 4, 470
- Parties not privy to contract, 4, 501
- Party for whose benefit covenant is made, 4, 505
- Personal representatives, 4, 510
- Privity of estate with original covenantee, 4, 505
- Right of action for breach during lifetime of covenantee passes to executor or administrator, 4, 510, 511
- Strangers, 4, 512
- Where covenantee's interest is joint, 4, 509
- Where covenantee's interest is several, 4, 509
- Where covenant is joint, 4, 507
- Where there are several covenantees, 4, 506
- Who must join to bring action, 4, 541
- Concurrent with debt, 4, 464
- Conflict of laws, 3, 563; 4, 501; 21, 905
- Construction**, 4, 469
 - "And" to mean "or," and vice versa, 4, 470
 - Dependent or independent, 4, 476
 - Grammatical sense, 4, 470
 - In general, 4, 469-471
 - Intention of parties to be ascertained from instrument itself, 4, 470
 - Practical interpretation by parties themselves, 4, 470
 - Preference for construction which renders whole covenant operative, 4, 469
 - Punctuation, 4, 470
 - Regard to be had to situation and circumstances of parties, 4, 470
 - Should be favorable to party in whose favor covenant is made, 4, 470
 - Subject to same rules of construction as deed itself, 4, 471
 - Void for uncertainty, 4, 470
 - Where covenant may inure in several ways, 4, 470
 - Where the words are repugnant, 4, 470
 - Whether covenant is dependent or independent, depending upon intention of parties, 4, 476
 - Whether joint or several, 4, 508
- Covenant by recital, 4, 469
- Covenants or conditions created by same word, 4, 469
- Craving oyer, 4, 527
- Damages**, 4, 565
 - Breaches of covenant in deeds, 4, 566
 - In general, 4, 565
- Declaration**, 4, 522
 - Action by devisee where breach occurred in lifetime of testator, 4, 532

Allegation of breach, 4, 523-526

Allegation of delivery, 4, 527

Allegation of Eviction

- In action on covenant for quiet enjoyment, 4, 533
- In action on covenant of warranty, 4, 532
 - What is sufficient, 4, 533
- Allegation showing incumbrances on property at date of deed, 4, 538
- Assignment of breach in general terms, 4, 527
- Averment for non-payment of rent, 4, 536
- Averment of breach where covenant is for quiet enjoyment, 4, 534
- Averment of delivery, 4, 523
- Averment of Performance**, 4, 538
 - Of conditions precedent, 4, 539
- Averment of readiness to perform a dependent covenant, 4, 540
- Averment of title in covenant for purchase-money, 4, 526
- Averment that eviction was by a lawful title, 4, 535
- Averring covenantor's notice of eviction, 4, 534
- Averring eviction where covenant is broken immediately, 4, 534
- Averring incumbrances, 4, 535
- Averring title in third person, time of conveyance, 4, 533
- Consideration, 4, 536
- Contracts in the alternative, 4, 531
- Covenant of Seisin**, 4, 535
 - And title to convey, 4, 527
- Covenant to pay at particular time and place, 4, 537
- Covenant to save harmless, 4, 530
- Declaring an implied covenant, 4, 524
- Description of premises, 4, 542
- Designating land conveyed, 4, 541
- Eviction, 4, 533-535
- Form, 4, 522
- Insufficient assignment of breach, 4, 530
- In whose name action must be brought, 4, 540
- Misdescription of consideration, 4, 537
- Necessity of alleging breach in words of covenant, 4, 525
- Necessity of averment of consideration, 4, 538
- Necessity of following words of contract, 4, 529
- Necessity of setting out consideration, 4, 523
- Necessity of setting out whole deed, 4, 527
- Necessity that contract be stated correctly, 4, 528
- Negating words of instrument, 4, 526
- No assignment of breach fatal even after verdict, 4, 532
- Notice, 4, 533-535
- Performance, 4, 536

- Profert of the instrument, 4, 523
 "Promises," 4, 522
 Protecting defective, 4, 537
 Requisites and sufficiency of, 4, 535
 Setting out deed, 4, 524
 Setting out entire consideration, 4, 537
 Setting out exceptions, 4, 532
 Setting out special contract, 4, 529
 Setting out title, 4, 526
 Showing performance on part of plain-
 tiff, 4, 538
 Showing that instrument was sealed,
 4, 528
 Statement of deed, 4, 529
 Statement of time at which deed was
 made, 4, 536
 Statement that contract was under seal,
 4, 522
 Tender, 4, 536
 Time, 4, 536
 Variance, 4, 531, 537
 What need not be averred, 4, 359
 What should be averred, 4, 538
 Whether consideration or defective
 consideration is stated in, 4, 537
 Whether defects are cured by verdict,
 4, 569
 Who must join to bring action, 4, 541
 Words importing a seal, 4, 528
Defenses, 4, 552
 Equitable, under plea of performance,
 4, 546
 Fraud and deceit, 4, 548
 Instances, 4, 553-555
 Performance, 4, 544
 Pleading specially matters of defense,
 4, 552
 Pleas of, 4, 546, 547
 Proof that deed was delivered and still
 remains as an escrow, 4, 523
 Proof that deed was delivered to a
 stranger, 4, 523
 Proof that deed was void, 4, 523
 Statute of limitations, 4, 549
 Tender, 4, 548
 Where covenant was not sealed by
 plaintiff, 4, 552
 Definition of covenant, 4, 463, 474
 Demurrer, 4, 543
Dependent Covenants, 4, 475
 Allegation of performance, 4, 538, 539
 Averment of readiness to perform, 4,
 540
 Whether dependent or independent,
 depending upon intention of parties,
 4, 476
Election, 4, 466
 Between covenant and assumpsit, 4,
 466
 Between covenant and case, 4, 466
 Between covenant and debt, 4, 466
 Between covenant and other action,
 4, 466
 Equitable defenses, 4, 465
 Essentiality of covenant in deed, 4, 477
Estoppel, 4, 561
 Recitals, 20, 468
Evidence, 4, 558
 Action against assignee, 4, 558
 Action for breach of covenant of seisin,
 4, 562
Action for Damages, 4, 562
 Indemnity against incumbrances, 4,
 562
 Knowledge of incumbrances, 4, 562
 As to title, 4, 561
 Documentary, 4, 563
 Of incumbrances, 4, 559
 Parol, 4, 560, 564
 Parol evidence to prove delivery, 4,
 523
 Plaintiff confined to evidences of proof
 set forth in the declaration, 4, 561
 Plea of non est factum, 4, 550
 Plea of omnia performavit, 4, 544
 Plea of tender, 4, 560
 Prima facie proof, 4, 558
 Proof of eviction by impairment of
 title, 4, 560
 Proof of refusal before expiration of
 time fixed for performance of cove-
 nant, 4, 559
 Registry as proof of delivery of deed,
 4, 523
 To prove delivery of deed, 4, 523
 Under plea of condition to perform, 4,
 560
 Under plea of non est factum, 4, 563
 Under special pleas, 4, 560
 What constitutes prima facie case of
 plaintiff, 4, 558, 559
 When evidence of damage is admissible,
 4, 562
 Express and implied covenants, 4, 474
 Form of action, 4, 465
 Form of expression to create a covenant,
 4, 469
 General issue, 4, 544
 "Grant, bargain, or sell," 4, 499, 517
Ground Rent
 Action of covenant for arrears of,
 which accrued after death of cove-
 nantee, 4, 518
 Implied covenants, 4, 474
Independent Covenants
 Illustrations of, 4, 476
 Joinder with case, 11, 994
 Joint and several covenants, 4, 508
 Judgment, 4, 569
 Kinds of covenant, 4, 474
 Lease equivalent to demise, 4, 468
 Matters of practice, 4, 557
Measure of Damages, 4, 493, 566
 Action against vendee for breach of
 contract, 4, 497
 Action by purchaser of land to recover
 damages for a failure to convey, 4,
 497
 Attorney's fees, 4, 567
 Breach of covenant against incum-
 brances, 4, 496, 568
 Breach of covenant for quiet enjoy-
 ment, 4, 493, 494, 496
 Breach of covenant of seisin, 4, 495

COVENANT, ACTION OF—Cont'd**Measure of Damages—Cont'd**

Breach of covenant of warranty, 4, 495
 Consideration with interest and costs,
 4, 566

Costs, 4, 567

Improvements and increase of value,
 4, 496

In action for breach of warranty of
 title, 4, 567

In Covenant Against Incumbrances

Where grantee has not discharged
 incumbrance, 4, 569

In partial failure of title, 4, 494

In particular cases, 4, 568, 569

Interest, 4, 567

Joint vendees, 4, 568

Mesne profits, 4, 567

New York rule in case of breach of
 covenant to convey, 4, 497

Price paid as measure of damages, 4,
 493

Rate of interest, 4, 567

Rental value, 4, 566

Where part of covenant has been
 waived by defendant, 4, 568

Where purchase is by barter, 4, 494

Nature of the action generally, 4, 464

Necessity of performance where the cove-
 nants are independent, 4, 476

New York statute as to implied cove-
 nants, 4, 469

Nominal damages, 4, 569

Oyer, 4, 552

Personal covenants, 4, 474

Pleading implied covenant, 4, 468

Pleadings in covenant, 4, 521

Pleas**Covenant Performed**

Absque hoc, 4, 545

Admitting execution of instrument,
 4, 545

Double and inconsistent, 4, 544

Effect of non est factum, 5, 543

Forms, 4, 542

Fraud and deceit, 4, 548

General issue, 4, 543

General plea of performance where a
 specialty is assigned in declaration,
 4, 544

General rules, 4, 542

Evidence in plea of non est factum, 4,
 550

Excusing performance, 4, 546

Frivolous, 4, 546

In abatement, 4, 556

In bar, 4, 555

Instances of special, 4, 547

Nil habuit in tenementis, 4, 552

Non damnificatus, 5, 552

Non est factum, 4, 543, 549

Non infregit conventionem, 4, 551, 556

Non-performance by plaintiff, 4, 547

Of craving oyer, 4, 552

Of performance and tender, 4, 544

Of tender, 4, 546

Omnia performavit, 4, 544

Performance, 4, 544

Pleading and demurring to several
 parts of a declaration, 4, 543

Pleading discharge, 4, 547

Pleading tender, 4, 547

Special, 4, 546

Special defenses, 4, 542

Special matters, 4, 546

Statute of limitations, 4, 549

Statutory provision as to non est fac-
 tum, 4, 550

What admitted by plea of tender, 4,
 546

What is admitted by non est factum,
 4, 549

What non est factum puts in issue, 4,
 549

When non est factum must be pleaded,
 4, 551

Pleas in Bar

Instances, 4, 555, 556

Preference for construction which renders
 whole covenant operative, 4, 469

Profert, 4, 528

Proving delivery of deed, 4, 523

Recitals

Estoppel, 20, 468

Recoupment, 4, 476

Replication, 4, 556

Departing from declaration, 4, 557

Statute of limitations, 4, 549

Variance, 4, 531, 537, 542, 564

Effect of, 4, 564

What is, 4, 564

What is not, 4, 564

Venue, 4, 521

When action joint, 4, 507, 516

When action several, 4, 507, 516

When and When Not Maintainable, 4, 464

Action on covenant by assignee, 4, 466

Affirmative obligation, 4, 467

Against grantee in a deed-poll for non-
 performance, 4, 502

Against whom maintainable, 4, 467

Agreement to pay money by install-
 ments, 4, 476

Alternation by parol agreement, 4, 492

Articles of partnership, 4, 473

Assertions as to boundaries, 4, 493, 494

Between partners, 4, 501

Bonds, 4, 492

Bond with penalty, 4, 492

Breach of agreement, 4, 464

Breach of contract under seal to pay
 money, 4, 477

Breach of covenant in deed, 4, 474

Breach of covenant to repair, 4, 489

Breach of indenture of apprenticeship,
 4, 473

Cases of defective execution, 4, 492

Conflict of laws, 3, 563; 4, 501; 21,
 905

Contract in presenti or in futuro, 4,
 468

Contract not under seal, 4, 500

Contract to do work, 4, 465

Covenant modified by parol, 4, 503

Covenants by agents, 4, 490
 Covenants of public officers, 4, 490
 Defective execution by defendant, 4, 492
 Different actions in covenant for different installments of a debt, 4, 489
 Failure to deliver deed at time specified, 4, 490
 For breach of covenant in a lease, 4, 488
 For breach of covenant not to carry on a particular trade, 4, 489
 For breach of covenant to allow lessor certain privileges, 4, 489
 For breach of covenant to cultivate, 4, 489
 For breach of covenant to pay rent, 4, 489
 For breach of covenant to reside on the premises, 4, 489
 For breach of covenant to save harmless from a judgment, 4, 488
 For breach of real covenant, 4, 477
 In action for non-payment of rent, 4, 472
 Independent covenants, 4, 476
 Instances in which covenant has been held not maintainable, 4, 500, 505
 Instruments which have been altered, 4, 492
 Judgment charging an annuity, 4, 489
 Necessity of technical words, 4, 493
 Necessity that the action be founded on a sealed instrument, 4, 464
 Necessity that the word "covenant" occur in the instrument, 4, 468
 Obligation to pay money, 4, 490
 On condition in title bond to convey land, 4, 502
 On covenants to deliver goods, 4, 489
 On deed from which the seal has been torn, 4, 502
 On lease executed by lessor only, 4, 501
 On sealed guaranty, 4, 473
 On the condition of a bond, 4, 502
 Parol alteration, 4, 502
 Particular cases, 4, 490
 Payment in installments, 4, 492
 Penal bonds, 4, 474, 502
 Performance and part performance on part of plaintiff, 4, 472
 Privity, 4, 501
 Scrolls, 4, 501
 Sealed instruments between tenants in common, 4, 473
 Upon agreement to share profits, 4, 473
 Upon contract varied by parol agreement, 4, 502
 Upon deed-poll, 4, 467
 Upon what words, 4, 468, 469, 493
 Waiver of parts of a covenant by the defendant, 4, 490
 When right of action arises, 4, 491
 Where covenant is implied by law, 4, 467
 Where covenant is modified by parol, 4, 465

Where instrument is defectively executed, so that assumpsit would lie against plaintiff, 4, 464
 Where instrument is duly executed by the defendant but plaintiff can only maintain assumpsit, 4, 492
 Words implying a covenant, 4, 468
 When covenant the only action maintainable, 4, 466
When to Be Brought, 4, 520
 Eviction, 4, 520
 Where action must be brought, 4, 521
 Whether language of deed constitutes a covenant or condition, 4, 469
 Whether transitory action, 4, 521
Who May Maintain, 4, 540
 Party for whose benefit covenant was made, 4, 540
 Where covenant is joint, 4, 541
 Words implying a covenant, 4, 493
COVENANTS
See COVENANT, ACTION OF; IMPLIED COVENANTS; LEASE; REAL COVENANTS; RELEASE.
Conditions
 For conditions, *see* DEEDS.
Covenant not to sue, *see* RELEASE.
Covenants running with the land, *see* REAL COVENANTS.
Breach of
 Equitable relief from mistake, 15, 627
 Mistake, 15, 627
Forfeiture, 8, 444
 Against waste, 8, 444
 Bankruptcy, 8, 444
 Breach of, 8, 444
 In restraint of alienation, 8, 444
 Non-payment of rent, 8, 445
 Not to sell, dispose, or assign, 8, 444
 Not to underlet, 8, 444
 To insure and keep insured, 8, 444
 To repair, 8, 444
 Voluntary assignment, 8, 445
 Limitation of actions, 13, 724
Married Women, 14, 622
 By statute, 14, 622
 Estoppel, 14, 622, 623
 Examples of valid covenants, 14, 622, 623
 In general, 14, 622
 In regard to her separate estate, 14, 622
 Validity, 14, 622
 Parol evidence, 17, 426
 Partnership, 1, 639b
 Set-off, 22, 244
To Idemnify
 Bill quia timet to enforce, 2, 258
COVER, 4, 570
 Open cover, 17, 194
COVIN, 4, 570
COW, 4, 570
COW-KEEPER, 4, 571
CRAFT, 4, 571
CRANK, 4, 571
CRAZY, *see* INSANITY.
CREATE, 4, 571

CREATURE, 4, 572**CREDIBILITY OF WITNESSES, see WITNESSES.****CREDIT, 4, 572; 23, 632**

See LETTERS OF CREDIT; MONEY.

As to constitutional provisions against the emission of bills of credit by the state, see CONSTITUTIONAL LAW.

Credit in cash, 3, 35

Distinguished from cash, 3, 31, 32

Faith, credit, and effect, 6, 173

Garnishment, 8, 1161

Give credit, 8, 1356

Goods, effects, and credit, 6, 188

Loans on credit, 13, 979

Mutual credit, 16, 15

Stock, 23, 590

CREDITOR, 4, 573

See ASSIGNMENT FOR THE BENEFIT OF CREDITORS; BANKRUPTCY; DEBTOR AND CREDITOR; INSOLVENCY.

CREDITORS' BILLS, 4, 573; 6, 723

See BILL IN EQUITY; SUPPLEMENTARY PROCEEDINGS.

As to suits to set aside fraudulent conveyances, see FRAUDULENT CONVEYANCES.

Absconding debtor, 8, 785

Against Corporation and Stockholder, 4, 578

Remedy at law must be exhausted, 4, 579

Whether it is necessary to join all stockholders, 4, 579

Against decedent's estates, 4, 580

Allegation of return nulla bona, 4, 574

Appointment of a receiver, 4, 576

As a lien upon the effects of judgment debtor, 4, 576

As an equitable levy, 4, 576

Assignment for benefit of creditors, fraudulent, 1, 879

Classes, 4, 573

Costs, 7, 410

Definition, 4, 573

Effect of the bill, 4, 576

Executors and administrators, 7, 401

Exhausting remedy at law, 4, 574, 575, 579

Form of decree of appointment of receiver, 4, 577

Injunction against transfer of debtor's property, 4, 576

Insolvency proceedings, 11, 226

Jurisdiction of court of equity, 4, 573

Jurisdiction of federal courts, 4, 581

Lis pendens, 13, 905

Nature of remedy, 4, 576

Necessity of exhausting remedy at law where debtor has absconded, 4, 574, 575, 579

Necessity of the return of nulla bona when debtor is adjudged insolvent, 4, 575

Objects sought by the creditor in chancery, 4, 576

Parties to the Bill

Fraudulent grantee, 4, 578

Joinder of parties, 4, 578

Whether debtor is a necessary party, 4, 578

Petition of creditor upon order to compel the personal representative to sell land for payment of debt, 5, 292

Receivers, 20, 56, 307

Attorney, 20, 316

Courts, 20, 316

Creditors without a lien, 20, 311

Denial of property, 20, 311

Due diligence of creditor, 20, 309

Extension of the powers of a receiver, 20, 316

Fraudulent assignment by debtor, 20, 311

General creditors, 20, 311

Miscellaneous matters of practice, 20, 316

Notice, 20, 315

Object of appointment, 20, 307

Personal property, 20, 312

Powers of receivers, 20, 314

Procedure, 20, 315

Real estate, 20, 312

Remedy at law must be exhausted, 20, 309

Restrictions on power, 20, 314

Return day of the execution, 20, 311

Return of execution unsatisfied, 20, 307

Right of receiver to sue, 20, 314

Right to set aside fraudulent conveyances, 20, 314

Title of, 20, 128, 312

After-acquired property, 20, 313

Equitable title, 20, 128

Examples, 20, 128

Exempt property, 20, 313

Personal property, 20, 312

Real estate, 20, 128, 313

Two or more, 20, 134

When receiver will not be appointed, 20, 311

Return of execution unsatisfied before its return day, 4, 576

Savings banks, 21, 740

Stock Exchange

Seats, 23, 755

Supplementary proceedings as substitute for, 4, 574; 7, 160; 24, 600

To reach copyright in charts, 3, 140; 4, 577

What Property May Be Reached, 4, 577

Copyrights, 3, 140; 4, 577

Exempt property, 4, 578

Patents, 4, 577

Property held in trust, 4, 577

Property which has not been fraudulently withdrawn from creditor's reach at law, 4, 577

Right of action for injury to debtor's property, 4, 577

Unearned salaries, 4, 578

When bill may be brought without exhausting remedy at law, 4, 575

When bill will be sustained, 4, 574

Vol. I.

Where it is proved that there is sufficient property to satisfy a debt other than that described in bill, 4, 575

CREEK, 4, 581

Margin of a creek, 14, 317

CREMATION, 5, 119**CREW, 4, 581****CRIB, 4, 582****CRIME, 4, 642**

High crimes and misdemeanors, 9, 361

Meaning of the term in constitutional provision of surrender of fugitives from justice, 7, 644

Receivers of railroads, 20, 388

Synonymous with offense, 4, 643

CRIMINAL

As opposed to civil, 3, 256

Criminal cases, 3, 28

CRIMINAL CAPACITY

Married women, 14, 649

CRIMINAL CASES

Certiorari in, 3, 66

CRIMINAL CONSPIRACY, 3, 668; 4, 582

See STRIKES; TRUSTS AND COMBINATIONS IN RESTRAINT OF TRADE.

Act of one act of all, 4, 621, 633

Acts and Declarations as Evidence, 3, 483; 4, 593, 631, 865; 9, 702

Admissions of declarations of one conspirator against a fellow conspirator though not made in his presence, 4, 594

Declarations after abandonment or consummation of common design, 4, 633

Declarations in furtherance of common design, 4, 633

Declarations made in absence of the accused, 4, 634

Declarations not in furtherance of common design, 4, 633

Declarations not made in the presence of accused, 4, 634

Foundation for Admission, 4, 635

Question for jury, 4, 635

In civil cases, 4, 632

Necessity of prima facie proof of unlawful combination before acts and declarations are admissible, 4, 594

Of one conspirator the acts of all, 4, 631

Speeches and publications, 4, 632

When common design has been consummated, 4, 632

Admissions, 3, 483; 4, 593, 631, 632, 635, 865; 9, 702

Larceny, 12, 859

Agreement

May be expressed or implied, 4, 585

To accuse another of a crime, 4, 584

To prosecute a person reasonably believed to be guilty, 4, 607

Which contemplates injury to third person, 3, 870

With one who is only feigning an intention to commit the crime, 4, 589

Allegation that performance was carried into effect unnecessary, 4, 591

An act in itself not indictable may be a subject of, 4, 601

Argument of counsel, 4, 639

Associations

For innocent purposes, 4, 587

Formed for innocent purposes which afterwards become corrupt, 4, 587

Of workmen, 4, 614

To bring criminals to punishment, 4, 587

Whose members are bound by oath not to disclose its secrets, 4, 587

A substantive offense, 4, 590

At Common Law

Whether common-law offense is abolished by statute, 4, 596

Boycotting, 4, 613, 614; 14, 803; 25, 1071

A newspaper, 4, 613

Definition of, 2, 512

Injunction, 24, 135

Origin and meaning of the term, 4, 613

Challenges of jurors, 4, 639

Cheating at cards, 4, 602

Civil Remedy, 4, 592

Action against corporation for conspiracy, 4, 592

Action for damages, 4, 592

Compromising offense, 4, 594

Damage to the plaintiff, 4, 593

Instances where an action has been held to lie, 4, 593

Survival of cause of action, 4, 593

Coercion of servant, 14, 803

Compromising offense, 4, 594

Confederation must be corrupt, 4, 587

Confession of one conspirator as evidence against another, 3, 483; 4, 631, 632, 635, 865; 9, 702

Conflict of Laws

Co-conspirators, 3, 537

Conspiracy of man and wife with another, 4, 588

Conspiracy to commit an indictable offense, 4, 585

Conspiracy to do that which in an individual would not be criminal, 4, 585

Contests between labor and capital, 4, 608

Continuance, 4, 638

Conviction of one alone, 4, 637

Conviction of one where two are indicted together, 4, 638

Corporations, 4, 257, 592

Crime complete without any act done when a conspiracy, 4, 589, 590

Crime which necessarily requires the concurrence of two persons, 4, 586

Declarations, 3, 483; 4, 593, 631, 632, 635, 865; 9, 702

Admissibility of acts and declarations of one conspirator against others, 4, 631

As evidence must be made in furtherance of common design, 4, 632

Declarations of one conspirator, 4, 594

CRIMINAL CONSPIRACY—Cont'd**Declarations—Cont'd**

False pretenses, 7, 783

Letters and statements of a co-conspirator, 4, 635

Which are merely narrative, 4, 635

Definition of conspiracy at common law, 4, 583

Disqualification of jurors, 4, 638

Elections, 6, 443

Essentials, 4, 583-585

Evidence, 4, 629

Active participation, 4, 629

Acts, Threats, and Declarations of Co-Conspirators, 9, 700

Admissibility of evidence, 9, 701

Confessions by co-defendant, 3, 483; 4, 593, 631, 632, 635, 865; 9, 702

Declarations made after the homicide, 9, 702

Declarations made before the homicide, 9, 700

Declarations not in furtherance of conspiracy, 9, 701

Declarations that are merely narrative, 9, 702

What declarations admissible, 9, 701

Directions given by one of the party, 4, 630

Drilling, 4, 630

Facts and circumstances to prove conspiracy, 4, 629

Handbills, 4, 629

Order of proof, 4, 635

Overt act as evidence of crime, 4, 625

Proof of conspiracy, 4, 629

Proof of previous plan, 4, 630

Resolutions passed at a meeting, 4, 629

Slight evidence of collusion, 4, 629

Statements and Confessions, 4, 634; 7, 49

Illustrations, 7, 49

Testimony of a co-conspirator, 4, 637

Fact that offense was committed no bar to indictment of conspiracy to commit it, 4, 591

False personation, 7, 695*

False Pretenses, 4, 605, 606; 7, 783

Indictment, 7, 779

Foundation for Admission, 4, 631

Question for jury, 4, 635

Fraudulent and corrupt combination with intent that injury shall result, 4, 587

Gist of the offense, 4, 587, 589

Hissing, 4, 601, 25, 1052

Husband and Wife, 4, 588

As conspirators, 9, 828

Indictment

Allegation of overt act, 4, 624

Allegation of overt act in conspiracy to cheat, 4, 628

Bill of particulars, 4, 624

Charging

Conspiracy as substantive offense, 4, 626

Conspiracy with unknown parties, 4, 622

Consummated act, 4, 626

Offense in words of statute, 4, 624, 627

Overt acts as surplusage, 4, 625

Common-law offense, 4, 622

Conspiracy

To accuse one of crime, 4, 627

To cheat and defraud, 4, 627, 628

To commit burglary, 4, 627

To extort money, 4, 628

To obstruct justice, 4, 628

To rob, 4, 627

Conspiring

With unknown confederates, 4, 622

Criminality appearing on face of indictment, 4, 626

For intimidating workmen, 4, 611

For specific offenses, 4, 627

Homicide, 9, 644

In general terms describing unlawful conspiracy, 4, 623

Insufficiency cured by verdict, 4, 626

Joinder of counts, 4, 626

Joinder of felony and misdemeanor, 4, 626

Means or object appearing criminally on face of indictment, 4, 623

Motion to quash, 4, 638

Offenses under statute, 4, 627

Overt act, 4, 624

Overt act as aggravation, 4, 625

Principals in second degree under statute, 4, 627

Setting out means to be used particularly, 4, 626

Showing active participation, 4, 623

Stating means by which cheating and defrauding are to be accomplished, 4, 601

Statutory conspiracy must be sufficiently charged, 4, 627

Two counts—one charging principal to be known, and other charging him to be unknown, 4, 631

Unlawful act by unlawful means, 4, 624

Venue, 4, 622

Where all counts are based upon same transaction, 4, 626

Where means are unlawful, 4, 625

Where object is not criminal, 4, 623

Infamous crime, 10, 605

Instruction, 4, 639

Examples of, 11, 267-270

Instructions considered together, 4, 640

Intent and agreement, 4, 588

Intent as an element, 4, 603

Intent in act, 4, 588

Intention or solicitation not sufficient, 4, 586

Interference with Business

Boycott, 4, 613

Judgment, 4, 641

Judgment procured by a conspiracy, 4, 593

Jury, 4, 638

Knowledge of part which each is to perform, 4, 585

Larceny, 4, 597; 12, 854
 Admissibility, 12, 854
 Admissions, 12, 859
 Corroboration, 12, 854
 Declarations, 12, 854
 Thief in furtherance of general design, 12, 854
Letters, 13, 264
Letters and statements of a co-conspirator, 4, 635
Libel and slander, 13, 337
Limitation of actions, 13, 724
Lord Denman's antithesis, 4, 583
Means to be used, 4, 624
Merger, 4, 591; 15, 360, 369
 Burglary, 15, 368
 Crime with the same degree as to conspiracy, 15, 369
 Where object of conspiracy is a felony, 4, 591
 Where object of conspiracy is a misdemeanor, 4, 591
 Whether conspiracy is merged with the commission of the crime, 15, 369
Motion to quash, 4, 638
Murder, 4, 597; 9, 571
 Chicago anarchists' case, 9, 572
 Death the probable result of acts committed, 9, 572
 In committing robbery, 9, 571
 Murder by one murder by all, 9, 571
 Not essential that name of deceased should be known to conspirator, 9, 572
 Purpose of conspiracy must be unlawful, 9, 573
 Responsibility of each conspirator's co-conspirator, 9, 573
 Specific agreement to kill, 9, 571
 Where means are not specifically agreed upon, 9, 573
Necessity of active participation, 4, 587
Necessity that two or more persons combine, 4, 586
New trial, 4, 640
Object not unlawful in itself, but means employed unlawful, 4, 603
Offense consists in conspiracy and not in acts committed, 4, 589
Offense is complete when confederacy is made, 4, 500
Order of Proof
 Acts and conduct of others than defendant to prove conspiracy, 4, 636
 Discretion of court, 4, 636
 Establishing conspiracy, 4, 636
 Evidence of general conspiracy, 4, 636
 Homicide, 9, 671
Overt act not necessary, 4, 589, 590
Overtaking vessel, 17, 297
Passive cognizance of fraud, or illegal action of others, 4, 587
Previous concert and agreement, 4, 585
Procedure and practice, 4, 638
Questions of Law and Fact
 Sufficiency of evidence of combination, 4, 637

Responsibility of Parties, 4, 616
 Accessory before fact, 4, 618
 Act of one act of all, 4, 620
 Acts of accessory as acts of principal, 4, 618
 Addition of a new party to conspiracy, 4, 620
 Advising or encouraging commission of crime, 4, 616
 Aiders and abettors in common design, 4, 619
 Association for innocent purpose where power is abused, 4, 620
 Common design, 4, 621
 Confederates as principals, 4, 620
 Inflaming public mind, 4, 617
 Liability of aider and abettor where act committed has no connection with common object, 4, 620
 Liability of instigator to a crime, 4, 616
 Parties present and consenting though not actively participating, 4, 620
 Responsibility for consummated act, 4, 619
 Where means are not specifically agreed upon, 4, 621
Right to trial by jury, 24, 502
Seduction, 4, 604; 21, 1046
Self-defense, 9, 598
Separate trial, 4, 637
Subjects of, 4, 597
 Abortion, 4, 597
 Abuse of criminal process, 4, 600
 Acts affecting public injuriously, 4, 603, 607
 Acts against law and order, 4, 599
 Acts against personal and property rights, 4, 615
 Acts against public justice, 4, 600
 Acts against the public peace, 4, 600
 Acts not illegal but tending to prejudice public at large, 4, 603
 Acts which if done by a single person would not be indictable, 4, 598
Agreement
 Of officials to violate a statute, 4, 601
 To cheat and defraud, 4, 601
 To commit a trespass, 4, 601
 To hiss an actor or condemn a play, 4, 601; 25, 1052
Anarchy, 4, 599
Any crime, 4, 597
Arson, 4, 597
 Attempt to defraud government of taxes, 4, 603
 Attempt to defraud public generally, 4, 603
Bigamy, 4, 598
Burglary, 4, 597
 Charging a person with an offense for purpose of extortion, 4, 602, 616
 Coercion of employers, 4, 611
 Confederation to injure or prejudice a third person, 4, 609
 Conspiracy to commit a statutory felony, 4, 597

CRIMINAL CONSPIRACY—*Cont'd***Subjects of**—*Cont'd*

Conspiracy to excite disaffection, 4, 599
 Decoying a person into jurisdiction, 4, 600
 Elections, 4, 603
 Felony, 4, 597
 Forgery, 4, 597
 For injury to an individual, 4, 615
 For slander of a person, 4, 616
 Fraudulent marriage, 4, 607
 Getting money by -false pretenses, 4, 605, 606; 7, 783
 Immoral acts, 4, 598, 604
 Incest, 4, 597, 598
 Inducing female to marry against her father's will, 4, 604
 Injuring a man in his trade, 4, 605
 Interference with business, 4, 605
 Larceny, 4, 597; 12, 854
 Murder, 4, 597; 9, 571
 Obstruction of justice, 4, 600
 Preparation for crime, 4, 607
 Procuring an acquittance by bribery, 4, 600
 Public offices, 4, 604
 Rape, 4, 597
 Robbery, 4, 597
 Seducing and carrying off a female, 4, 604; 21, 1046
 Spurious goods, 4, 602
 Suppressing competition at public sales, 4, 600
 Suppression or fabrication of evidence, 4, 600
 Theaters, 4, 601
 To coerce and oppress workmen, 4, 610
 To commit a criminal act, 4, 597
 To commit a misdemeanor, 4, 598
 To compel discharge of employees, 4, 609
 To condemn a play or hiss an actor, 4, 601
 To defraud government of revenue, 4, 603
 To do some act which will endanger public health, 4, 604
 To excite disaffection, 4, 601
 To extort money, 4, 602
 To induce one to violate Sunday law, 4, 601
 To injure profession or business, 4, 616
 To kidnap, 4, 598
 To prevent hiring employees, 4, 612
 Treason, 4, 597
 Trespass, 4, 607
 Trusts and combinations in restraint of trade, 4, 608
 Where object is not criminal, 4, 598
 Where object to be obtained is criminal, 4, 597
 Whether it must be criminal apart from agreement, 4, 598
 Success not an element, 4, 591
 Suit of either conspirator against the other, 5, 323

Summary proceedings, 24, 502
 The agreement, 4, 585
 The combination, 4, 586
 Time as an element, 4, 586
To Cheat and Defraud, 4, 601, 605
 Agreement to defraud, 4, 601
 Cheating, 4, 602
 Cheating by means of bank notes, 4, 602
 False representations in sale of a horse, 4, 606
 False representations of insolvency, 4, 606
 Instances, 4, 605-607
 Issuing fictitious firm notes or bills, 4, 606
 Obtaining property by fraudulent means, 4, 605
 Spurious goods, 4, 602
 Trespass on the case, 26, 702
 Trial and its incidents, 4, 637
 Two or more must unite, 4, 588
Under Statute, 4, 595
 By statute of United States, 4, 595
 Conspiracy to cast away a vessel, 4, 595
 Conspiracy to intimidate or drive out Chinese, 4, 595
 Conspiracy to prevent citizens from voting, 4, 595
 Definition, 4, 594
 In Alabama, 4, 596
 In Connecticut, 4, 596
 In Indiana, 4, 596
 In Iowa, 4, 596
 In Maine, 4, 596
 In Michigan, 4, 596
 In Missouri, 4, 596
 In New Jersey, 4, 597
 In New York, 4, 597
 In North Carolina, 4, 597
 In Pennsylvania, 4, 597
 Indictment, 4, 595
 Revenue officers conspiring to defraud United States, 4, 595
 Section 5440 of revised statutes of United States, 4, 595
 United States revised statutes, 4, 595, 596
 Using mail to defraud, 4, 595
 Whether an infamous crime, 4, 596
 Whether common-law offense is abolished by statute, 4, 596
 Unlawful act, 4, 584
Unlawful Means to Obtain an Object, 4, 603
 Setting out means, 4, 603
Venue, 4, 622
 County in which an act was done in furtherance of conspiracy, 4, 622
 Verdict, 4, 640
 What constitutes an unlawful act, 4, 590
 What is meant by corrupt purposes, 4, 588
 When a man marries a woman in name of another, 4, 588
 Where act is a civil wrong, 4, 584
 Where conspiracy was concocted before accused became an associate, 4, 586
 Vol. I.

Where conspirators are not acquainted with each other, 4, 586

Where means are not indictable, 4, 603

Where means to obtain an end are criminal, 4, 598

Where one of the parties was legally capable of doing the act, 4, 588

Whether an act agreed to be done would be criminal if done by one, 4, 585

Whether conspiracy may exist without consent of two or more, 4, 585

Witnesses, see *infra*, EVIDENCE.

Testimony of a co-conspirator, 4,

637

CRIMINAL CONVERSATION, 21, 1053

See ADULTERY.

Bail

In actions for, 2, 36

Compared with action on seduction, 21, 1054

Declarations of wife, 21, 1054, 1055

English statutes, 21, 1054

Evidence of improper liberties, 1, 215

Exemplary damages, 21, 1055

Husband's Action

Action for loss of services, 9, 835

Declaration, 9, 835

Defendant's poverty, 9, 836

Defendant's wealth, 9, 835

Defense, 9, 835

Joinder of suits for divorce, 9, 834

Paramour co-respondent in adultery, 9, 834

Personal suit, 9, 835

Proof of adultery, 9, 835

Trespass or case, 9, 834

What jury considers estimated damages, 9, 835

Husband's consent to adultery, 21, 1055

Husband's right of action, 21, 1053

Imprisonment for debt, 10, 230

Infants, 21, 1053

Married woman, 21, 1053

Meaning of the term debauch, 5, 140

Mitigation of damages, 21, 1055

No question of loss of services, 21, 1054

Plaintiff's cruelty, 21, 1056

Plaintiff's immorality, 21, 1056

Plaintiff's want of affection, 21, 1056

Presumption of loss, 21, 1055

Proof of marriage, 14, 530

Proof of marriage necessary, 21, 1054

Survival of actions for criminal conversation, 7, 267

Unchaste character of wife, 21, 1055

Where offense is without woman's consent, 1, 213

Wife living apart, 21, 1054, 1055

Without woman's consent, 1, 213

Witnesses

Wife as witness, 29, 628

CRIMINAL LAW, 4, 641

See ABDUCTION; ABORTION; ACCESSORY; ADVICE OF COUNSEL; AFFRAY; AGE; ARSON; ASSAULT; ATTEMPTS; BAIL; BARRATRY; BIG-

AMY; BREACH OF THE PEACE; BRIBERY; BURGLARY; CHAMPERTY AND MAINTENANCE; CHANGE OF VENUE; CHARACTER (IN EVIDENCE); COMPOUNDING OFFENSES; CONCEALED WEAPONS; CONCEALMENT OF BIRTH; CONFESSIONS; CONFLICT OF LAWS; CONSENT; CONTEMPT; CORPUS DELICTI; COUNTERFEITING; CRIMINAL CONSPIRACY; DECOY LETTERS; DISFRANCHISEMENT; DISORDERLY HOUSE; DISTURBING MEETINGS; DUELLING; EAVES-DROPPING; EMBEZZLEMENT; EXPLOSION; EXPOSURE OF PERSON; EX POST FACTO LAWS; EXTRADITION; FALSE IMPRISONMENT; FALSE PERSONATION; FALSE PRETENSES; FALSE SWEARING; FALSE TOKENS; FALSE WEIGHTS AND MEASURES; FELONIES; FORCIBLE ENTRY AND DETAINER; FORESTALLING THE MARKET; FORGERY; FORNICATION; GAMING; HABEAS CORPUS; HOMICIDE; HOUSE OF CORRECTION; IDENTITY; IMPEACHMENT; INCEST; INFORMER; INTOXICATING LIQUORS; JEOPARDY; LARCENY; LEWD AND LASCIVIOUS COHABITATION AND CONDUCT; LIBEL AND SLANDER; LICENSE; LOTTERIES; MALICIOUS MISCHIEF; MALICIOUS PROSECUTION; MALPRACTICE; MAYHEM, MEDICAL JURISPRUDENCE; MILITARY LAW; MISDEMEANORS; NUISANCES; OBSCENITY; OBSTRUCTING JUSTICE; PARDON; PENALTIES, PENAL AND QUI TAM ACTIONS; PERJURY; POISONS AND POISONING; POSTAL LAWS; PRESUMPTIONS; PRISONS; RAPI; REASONABLE DOUBT; RECEIVING STOLEN PROPERTY; RES GESTÆ; RESTITUTION OF STOLEN GOODS; REWARD; RIOT; ROBBERY; ROUT; SEDUCTION; SELF-DEFENSE; SENTENCE; SODOMY; STRIKES; SUICIDE; SUNDAY; THREATS AND THREATENING LETTERS; TIPPING-HOUSE; TRADE-MARKS; TREASON; UNLAWFUL ASSEMBLY; USURY.

Uttering counterfeit money, see COUNTERFEITING.

Violating or obstructing the right of suffrage, see ELECTIONS.

As to corporation's liability, see CORPORATIONS.

As to criminal liability of wife for acts done in the presence of her husband, see HUSBAND AND WIFE.

As to criminal trespass, see TRESPASS.

As to falsifying accounts, see ACCOUNTS.

As to falsifying record, see RECORD.

As to the presumption of innocence, see PRESUMPTIONS.

As to violation of ordinances, see ORDINANCES.

CRIMINAL LAW—Cont'd**Construction of Statutes**

As to the strict construction of penal statutes, see STATUTES.

As to costs in criminal cases, see COSTS.

As to criminal intent, see INTENT.

As to destroying fish, see FISH AND FISHERIES.

As to destroying game, see GAME AND GAME LAWS.

Crime committed partly in one jurisdiction, partly in another, see JURISDICTION.

Crimes between husband and wife, and wife's liability, see HUSBAND AND WIFE.

Exhibiting immoral shows, see THEATERS.

For consequences of conviction, see INFAMY.

For construction of criminal statutes, see STATUTES.

For criminal liability of the insane, see INSANITY.

For criminal negligence, see NEGLIGENCE.

For cruel and unusual punishment, see CONSTITUTIONAL LAW.

For doctrine of merger of crimes, see MERGER.

For infamous crimes, see INFAMOUS CRIMES; INFAMY.

For liability between master and servant, see MASTER AND SERVANT.

For liability for crime of principal and agent, see AGENCY.

For misprision of treason, see TREASON.

For murder, see HOMICIDE.

Obtaining goods by false pretenses, see FALSE PRETENSES.

Suppression of evidence, see SUPPRESSION OF EVIDENCE.

United States revenue laws, see REVENUE LAWS.

Accident, 4, 686

Accidental mischief resulting from a lawful act, 4, 686

Act and intent must unite, 4, 679

Acting under order of a superior, 4, 693

Acts prohibited by statute, 4, 644

Adulteration, 1, 207

Adultery, 1, 209

Bankruptcy, criminal liability of debtor, 2, 86

Blasphemy, 2, 424

Brawls, 2, 515

Bridges, indictment for erecting over navigable streams, 2, 551

Capacity to Commit Crime

For capacity of corporations, see CORPORATIONS.

For capacity of deaf and dumb persons to commit crime, see DEAF AND DUMB PERSONS.

Idiocy, see INSANITY.

Infants, see INFANCY.

Evidence of intoxication upon the question of intent, 4, 805

In general, 4, 682, 693

Intoxication, 4, 707, 708, 711, 802, 807

Delirium tremens, 4, 714, 809

General doctrine, 4, 808

Involuntary drunkenness, 4, 715, 810

Larceny, 4, 807

Murder, 4, 807

Passing counterfeit money, 4, 807

Perjury, 4, 807

Provocation, 4, 807

Self-defense, 4, 808

Temporary insanity from intoxication, 4, 708, 810

When evidence of drunkenness is admissible, 4, 804

Where assault with intent is alleged, 4, 806

Where intoxication physically incapacitates for committing the crime alleged, 4, 809

Intoxication as aggravation, 4, 710, 805

Intoxication as defense, 4, 802

Responsibility for crime, 4, 685

Civil Actions for Damages in Case of Public Wrongs, 17, 515

At common law, 17, 515

Felony resulting in death, 17, 515

Larceny, 17, 515

Limitation to common-law rule, 17, 515

Robbery, 17, 515

Statutory provisions in the United States, 17, 516

Classification of Crimes

Acts affecting currency and public and private securities, 4, 650

Acts affecting persons and lives of individuals, 4, 650

Acts affecting property, 4, 650

Acts affecting public justice, 4, 651

Acts affecting public polity, 4, 650

Acts affecting religion, morality, and decency, 4, 651

Acts affecting sovereignty of state, 4, 650

Acts affecting the public, or individuals, or their property, 4, 650

Acts affecting the public peace and security, 4, 651

Felonies, 4, 651

Malum in se and malum prohibitum, 4, 650

Misdemeanors, 4, 653

Common-law and statutory crimes distinguished, 4, 746

Compulsion Excuse for Crime, 4, 706; 6, 89

Acts committed under compulsion of law, 4, 706

Fear of present death, 4, 707

Joining rebels, 4, 707

Killing to prevent escape after felony, 4, 706

Where accused had no power to prevent act, 4, 706

Crime defined, 4, 642

Crimes Committed by or Against Indians, 10, 442

Crime by Indian against an Indian, 10, 442

Crime by white against Indian, 10, 443

Crime by white man against white

man on Indian reservation, 10, 443

Protection of United States court, 10, 443

United States constitution, 10, 442

Cruelty to animals, 1, 575

Definition, 4, 642

Drunkenness Defense for Crime, 4, 707, 708, 711, 802, 807

As affecting degree of offense, 4, 711

Delirium tremens, 4, 714, 809

Disproving criminal intent, 4, 712

Drunkenness no excuse for homicide, 4, 703

Homicide while drunk, 4, 712

Insanity resulting from intoxication, 4, 713

Intoxication as an aggravation, 4, 710, 802

Involuntary intoxication excuse for crime, 4, 715, 810

Mania a potu, 4, 714

Physical condition of accused such as to render it improbable that he committed the crime, 4, 709

Temporary insanity, 4, 708, 810

Voluntary intoxication, 4, 707, 708

Where accused is unconscious of his acts, 4, 708

Where existence of a particular motive or intent is necessary to constitute the crime, 4, 710-713

Duress

Crime committed under, 4, 706; 6, 89

Order of master, 6, 90

Orders of superior, 6, 90

Elements of Crime, 4, 672

Overt act essential, 4, 673

Excuse and justification, 4, 693, 707

"Grade of crime," 8, 1410

Gunpowder, 7, 523

Infanticide, 15, 221

A dead-born child, 15, 222

Burden of proof, 15, 225

Child must be wholly delivered, 15, 221

Compression of the umbilical cord, 15, 225

Debility, 15, 226

Definition, 15, 221

Evidence, 15, 228

Examples, 15, 226

Fractures, 15, 226

Hemorrhage, 15, 226

Hydrostatic test, 15, 223

Independent circulation, 15, 222

Live child, 15, 222

Medical evidence, 15, 222

Neglect causing death, 15, 226

Protracted delivery, 15, 226

The respiratory organs, 15, 223

The umbilical cord, 15, 222

"Inhabitants," 10, 771

Intoxication aggravation of offense, 4, 805

Intoxication as a defense, 4, 707, 711, 802, 807

Justification, 4, 810

Insulting epithets, 4, 811

Permitting one's self to be robbed in order to subject robber to prosecution, 4, 811

Liability

Of an idiot committing a felony through intervention of innocent agent, 4, 706

Of an insane person committing a felony through intervention of innocent agent, 4, 706

Of one committing a felony through intervention of innocent agent, 4, 706

Life of member, 15, 262

Maim, 14, 985

Maintenance of persons under indictment, 19, 90

Malice, 4, 681

When presumed, 4, 682

Malum prohibitum and malum in se, 4, 746

Master and Servant, 14, 814**Liability of Master,** 14, 824

Assault, 14, 824

Assent of master, 14, 826

Command of master, 14, 826

Criminal trespass, 14, 824

Examples, 14, 826

Innocent servant, 14, 826

Unauthorized acts, 14, 826

"Member of corporation," 15, 262

Merger, 15, 359*Conviction of lower crime as bar to higher, see JEOPARDY.*

Conviction of a lower crime, 15, 361

Examples, 15, 369

Felony proved on indictment for misdemeanor, 15, 361

Indictment as principal, conviction as accomplice, 15, 361

Indictment containing several counts, 15, 362

Indictment for offense, conviction for attempt, 15, 362

Modern changes, 15, 360

Offense of the same character, 15, 359

Offense proved includes offense charged, 15, 361

Offenses belonging to the same class, 15, 362

What is, 15, 359

Where different degrees of offense are charged, 15, 363

Mistake, 4, 687

Capturing a vessel honestly supposed to be piratical, 4, 688

Honest misapprehension of ownership of property, 4, 687

Ignorance of fact admissible to negative a particular intent, 4, 688

CRIMINAL LAW—Cont'd**Mistake—Cont'd**

- Ignorance of fact where it could have been known by reasonable diligence, 4, 687
- Obstructing highway in ignorance that it is a highway, 4, 687
- Of law as excuse for crime, 4, 688
- Receiving money honestly supposing it to be due, 4, 688
- Resisting an officer supposing him to be a private citizen, 4, 688
- Where statute makes offense indictable irrespective of guilty knowledge, 4, 687

Motive, 4, 674; 15, 937

- Evidence tending to show accused guilty of another offense, 15, 938
- Evidence to prove, 15, 937

Municipal Corporations, 15, 1196

- Bridges, 15, 1197
- Examples, 15, 1196-1198
- Nuisances, 15, 1198
- Requisites of indictment, 15, 1197
- Streets and highways, 15, 1196
- Whether corporation liable for indictment, 15, 1196

National Banks**Liability of Officers, 16, 202**

- Embezzlement, 16, 202
- Misapplication of funds, 16, 302

Negligence, 16, 392**Offense, 17, 36****Offenses Against Postal Law****Opening Letters, 18, 854**

- Examples, 18, 854, 855
- In general, 18, 854

Parent and Child, 17, 362

- Assault, 17, 362
- Cruelty, 17, 363
- Excessive punishment, 17, 362
- Failure to provide proper food and clothing, 17, 364
- Starving child, 17, 363, 364

Pari delicto, 17, 406**Partnership****Liability, 17, 1074**

- Indictment in firm name, 17, 1074
- In general, 17, 1074
- Intoxicating liquor, 17, 1074
- Joint indictment, 17, 1074

Personal goods, 18, 407**Piracy, 18, 461**

See INTERNATIONAL LAW.

Public Lands, 19, 365, 373

- Compromise with offenders, 19, 366
- Cutting timber on public lands, 19, 365
- Innocent purchaser of timber unlawfully cut, 19, 366

Public Officers, 19, 502

See EXTORTION; EMBEZZLEMENT; BRIBERY.

Judges, see JUDGES.

- Availing election or appointment, 19, 505, 506
- Corruption, 19, 503, 505
- Discretion, 19, 502

Discretionary duties, 19, 503**Disobedience, 19, 502****Disputing validity of his own appointment, 19, 506****Examples, 19, 504-506****Exercise of judgment, 19, 502****Failure to perform duty, 19, 502, 504****Following language of statute, 19, 505****Fraud or breach of trust, 19, 505****Gross incompetency, 19, 503****Indictable offenses, 19, 504****Indictment, 19, 505****Act complained of, 19, 506****Entry upon duties of office, 19, 506****Facts stating illegality, 19, 506****Necessary averments, 19, 505, 506****Official capacity, 19, 506****Statement of illegality, 19, 506****In general, 19, 502****Judicial duties, 19, 503****Legislators, 19, 503****Malice, 19, 503****Ministerial duties, 19, 502****Mistake, 19, 502****Neglect of duty, 19, 502, 504****Omission, 19, 503****Particular offenses, 19, 504****Party prejudice, 19, 505****Public duty imposed by law, 19, 503****Removal from office, 19, 506****Sale of office, 19, 505****Timber on Indian lands, 19, 366****Where no damage arises from default, 19, 504****Willfulness, 19, 503****Punishment, 4, 721****Cruel and Unusual Punishment**

For the constitutional provision against cruel and unusual punishments, see CONSTITUTIONAL LAW.

Fines, see FINES.

Adjustment of, 4, 726**Capital, 4, 728****Changes prescribed by statute, subsequent to commission of offense, 4, 725****Discipline of convicted, 4, 726****Discretion of Court, 4, 723****In ordering imprisonment until fine is paid, 4, 723****Sentencing an infant, 4, 723****For attempts, 4, 724****For distinct offenses, 4, 727****Increased punishment for subsequent offense, 4, 726****In either of two counties, 4, 723****Joint conviction, 4, 727****Laws imposing several penalties cannot be applied retrospectively, 4, 726****Object of, 4, 721****Of accessories, 4, 728****Second offense, 4, 728****Separate, 4, 728****Statutes directing jury to assess, 4, 724****Where crime is a violation of statute as well as a city ordinance, 4, 727**

Where offense is committed against two sovereignties, 4, 726

Where same act is two crimes, 4, 727

Purprestures, 16, 941

Quo warranto, 19, 662

Railroads

Crimes Against Railroads, 19, 928

Examples, 19, 928, 929

Intention, 19, 928

Making use of signals without authority, 19, 929

Placing obstructions upon track, 19, 928

Scope of statutes, 19, 928

Shooting or throwing at cars, 19, 929

Wrecking trains, 19, 928

Railroads in streets, 23, 1136

Railroad's Liability to Indictment, 19, 926

See generally, CORPORATIONS.

Failure to keep bridge in repair, 19, 928

Form of indictment, 19, 926

For Negligently Causing Homicide, 19, 926

Burden of proof, 19, 926

Examples, 19, 926, 927

Massachusetts statute, 19, 927

Statutes providing for indictment, 19, 926

Maintaining public nuisances, 19, 926

Various examples, 19, 927

Violation of the Sunday law, 19, 927

Res Judicata, 21, 256

See generally, JEOPARDY.

Civil action relating to same matters, 21, 257

Distinguished from civil actions, 21, 256

Examples, 21, 256-258

Identity, 21, 256

In general, 21, 256

One of a series of crimes, 21, 257

Public as party, 21, 256

Strict application of rules in criminal suits, 21, 256

Whether criminal sentence is evidence in civil case, 21, 257

Whether evidence in civil case admissible in criminal suit, 21, 258

Soldier acting under the order of his superior officer, 4, 693

Soldiers' liability, 15, 441

Solicitation

By signs or motions, 4, 672

Distinguished from attempt, 4, 670

Inciting an officer to corruption, 4, 671

Soliciting a servant to steal his master's goods, 4, 670

Through intermediate agent, 4, 672

To commit a breach of peace, 4, 671

To commit adultery, 4, 670

To commit adultery at common law, 4, 671

To commit a felony, 4, 671

To commit a misdemeanor, 4, 671

To commit arson, 4, 670

To Commit Crime, 4, 669

Not directed to procurement of some specific offense, 4, 670

To commit incest, 4, 671

To commit murder, 4, 670

To commit sodomy, 4, 670

When not indictable, 4, 671

Statutes

Constitutional Provisions Requiring that Subject Shall Be Expressed in Title, 23, 262

Examples of insufficient criminal statutes, 23, 265

Examples of valid criminal statutes, 23, 263-265

In general, 23, 262

Specification of particular crimes and offenses, 23, 262

Title—An act to establish a code of criminal procedure, 23, 263

Titles "Crimes and criminal procedure," 23, 263

Constitutional provisions that statutes shall contain no more than one subject, 23, 272

Effect of Repeal, 23, 512

After conviction but before sentence, 23, 513

In general, 23, 512

Offenses committed before passage of the act, 23, 512

Validity of criminal proceedings taken afterward, 23, 513

Statutory offenses, 4, 643

Street Railways, 23, 1136

Repairs, 23, 990

Unauthorized use of streets, 23, 958

Territories, 25, 957

Capital crimes, 25, 957

Infamous crimes, 25, 957

Information, 25, 957

Jury of twelve men, 25, 958

United States courts, 25, 969

Torts distinguished from crime, 26, 73

Wrecking trains, 19, 928

CRIMINAL PROCEDURE, 4, 729; 19, 221

See ACCESSORY; ALIBI; ARREST (IN CRIMINAL CASES); BURDEN OF PROOF; CHANGE OF VENUE; CHARACTER (IN EVIDENCE); COMPLAINT; CONFESSIONS; CONTINUANCES; COSTS; CRIMINAL LAW; DISTRICT ATTORNEY; EMBEZZLEMENT; EXPERT AND OPINION EVIDENCE; EX POST FACTO LAWS; EXTRADITION; FINES; FORGERY.

See generally, NAME.

See GRAND JURIES; HABEAS CORPUS; HOMICIDE; IMPEACHMENT; INCEST; INDICTMENT; INFORMATION; INFORMER; INTOXICATING LIQUORS; JEOPARDY; JOINDER OF OFFENSE; JURY AND JURY TRIAL; LARCENY; LEWD AND LASCIVIOUS COHABITATION AND CONDUCT; LIBEL AND SLANDER; LICENSE; MITTIMUS; NUISANCES; OBSTRUCTING JUSTICE;

CRIMINAL PROCEDURE—Cont'd

OPEN AND CLOSE; PARDON; PENALTIES, PENAL AND QUI TAM ACTIONS; PRIVILEGED COMMUNICATIONS; RAPE; REASONABLE DOUBT; RECEIVING STOLEN PROPERTY; RES GESTÆ; RESTITUTION OF STOLEN GOODS; RIOT; SELF-DEFENSE; SENTENCE; SODOMY; SUMMARY PROCEEDINGS; THREATS AND THREATENING LETTERS; VARIANCE; VENUE; VERDICT; VIDELICET; WARRANTS.

As to election between different felonies, see ELECTION.

As to preliminary examination, see PRELIMINARY EXAMINATION.

By information, see INFORMATION.

Comments on the defendant's refusal to testify, see DISTRICT ATTORNEYS; WITNESSES.

Constitutional rights, such as speedy trial, etc., see CONSTITUTIONAL LAW.

Crime committed partly in one county, partly in another, see JURISDICTION.

Criminal procedure of justice of the peace, see JUSTICE OF THE PEACE.

For judicial notice, see JUDICIAL NOTICE.

For jury and jury trial, see JURY AND JURY TRIAL.

For misnomer, see MISNOMER.

For process and appearance, see ARREST.

Judgment, see JUDGMENT.

Presumptions of innocence, see PRESUMPTIONS.

Presumptions of sanity and insanity, see PRESUMPTIONS.

Questions of law and fact, see QUESTIONS OF LAW AND FACT.

Adjournments, 4, 834

Validity of procedure at adjourned term, 4, 835

Admissions to prove a recorded fact, 4, 851

Appeal, 1, 628; 4, 882, 885

Exclusion of evidence, when cured, 4, 886

Raising objections for the first time on appeal, 4, 886

Reversal for failure to instruct, 4, 886

Right of state, 4, 884

Time to appeal, 4, 884

When appeal lies, 4, 885

Argument of Counsel, 4, 875

Abuse by counsel as ground for new trial, 4, 875

Abuse of discretion by court, 4, 875

Abusive language, 4, 877

Attack of character, 4, 878

Comment of prosecuting attorney upon defendant's failure to testify, 4, 871

Commenting on evidence at former trial, 4, 878

Commenting upon defendant's failure to testify, see WITNESSES.

Comment upon facts pertinent to issues, but not in evidence, 4, 876

Confined to facts in evidence, 4, 875

Exhibition of pictures and engravings, 4, 875

General rules governing the argument, 4, 876

Instruction by court not to consider, 4, 876

Interference of judge upon his own motion, 4, 878

Reference to fact that change of venue was taken, 4, 878

Subject to control of court, 4, 875

Arraignment, 4, 760, 773

Demanding name of accused, 4, 773

Must appear from the record, 4, 761

New trial, 16, 610

Rearraignment after mistrial, 4, 762

Record, 20, 479

Reversal where record shows neither arraignment nor plea, 4, 761

Verdict where there has been neither arraignment nor plea, 4, 761

Waiver, 4, 761, 762

What is a sufficient, 4, 762

Where there is a change of venue, 4, 762

Attempts to Escape

Evidence, 4, 860

Bill of discovery in aid of, 2, 201

Bill of Exceptions, 2, 222; 6, 823

See BILL OF EXCEPTIONS.

At common law, 6, 823

Under statutes, 6, 823

Bill of particulars in, 2, 246

Bill to Take Testimony de Bene Esse, 2, 287

Where witness resides out of the state, 2, 291

Burden of Proof, 4, 844

See REASONABLE DOUBT.

Insanity, 4, 844, 845

Self-defense, 4, 845

When upon accused, 4, 845

When upon prosecution, 4, 844

Code pleading, 18, 492

Comparison of footprints, 7, 508

Compulsory inspection of person, 7, 508

Defense of infancy, 4, 798

Defense of insanity, 4, 799

Definition, 4, 730

Demanding name of accused, 4, 773

Demurrer, 4, 777

Attachment, 4, 778

Definition, 4, 777

English doctrine, 4, 778

In Alabama, 4, 778

In Iowa, 4, 779

In Kentucky, 4, 778

In Michigan, 4, 779

In Ohio, 4, 779

Judgment, 4, 778

Leave to plead where demurrer has been overruled, 4, 778

Necessity of writing, 4, 777

Seldom used in practice, 4, 778

What demurrable, 4, 779

Depositions, 5, 621

Depositions and commissions, see DEPOSITIONS.

Dies non juridicus, 5, 87

Evidence, 4, 842

For character and reputation, see CHARACTER.

Of threats, see THREATS.

Admissibility, 4, 846

Admissibility of evidence given on former trial for purposes of impeachment, 4, 849

Asking accused as to contents of writing which he admits to be his, 4, 854

Attempts to escape, 4, 860

Attempts to procure false testimony, 4, 860

Documentary, 4, 846

Exclusion of, when cured, 4, 886

Explanatory statements, 7, 50

Given before grand jury, 4, 849

In Reference to Similar Transactions

To prove intent, 4, 860

Insurance

Excessive insurance in trial for arson, 4, 848

Letters, 4, 853

Marriage license in prosecution for bigamy, 4, 852

Materiality, 4, 847

Exclusion of material evidence, 4, 847

Evidence tending to prove the point, 4, 847

Motive, 4, 848; 7, 50; 15, 937

Motive, 4, 848; 7, 50; 15, 937

In general, 15, 937

Tending to show accused guilty of another offense, 15, 938

Must be given in presence of accused, 4, 844

Of Good Character

In criminal proceedings, 4, 861

Of intent, 4, 858

Of other crimes, 4, 850

Parol evidence to show election to office, 4, 851

Preparation, 7, 50

Production of best evidence, 4, 843

Proof of all facts stated in indictment, 4, 843

Proof of records, 4, 851

Proving handwriting, 4, 853

Receipts, 4, 846

Record of conviction and felony, 4, 850

Relevancy, 4, 846

Assurance that relevancy will bear upon further evidence, 4, 846

Defense as set up on preliminary examination, 4, 847

Evidence fairly tending to prove point, 4, 846

Testimony in reference to similar transactions, 4, 846

Same in criminal as in civil cases, 4, 843

Subsequent conduct, 7, 50

Sufficiency of, 4, 857

Testimony given upon a former trial, 4, 849; 9, 333, 335

Trial for violation of election laws, 4, 852

When objection should be made, 4, 847

When paper set out in indictment, 4, 843

Witnesses impeached by grand juror, 4, 849

Final Judgment, 12, 64

Examples, 12, 70

Order overruling demurrer to indictment, 12, 70

Order sustaining demurrer to indictment, 12, 70

Infants

Confessions, 10, 699

Injunctions

Sentence, 10, 914

Instruction, see INSTRUCTIONS.

Where not requested, 11, 251

Intent

Evidence of, 4, 858

Presumption of, 11, 378

Intoxication, 4, 802

Judge absent from murder trial, 12, 11

Jurisdiction

Offense begun in one country, complete in another, see JURISDICTION.

Offense on or near boundaries, 10, 593

Receiver of stolen goods, 10, 531

Liability of county for attorney's services when appointed by court to defend a prisoner, 4, 367

Limitation of Actions, 4, 784; 13, 767

Alleging and indictment, 10, 585

Conspiracy, 13, 724

Desertion, 15, 416

Embezzlement, 6, 498i

Forgery, 13, 725

Fugitives from justice, 4, 785

Indictment against corporations, 4, 272

Rape, 13, 725

Retrospective action, 13, 702

Seduction, 13, 725; 21, 1027

Specially pleaded, 4, 784

Statute does not run while prosecution is pending, 4, 784

List of jurors, 12, 334

Modes of originating process, 4, 730

Motion by defendant to be discharged from custody, 4, 766

Motion to quash, 4, 762

Motion to quash indictment, see INDICTMENT.

New Trial, 16, 601

See NEW TRIAL.

At instance of state, see JEOPARDY.

Conviction of higher degree in second trial, see JEOPARDY.

Jeopardy, see JEOPARDY.

Absence of accused during trial, 16, 607

CRIMINAL PROCEDURE—Cont'd**New Trial—Cont'd**

- Accused unable to procure attendance of witnesses, 16, 607
- Appeal, 16, 609
- Arraignment, 16, 610
- At common law, 16, 602
- Effect on rights of accused, 16, 603
- Escape, 16, 610
- Felonies, 16, 601, 602
- Grounds, 16, 609, 610
- In England, 16, 602
- In United States, 16, 602
- Introduction of incompetent testimony, 16, 607
- Judge going out of office before making up of case, 16, 608
- Misdemeanor, 16, 601
- Necessity of second indictment, 16, 610
- Newly-Discovered Evidence**, 16, 606
 - Cumulative evidence, 16, 606
 - Due diligence, 16, 606
 - Evidence must have been discovered since trial, 16, 606
 - Tending to impeach witness, 16, 606
- No injury to complainant, 16, 608
- Objection to indictment, 16, 608
- Omission to ask accused what he has to say, 16, 608
- Refusal to grant continuance, 16, 607
- Rules Governing Application**, 16, 604
 - Compared with civil actions, 16, 604
 - Erroneous rulings or instructions, 16, 605
 - Evidence inadequate to support conviction, 16, 604
 - Weight of evidence, 16, 605
 - Whether awarded more freely than in civil cases, 16, 604
- Sentence, 16, 607
- Surprise, 16, 607
- Time for Making Application**, 16, 631
 - Discretion of court, 16, 631
 - Examples, 16, 631, 632
 - Extension of time, 16, 631
 - Four days, 16, 631
 - Motion at trial term, 16, 631
 - Statutory period, 16, 631
 - Within three days, 16, 631
- Trifling irregularities, 16, 608
- Variance, 16, 607
- Waiver of the right, 16, 633
- Nolle Prosequi**, 16, 710, 711
 - Attorney-general, 16, 714
 - Courts, 16, 714
 - Definition, 16, 713
 - District attorney, 16, 714
 - Effect of entry, 16, 713
 - Entry after jury has been impaneled, 16, 714
 - Entry after verdict, 16, 713
 - Entry before trial, 16, 713
 - Entry during trial, 16, 713
 - Necessity of sanction of court, 16, 714
 - Retraction, 16, 714
 - Right incident to the sovereign, 16, 714
 - Statutory regulations, 16, 714

- When it may be entered, 16, 713
- Whether an acquittal, 16, 710, 711
- Whether bar to another indictment, 16, 710-714
- Who has authority to enter, 16, 714
- Nuisances**, 16, 942, 961, 970
 - See INDICTMENT.
 - Abatement, 16, 970
 - Contagious disease, 16, 961
 - Evidence, 16, 970
 - Examples of indictable nuisances, 16, 961
 - Punishment, 16, 970
 - Purprestures, 16, 941
 - What indictable, 16, 961
- What Not a Defense**, 16, 936
 - Acquiescence in similar nuisances, 16, 937
 - Agent's liability, 16, 937
 - Authority from municipal corporations, 16, 937
 - Benefits derived by public, 16, 931, 937
 - Care, 16, 931, 937
 - Lease of premises, 16, 937
 - Master and servant, 16, 937
 - Pecuniarily unable to abate, 16, 936
 - Principal's liability for agent, 16, 937
 - Where maintainable, 16, 961
- Open and close, 17, 206
- Pardon**, 4, 798
 - See PARDON.
 - Must be produced, 4, 798
- Pleas**, 4, 772
 - As to the plea of *autrefois acquit*, see JEOPARDY.
 - Classes of pleas, 4, 772
 - Entering the plea of not guilty where party refuses to plead, 4, 775
 - Justification, 4, 810
 - Necessity of, 4, 772
- Plea in Abatement**, 4, 780
 - Defect must be apparent upon record, 4, 781
 - Descriptio personæ, 4, 780
 - For the court, 4, 783
 - Incompetency of grand jurors, 4, 781
- Judgment**
 - In case of misdemeanor, 4, 784
 - In cases of felony, 4, 784
 - Must be certain, 4, 783
 - Objection to a portion of grand jury, 4, 783
 - Objection to summoning, impaneling, etc., of grand jury, 4, 782
 - Pointing out specifically wherein grand jury was illegally chosen, 4, 782
 - Setting forth grounds of objection specifically, 4, 783
 - Two or more pleas, 4, 783
 - When it lies, 4, 780
 - When it must be filed, 4, 783
 - When objection to grand jurors can be made, 4, 781
- Plea in bar**, 4, 785

Plea of Guilty

Curing formal defects, 4, 774

Effect of, 4, 773

Stay of sentence, 4, 773

Whether plea may be put in by attorney, 4, 774

Plea of guilty or not guilty, 4, 773

Plea of nolo contendere, 4, 774

Plea of Not Guilty, 4, 774

Advantages of, 4, 774

Defense of insanity under, 4, 799

Intoxication as a defense under, 4, 802

Justification, 4, 810

Locus delicti, 4, 774

What defenses may be set up under, 4, 798

What it puts in issue, 4, 774

Withdrawal of, 4, 776

Plea of pardon, 4, 798

Plea to the Jurisdiction, 4, 785

Error in changing the venue, 4, 786

Refusing to plead, 4, 775

Reversal where the record shows no plea, 4, 761

Special, 4, 772

Substituting a new plea in the superior court, 4, 777

Where arraignment is before justice of the peace, 4, 772

Where arraignment is for misdemeanors, 4, 772

Withdrawal of, 4, 776

After sentence, 4, 777

Discretion of court, 4, 776

On reversal of conviction, 4, 776

Statute regulating practice, 4, 777

Where something has taken place since the last continuance, 4, 777

Presence of Defendant

At Reception of Verdict, 28, 344, 345

Capital offenses, 28, 345

Crimes less than capital, 28, 345, 346

Evidence of presence, 28, 346

Examples, 28, 344-347

Misdemeanors, 28, 346

Necessity, 28, 344

Variance, 28, 345

Waiver of right to be present, 28, 347

Record, 20, 481

Quo warranto, 19, 662

Recommendation to mercy, 28, 364

Records, 20, 477, 479*See* RECORDS.

Allocation, 20, 481

Arraignment and plea, 20, 479

Change of venue, 20, 481

Continuances, 20, 481

Indictment, 20, 479

Joinder in issue, 20, 480

Presence of defendant, 20, 481

Presumption of oath, 20, 481

Showing arraignment and plea, 10, 528

Swearing of the jury, 20, 480

Time and place of holding court, 20, 479

Trial by jury, 20, 480

Whether record in criminal case is evidence in another criminal prosecution, 20, 500

Whether record in criminal case is evidence in civil case, 20, 500

Res Judicata, 21, 256*See generally*, JEOPARDY.

Civil action relating to same matters, 21, 257

Distinguished from civil actions, 21, 256

Examples, 21, 256-258

Identity, 21, 256

One of a series of crimes, 21, 257

Public as party, 21, 256

Strict application of rules in criminal suits, 21, 256

Whether criminal sentence is evidence in civil case, 21, 257

Whether evidence in civil case admissible in criminal suit, 21, 258

Secondary evidence, 4, 850

Second trial, 4, 881

Special judge, 12, 27

Standing mute, 4, 775

Statutes**Constitutional Provisions Requiring that Subject Shall Be Expressed in Title, 23, 262**

Examples of insufficient criminal statutes, 23, 265

Examples of valid criminal statutes, 23, 263-265

Specification of particular crimes and offenses, 23, 262

Title—An act to establish a code of criminal procedure, 23, 263

Titles—"Crimes and criminal procedure," 23, 263

Subpoena, 24, 159

Payment of fees and expenses, 24, 167

Trial

Admission of further evidence, 4, 841

Appointment of counsel, 4, 842

Conduct of, 4, 840

Interrogation of witness by judge, 4, 841

Limiting number of counsel, 4, 842

Modes of criminal, 4, 840

Regulation by court, 4, 842

Special pleas before the general issue, 4, 841

Time to prepare for, 4, 841

Venue, 28, 229*Crime begun within one state and finished in another, see JURISDICTION.*

Accessory, 28, 235

Attempts, 28, 234

Conspirators, 28, 236

Examples, 29, 229-231

Extraterritorial offenses, 28, 236

Libels, 28, 234

Perjury, 28, 234

Waiver, 28, 590

Copy of indictment, 28, 591

Examples, 28, 590, 591

CRIMINAL PROCEDURE—Cont'd**Waiver—Cont'd**

Of rights in criminal trial, 28, 590

Polling jury, 28, 591

Weight of Evidence

Question for jury, 4, 856

What may be pleaded, 4, 781-784

Whether criminal must be prosecuted before civil action will lie, 26, 73

Written and parol evidence, 4, 850

CRIMINAL PROSECUTION, 19, 291**CROPS, 4, 887***See* WAY-GOING CROPS.

Accession to mortgage, 1, 60

Cattle Guards, 7, 914

Injuries to growing crops, 7, 914

*Chattel mortgages, see infra, MORTGAGE.***Croppers, 4, 899**

Assignable title in crops, 4, 900

Attachment

Of cropper's interest in crops, 4, 900

Subjecting cropper's interest to payment of his debts, 4, 900

Tenancy in common, 11, 1067, 1075

Whether partners, 17, 854

Who are, 4, 900

Crop-time, 4, 887

Damages, 16, 985

Definition, 4, 887

Distress, 5, 710

Dower lands, 5, 908

Emblements, 6, 883; 17, 784*See* EMBLEMENTS.

Definition, 7, 243

Growing clover and hay, 7, 243

Trees and plants, 7, 243

Execution, 4, 891, 892; 7, 128

Executors and Administrators, 4, 891, 892

Title of executor and life tenant as against reversioner or remainderman, 7, 242

Title of executor and tenant in fee as against heir, 7, 242

Title of executor as one seised in fee as against a doweress or devisee, 7, 242

Fair average crop, 4, 887

Growing Crops, 4, 887, 902

Chattel mortgages, 3, 185; 4, 902; 15, 813

Executions, 4, 891, 892; 7, 128

Manner of levy, 7, 151

Lien of execution, 8, 989

On Land Held Adversely, 1, 52, 889

Action for by owner of land, 4, 889

Parol evidence, 17, 423

Parol reservation, 17, 423

Statute of Frauds, 4, 893; 8, 700

Fructus industriales, 4, 893; 8, 700

Fructus naturales, 4, 893; 8, 700

Whether real or personal property, 4, 887

Husband and wife, 4, 901

Injuries to

Malicious mischief, 14, 10

Joint tenants and tenants in common, 11, 1103

Landlord and Tenant

Cultivation of land on shares, 12, 666

Relation must appear from lease, 12, 666

Whether relation exists, 12, 666

Larceny, 4, 891

Indictment, 12, 813

Letting on Shares, 4, 895

Construction of the contract, 4, 895

Croppers, 4, 899

Joinder of tenants in common in an action of trespass for spoiling crops, 4, 897

Landlord's lien, 4, 898

Lessee's right to possession of the land, 4, 897

Lessor and lessee, 4, 897

Master and servant, 4, 899

Necessity of delivery to vest title to crops in landlord, 4, 898

Provision for a division of the profits, 4, 896

Rights of tenants in common to possession, 4, 896

Tenancy in common in crops, 4, 896

Test to determine whether a tenancy in common, 4, 896

Trover by one tenant in common against another, 4, 897

When a partnership, 4, 900

Where the agreement is a partnership, 4, 900

Where the reservation is of an undivided share, 4, 896

Whether a lease, 4, 897

Whether the interest of lessor is subject to execution, 4, 898

License to enter upon land to cut and remove trees, 4, 894

Liens, 4, 898; 12, 757^c; 13, 594Advancements, 3, 334; 4, 902; 12, 757^d

At common law, 13, 594

Attachment of crops, 12, 757^cContract, 12, 757^cCrops grown on the track, 12, 757^eCrops of subtenant, 12, 757^d

Discharge, 13, 622

Distinct parcel of land demised, 12, 757^e, 757^f, 757^h

Execution, 8, 989

Express agreement, 13, 594

Extent of lien, 12, 757^gIn advance of their being planted, 12, 757^dJudgment creditor, 12, 757^j**Priority**Action for damages against purchaser, 12, 757^kAction to enforce landlord's lien, 12, 757^kMortgagee, 12, 757ⁱNotice to purchaser, 12, 757^lPurchaser, 12, 757^jPurchaser without notice, 12, 757^mWhere purchaser without notice may hold against landlord's lien, 12, 757^m

- Statutory Liens**, 4, 898, 901; 12, 757*f*;
 13, 594
 Effect of purchase without notice,
 13, 594
 In Alabama, 12, 757*f*; 13, 594
 In Arkansas, 12, 757*f*; 13, 594
 In District of Columbia, 12, 757*f*
 In Florida, 12, 757*f*; 13, 594
 In Georgia, 12, 757*f*; 13, 594
 In Illinois, 12, 757*f*; 13, 595
 In Indiana, 12, 757*f*; 13, 595
 In Iowa, 12, 757*f*; 13, 595
 In Kansas, 12, 757*g*; 13, 595
 In Kentucky, 12, 757*g*; 13, 596
 In Louisiana, 12, 757*g*; 13, 596
 In Maryland, 13, 596
 In Mississippi, 12, 757*g*; 13, 596
 In Missouri, 13, 596
 In New Jersey, 12, 757*g*
 In North Carolina, 12, 757*d*, 757*g*;
 13, 596
 In Pennsylvania, 12, 757*g*
 In South Carolina, 12, 757*g*; 13,
 596
 In Tennessee, 12, 757*g*; 13, 596
 In Texas, 12, 757*g*; 13, 597
 Waiver of lien, 13, 594
 Time of taking effect, 12, 757*h*
Waiver, 12, 757*n*
 Giving a note for rent, 12, 757*o*
 Landlord taking personal judgment
 against tenant, 12, 757*n*
 Taking mortgage on crops, 12, 757*o*
 Tender, 12, 757*o*
 Waiver as to part of crops, 12, 757*n*
 Where lien attaches, 12, 757*g*
 Whether extends to entire crop or
 each parcel, 12, 757*e*, 757*f*
 Malicious mischief, 14, 10
 Measure of damages for destroying grow-
 ing, 5, 37
Mortgages, 3, 185; 15, 813
 As between mortgagee and subsequent
 purchaser, 4, 904
 Future crops, 15, 752, 753
 Growing crops, 3, 185; 4, 902; 15, 813
 Mortgagor's right, 15, 813
 On unplanted, 3, 185; 4, 903
 On homestead lands, 7, 139
 On leased land belonging to tenant, 4,
 888
 Outstanding, 4, 877; 17, 294
 Parol reservation of, 4, 889
Partition, 17, 784
 Purchaser, 17, 805
Partnership
 Whether croppers are partners, 17, 854
 Personality or realty, 3, 167
 Public lands, 4, 889
 Purchaser of crops, right of entry, 4, 893
 Purchaser of mortgaged premises, 4, 890
Railroad's Obligation to Fence
 Expenses incurred in protecting crops,
 7, 909
 Injury to crops, 7, 908
 Redemption of land from judicial sale,
 20, 640
- Rent**
 Crops payable as, 12, 736
 Paid in shares, 12, 732
 Payable in, 12, 731
 Replevin, 20, 1061
 Ripe and unripe, 4, 888
Ripe Crops, 4, 891
 Liability to be seized on execution, 4,
 891
 Purchaser of land at foreclosure sale,
 4, 892
 Whether personal property, 4, 891
Sales, 21, 470
 Crops not planted, 21, 471
 Examples, 21, 470, 471
 Fructus naturales, 4, 894
 Possession, 4, 893
 Potential existence, 21, 470
 Statute of frauds, 4, 893
 Separate property of married women,
 22, 33
Sheriff's Sales, 22, 657
 Appraisement, 22, 658
 Condition of the crops, 22, 657, 658
 Foreclosure sales, 22, 659
 Severance, 22, 657
 Statutory provisions, 22, 657-659
 Whether crops pass to execution pur-
 chaser, 22, 657
 Sowing by stranger, 4, 889
Statute of Frauds, 4, 893; 8, 700
 Fructus industriales, 4, 893; 8, 700
 Growing crops, 4, 893; 8, 700
 Trover, 26, 776
 Trust deeds and power of sale mortgages,
 26, 946
Usages and Customs
 Away-growing crops, 27, 835, 837
 When mortgage on unplanted crops vests,
 4, 903
 Where stranger enters without authority
 and cuts grass, 4, 889
 Whether deed is necessary to convey-
 ance of, 5, 434
 Whether they pass under an assignment
 for benefit of creditors, 4, 888
CROPPER, 4, 887
See CROPS.
CROSS, 4, 905
 Cross a lake, 4, 905
 Cross a road, 4, 905
 Cross a street, 4, 905
 Cross the bar, 4, 905
 Equivalent to intersect, 4, 905
CROSS-BILL, 2, 201; 4, 905
See BILL IN EQUITY.
 Determinating controversy between all
 defendants, 22, 415
 Relief to all defendants, 22, 414, 415
CROSS-COMPLAINT, 4, 906
CROSS-EXAMINATION
See WITNESSES.
 Bastardy proceedings, 2, 151
CROSS-REMAINDERS, *see REMAINDERS.*
CROSSINGS, 4, 906
 Acquiescence by railroad, 19, 935
 Adequate, 1, 189

CROSSINGS—Cont'd

- Animals**, 4, 925; 7, 916, 927
 - Duty to signal for, 4, 925
- Appliances** for control of train, 4, 935
- Backing** train over crossing in city, 4, 936
- Bell Ringing**
 - Impairment of Obligation of Contracts**
 - Right of state to require, 8, 623
 - Blockading** highway where not proximate cause of injury, 4, 939
- Bridges**, 19, 870
- Burden of Proof**
 - Of contributory negligence, 4, 941
- By Custom and License**, 4, 915
 - Invitation** to public to use a crossing, 4, 916
 - Invitation** to use crossing a question for jury, 4, 916
 - Railroad's duty** where crossing has been used by general public for years, 4, 915
 - Signals and safeguards**, 4, 915
 - Cattle killed** at, 4, 925, 926; 7, 916, 927
 - Checking** train for traveler at, 4, 912
 - Children and feeble persons**, 4, 948
 - Collision** at crossing between trains of different companies, 4, 951
 - Collision** of one team with another at highway, 4, 951
 - Comparative negligence**, 4, 949
 - Contractor's fault**, 14, 835
 - Contributory Negligence**
 - Burden of Proof**, 4, 941
 - True rule**, 4, 941
 - Whether** upon plaintiff or defendant, 4, 941
 - Crossing** in front of moving train, 4, 948
 - Defeating** recovery, 4, 942
 - Defendant's negligence** subsequent to negligence of plaintiff, 4, 939
 - Driving** upon a bridge on which a railroad train is about to pass, 4, 927
 - Held** established as matter of, 4, 923
 - Intoxication**, 4, 947
 - Muffings**
 - Holding** umbrella in front, 4, 947
 - Neglect** of railroad company may be of such a character as to excuse traveler, 4, 943
 - Of children and feeble persons**, 4, 948
 - Of owner** in allowing his cattle to run at large, 4, 926
 - Physical infirmities**, 4, 947
 - Presumption** of, 4, 940
 - Proximate cause**, 4, 942
 - Question** for jury, 4, 944
 - Rebuttal** of presumption of care, 4, 941
 - Speed** of trains at crossings, 4, 934
 - Stop, look, and listen**, 4, 945
 - View** of crossing obstructed, 4, 942
 - Violation of Statute**
 - By railroad**, 4, 943
 - Want** of ordinary care, 4, 941
 - What is**, 4, 941
 - Where** injury might have been avoided by company, 4, 939

- Where** no signals are given, 4, 923
- Willful injuries**, 4, 942
- Crossing** in front of moving train, 4, 948
- Crossing vessel**, 17, 297
- Deafness**, 4, 947
- Definition**, 4, 907; 19, 422
- Directing a Verdict**, 4, 938
 - Where** there is no evidence or negligence, 4, 938
- Distinguished** from intersection, 19, 868
- Duty of railroad company at crossing**, see *infra*, RAILROADS DUTY.
- Eminent Domain**, 6, 537, 554
 - Across** turnpike, 6, 555
 - Change** of grade, 6, 555
 - Measure of Damages**, 6, 580
 - For** cutting through embankment, 6, 580
 - Obstruction**, 6, 580
 - What** may be considered, 6, 581
 - Owner** of property abutting on highway, 6, 555
 - Railroad crossings**, 6, 580
- Evidence**
 - As** to signals, 4, 928
 - Directing** a verdict where there is no, 4, 938
 - Positive** evidence that signals were given as against negative evidence that signals were not heard, 4, 928
 - Speed** of trains at crossings, 4, 934
 - Sufficient** evidence of negligence, 4, 937
- Farm Crossings**
 - See infra*, PRIVATE.
 - Duty** to keep gate shut, 7, 916
 - Gates and bars**, 7, 915
 - Imputed** contributory negligence where gate is left open, 7, 917
 - Liability** of company for animals entering through open gate, 7, 916
- Flagman** at, 4, 929
 - See infra*, LOOKOUT.
 - Duty** of the railroad to maintain, 4, 929
 - Flagman** intoxicated, 4, 931
 - Municipal regulations**, 15, 1168
 - Necessity** of notice to public when he is removed, 4, 930
 - Negligence** of flagman negligence of company, 4, 931
 - Statute** requiring, 4, 930
 - Where** failure to have flagman is not proximate cause of the injury, 4, 931
 - Where** flagman has been maintained for a long time at a crossing, 4, 930
 - Where** one crosses at invitation of the flagman, 4, 931
 - Whether** flagman is necessary question for court or jury, 4, 929
- Flying switches**, 4, 936; 8, 73
- Frightening** horses, 4, 937
- Frightening** horses on highway by giving signal, 4, 927
- Gates** at, 4, 928
 - Care** to be exercised by the traveler, 4, 929

- Common-law liability of railroad to maintain, 4, 928
- Gateman's duty, 4, 929
- Negligence question for jury, 4, 929
- Open gate an implied invitation to traveler to cross, 4, 928
- Open gate evidence of negligence, 4, 928
- Statutes requiring railroads to fence their lines, 4, 928
- Highway Crossings**, 19, 865
 - Duty to construct and maintain safe crossings, 19, 865
 - Duty to restore highway, 19, 865
 - Highways built after completion of road, 19, 865
 - Liability for injuries, 19, 865
 - Private crossings, 19, 866
 - Statutory duty, 19, 865
 - The Connecticut statutes, 19, 866
 - The Indiana statute, 19, 866
 - The Kansas statute, 19, 866
 - The New York statute, 19, 866
 - What included by the term crossing, 19, 866
- Highways Laid Across a Railroad**, 6, 554
 - Company's right to damages, 6, 554
 - Eminent domain, 6, 554
- Impairment of Obligation of Contracts**
 - Right of state to regulate, 8, 623
- Imputable contributory negligence, 4, 948
- Indictment of corporation for failure to give warning at, 4, 269
- Indictment of railroad for failure in its duty, 4, 908-925
- Injunctions, 10, 973
- Injury of fellow servant, 4, 949
- Intoxication, 4, 947
- Intoxication of traveler, 4, 914
- Kicking cars, 4, 937
- Kinds of, 4, 907
- Legislative control over, 4, 950
- Liability for Defects in**, 4, 916
 - Liability of municipality, 4, 916
 - Municipality's right to recover over against the company, 4, 916
 - Railroad's liability, 4, 916
- Lights on cars and engines, 4, 935
- Lookout at**, 4, 931
 - See infra*, FLAGMAN.
 - Efficiency, 4, 931
 - Exercise of ordinary care by lookout, 4, 932
 - Particular statutory provisions, 4, 931
 - Where an engine is backing a train in a city, 4, 931
- Machinery and appliances, 4, 912
- Mandamus, 14, 159
- Muffings, 4, 947
- Municipal corporations, 19, 886
- Municipality's liability for defects in, 4, 916
- Municipality's Right to Recover Over Against Railroad Company**
 - Where it has been held liable for defect in crossing, 4, 916
- Mutuality of rights and duties, 4, 909
- Negligence**
 - Of railroad must be proximate, 4, 938
 - Violation of statute, 4, 942
- Obligations of railroads, 8, 605
- Obstructed View**, 4, 918, 942
 - Railroad company's duty, 4, 919
 - Temporary, 4, 920
 - Travelers' duty, 4, 919
 - When traveler guilty of contributory negligence, 4, 942
- Ordinary care, 4, 909, 910
- Peculiar statutory provisions, 4, 949
- Physical Infirmities**, 4, 947
 - Of traveler, 4, 914
- Plaintiff's negligence apparent to defendant, 4, 939
- Precautions after an accident, 4, 939
- Presumption**
 - Of care prevails, 4, 940
 - Of contributory negligence, 4, 940
 - Of negligence, 4, 937
- Private**, 4, 914; 19, 866
 - See infra*, FARM.
 - Care to be exercised by traveler, 4, 915
 - Contract duty, 19, 867
 - Duty to construct, 19, 866
 - Railroad's duty to maintain and repair, 4, 914
 - Signals, 4, 915
 - Statutory provisions, 19, 867
- Pushing back and switching cars over, 4, 935
- Questions of Law and Fact**
 - Care to be used when view is obstructed, 4, 918
 - Contributory negligence of child, 4, 948
 - Contributory negligence question for jury, 4, 944
 - Invitation to public by the railroad to use a crossing, 4, 916
 - Necessity for flagman question for court or jury, 4, 929
 - Necessity of signal, 4, 921
 - Open gate at crossings, 4, 929
 - Pushing, switching and backing cars, 4, 935
 - Speed of train at crossing, 4, 932
 - Violation of statute question for jury, 4, 934
 - What is sufficient warning, 4, 918
 - Where there is no evidence for jury, 4, 938
 - Whether sign board necessary, 4, 916
- Railroad commissioners, 19, 690
- Railroad liable over to municipality, 4, 950
- Railroads Crossing Each Other**, 19, 867
 - Absolute necessity, 19, 868
 - Crossing at grade, 19, 868
 - Crossing over the railroad, 19, 869
 - Crossing under the railroad, 19, 869
 - Injunction, 19, 869
 - Intersection distinguished from crossing, 19, 868
 - Regard for public safety, 19, 870
 - Restricted right, 19, 868

CROSSINGS—Cont'd**Railroads Crossing Each Other—Cont'd**

Right of other railroads to crossing,
19, 867

Statutory provisions, 19, 868

The California statutes, 19, 868

The Minnesota statutes, 19, 868

The Nebraska statutes, 19, 868

The New York statutes, 19, 868

When such crossings allowed, 19,
868

Railroad's Duty, 4, 907; 9, 411

Appliances for control of train, 4, 935

At established crossings, 4, 909

Bridges, 4, 908

Checking train for traveler, 4, 912

Duty at railroad crossings, 4, 914

Duty to exercise ordinary care, 4, 910

Failure to perform a self-imposed
duty, 4, 938

Foot-ways, 4, 909

General view of the company's duty,
4, 910

Improvements to meet increasing
wants of public, 4, 908

Lights on cars and engines, 4, 935

Obligation to construct crossings a
continued duty, 4, 908

Private ways, 4, 908

Proper machinery and appliances, 4,
912

Signals, 4, 910

Speed of trains at crossing, 4, 932

Temporary obstruction of view, 4, 921

To exercise ordinary care, 4, 909

To have flagman at crossing, 4, 929

To have gates at crossing, 4, 928

To keep approaches in safe condition,
4, 908

To maintain lookout at crossing, 4,
931

To provide warning at crossings, 4,
910

To restore highway, 4, 908

To signal for animals, 4, 925

To use reasonable degree of care
towards persons crossing, 4, 909

Towards trespassers, 4, 909

Trains passing each other at speed on
crossings, 4, 910

Train under control, 4, 933

Traveler's duty to assume that railroad
company does its duty, 4, 924

Traveler's duty to exercise ordinary
care, 4, 909

When backing engine or train at high-
way, 4, 935

When obligation to construct crossing
begins, 4, 908

When View Is Obstructed, 4, 919

Care to be exercised, 4, 920

Signals, 4, 919

Special warning, 4, 919

Where railroad creates obstruction,
4, 920

Where crossing has been used by
general public for years, 4, 915

Where crossing is in a street or village,
4, 911

Where crossing is particularly danger-
ous, 4, 911

Where crossing occupies a street or
highway, 4, 913

Where highway was laid out after con-
struction of railroad, 4, 908

Where it operates its trains over the
tracks of another company, 4, 913

Where railroad creates an extra dan-
ger, 4, 911

Where street railway uses the same
crossing, 4, 908

Railroad's Fence

Abandonment of public use, 7, 911

Duty to fence at crossing, 7, 910

Test of duty to fence, 7, 911

Railroad's Liability

For a thing rightful in itself but done
at an improper time or place, 4, 912

Where it conforms with statutory re-
quirements, 4, 912

Railroad's right to rely upon traveler to
exercise ordinary care, 4, 910

Rebuttal of presumption of care, 4, 941

Right of public, 19, 935

Signals, 4, 910, 915

Signals Required by Statute, 4, 921

Absolute liability of railroad for failure
to give, 4, 922

Additional warnings, 4, 925

Conclusive presumption from failure to
give, 4, 923

Contributory Negligence

Of owner in allowing cattle to run at
large, 4, 926

On part of traveler, 4, 924

Duty to signal for animals, 4, 925

Evidence as to signals, 4, 928

Failure to frighten animals from the
track, 4, 925

Failure to give as negligence per se,
4, 921

Failure to give proximate cause of in-
jury, 4, 921

Failure to give where not proximate
cause of injury, 4, 939

Frightening animals on the crossing,
4, 926

Frightening horses on highways, 4, 927

Illustrative doctrines, 4, 923

Indictment for failure to give, 4, 925

Mandatory nature of the statute, 4,
925

Necessity of question for jury, 4, 921

Positive duty, 4, 923

Power of state, 19, 886

Private crossings, 4, 915

Statutory provisions, 4, 921

Statutory provisions in the nature of
police regulations, 4, 924

What is sufficient signal, 4, 924

What sufficient when backing trains,
4, 936

Where failure to give is cause of fright-
ening horses upon a highway, 4, 927

- Where signal is forbidden by municipal ordinance, 4, 925
- Where signals would not have prevented accident, 4, 923
- Where traveler has notice of approach of train, 4, 923
- Whether both bell and whistle must be used, 4, 924
- Whether traveler only is entitled to benefit of signals, 4, 927
- Who entitled to benefit of signals, 4, 927
- Sign Boards at, 4, 916**
 - Impairment of Obligation of Contracts**
 - Right of state to regulate, 8, 623
 - Snowstorms, 4, 947
 - Specific Performance**
 - Contracts to build, 22, 996
 - Special trains, 4, 943
 - Speed of Trains at, 4, 932, 938**
 - At night, 4, 933
 - Contributory negligence, 4, 934; 19, 886
 - Evidence of speed, 4, 934
 - Failure of positive law, 4, 934
 - Negligence per se at common law, 4, 932
 - Negligence, though speed no greater than that required by statute, 4, 933
 - Question for jury, 4, 932
 - Slackening speed, 4, 932
 - Statutory requirements, 4, 934
 - Train under control, 4, 933
 - Usual rate of speed, 4, 934
 - Violation of statute question for jury, 4, 934
 - What negligent as matter of fact, 4, 932
 - Where warning is given, 4, 934
- State Regulations, 19, 886**
 - How and when crossings shall be built, 19, 886
 - Power of legislature, 19, 886
 - Power of state to authorize crossings to be made, 19, 887
 - Signals, 19, 886
 - Where two railroads cross, 19, 888
- Stop, Look and Listen, 4, 918, 945**
 - Children, 4, 948
- Street cars, collisions of, 4, 951
- Street Railways, 23, 992**
 - Duty of driver and engineer, 23, 1028
 - Liability of company for injury to person, 23, 1023, 1026
- Streets in city, 4, 911
- Trains passing each other at speed on crossings, 4, 910
- Traveler's Duty, 4, 913**
 - Care to be exercised at private crossing, 4, 915
 - Driving rapidly across crossing, 4, 913
 - In approaching gate at crossing, 4, 929
 - Physical infirmities of traveler, 4, 914
 - Special dangers, 4, 913
 - Stop, look, and listen, 4, 945
 - Temporary obstruction of view, 4, 920
 - To exercise vigilance, 4, 913
 - To heed warning, 4, 913
 - To look out for trains, 4, 914
 - Voluntary intoxication of traveler, 4, 914
- When View Is Obstructed, 4, 918**
 - Care to be used a question for jury, 4, 918
 - Cases illustrating the doctrine, 4, 919
 - Pennsylvania doctrine, 4, 918
 - Stop, look and listen, 4, 918
 - Test of the traveler's care, 4, 919
 - Where there is a failure to give statutory signals, 4, 914
- Traveler's right to assume that signals will be given, 4, 942
- Traveler's right to rely upon railroad to exercise ordinary care, 4, 910
- Voluntary exposure (life and accident insurance), 28, 491
- Warning at, 4, 910**
 - Additional warnings to those required by statute, 4, 925
 - Crossing highway at great speed, 4, 933
 - Right to expect warning does not excuse one of ordinary care, 4, 918
 - Signals, 4, 921
- Sign Boards at Crossings, 4, 916**
 - Failure to have where person injured knew of the crossing, 4, 917
 - Necessity question for jury, 4, 916
 - Person not intending to use a crossing but approaching it, 4, 917
 - Required by common law, 4, 917
 - Where person by exercise of ordinary care might have known of crossing, 4, 917
 - Where required by statute, 4, 917
- Special warning when view is obstructed, 4, 919
- Traveler's right to presume that railroad will give, 4, 918
- What are sufficient, 4, 917
- What is sufficient question for jury, 4, 918
- When backing trains, 4, 936
- What a part of, 4, 907
- Where the crossing occupies a street or highway, 4, 913
- Whistling**
 - Impairment of Obligation of Contracts**
 - Right of state to require, 8, 623
- CROSSING VESSEL, 16, 297**
- CROW, 4, 951**
- CROWDS**
 - As nuisance, 10, 828
- CRUEL, 4, 951**
 - Cruelty as a ground for divorce, see DIVORCE.*
 - For cruel and unusual punishments, see CONSTITUTIONAL LAW.*
 - Cruel and unusual punishment, 19, 570
 - Libel and slander, 13, 303
- CRUELTY TO ANIMALS, 1, 575**
 - Arrest for, 1, 737
 - Beating of horses, 2, 160
 - Domestic animals, 5, 856
 - Inflicting pain without malice, 1, 576

CRUELTY TO ANIMALS—Cont'd

- Municipal corporations, 15, 1190
- "Needlessly torture or mutilate," 16, 373
- Slaughtering with unnecessary cruelty, 1, 576
- Torture, 26, 79
- Wanton cruelty to animals, 28, 594
- What constitutes, 1, 576

CRUELTY TO CHILDREN, see PARENT AND CHILD; SCHOOLS.**CRUISE, 4, 952****CUCKING-STOOL, 4, 952****CUL-DE-SAC, 24, 2****CULPABLE, 4, 952****CULTIVATE, 4, 952**

- Cultivated field, 4, 952; 7, 958
- Fit for cultivation, 8, 40
- Improved or cultivated land, 4, 953
- Inclosed or cultivated field, 4, 953
- State of cultivation, 4, 953
- Suitable for cultivation, 4, 953
- Things necessary for cultivation, 4, 953

CULVERTS, 24, 952**CUMULATIVE EVIDENCE, see NEW TRIAL.****CUMULATIVE SENTENCE, 4, 953**

- Cumulative remedies, 20, 974

CUMULATIVE VOTING, 4, 954

See VOTING TRUSTS.

- At election of officers, 4, 954
- In private corporations, 4, 956

CURATOR, 4, 956**CURE, 4, 956****CURE BY VERDICT, see VERDICT.****CURRENCY, 2, 326; 4, 957**

See MONEY.

- Bills and notes, 2, 326

CURRICLE, 4, 957**CURTESY, 4, 958**

See COMMUNITY PROPERTY; DOWE

- Alien husband, 1, 464

- Aliens, 4, 958

Birth of Issue, 4, 961

- Child born alive, 4, 961
- Possibility of child inheriting estate, 961

- Statute in Pennsylvania, 4, 962

Curtesy Consummate, 4, 963

- Conveyance, 4, 964
- Equities against wife, 4, 964
- Vests by operation of law, 4, 963

Curtesy Initiate, 4, 962; 9, 841

- Assignability, 4, 962
- Legal estate, 4, 962
- Liability for debts, 4, 962
- Mortgage by husband and wife void as to wife—binding as to husband's curtesy initiate, 4, 962
- Not a vested right, 4, 963
- Sale, 4, 962

- Death of wife, 4, 962

- Definition, 4, 958

- Determinable fees, 4, 964

Effect of Separate Property Acts on Husband's, 4, 967; 22, 57

See SEPARATE PROPERTY OF MARRIED WOMEN.

Curtesy at time of devise, 22, 57

Curtesy defeated by conveyance, 22, 57

Examples, 22, 57, 58

If wife dies intestate, 22, 57

Executory Interests, 20, 965

Birth of children who would have inherited estate, 20, 966

Examples, 20, 965, 966

Where limitation is by way of use or devise, 20, 967

Where the particular estate is defeated, 20, 965

Whether limitation is conveyance at common law, 20, 967

How Barred, 4, 966

Alienation, 4, 968

Antenuptial agreement, 4, 966

Conditions contained in deed conveying property, 4, 966

Divorce a vinculo, 4, 966

Insurable interests, 11, 316

In What Property Curtesy Exists, 4, 964

Determinable fees, 4, 964

Equitable estates, 4, 965

In reversion, 6, 896; 21, 348

Personal estate, 4, 964

Real estate, 4, 964

Remainders and executory interests, 4, 961; 20, 965

Wife's separate estate, 4, 965

Limitation of action, 14, 657

Marriage, 4, 959

Marriage of insane person, 11, 141

Married women acts, 4, 967; 22, 57

Mechanics' liens, 15, 168

Medical jurisprudence, 15, 216

Mortgages

Redemption, 20, 619

Parcenary, 17, 316

Requisites at Common Law, 4, 958

Birth of child, 4, 961

Death of wife, 4, 962

Marriage, 4, 959

Seisin, 4, 959

Reversion, 6, 896; 21, 348

Seisin, 4, 959

Actual, 4, 959

At what time during coverture wife must be seised of property, 4, 959

Departure from the requirement of seisin in fact, 4, 960

Necessity of, in wife, 4, 959

Possession of lessee, 4, 960

Remainders, 4, 961

Where wife takes as heir or devisee, 4, 960

Where wife takes by conveyance, 4, 960

Wild or waste lands, 4, 960

Statute of limitations, 4, 966

Statutes regulating, 4, 966

Supplementary proceedings, 24, 642

Waste, 28, 894

Assignee of a tenant by the curtesy, 28, 913

Whether husband's curtesy is barred by conveyance of wife under married women's act, 5, 429

- Whether vested rights, 3, 759
 Wife's separate estate, 4, 965, 967
- CURTILAGE**, 1, 768; 4, 968
- CURVE**, 4, 969
- CUSTODIAN**
- CUSTODY**, 4, 969
Property in custodia legis, see **COURTS**.
 Of the law, 4, 969
- CUSTOM**, 4, 969
See USAGES AND CUSTOMS.
 Borough-English, 2, 480
 Distinguished from prescription, 19, 10
 Judicial notice, 12, 164
 Taxation, 25, 16
 Trespass, 26, 590
- CUSTOMARY**, 3, 149; 4, 969
- CUSTOM DUTIES**, see **REVENUE LAWS**.
- CUSTOMER**, 4, 970
- CUSTOM HOUSE**
See REVENUE LAWS.
Stoppage in Transitu
 Entry of goods in custom house, 23, 918
- CUT**, 4, 970
 Cut distinguished from stab, 4, 870
 Cut down, 4, 970
 Cut glass, 8, 1356
 Cut off, 4, 970
- CY-PRES**, 11, 891
See CHARITIES.
 Definition, 3, 133
Remainders, 20, 866, 879
 Remainders under cy-pres doctrine in case of an intended perpetual succession of life estates, 20, 867
 Remainders under cy-pres doctrine where real estate is devised to children of unborn child, 20, 866
 Remainder under cy-pres doctrine, where the word son or child, in a devise of an estate in remainder, is construed as a word of limitation, 20, 867
- DAILY**, 4, 970
- DAM**, 4, 971
See FISHWAYS.
Right to take ice, see **ICE COMPANIES**.
- Abatement**
 When party injured by dam may abate, 4, 986
 Care in constructing, 4, 979
 Definition, 4, 97
 Eminent domain, 6, 539
 Extinguishment of right to flow or overflow water, 4, 983
 Flash-boards as part of dams, 4, 971
 Flooding neighbor's lands, 4, 978, 979, 984, 987; 8, 68; 12, 614; 15, 488; 28, 959
- Floods**
 Duty of owners of dams, 8, 69
 Grant of right to overflow land above or below, 4, 983
 Impeding the passage of fish, 8, 34
 Injunction against erection, 4, 977
 Liability for flood by one who collects water on his property, 8, 67; 12, 614
- Liability for ordinarily recurring freshets, 8, 69
 Liability of joint owners to repair, 4, 980
- Liability of Owner**
 Care in constructing, 4, 979
- Liability of Person Erecting**, 4, 978, 979; 8, 67, 68
 Backing water upon land, 4, 978, 979, 984, 987; 8, 68; 15, 488; 28, 959
 Creating a stagnant pool, 4, 978
 Flooding lower land, 4, 979
 Flowing back water on a mill above, 4, 978
 Injuries to mining claim, 4, 979
 Ordinary height of water, 4, 978
 Percolation, 4, 979
 Responsibility for injury caused by, 4, 977
- Measure of prescriptive right, 4, 984
- Mill Acts**
 Actions in general, 15, 491
 Allegations, 15, 491
 As bar to actions, 4, 987
 Assessing damages, 15, 488, 492
 Change of remedy by, 15, 488
 Common-law remedy taken away, 15, 490
 Complaint or petition, 15, 491
 Construction, 15, 490
 Defenses, 15, 491
 Detention of water, 15, 498
 Diversion of water, 15, 498
 Effect of remedies, 15, 490
 Eminent domain, 15, 488
 Evidence, 15, 491
 Examples of statutes, 15, 489
 Finality of judgment, 15, 492
 Height of mill dam, 15, 490
 History of enactment, 15, 488
 Injuries by mill owners, 15, 498
 Injuries to mill owners, 15, 498
 Injury from dams, 15, 488
 Injury to land from overflow, 15, 488
 Issues, 15, 491
 Judgment, 15, 491
 Judgment for damages, 15, 492
 Kind of mills to which acts apply, 15, 488
 Lawful and authorized flowage, 15, 491
 Prevalence of general mill acts, 15, 488
 Proceedings, 15, 491
 Proof, 15, 491
 Questions of law and fact, 15, 491
 Remedies under the act, 15, 491
 Review of proceedings, 15, 492
 Validity of acts, 15, 488
 Verdict, 15, 491
 Waiver of estoppel, 15, 492
 Where common-law remedy allowed, 15, 491
 Whether remedy cumulative, 15, 490
 Who are occupants, 15, 490
 Who are owners, 15, 489
 Who are subject to provisions, 15, 489
 Who may claim benefit of act, 15, 489

DAM—*Cont'd***Mill Owner's Duties as to Use of Water,** 15, 497

Mill owners having mutual interest in dam, 15, 497

Notice to mill owner below, 15, 497

Mill Owner's Right to Erect, 15, 496

Examples, 15, 496

Extent of detention, 15, 496

Period of drought, 15, 497

Mill Owner's Right to Use Water, 15, 496, 497

Reasonable use, 15, 497

Prescription

Loss of prescriptive right to overflow lands of another, 4, 985

Rights acquired by, 4, 984

Right to detain water, 4, 981

Right to exclusive use of water, 4, 982

Right to overflow lands, 4, 984

Prescriptive right to use water, 4, 981

Remedy of Persons Injured by, 4, 985

Abatement, 4, 985

Damages, 4, 986

Measure of damages, 4, 988

Mill owner's remedy for injuries sustained, 4, 988; 15, 491

What admissible as evidence, 4, 987

When owner of dam entitled to nominal damages, 4, 987

When party injured may abate, 4, 986

Where action may be maintained, 4, 988

Who may bring suit, 4, 986

Right acquired by grant, 4, 983

Right acquired by occupancy, 4, 982

Right of pond owner to erect, 12, 629

Right to Erect, 4, 971

By statute, 4, 972

Dam over navigable stream granted by statute, 4, 974

In Alabama, 4, 972

In Connecticut, 4, 973

In Maine, 4, 974

In Massachusetts, 4, 973

In Michigan, 4, 975

In New York, 4, 975

In Pennsylvania, 4, 975

In Vermont, 4, 973

On navigable stream, 4, 971, 974

Power of congress, 4, 976

State statutes, 4, 973, 974

Statutory right to erect no protection for injuries to private owner, 4, 976

When party owns but one side of stream, 4, 972

Right to ice, 15, 496

Right to Overflow Lands, 4, 978, 979, 987; 8, 68; 15, 488; 28, 959

Acquired by prescription, 4, 984

Right to use water, 4, 980

Riparian Rights, 28, 957

Backing of water, 4, 978, 979, 984, 987; 8, 68; 15, 488; 28, 959

Examples, 28, 957-963

Extraordinary flow, 28, 961

Intention to operate machinery requiring more than usual flow, 28, 958

Liability of dam owner, 28, 959-962

Operation of machinery, 28, 958

Purposes for which water is accumulated, 28, 957

Stagnant waters, 28, 960

Unusual rise of water, 28, 961

Withdrawing from another the use of waters, 28, 958

Statute of frauds, 4, 983; 8, 667

Statute relating to, 4, 976

What is a reasonable detention of water 4, 980

DAMAGE FEASANT, see ESTRAYS.**DAMAGES,** 4, 989; 5, 1

See ACTIONS; BREACH OF PROMISE OF MARRIAGE; CIVIL DAMAGE ACT; DEMURRAGE; EMINENT DOMAIN; EXEMPLARY DAMAGES; LIBEL AND SLANDER; LIQUIDATED DAMAGES; MALPRACTICE; NAVIGATION; RE-EXCHANGE.

As to apportionment of damages in contributory negligence cases, see CONTRIBUTORY NEGLIGENCE.

As to damages for taking under eminent domain, see EMINENT DOMAIN.

Damages from the sale of intoxicants, see CIVIL DAMAGE ACTS.

Forcible entry and detainer, see FORCIBLE ENTRY AND DETAINER.

For infringements of patents, see PATENTS.

For measure of damages in actions against carriers of goods, see CARRIERS OF GOODS.

For remittitur, see NEW TRIAL.

In action for assault, see ASSAULT.

Injunction bond, see INJUNCTIONS.

Malicious Prosecution, see MALICIOUS PROSECUTION.

Measure of damages, see MEASURE OF DAMAGES.

Mental Anguish**Telegraphs and Telephones**

As to recovery of damages for failure to send message, see TELEGRAPHS AND TELEPHONES.

Mitigation of damages, see MITIGATION OF DAMAGES.

New Trial

For excessive or inadequate damages, see NEW TRIAL.

Penalty, see LIQUIDATED DAMAGES.

Telegraphs and Telephones, see TELEGRAPHS AND TELEPHONES.

Trespass, see TRESPASS.

Verdict, see VERDICT.

Admission of part of claim, 5, 62

And claim, 3, 274

Animals

For injuries by, 1, 583

Assessment of, 5, 63

By court, 5, 496²

By court with assent of plaintiff, 5, 63

By court without writ of inquiry, 5, 63

Vol. I.

- Effect of default, 5, 63
- Evidence in mitigation, 5, 63
- Right of trial by jury, 3, 723
- Writ of inquiry, 5, 63
- Breach of Contract**, 5, 21
 - Circumstances made known at time of making contract, 5, 15
 - Damages arising out of peculiar circumstances, 5, 14
 - Damages naturally arising from breach of contract, 5, 13
 - Presumption that parties contemplated usual and natural consequences, 5, 13
 - Rules determining, 5, 13
 - Special circumstances known to defendant, 5, 15
 - Storing fruit, 5, 13
 - Where vendor knows that vendee has contract to resell, 5, 15
- Breach of promise of marriage, 5, 21
- Consequential, 5, 6
- Corporation's liability for willful or reckless torts, 5, 12
- Criminal conversation, 9, 835
- "Damages" in an appeal bond, 2, 466
- Damnum Absque Injuria**, 5, 3, 68; 16, 256; 26, 449
 - Effect of prohibitory laws upon brewery and distillery property, 5, 70
 - Fires, 5, 70
 - Injuries committed through necessity, 5, 69
 - Pollution of stream by water from coal mine, 5, 70
 - Riparian rights, 5, 70
 - Use of one's own property, 5, 69
- "Debt or damages," 5, 158
- Definition, 5, 2; 7, 448
- Double and Treble**, 5, 62
 - Directing judgment to be entered for an increased amount, 5, 62
 - Double judgment act of Missouri, 5, 63
 - Recovery of double damages for killing stock, 5, 63
- Entry, writ of, 6, 654
- Equitable jurisdiction, 6, 693
- Evidence**, 5, 64
 - Evidence that deceased had policies of insurance on his life, 5, 67
 - In action for breach of contract for sale, 5, 64
 - In action for breach of promise of marriage, 5, 64
 - In actions for death by wrongful act, 5, 67
 - In actions for personal injuries, 5, 65
 - In actions for torts, 5, 65
 - Medical expenses, 5, 68
 - Mental sufferings, 5, 66
 - Pecuniary circumstances of parties, 5, 65
 - Pecuniary circumstances of survivors, 5, 67
 - Physical examination of defendant, 5, 67
- Exemplary*, see EXEMPLARY.
- For Breach of Contract**
 - Of charter party, 3, 154
- General principles, 5, 2
- Hadley v. Baxendale*, 5, 13
- In action of debt, 5, 166
- Inconveniences, 5, 2
- Increasing damages on appeal, 5, 62
- In Ejectment**, 6, 217
 - In Alabama, 6, 217
 - In Arkansas, 6, 217
 - In Colorado, 6, 217
 - In Georgia, 6, 217
 - In Illinois, 6, 217
 - In Indiana, 6, 217
 - In Iowa, 6, 217
 - In Kentucky, 6, 217
 - In Maine, 6, 217
 - In Maryland, 6, 217
 - In Massachusetts, 6, 217
 - In Michigan, 6, 217
 - In Minnesota, 6, 217
 - In Mississippi, 6, 218
 - In Missouri, 6, 218
 - In Nebraska, 6, 218
 - In New Jersey, 6, 218
 - In New York, 6, 218
 - In Oregon, 6, 218
 - In Pennsylvania, 6, 218
 - In South Carolina, 6, 218
 - In Tennessee, 6, 218
 - In Texas, 6, 218
 - In Vermont, 6, 218
 - In Virginia, 6, 218
 - In West Virginia, 6, 218
- Injuria sine damno*, 5, 3
- Injury resulting in benefit, 5, 4
- Invasion of right, 5, 4
- Judgment, 5, 54
- Judgment for action of debt, 5, 177
- Lateral and subjacent support, 12, 939
- Legislature's right to fix amount of damages, 18, 759
- Liquidated damages*, see LIQUIDATED DAMAGES.
- Logs and lumber, 13, 1026
- Loss, 13, 1052
- Mental Sufferings**, 5, 42, 66
 - See TELEGRAPHS AND TELEPHONES.
 - Expulsion from train, 19, 910
 - Mortuary tables, 15, 882
- Nominal**, 5, 4
 - Action to try title to land, 5, 4
 - Instances, 5, 4
 - Public offices, 5, 4
- Pleading**
 - Allegation of special employment at time of injury, 5, 41
 - Demand for damages under code system, 5, 49
 - Effect of the ad damnum, 5, 53
 - Injuries by domestic animals, 5, 53
 - Itemizing damages, 5, 52
 - Matter of aggravation, 5, 52
 - No recovery of excess of sum alleged in complaint and declaration, 5, 53
 - Profits as distinguished from rent, 5, 51

DAMAGES—Cont'd**Pleading—Cont'd**

Recovery under general allegation, 5, 49

Referring to statute under which a penalty is claimed, 5, 53

Statutory damages, 5, 53

Traversing matter of aggravation, 5, 52

What Must Be Specially Alleged, 5, 50

Earnings of plaintiff, 5, 52

Illustrations, 5, 50

In action for breach of agreement to convey real estate, 5, 51

Loss of business, 5, 51

Rent, 5, 51

Special damages, 5, 50

Police Powers

Legislature's right to fix amount of recovery, 18, 759

Prospective, 5, 16

Nuisances, acts wrongful only when causing damage, 5, 16

Permanent injuries, not result of trespass, 5, 20

Trespass resulting in continuing nuisances, 5, 17

Trespass to realty, 5, 16

Railroads

Baggage, 19, 918

Measure of, in the Case of Injury, 19, 942, 945

Exemplary damages, 19, 943

Insurance as affecting damages, 19, 944

Loss of society, 19, 943

Pecuniary damages, 19, 942

"Pecuniary" liberally construed, 19, 944

Plaintiff's inheritance as affecting damages, 19, 944

Willful neglect, 19, 944

Nuisances, 19, 922

Receivers of Railroads

Priority of claims for damages for injury to person or property, 20, 412

Remote damages, 20, 975

Remoteness, 5, 5

Breach of contract, 5, 13

Consequential damages, 5, 5

Efficient cause, 5, 9

Extraordinary consequences, 5, 10

Highway accidents, 5, 9

Immediate damages, 5, 5

Instances, 5, 6

Intervention of other causes between act of defendant and injury, 5, 9

Natural consequence for breach of contract, 5, 13

Natural consequences, 5, 5

Negligent labeling of a poison as harmless by druggist, 5, 8

Plaintiff's act which results from defendant's fault, cause of injury, 5, 11

Plaintiff's own act, 5, 11

Torts not malicious, 5, 6

True cause, 5, 10

Unforeseen consequences, 5, 8

Waters, 5, 7

Willful, reckless or malicious torts, 5, 11

Replevin, 20, 1120

Action on Replevin Bond, 20, 1145

Costs, 20, 1146

Costs of original suit, 20, 1147

Damages actually sustained, 20, 1145

Evidence of damages, 20, 1146

Failure to prosecute, 20, 1146

Nominal damages, 20, 1146

Plaintiff estopped from denying value recited in bond, 20, 1147

Recitals in bond as to value of property, 20, 1146

Return of property, 20, 1146

Review of judgment, 20, 1146

Sureties in court, 20, 1147

Use of property, 20, 1145, 1146

Value of property fixed by judgment, 20, 1147

Action sounds in damages, 20, 1120

At what time value should be found, 20, 1128

Damages for detention, 20, 1121, 1123

Damages for seizure, 20, 1123

Decrease in value of property, 20, 1128, 1129

Detention, 20, 1126, 1127

Detention of property, 20, 1124

Enhanced value, 20, 1129

Excessive damages, 20, 1120

Exemplary damages to defendant, 20, 1128

Full value for property with damages for detention, 20, 1124

Greater damages than claimed by answer, 20, 1120

Greater damages than prayed for in petition, 20, 1120

How value of use estimated, 20, 1126

Interest and damages in gross, 20, 1129

Interest on value of property, 20, 1127

Market value, 20, 1122

Measure of damages, 20, 1122

Papers, 20, 1125

Part of goods belonging to defendant and part to plaintiff, 20, 1124

Party recovering having special property in goods, 20, 1124

Party recovering, is owner, 20, 1124

Property in execution, 20, 1124

Speculative property, 20, 1127

Use in absence of fraud or negligence, 20, 1126

Uses of the property, 20, 1126

Value at time of trial, 20, 1122

Value at time property was taken, 20, 1128

Value of property, 20, 1122

Value where taking was wrongful, 20, 1129

Where delivery to plaintiff is impossible, 20, 1124

Where goods have increased in value, 20, 1129

- Special**
 - Pleading, 5, 50
 - Substantial, 5, 5
 - Violation of right, 5, 2
- DAMNUM ABSQUE INJURIA**, 5, 3, 68, 70
 - Collision, 16, 256
 - Injuries through necessity, 5, 69
 - Trade-marks, 26, 449
 - Trespass, 26, 577
 - Use of one's own property, 5, 69
- DANCING**, 5, 76
 - Theaters, 25, 1031
- DANGER**, 5, 76
 - "Dangers of navigation," 3, 148
 - Dangers of the roads, 2, 233
 - "Dangers of the sea," 3, 148
 - Exposed to danger, 7, 533
 - Imminent danger, 9, 596, 933
 - Real danger, 19, 971
- DANGEROUS**, 5, 76
 - Dangerous business, 5, 76
 - Dangerous Weapon**, 29, 35
 - See* ASSAULT.
 - Police power, 18, 758
 - Within postal laws, 18, 864
- DANSEUSE**, 5, 76
 - Seconde premiere danseuse, 5, 76
- DASH**, 5, 76
- DATE**, 5, 77
 - See* TIME, COMPUTATION OF.
 - Acknowledgment, omissions in, 1, 153
 - Alteration of, 5, 78
 - Contracting by parol, 5, 79
 - Copy of indictment, 10, 482
 - Definition, 5, 77
 - Dissolution of Partnership**
 - Insanity, 17, 1094
 - Partnership at will, 17, 1103
 - Partnership dissolvable upon notice, 17, 1103
 - Partnership for a fixed term, 17, 1102
 - Power of court, 17, 1095
 - Evidence, 5, 78
 - Forgery**, 8, 472
 - Antedating deed, 8, 472
 - Executing deed with false date, 8, 472
 - Filling blank in executed agreement, 8, 472
 - Materiality, 8, 521
 - Use of false date, 8, 472
 - Hearsay evidence, 9, 330
 - How proven, 5, 80
 - Impossible and inconsistent, 5, 80
 - Lease**, 12, 981
 - Mistake in date, 12, 981
 - Time of commencement, 12, 981
 - When no date is fixed, 12, 985
 - Where no date is specified, 12, 981
 - Letters, 13, 263
 - Municipal security, 15, 1230
 - Notice by publication, 16, 816, 824
 - Presumptions, 5, 78
 - Presumptions arising from, 5, 78
 - Presumptions as to date, 7, 89
 - Presumptions of correctness, 19, 50
 - Questions of law and fact, 19, 636
 - Rebutting presumption arising from, 5, 79
 - Reformation of instruments, 15, 661
 - Return of service of process, 22, 180
 - Service of Process**
 - Amendment, 22, 202
 - Summons, 24, 523
 - Suretyship**
 - Discharge of surety by change in date, 24, 840
 - When necessary, 5, 77
- DAUGHTER**, 5, 80
- DAY**, 5, 81, 545
 - See* TIME, COMPUTATION OF; LAY DAYS; SUNDAY.
 - Fractions of a day, *see* TIME, COMPUTATION OF.
 - Clear day, 3, 282; 26, 7
 - Commencement of day, 5, 547
 - Day next appointed, 16, 702
 - Definition, 5, 81
 - Dies Non Juridicus**, 5, 85, 667
 - See* SUNDAY.
 - Arbitration and award, 5, 86
 - Attachment, 5, 86
 - Criminal process, 5, 87
 - Demand, 5, 85
 - Injunction, 5, 87
 - Judgments, 5, 85, 87
 - Judicial acts, 5, 85
 - Ministerial acts, 5, 85
 - Notice, 5, 85
 - Omission in computation of time, 5, 88
 - Recognition, 5, 87
 - Referee's announcement, 5, 87
 - Returns made upon, 5, 85
 - Summons, 5, 86
 - Trial of a case, 5, 87
 - Upon civil process, 5, 86
 - Verdict, 5, 86
 - What acts may be performed, 5, 85
 - When day of performance falls upon Sunday, 5, 89
 - Writ of inquiry, 5, 86
 - Writs, 5, 85
 - First day, 8, 21
 - For this day and train only, 8, 93.
 - How Reckoned**
 - From day, or from day of date, 5, 82
 - Lying days, 13, 626
 - Natural or artificial, 5, 81
 - Rainy, 5, 544
 - Running, 5, 544
 - Term of court as one day, 5, 91
 - Twenty-eighth and twenty-ninth of February, during leap year, 5, 91
 - Usages and customs, 27, 817
 - "Working," 3, 149; 26, 11
- DAYS OF GRACE**, 2, 316; 3, 593; 5, 92, 528⁶⁶; 27, 866
 - See* BILLS AND NOTES.
 - Action does not lie until last, 5, 534
 - Bank checks, 5, 528⁷⁰
 - Bill due on last day, 5, 528⁷⁸
 - Bill of exchange on bank, 5, 528⁷⁸
 - Bill or note falling due on Sunday, 5, 528⁶⁵; 26, 13

DAYS OF GRACE—Cont'd

- Checks, 2, 398
- Common-law right, 2, 397
- Computation of time— Sunday, 5, 528z⁶⁵, 528z⁶⁷; 26, 13
- Coupons, 4, 434
- Custom of
 - Bank, part of contract, 5, 528z⁷¹
 - District of Columbia, 5, 528z⁷¹
- Custom to demand on fourth day, 5, 528z⁶⁶
- Demand notes, 2, 398
- Demand on day of payment but notice of dishonor not sent until third day of grace, 5, 528z⁶⁷
- Demand to be on last day, 5, 528z⁶⁸
- In California, 5, 528z⁷⁰
- In Georgia, 5, 528z⁷⁰
- In Iowa, 5, 528z⁷⁰
- In Louisiana, 5, 528z⁷⁰
- In New York, 5, 528z⁷⁰
- Inland bill, 2, 398; 5, 528z⁷⁸
- Judicial notice of, 2, 110, 111
- Judicial notice of usage, 5, 528z⁷¹
- Last Day of Grace**
 - Holiday, 5, 528z⁶⁵
 - Sunday, 5, 528z⁶⁷; 26, 13
- Lex Loci Solutionis**
 - Determining, governing, 2, 331
- Local usage, 5, 528z⁷¹
- Non-Negotiable**
 - Notes, 2, 398
 - Paper, 5, 528z⁷⁰
- Notes Payable**
 - At specified time but no specified place, 5, 528z⁶⁹
 - At twelve months, 2, 398
 - On certain day, 2, 398
 - On demand, 2, 327; 5, 528z⁶⁰
- Notice of Dishonor**
 - On third day, 5, 528z⁶⁸
 - When Saturday is last day, 5, 528z⁶⁸
- Presumption as to, 5, 528z⁷⁹
- Presumption**
 - That three days are allowed, 2, 397
- Promissory notes, 2, 398
- Regulated by the place of payment, 2, 397
- Sight bills, 2, 398
- Special custom as to, 2, 398
- Statutory provisions, 5, 528z⁷⁰
- Stipulations waiving, 5, 528z⁷²
- Sunday, 5, 528z⁶⁵, 528z⁶⁷; 26, 13
- Upon what bills of exchange allowed, 2, 398
- Usage of Banks**, 5, 528z⁶⁶, 528z⁷⁸; 27, 866
 - Examples, 27, 866–868
 - In District of Columbia, 27, 866
 - What laws regulated by, 5, 528z⁷⁰
 - What not entitled to, 5, 528z⁷⁰
 - What Notes Entitled to**, 5, 528z⁶⁹
 - In Massachusetts, 5, 528z⁶⁹
 - Ohio doctrine, 5, 528z⁶⁹
 - When allowed, 5, 528z⁷⁸
 - When excluded, 2, 398
 - Who entitled to, 5, 528z⁶⁶

DAYTIME, 5, 92**DEAD**, 5, 114

Freight, 5, 114

Live and dead stock, 5, 114

DEAD ANIMALS, 5, 114**DEAD BODY**, 5, 115*Burial*, see **EXECUTORS AND ADMINISTRATORS**.

As property, 3, 51

Body snatching, 5, 117

Burial rights, 3, 166

Burying person who has died a violent death before coroner sat upon body, 5, 118

Decent interment must be provided, 3, 52

Digging up disused burial ground, 5, 119

Duty of husband or wife to bury deceased consort, 3, 52

Executors and administrators, see **EXECUTORS AND ADMINISTRATORS**.

Husband's liability for expense of burial of wife, 5, 116

Husband's right of duty as to burial of his wife, 5, 116

Husband's right to remove corpse of wife, 3, 52

Next of kin, 5, 115

Parent's duty to bury deceased child, 3, 52

Preventing interment as an indictable offense, 5, 118

Property in, 3, 166; 5, 115

Removal of body, 5, 116

Replevin for coffin and its contents, 3, 52

Right of burial controlled by wish of deceased, 3, 52

Right of disposition as between widow and son, 5, 115

Right to Remove Corpse

Consent of proper authorities, 3, 53

Son's right to remove corpse of parent, 3, 53

Stealing shroud or apparel, 5, 118

Taking clothes from, 3, 286

Violating sepulture, 5, 117

Widow's right to remove husband's body, 3, 53

DEAD PROPERTY

Inns and innkeepers, 11, 68

DEADLY WEAPON, 9, 547; 29, 33*Assault with*, see **ASSAULT**.

Manslaughter, 9, 587

Presumption of malice from use of, 9, 545

What constitutes, 9, 547

DEAF AND DUMB PERSONS, 5, 119See **INTERPRETER**.*As to their testamentary capacity*, see **TESTAMENTARY CAPACITY**.*Competency as to witnesses*, see **WITNESSES**.

Capacity of grantor, 9, 24

Capacity to commit crime, 4, 694

Civil capacity, 5, 120

Criminal Law

Deaf and dumb person's responsibility question for jury, 5, 120

- Responsibility for crime of deaf and dumb persons, 5, 120
- Deafness**
Contributory negligence, 4, 79
Distinguished from idiots, 4, 694; 5, 119; 9, 728
Lease, 12, 993
May lawfully intermarry, 5, 120
Mute, 16, 2
Presumption of sanity, 4, 694; 5, 119; 9, 728
- Streets and Sidewalks**
Actions for injury to, 24, 103
Whether idiots, 4, 694; 5, 119; 9, 728
Whether qualified voters, 6, 270
- DEAL**, 5, 122
- DEALER**, 5, 122; 25, 488
Butcher, 5, 123
Farmer, 5, 123
- DEALER'S TALK**, see **WARRANTY**.
- DEALINGS**
Mutual dealings, 16, 16
- DEAN**
Dean and chapter, 3, 110
- DEAR**, 5, 124
- DEATH**, 5, 125
See **CONCEALMENT OF BIRTH OF CHILD**;
DEAD BODY; **DEBTS OF DECEASED**;
MASTER AND SERVANT; **PEDIGREE**.
Suretyship, see **SURETYSHIP**.
As to the substitution of parties in an action, see **ABATEMENT**; **PARTIES TO ACTIONS**.
Partnership, see **PARTNERSHIP**.
- Abatement**, 7, 413
As to revival, see **BILLS OF REVIVAL**;
SCIRE FACIAS.
- Actions ex Contractu**, 7, 262
Action for breach of promise of marriage, 7, 263
Action founded upon personal suffering of deceased, 7, 262
Actions of account, 7, 262
Actions of a personal nature, 7, 262
Choses in action assigned, 7, 263
Choses in action of a bankrupt, 7, 263
Choses in action of a corporation sole, 7, 263
Contract between master and servant, 7, 262
Damage to personal estate, 7, 263
Exclusive right of personal representative, 7, 262
General rule as to actions ex contractu, 7, 262
Interests of deceased several, though the words of contract were joint, 7, 263
Joint interest in choses in action, 7, 263
Promise made to deceased for benefit of third party, 7, 264
- Real Covenants**, 7, 264
Collateral covenants, 7, 264
Covenant broken in lifetime of deceased, 7, 264
- Covenants which run with land, 7, 264
Where there was substantially damages to estate of deceased, 7, 264
- Actions ex Delicto**, 7, 265
Action against sheriff for escape, 7, 266
Action for criminal conversation, 7, 267
Action for seduction, 7, 267
Actions founded upon personal injury, 7, 265
Alterations, 7, 266
Assault and battery, 7, 265
At common law, 7, 265
Deceit, 7, 265
Detinue, 7, 266
Diverting water courses, 7, 266
Ejectment, 7, 266
False imprisonment, 7, 265
In Massachusetts, 7, 266
Injury sustained by defective highways, 7, 267
Injury to real estate, 7, 267
Libel, 7, 265
Malicious prosecution, 7, 265
Obstructing lights, 7, 266
Replevin, 7, 266
Slander, 7, 265
Statutes as to injuries to real estate, 7, 267
Statutory, 7, 267
Trespass, 7, 265
Trespass quare clausum fregit, 7, 266
Trover, 7, 265
Waste, 7, 266
Where there is injury to personal estate of decedent, 7, 265
Wrong to the freehold, 7, 266
- Administrators de bonis non**, 7, 416
Attachment, 7, 416
Death after execution sued out, 7, 417
Death between interlocutory and final judgment, 7, 415
Death between judgment and execution, 7, 414
Death between verdict and judgment, 7, 414
Death of executor or administrator pending suit, 7, 415
Death of sole plaintiff, 7, 413
Effect of death upon an award, 7, 417
In Alabama, 7, 413
In England, 7, 414
In equity, 7, 418
In Iowa, 7, 413
In Massachusetts, 7, 414
In New Hampshire, 7, 413
In Pennsylvania, 7, 414
In Tennessee, 7, 414
Judgment nunc pro tunc, 7, 414
Motion to revive, 7, 413
- Of Action and Rights of Action**, 7, 334, 477
Actio personalis moritur cum persona, 7, 477

DEATH—Cont'd**Abatement—Cont'd****Of Action and Rights of Action—Cont'd**

- Civil damage acts, 7, 479
- Death of partner, 17, 1173
- Executors and administrators, 7, 477
- Exemplary damages, 7, 477
- Meaning of the maxim, 7, 477
- Replevin, 7, 478
- Statutory modifications, 7, 478
- Trover, 7, 478
- What is meant by personal action, 7, 477

Of a Suit in Equity

- By death of party, 2, 270
- Statutes providing there shall be no abatement, 7, 413
- Warrant of attorney to confess judgment, 7, 417; 28, 694
- Writs of error, 7, 418

Action for, 5, 125; 7, 268

- At common law, 5, 125; 7, 268
- Beneficiary as witness, 29, 746
- By what law governed, 5, 127

Competency of Defendant as Witness, 29, 746

- Action given directly to beneficiary, 29, 746
- Stockholders and officers, 29, 746
- Where defendant is a corporation, 29, 746

- Constitutionality of statutes, 5, 125
- Construction of statutes giving actions for, 23, 401

Contributory negligence of decedent, 4, 81**Damages, Measure of, 5, 46, 128; 17, 390; 19, 942**

- Damages recovered from debts of decedents exempted from liability, 7, 269
- Death of minor child, 5, 46, 129
- Examples, 19, 942-945
- Exemplary damages, 19, 943
- Fact that plaintiffs were not dependent upon deceased, 5, 46
- Feelings of survivors, 5, 45; 7, 269
- In general, 19, 942
- Instructions to jury, 5, 129
- Insurance as affecting damages, 5, 46; 19, 944
- Loss of intellectual and moral training, 5, 45
- Loss of society, 19, 943
- Necessity that survivor have legal claim upon deceased, 5, 46; 7, 268
- Pain and suffering of deceased, 5, 45
- Pecuniary loss suffered by parties, 5, 46, 128; 7, 268; 19, 942
- Personal character of decedent, 5, 129
- "Pecuniary" liberally construed, 19, 944
- Plaintiff's inheritance as affecting damages, 19, 944
- Solatum for injury to feelings, 5, 46; 7, 269

Subsequent marriage of widow, 5, 46

- What should be considered in estimating damages, 5, 46
- Willful neglect, 19, 944
- Death of parent, 17, 390
- Debts of decedents, 7, 269

Defense

- Payment of insurance money, 24, 319
- Enforcing cause of action arising under statutes of one state in courts of another, 5, 128
- Evidence, 5, 67
- Evidence that deceased had policies upon his life, 5, 67
- Exemplary damages, 5, 130; 7, 479
- Exemption from liability for debts of deceased, 7, 269

Expectation of pecuniary benefit to parents from continuation of child's life, 5, 126**Extraterritorial force of statutes, 3, 508; 7, 269****Foreign corporation, 8, 379****Foreign Executors and Administrators 8, 425**

- Comity, 8, 426
- Necessity of taking out ancillary letters, 8, 426

Suit by, 8, 426**Insurance, 5, 46; 19, 944; 24, 319****Lord Campbell's act, 5, 125****Loss of life by a passenger on ship, 22, 769****Mental suffering, 5, 45; 7, 269****Necessity of evidence of specific pecuniary damage, 5, 126****Necessity of showing legal claim to support, 5, 46; 7, 268****"Next of kin," 16, 705****Parent's Action, 5, 126; 17, 387****At common law, 17, 387****Loss of service foundation of action 17, 388****Statutes, 17, 387, 388****Parties plaintiff, 16, 468, 469****Pecuniary circumstances of survivors 5, 67****Pecuniary damages, 5, 46, 128; 7, 268 19, 942****Probate****Claim of damages for death, 19, 161****Release by decease, 20, 764****Remedy by indictment, 7, 268****Right of personal representative to sue 5, 125; 7, 268****Statutory limit upon amount to be required, 5, 128****Statutory provisions, 5, 126; 7, 268 17, 387, 388****Subrogation, 24, 319****Examples, 24, 319****In general, 24, 319****Payment of insurance money as defense, 24, 319****Right of personal representative against other persons, 24, 319**

- Suit by personal representative, 5, 125;
7, 268
Who may bring action, 5, 125
Agency, effect of agent's death upon, 1,
446
Agency, effect of principal's death upon,
1, 446
Civil Death, 3, 273
Definition, 3, 273
Extraterritorial force of statutes re-
specting, 3, 516
Married women, 14, 595, 605, 670
Succession, 24, 362
Death by Own Hand, 12, 390
See **LIFE INSURANCE**.
Donee of power, 18, 960
Effect of death of an executor or admin-
istrator, see **EXECUTORS AND ADMIN-
ISTRATORS**.
Effect of executor's death before probate,
7, 191
Effect on action, see *infra*, **ABATEMENT**.
Effect on Contracts, 5, 136
Contract for services, 5, 138
Where contract can be executed by
personal representative, 5, 136
Where contract is of personal nature,
5, 136
Effect on writ of attachment, 5, 134
Effect upon agent's authority, see *infra*,
AGENCY.
Effect upon alimony, 1, 484
Effect upon Appeal
Of death of principal, 5, 135
Effect upon drawer of check, 5, 137
Effect upon partnership, see **PARTNER-
SHIP**.
Effect upon statute of limitations, 5, 136
Effect upon suretyship, see **SURETYSHIP**.
Excessive damages in action for, 5, 59
Execution, 7, 121
Death of defendant where execution is
not tested, 7, 122
Death of defendant where execution is
tested, 7, 122
Death of judgment creditor, 7, 122
Death of one of several defendants, 7,
122
Identity, 15, 231
See **IDENTITY**.
Age of person, 15, 232
Bones, 15, 231
Hair, 15, 231
Hands, 15, 231
Mutilated body, 15, 231
Sex, 15, 232
Stature, 15, 233
Teeth, 15, 231
Joinder of Parties, 17, 580
Death of co-defendant, 17, 580
Death of co-obligor, 17, 580
Judgment
Against deceased persons, 12, 86
Collateral attack, 12, 1474
Nunc pro tunc, 5, 135
Landlord and tenant, 12, 758b
Notice by publication, 16, 822
Of one of two or more parties jointly
liable, 5, 195
Of witness whose deposition is being
taken, 5, 599
Powers
Death of donee, 18, 985
Death of party whose consent is nec-
essary to execution, 18, 979
Presumption of death, see **PRESUMP-
TIONS**.
Presumption, 1, 37; 7, 97
After seven years' absence, 19, 46
As to Continuance of Life, 19, 74
Examples, 19, 74
Life insurance, 13, 658
Marriage, 14, 522
Proof of, 5, 140, 888
General family belief, 5, 140
General reputation in community, 5,
140
Grant of letters testamentary, 5, 140
Referees
Effect of death of party, 20, 688
Effect of death of referee, 20, 688
Revocation of proposal by death of pro-
poser, 3, 851
Signs of, 15, 258
Cadaveric lividity, 15, 260
Cadaveric rigidity, 15, 259
Cessation of circulation, 15, 258
Cessation of respiration, 15, 258
Filmy aspect of the eyes, 15, 258
Loss of animal heat, 15, 253
Mummification, 15, 261
Pallor of the body, 15, 258
Putrefaction, 15, 260
Saponification, 15, 260
Subscriptions, 24, 338
Substitution of Parties, 17, 628
Amendment of pleadings, 17, 629
Appeals, 17, 629
Assignees pendente lite, 17, 631
Feigned issues, 17, 630
Jurisdiction over substituted parties,
17, 629
Notice of substitution, 17, 630
Party dead at commencement of ac-
tion, 17, 628
Proof of right to substitution, 17, 631
Right lost by laches, 17, 629
Substitution must appear on record,
17, 628
Substitution of personal representa-
tive, 17, 628
Successors in public office, 17, 632
Successors in trust, 17, 631
When and when not compulsory, 17,
629
When substitution is necessary, 17,
628
Whether order of substitution is ap-
pealable, 17, 630
Who may be a substitute, 17, 630
Suits for negligence causing, 3, 521, 522
Warrant of Attorney
To confess judgment, 7, 417; 28, 694
Waterworks and water companies, 29, 23

DEATH BY WRONGFUL ACT, see DEATH.**DEBAUCH**, 5, 140

Habits, 5, 141

DE BENE ESSE, 5, 92

See BILL TO TAKE TESTIMONY DE BENE ESSE.

Evidence

In arbitration proceedings, 1, 682

DEBENTURE, 5, 141

Revenue laws, 5, 143

DEBT, 5, 143; 10, 279

See ASSIGNMENTS; DEBTOR AND CREDITOR; DUE; PAYMENT.

See INDEBTED.

As to debt, default, or miscarriage in the statute of frauds, see FRAUDS, STATUTE OF.*As to promises to answer for the debts of another*, see FRAUDS, STATUTE OF.*Assignment of*, see ASSIGNMENTS.*Extinguished by part payment*, see PAYMENT.*Interest*, see INTEREST.*On creditors*, see FRAUDULENT SALES.*Set-off*, see SET-OFF.

Active, 5, 163

All, 5, 157

Amount in controversy, 12, 285

Ancestral, 5, 163

Antecedent, 5, 163

Assignability of money not yet due, 1, 831

Between citizen and alien, 1, 465

Changes of advancements to, 1, 223

Charges, 3, 120

Consideration of, by grantee, 7, 20

Contract, 5, 158

Contracted, 5, 157

Damages or, 5, 158

Decedents

What are assets, 1, 825

Demand distinguished from, 5, 158, 526

Distinguished from alimony, 1, 482

Distinguished from duty, 5, 159

Distinguished from fine, 7, 993

Distinguished from indebtedness, 5, 144

Distinguished from liability, 5, 144, 159

Due, 5, 158, 164

Dues and demands, 5, 159

Floating, 8, 66

Forgiveness of, 8, 1321

Fraudulent, 5, 165

Hypothecary, 5, 165

In its comprehensive sense, 5, 143

In its most technical sense, 5, 143

Instruction, examples of, 11, 268-272

Just debt, 12, 383

Legacies and devises, 13, 16

Legal tender acts, 5, 147

Liquid, 5, 165

Meaning of the term in wills, 5, 155

Mutual debts, 16, 16

Necessity of word heirs in conveyance of fee simple, 6, 876

Ordinances, 17, 260

Owning, 5, 160

Priority, 1, 826

Priority of the United States, 2, 4660

Privileged, 5, 165

Record, 5, 160

Release, 20, 758

By one partner, 20, 759

Death of joint maker of note, 20, 761

Declared intention to release, 20, 758

Infant, 20, 760

Intention of parties, 20, 759

Joint creditors, 20, 759

Joint obligor discharged by operation of law, 20, 761

Judgment without satisfaction, 20, 761

Lien, 20, 758

Promise to look to one joint debtor for payment, 20, 760

Release of one of several joint debtors as release of all, 20, 759

Release of one partner, 20, 760

Where debtor surrenders all property, 20, 758

Whether release must be under seal, 20, 760

Right, debt, or duty, 21, 406

Right of one not a party to sue upon, 3, 866

Specialty, 5, 165

Specific Performance

Transfer of, 22, 1000

State, 5, 161

Statutes relating to estates of deceased persons, 5, 146

Statutory, 5, 165

Stock, 23, 589

Synonymous with duty, 6, 100

War, 11, 463

Whether action of debt lies upon agreement to pay a certain sum in bank notes, 4, 467

Whether included in effects, 6, 182

Whether it includes costs in a criminal case, 5, 149

Whether it includes liability in tort, 5, 149

Whether term includes a fine, 5, 152

Whether term includes taxes, 5, 148

Within bankrupt and insolvent laws, 5, 153

Within statutes abolishing imprisonment for debt, 5, 154

DEBT (ACTION OF), 5, 165, 174; 11, 992

See PAYMENT; PLEADING.

Action on recognizance, 5, 174

Against personal representative of the land, 7, 331

Assumpsit, 5, 166

Covenant and debt as concurrent remedies, 4, 464

Damages, 5, 166

Decedents, Debts of**Non-Claim**

Pledge, 18, 664

Decreets in equity to enforce, 5, 389

Definition, 5, 165

Election of Actions, 5, 176

Debt or covenant, 4, 466, 467; 5, 176

Executors and Administrators

Plea of plene administravit, 7, 392.

Traversing devastavit, 7, 392

General Issue, 5, 174; 18, 522, 523

After Hilary rules, 18, 523

Application of Hilary rules, 18, 524

At common law, 18, 523

Matter in confession and avoidance, 18, 523

Never indebted, 18, 523

On Specialty, 18, 524

After Hilary Rules, 18, 525

Debt on records, 18, 525

Debt on statutes, 18, 525

Effect of the rule, 18, 525

Provisions of the rule, 18, 525

At common law, 18, 524

Distinction between void and voidable, 18, 524

Effect of non est factum, 18, 525

Illegality, 18, 525

Instrument void in law, 18, 524

Non-execution, 18, 524

What must be specially pleaded, 18, 525

Scope, 18, 523

Statute of limitations, 18, 523

When applicable, 18, 523

Implied and express contracts, 11, 992

Joinder of Different Causes of Action, 11, 992

Implied and express contracts, 11, 992

Judgment and simple contract, 11, 992, 993

Several bonds, 11, 992

Special and separate contract, 11, 992

Joinder with assumpsit, 11, 994

Joinder with case, 11, 994

Joinder with detinue, 11, 995

Judgment, 5, 165, 177

For damages, 5, 177

General judgment for principal and interest, 5, 177

In an action to recover penalty, 5, 178

Local action, 1, 184*f*

Responsive to the writ, 5, 177

Sister states, 12, 148*u*

Where defendant files nil debet and two special pleas, 5, 178

Local or transitory, 1, 184*f*

Manner in which obligation was incurred, 5, 166

Nil Debet, 5, 174; 18, 522

See *infra*, GENERAL ISSUE.

Non assumpsit, 5, 175

Non est factum, 5, 175; 18, 522

Nul tiel record, 5, 175

On recognizance, 5, 167

Parties to Actions

Action upon bill or note, 5, 172

Penalties, 18, 274

Pleading

Declaration, 5, 173

Against administrator, 5, 173

Consideration, 5, 174

Joinder on debt of simple contract with debt on specialty, 5, 173

Omission of debet and detinet, 5, 174

Omission to allege a demand, 5, 173

Profect of the instrument, 5, 173

Showing sum due, 5, 173

Plea, 5, 174

The general issue, see *infra*, GENERAL ISSUE.

Nil debet to action on debt, 5, 174

Pledge

Presenting claim to representatives, 18, 664

Replevin

Replevin bond, 20, 1141, 1142

Replication, 5, 175

Several bonds, 11, 992

Special and separate contract, 11, 992

Statutes modifying or abolishing, 5, 166

Sum certain, 5, 165

Taxation, 25, 13, 312, 316

Collector in default, 25, 351

Variance, 5, 176

Verdict, 5, 178

Assessment of damages, 28, 303

When Action Lies, 5, 166, 173

Against executor to recover legacy, 5, 167

Against heir for debt of ancestor, 5, 173

Against sheriff, 5, 168

Against turnpike corporations for damages assessed, 5, 168

Award, 5, 167

Bills and notes, 5, 167

Bond conditioned for performance of money, 5, 168

Bonds conditioned for the payment of covenants, 5, 167, 168

By-laws and ordinances for fines, 5, 176

Charter-party, 5, 168

Collection of a tax, 5, 170

Corporations, 5, 167, 168

Decree of court of chancery, 5, 169

Fees, 5, 166

Goods sold, 5, 166

Injunction bond, 5, 168

Interest due on loan, 5, 166

Judgments, 5, 169

Open account, 5, 167

Penalties, 5, 170

Policies of insurance under seal, 5, 168

Promissory notes, 5, 172

Purchase-money of lands, 5, 167, 168

Recognizance of bail, 5, 169

Records, 5, 169

Rent, 5, 167, 168

Replevin bond, 5, 168

Sealed instrument, 5, 167, 168

Simple contract, 5, 166

Single bonds, 5, 168

Specialties, 5, 168

Statute merchant, 5, 169

Statutes, 5, 170

Use and occupation, 5, 166

Work and labor, 5, 166

When Action Will Not Lie

Agreement to pay in bank notes, 4, 467; 5, 171

DEBT (ACTION OF)—*Cont'd***When Action Will Not Lie**—*Cont'd*

Collateral promise to pay debt of another, 5, 171

Decree in chancery, 5, 171

Defendants, 5, 172

Installments, 5, 171

Mortgages, 5, 171

Parties to actions, 5, 171

Plaintiff, 5, 171

Promise to pay a debt in a commodity, 5, 170

Promise to pay a debt in a particular kind of money, 5, 170

Unliquidated damages, 5, 171

Where action grows out of a tort, 5, 171

DEBT—DEBTOR, see **DEBT**; **DEBTOR AND CREDITOR**; **DEBTS OF DECEDENTS**.**DEBTOR AND CREDITOR**, 5, 143, 161, 179

See **ACCORD AND SATISFACTION**; **BANKRUPTCY**; **COMMUNITY PROPERTY**; **COMPOSITIONS WITH CREDITORS**; **CONTRIBUTION**; **CREDITOR'S BILL**; **DEBT**; **EXONERATION**; **FRAUDULENT CONVEYANCES**; **FRAUDULENT DEBTOR**.

See generally, **ASSIGNMENT FOR BENEFIT OF CREDITORS**; **INSOLVENCY**.

See **MARRIAGE SETTLEMENTS**; **NOVATION**; **PAYMENT**; **RELEASE**; **SET-OFF**; **SUBROGATION**.

Accord and satisfaction as a discharge of duty, see **ACCORD AND SATISFACTION**.

Application of payments, see **PAYMENTS**.

As to fraudulent ante-nuptial settlements, see **MARRIAGE SETTLEMENTS**.

Collateral security, see **PLEDGE IN COLLATERAL SECURITY**.

Compositions with creditors as a discharge of debtor, see **COMPOSITION WITH CREDITORS**.

Discharge of debt by merger, see **MERGER**.

Marshaling, see **MARSHALING ASSETS**.

Novation, see **NOVATION**.

Advancements

Fraud, 10, 23

Transaction in fraud of creditors will not be considered as advancement, 10, 23

Alteration of instrument as a discharge of debtor, see **ALTERATION OF INSTRUMENT**.

Arrest, see **ARREST**.

Agreement not to sue, 5, 196

Assignment for Benefit of Creditor, 5, 179

See **ASSIGNMENTS FOR BENEFIT OF CREDITORS**.

Bill in Equity

By one creditor in behalf of all, 6, 736

Parties, 6, 749

Trust and trustees, 6, 749

Bona Fide Purchaser, 16, 828

Actual knowledge of prior unrecorded incumbrance, 16, 829

Attaching creditor, 16, 828

Between general creditors, 16, 830

Execution levied before assignment, 16, 830

Judgment creditor, 16, 828

Judgment preferred to prior equity, 16, 829

Lien creditor, 16, 831

Preferred creditor, 16, 830

Recording act, 16, 828

Transfer to one creditor whose equities are equal to another, 16, 830

Unrecorded mortgage, 16, 830

Vendor's lien, 16, 830

Who meant by creditor, 16, 828

Change of Joint and Separate Debts

Death of one of two or more parties jointly liable, 5, 195

Creation of the Relation, 5, 180

Agreement for the benefit of a third party, 5, 180

Assignment of an existing demand, 5, 180

Services to another without his consent, 5, 180

Debtor's Right to Receipt, 19, 1114

At common law, 19, 1114

Collector's receipt for taxes, 19, 1114

In general, 19, 1114

Definition of the terms, 5, 161, 162, 179

Forgiveness of debt, 8, 1321

Husband and Wife

Possession, 9, 802

Injunction, 10, 807

Insurable Interests, 11, 319

Of creditor, 11, 317

Legacy to debtor, 13, 80

Married Women, 14, 676

As husband's agent, 14, 677

Examples, 14, 677

Husband's rights, 14, 677

Property in use in husband's business, 14, 677

Merger

See **MERGER**.

Extinguishing a debt by, 5, 204

Payment as a discharge, 5, 202

Payment of part of a debt as a discharge pro tanto, 5, 202

Preferences, 5, 184

See **ASSIGNMENT FOR THE BENEFIT OF CREDITORS**; **FRAUDULENT CONVEYANCES**.

Priority, 5, 204

See **DEBTS OF DECEDENTS**; **LIENS**; **PARTNERSHIP**.

Priority of United States, see **UNITED STATES**.

Release, 20, 758

By one partner, 20, 759

Death of joint maker of note, 20, 761

Declared intention to release, 20, 758

Infant, 20, 760

Intention of parties, 20, 759

Joint creditor, 20, 759
 Joint obligor discharged by operation of law, 20, 761
 Judgment without satisfaction, 20, 761
 Lien, 20, 758
 Promise to look to one joint debtor for payment, 20, 760
 Release of one of several joint debtors as release of all, 20, 759
 Release of one partner, 20, 760
 Where debtor surrenders all property, 20, 758
 Whether release must be under seal, 20, 760
 Res judicata, 21, 180
Respective Right of Debtor and Creditor in Debtor's Property, 5, 180
Fraudulent conveyances, see FRAUDULENT CONVEYANCES.
 In general, 5, 180
 Judgment of creditors, 5, 180
Rights of Creditor in Debtor's Services, 5, 185
 Debtor acting as agent for wife without compensation, 5, 185
 In general, 5, 185
 Liability on profits (when husband carries on wife's business) to husband's debts, 5, 186
Satisfaction by Gift or Legacy, 13, 80, 82, 108
See LEGACIES AND DEVISES; GIFTS.
 Annuity, 13, 84
 At law, 13, 83
 Breach of trust, 13, 83
 Debt an express charge of legacy, 13, 83
 Debt contracted after making will, 13, 84
 Deficiency of assets, 13, 86
 Difference in time of payment of debts from legacy, 13, 84
 Different sets of trustees, 13, 87
 Distinction between legacy and satisfaction of a debt due a child and legacy in satisfaction of apportionment, 13, 88
 Domestic servants, 13, 87
 Executor's assent, 13, 152
 Express agreement to accept legacy, 13, 83
 Express direction in will for payment of debts, 13, 85
 Extrinsic evidence, 13, 108
 Extrinsic evidence of intention, 13, 81
 General rule, 13, 80, 82
 Intention of testator, 13, 80
 Legacy by husband to wife, 13, 86
 Legacy by parent to child, 13, 86
 Legacy contingents, 13, 84
 Legacy equal to existing debt, 13, 82
 Legacy for use of married women, 13, 84
 Legacy greater than existing debt, 13, 82
 Legacy of different nature from debt, 13, 84
 Legacy of less amount than debt, 13, 84

Legacy to creditor's wife, 13, 87
 Negotiable security, 13, 86
 Particular motive assigned for the gifts, 13, 84
 Set off, 13, 81
 Specific chattel, 13, 84
 Unliquidated demand, 13, 86
 What words sufficient, 13, 81
 When a satisfaction for debt, 13, 82
 Savings banks, 21, 720
 Tontine insurance, 26, 65
Witnesses, 29, 602
 Actions by executors and administrators, 29, 603
 Contest as to disposition of debtor's property, 29, 602
 Examples, 29, 602-604
 Garnishee, 29, 603
 General creditor, 29, 603
 In general, 29, 602
 One prima facie liable for debt, 29, 602
 Where it is sought to charge another party, 29, 602
DEBTS OF DECEDENTS, 5, 206
See EXECUTORS AND ADMINISTRATORS; FOREIGN EXECUTORS AND ADMINISTRATORS; JUDICIAL SALES; MARSHALING ASSETS.
See generally, SUCCESSION.
Debt charged upon land, see LEGACIES AND DEVISES.
Executor's retention of his debts from estate, see EXECUTORS AND ADMINISTRATORS.
Promise to leave by will, see WILLS.
Specific performance of contracts of decedents, see SPECIFIC PERFORMANCE.
Allowance or Rejection, 5, 224
 Allowance as bar to action upon same claim, 5, 232
 Allowance by one administrator where there are two or more, 5, 226
 Allowance of indorsement as contingent claim, 5, 227
 Allowance of more than is claimed, 5, 227
 Allowance to close account, and authorize sale of property, 5, 231
 Burden of proof, 5, 227
 Claim barred by statute of limitations, 5, 229
 Claim before justice of the peace of another state, 5, 227
 Claims unsupported by oath of defendant, 5, 231
 Collateral attack on allowance, 5, 232
 Conclusiveness of allowance, 5, 228, 233, 274
 Conclusiveness of proceedings in courts of probate, 5, 225
 Debts due to executor, 5, 228
 Defenses to claims presented to probate court, 5, 231
 Distinction between allowance and judgment, 5, 232

DEBTS OF DECEDENTS—Cont'd**Allowance or Rejection—Cont'd**

Expenses and disbursements of administrator, 5, 231

How far allowances binding upon heir and devisee, 5, 233

Interest upon approved claim, 5, 232

Judgment by rule on unliquidated claim, 5, 227

Necessity of direct action to set aside allowance, 5, 233

Necessity of order from probate court for payment, 5, 234

On whom allowance is binding, 5, 232

Parties to proceedings before commissioners, 5, 226

Pendency of proceedings by creditor in another state, 5, 227

Presumption of allowance, 5, 234

Probate court's approval as a quasi judgment, 5, 231

Probate court's supervision over administrators, 5, 225

Province of probate court, 5, 225

Remedy where claim is disallowed by commissioners, 5, 235

When allowance only prima facie evidence of indebtedness, 5, 232

Where administrator does not act within reasonable time, 5, 234

Where claims are disputed or doubted, 5, 235

Whether allowance constitutes a lien, 5, 232

Whether allowance should be set aside which was barred by statute of limitations, 5, 230

Application of Real Estate to Payment of

Debts, 5, 262; 7, 272; 13, 109

Abolition of common-law doctrine, 5, 262; 13, 109

Acts of court of probate not warranted by statute are coram non iudice, 5, 276

Alienation by heir, 7, 272

Alienation by heir after suit brought, 5, 264

Allegation that personal estate has been exhausted or insufficient, 5, 270

Amendment nunc pro tunc, 5, 280

Application is a proceeding in rem, 5, 278

At common law, 5, 262

Authority of the legislature to authorize sale of decedent's real estate, 5, 275

Burdens upon the land, 7, 272

Certificate of probate judge, 5, 283

Collateral attack, 5, 304

Collateral attack because petition did not contain full statement of claims against estate, 5, 305

Collateral attack upon the sufficiency of notice, 5, 287, 288

Conclusiveness of decree, 5, 304

Conclusiveness of recital of due notice in decree in collateral proceedings, 5, 306

Conditions of sale, 5, 287

Confirmation and Ratification of Sale, 5, 298

Acquiescence by party in interest as a ratification, 5, 299

Approved in part and rejected in part, 5, 299

Curing irregularities in proceedings, 5, 299

Necessity that approval be in express terms, 5, 298

Power of court, 5, 299

Sale void for want of jurisdiction, 5, 300

Title of purchaser at sale, 5, 299

When essential, 5, 298

Who may object to the confirmation, 5, 299

Constitutionality of legislative determination of the fact that debts are owing, 5, 276

Court must be satisfied that personal estate has been exhausted or insufficient, 5, 269

Creditor following specific produce of real estate aliened by heir, 5, 264

Debt barred by statute of limitations, 5, 273, 274

Debt barred by statute of non-claim, 7, 284

Defects which do not prevent parties from obtaining information intended to be conveyed by statute, 5, 287

Delay of creditors in applying for appointment of administrator, 5, 266

Departure from requirements of statute, 5, 282

Description of property in order of sale, 5, 279

Designating a person by whom sale is to be made, 5, 279

Effect of allowance, 5, 273

Effect of purchase by executor or administrator at his own sale, 5, 281

Errors not jurisdictional, 5, 304

Evidence of notice, 5, 287

Examples of immaterial defects, 5, 290

Executor's authority under general directions to pay debts, 5, 269

Executor's authority where power to dispose of estate is given in the will, 5, 268

Failure of administrator to give bond required by statute, 5, 282

Failure of record to show an order authorizing sale, 5, 283

Failure to give notice, 5, 287

Filing a petition on a date subsequent to that specified in notice, 5, 286

Insolvency of the estate, 7, 272

Interest of executor in lands, 7, 272

In what court jurisdiction is passed to enforce creditor's claim, 5, 266

- Irregularities in the order or sale which have been held material, 5, 283
- Irregularities which will not render sale void on collateral attack, 5, 306
- Jurisdiction of courts of probate, 5, 267
- Jurisdiction of court when lands lie in another state, 5, 269
- Jurisdiction of court when petitioner fails to state jurisdictional facts, 5, 269
- Jurisdiction of facts to appear affirmatively upon record, 5, 277
- Jurisdiction of orphan's court, 5, 267
- Jurisdiction of surrogate's court, 5, 267
- Jurisdiction of things, not of persons, 5, 278
- Land in hands of a bona fide purchaser, 5, 263
- Land in hands of heir or devisee, 5, 263
- Land purchased from heir subject to administrator's lien, 5, 265
- Length of time notice is to be published, 5, 286
- Names of defendants, 5, 281, 287, 292
- Necessary Parties**, 5, 294
 - Devisees as, 5, 295
 - Executors and administrators as parties, 5, 296
 - Guardian ad litem where heirs or devisees are minors, 5, 295
 - Heirs as, 5, 294
 - Necessity that all parties interested be brought in, 5, 294
 - Other creditors as parties, 5, 296
 - Presumption that heirs exist until contrary is shown, 5, 294
 - Purchaser from heirs, 5, 296
 - State as party, where there are no heirs or devisees, 5, 297
 - Where guardian of minors enters appearance for them, 5, 296
 - Widow, 5, 296
- Necessity of decree to conclude heirs, 5, 274
- Necessity that debt should have been contracted in lifetime of a decedent, 5, 272
- Necessity that debt should have existed down to time of order, 5, 272
- Neglect of administrator to take oath, 5, 282
- Notice**, 5, 284; 12, 269
 - Collateral attack upon sale for want of notice, 5, 284-288
 - Complying with statute, 5, 284
 - Description of property, 5, 285
 - Form of, 5, 284
 - Jurisdictional fact, 5, 297
 - Necessity of, 5, 284, 297
 - Of sale where notice is given to heirs or parties interested, 5, 284
 - Sale void for want of, 5, 297
 - Substantial compliance with statute requiring, 5, 285
- Sufficiency to be determined by the court, 5, 284
- Where there is no service of process upon infant heirs, 5, 295
- Whether notice is jurisdictional, 5, 284
- Omissions of description of property from order of sale, 5, 279
- Order of sale before litigation of a final account, 5, 271
- Order of sale in alternative, 5, 305
- Order should be made by whole court and entered on whole minutes, 5, 279; 12, 269
- Parties, 5, 281, 292, 294
- Pendency of appeal, 5, 305
- Personal estate insufficient in consequence of a devastavit, 5, 271
- Personal liability of heirs or devisees, 5, 264
- Petition**
 - Conflicting titles, settling conflicting titles, 5, 292
 - Creditor's petition in effect a creditor's bill, 5, 292, 293
 - Description of land, 5, 291
 - Failure to state jurisdictional facts, 5, 291
 - Filing of account of personal property, 5, 290
 - Form of the, 5, 289
 - Impeaching validity of sale collaterally, 5, 291
 - In form of bill in chancery, 5, 292
 - Making all creditors to estate parties, 5, 292
 - Must be filed at the time designated in notice, 5, 285, 286, 288
 - Must show that the personality is insufficient, 5, 289
 - Necessity of, 5, 288
 - Necessity of resorting to real estate appearing on face of petition, 5, 290
 - Need not follow words of statute, 5, 290
 - Power of court where petition is defective, 5, 290
 - Statements in the, 5, 289
 - Stating names of heirs, 5, 290
 - Verification of petition by affidavit, 5, 291
- Posting, 5, 287
- Power of court to describe mode and terms of sale, 5, 278
- Power of executor or administrator to sell real estate, 5, 268
- Power of sale in executor, 7, 273
- Power to mortgage, 5, 277
- Power to rent, 5, 277
- Power to warrant, 5, 280
- Presumption as to regularity and jurisdiction, 5, 285; 12, 278
- Proof that assets have descended to heirs, 5, 270
- Propriety of judgment, 5, 305
- Provisions of statute must be strictly complied with, 5, 276

DEBTS OF DECEDENTS—Cont'd**Application of Real Estate to Payment of Debts—Cont'd**

Recitals in decree that due notice has been given, 5, 287

Reckoning doubtful demands in determining whether assets have been exhausted, 5, 271

Repeal of statute warranting transaction before sale, 5, 281

Resale, 5, 304

Restraining Sale

By injunction, 5, 303

Salc after statute of limitations, runs against a debt, 5, 283

Sale must be by proper party, 5, 282

Sale must be for debts only, 5, 276

Sale of lands at instance of a creditor, 5, 268

Setting Aside Sale, 5, 300

Action of probate court upon application of parties interested, 5, 300

After confirmation, 5, 301

Caveat emptor, 5, 302

Collateral impeachment of sale, 5, 302

Collusion between executor and vendee, 5, 303

Defective description of property, 5, 303

Great inadequacy accompanied by circumstances of unfairness, 5, 301

Gross inadequacy in price, 5, 301

Mere inadequacy of price, 5, 300

Necessity of direct proceedings to set aside sale, 5, 300

Parties to action to set aside, 5, 301

Right of subrogation of vendee to rights of creditors where sale has been set aside, 5, 303

Right of vendor to have sale set aside as to one of two tracts where it has already been set aside as to the other, 5, 303

Slight irregularities in proceedings, 5, 303

Upon ground that purchase-money has not been paid, 5, 303

Specialty of, 5, 262

Specifying date of sale, 5, 285

Statute of limitations, 5, 273, 274; 7, 282

Statutory method of enforcement exclusive of equity, 5, 268

Strict conformity in making order of sale, 5, 280

Sufficiency of evidence, 5, 273

Suit at law to recover possession, 7, 272

Terms, 5, 280

Terms for cash, 5, 280

Title of heirs, 5, 281

Title of purchasers, 5, 281

What May Be Sold, 5, 292

Estate held in trust, 5, 292

Every interest in land, 5, 292

Land certificate, 5, 293

Lands fraudulently conveyed, 5, 293

Lands of which deceased was dis-
seised, 5, 293

Legal and equitable interest in land,
5, 292

Only so much land as is intended to
discharge a debt, 5, 292

Remainders and reversions, 5, 293

Resulting trusts or other equities, 5,
293

When jurisdiction of court attaches, 5,
269

Where fraud is alleged, 5, 306

Where lands are charged with debt, 7,
275

Whether heirs are jointly or severally
liable, 5, 263

Within what time petition for leave to
sell real estate must be filed, 5, 265

Arbitration or Reference

Parties to arbitration or reference, 5,
226

Remedy where claim is disallowed by
commissioners, 5, 235

Assets

Rent in arrears, 12, 734

Authentication of Claims, 5, 220

Before whom affidavit should be taken,
5, 222

By agent or attorney, 5, 222

By whom affidavit should be made, 5,
222

Duty of executor, 5, 220

Form of affidavit, 5, 222

Necessity of affidavit, 5, 220

Objection to authentication, 5, 223

The affidavit, 5, 221

When affidavit should be filed, 5, 222

By whom presentment can be made, 5, 209

Claim against executor or administrator,
5, 212

Constitutionality of repeal, 5, 309

Constitutionality of statutes authorizing
sale of a decedent's real estate, 5, 275

Contingent and immature claims, 5, 211

Contracts and Conveyances of Decedents

Enforcement of claim founded upon
contract with decedent in lifetime,
5, 309

Contribution between heirs of legatees
and devisees, 4, 11

Contribution, liability of estate of a de-
ceased co-surety for, 4, 3

Conveyances and Contracts of Decedents,
5, 309

Administrator impeaching deed of de-
cedent, 5, 310

Creditors' bills against decedent's estates,
4, 580

Creditor's interest in decedent's estate,
5, 307

Determination of claims, 5, 206

Distribution of assets in different jurisdic-
tions, 3, 644; 8, 428, 430

Effect of non-presentation, 5, 215

Effect of recognition, 5, 210

Equitable claims, 5, 211

Execution

- Against decedent, 7, 232
- Against decedents' estates, 7, 120

Executors and Administrators, 7, 308

- Admission of assets, 7, 308
- Advancements out of representative's own funds, 7, 314
- Attorney's lien, 7, 309
- Claim against estate, 5, 228
- Duty of observing legal priorities, 7, 308
- Effect of direction in will, 7, 308
- Failure to plead debt of higher nature, 7, 308
- Foreign assets, 7, 308
- Honest mistake, 7, 308
- Interest, 7, 313
- Mode of payment, 7, 313
- Order of Payment**, 5, 236-254
 - Law regulating, 7, 308
- Payment in legal tender, 7, 313
- Payment of debts before legacies, 7, 308
- Payment upon discount, 7, 313
- Personal liability for debts, 7, 314
- Personal liability of representative, 7, 313
- Recovering over-payment, 7, 313
- Representing estate as insolvent, 7, 308

Right to Prefer

- Confession of judgment, 7, 310
- Creditors of equal degree, 7, 309
- Effect of filing bill, 7, 310
- Notice of action at law, 7, 310
- Where one of several creditors obtains judgment, 7, 309

Subrogation of personal representative, 7, 314**Expenses of**

- Funeral, 5, 247
- Last sickness, 5, 247
- Physician's bill, 5, 247
- Probate charges, 5, 247
- Public dues and taxes, 5, 247
- Servant's wages, 5, 247
- Failure to file claim due to executor's promise to pay them, 5, 210
- Failure to plead the statute, 5, 215
- Form of notice to person, 5, 206
- Impounding or retaining assets, 7, 319
- Interest, 5, 528²⁰⁰
- Judgment against decedent, 5, 213
- Knowledge on part of personal representatives of existence of a claim, 5, 209

Laches

- Suits to Charge Heirs and Legatees**, 12, 594
 - Where there is prejudice from delay, 12, 594

Land devised for payment of debts goes to personal representative, 7, 261**Law governing order of payment**, 5, 238**Legal Assets**, 5, 260

- Advancements made for decedent's children, 5, 260

Damages recovered for death of decedent, 5, 260**Debts due estate**, 5, 260**Money paid to a guardian or legatee**, 5, 260**Liability of executor and administrator**, 7, 325**Liens**, 5, 307; 13, 603

- At common law, 13, 604
- Attorney, 7, 309
- Created by will, 13, 604
- Creditor's interest in estate, 5, 307
- Effect of a statutory lien, 13, 605
- Judgment liens, 5, 308
- Judgments against heirs and devisees for individual debts, 5, 307
- Paramount to testator's disposition by will, 5, 307
- Paramount to title of heirs and devisees, 5, 307
- Primary liability of personal property, 13, 604
- Right of legislature to repeal law authorizing sale of estate for payment of debts, 5, 309
- Sale of land transfers lien to proceeds, 5, 309
- Specific fund for payment of debts, 13, 606
- Statutory limitation, 5, 308
- Testator's direction, 13, 604
- When suit must be brought, 5, 308
- Whether debts are charged upon land, 13, 604, 605

Marshaling Assets, 14, 726

- Contract for purchase of realty, 14, 726
- Judgment creditor, 14, 727
- Personalty exhausted by payment of debts, 14, 726

Mortgage or lien, 5, 213**Necessity of Presentation**, 5, 207-214

- Absence of administrator from state, 5, 208
- After judgment of revival upon a scire facias, 5, 208
- Claim against deceased partner, 5, 212
- Claim against the executor or administrator, 5, 212
- Contingent and immature claims, 5, 211
- Equitable claims, 5, 211
- Judgment against decedent, 5, 213
- Mortgage or lien, 5, 213
- Order of revivor upon scire facias, 5, 220
- Presentation by an administrator, 5, 210
- Presumption that claim was presented in due time, 5, 208
- Statutes of non-claim, 5, 207
- Taxes and preferred claims, 5, 211
- Unliquidated demands, 5, 211
- Notice to present, 5, 206
- Objection that claim was not presented to administrator cannot be raised after decree, 5, 215
- Order of liability of assets, 1, 826

DEBTS OF DECEDENTS—Cont'd

- Order of Payment, 5, 236-254; 7, 308
- At Common Law, 5, 238
 - Equitable estates, 5, 238
- Between docketed judgments, 5, 238
- Bonds, 3, 829; 5, 242
- Bonds not due until after decedent's death, 5, 242
- Bonds not founded on valuable consideration, 5, 242
- Breaches of trust, 5, 244
- Change in, 5, 252
- Claim arising from covenant, 5, 242
- Contest as to relative dignity of conflicting claims, 5, 253
- Decree not authorizing issuing of execution, 5, 240
- Decrees of courts of equity, 5, 239
- Departure from statutory order at representative's own risk, 5, 236; 7, 308
- Departure from statutory order when ordered by court, 5, 236
- Equitable estates, 5, 238
- Expenses of Administration**, 5, 251
 - Distinguished from probate charges, 5, 251
- Expenses of Last Illness**, 5, 251
 - Duration of, 5, 251
 - Nursing, 5, 251
 - Physician's charges, 5, 251
- Fiduciary debts, 5, 243
- Foreign judgment, 5, 240
- Funeral Expenses**, 5, 249
 - Expenses are not a debt due from deceased, 5, 250
 - For mourning of family and widow, 5, 250
 - Notice of claim, 5, 250
 - Tombstone, 5, 250
 - What are reasonable funeral expenses, 5, 249
- Giving preferences among creditors of equal degree, 5, 237
- In Alabama, 5, 245, 247
- In Connecticut, 5, 245, 247
- In Delaware, 5, 243
- In Georgia, 5, 245
- In Illinois, 5, 245, 246
- In Indiana, 5, 245, 246
- In Iowa, 5, 245, 246
- In Kentucky, 5, 245, 246
- In Louisiana, 5, 248
- In Maryland, 5, 247
- In Massachusetts, 5, 245, 247
- In Mississippi, 5, 245, 247
- In Missouri, 5, 248
- In New Hampshire, 5, 245, 246
- In North Carolina, 5, 245, 246
- In Ohio, 5, 245, 246
- In Pennsylvania, 5, 245
- In Rhode Island, 5, 245, 247
- In South Carolina, 5, 243
- In Tennessee, 5, 243
- In Vermont, 5, 245
- In Virginia, 5, 245
- Instances of simple contract debts, 5, 242

- Judgment against executor or administrator himself, 5, 239
- Judgment liens, 5, 308
- Judgment not presented for allowance as required by local statute, 5, 241
- Judgment of justice of the peace, 5, 241
- Judgment of scire facias, 5, 240
- Judgment quando, 5, 240
- Judgment quod computet, 5, 239
- Judgments, 5, 238-242, 247
- Jurisdiction of court of equity to determine order of payment, 5, 253
- Mortgages, 5, 242
- Notice to administrator of preferred claim, 5, 236
- Postponement of creditors who had received a dividend from estate, 5, 253
- Power of court to change order of payment, 5, 252
- Power of state to give preference to its own judgments, 5, 240
- Priority, 5, 236
- Priority among debts other than specialties, 5, 254
- Priority of lien, 5, 308
- Priority of states, 5, 249
- Priority of United States, 5, 248
- Probate charges, 5, 251
- Rights of creditor become fixed at death, 5, 251
- Specialty debt where administrator has converted estates to his own use, 5, 242
- States in which the common-law order is still maintained, 5, 243
- Statutory order, 5, 245
- Subrogation of sureties, 5, 242
- Widow's allowance, 5, 245-247
- Payment by executor's note, 18, 184
- Pending action equivalent to presentation of claim, 5, 209
- Personal liability of heir, 5, 262
- Petition for sale, 12, 148d
- Priority*, see *infra*, ORDER OF PAYMENT.
- Promise by executor to pay a barred claim, 5, 209
- Property Primarily Liable**, 5, 254
 - As between a specific legacy and a devise, 5, 255
- Contribution among heirs, 5, 259
- Exemptions, 5, 254
- For taxes on real estate, 5, 255
- Lands acquired after testator has made his will, 5, 293
- Lands in another state, 5, 254
- Lands of a primary fund for satisfaction of specialty debts and specific liens, 5, 258
- Order of marshaling estates, 5, 254
- Payment by executor to exonerate property devised by will, 5, 259
- Personal estate, 5, 255
- Purchase-money remaining unpaid, 5, 256
- When heir entitled to contribution from legatee, 5, 259

- Where testator charges all his estate with payment of debts, 5, 258
- Whether charging the land exonerates the personality, 5, 258
- Receivers, 20, 42**
 - Administrator ad litem, 20, 43
 - In general, 20, 38
 - Power of court of equity, 20, 42
 - Powers and rights, 20, 42
 - Rents and profits, 20, 42
 - To receive and apply property, 20, 42
 - When receivers will be appointed, 20, 42
 - Who may be appointed, 20, 42
- Reference or Arbitration, 5, 223**
 - Costs, 5, 224
 - In New York, 5, 224
 - Omission to submit as admission, 5, 224
 - Powers of referees, and proper proceedings, 5, 224
 - Statutory authority to submit doubtful claims, 5, 223
 - Strict compliance with statute, 5, 224
- Retainer, 7, 311**
 - Abolition, 7, 313
 - By implication, 7, 313
 - By statute, 7, 313
 - Administrator improperly appointed, 7, 312
 - Damages for tort, 7, 313
 - Debt barred by statute of limitations, 7, 312
 - Equitable assets, 7, 312
 - Obligee executor one of two joint obligors, 7, 311
 - Payment into court upon creditor's suit, 7, 312
 - Pleading retainer, 7, 313
 - Preferences over debts of equal degrees, 7, 311
 - Representative a joint creditor, 7, 312
 - Representative cestui que trust, 7, 312
 - Statute requiring presentation and allowance of claims, 7, 313
 - Surety personal representative of principal debtor, 7, 311
 - Who may and may not retain, 7, 311
- Sale, see infra, APPLICATION OF REAL ESTATE.*
- Scope of the term debt, 5, 146
- Statement of time in which presentation is necessary, 5, 206
- Statute of Frauds**
 - Promises that executor should pay, 8, 690
- Statute of limitations, 5, 273, 274; 7, 282, 312; 13, 709
- Statutes of Non-Claim, 5, 206**
 - Absence of administrator from state, 5, 208
 - Failure to plead, 5, 215
 - Power of representative to waive, 7, 284
 - Runs against non-residents as well as residents, 5, 208
 - What claims are within statute, 5, 210

- Sufficiency of Presentation**
 - Abandonment of claim, 5, 219
 - Accuracy of description of claim, 5, 218
 - Form, 5, 217
 - Illustrative cases, 5, 217-220
 - Indifference in showing claim, 5, 219
 - Motion, 5, 220
 - Necessity of new presentation upon qualification of another administrator, 5, 219
 - Notice to administrator, 5, 217
 - Notice to administrator of demand at county court, 5, 219
 - Setting forth the items distinctly, 5, 219
 - Where promissory note is lost, 5, 218
 - Writing, 5, 218
- Taxation, 25, 298**
 - Detention of property, 25, 308
 - Place of taxation, 25, 154
 - To whom decedent's property is taxed, 25, 125
- Taxes and preferred claims, 5, 211
- Time of Presentation, 5, 215**
 - Insolvency, 5, 215
 - Law enforced when the publication was made, 5, 215
 - Time begins to run from date of publication of notice, 5, 215, 216
- Unliquidated demands, 5, 211
- What claims are within statutes of non-claims, 5, 210
- When suit must be brought, 5, 308
- Whether Debts Are a Charge Upon the Land, 13, 603-605**
 - At common law, 13, 604
 - Created by will, 13, 604
 - Effect of statutory lien, 13, 605
 - Primary liability of personal property, 13, 604
- Specific fund for payment of debts, 13, 606
- Testator's direction, 13, 604
- Witnesses**
 - Persons Interested in the Estate, 29, 572**
 - Co-devisee, 29, 575
 - Devisee, 29, 575
 - Distributees, 29, 572
 - Heirs at law, 29, 572
 - In general, 29, 572
 - Specific legatee, 29, 574
 - Release of interest, 29, 572, 574
 - Residuary legatee, 29, 574

DECEASE

- Living at time of my decease, 13, 972
- On decease, 17, 185

DECEDENT, see DEBTS OF DECEDENTS.

DECEIT, 5, 318

See FRAUDULENT SALES.

As to when deceit gives rise to implied warranty, see IMPLIED WARRANTY.

Misrepresentations in insurance cases, see INSURANCE.

Rescission, see RESCISSION.

Slander of title, see TITLE.

Acting upon representations, 5, 331

DECEIT—Cont'd

- Action for, 8, 637
- Affirmance of contract, 5, 343
- Affirmance of transaction, 5, 343
- Assignability**
 - Causes of action for, 1, 833
- As to Matters of Law**, 5, 326
 - Negotiations between parties holding confidential relations, 5, 327
 - Representations as to stock subscriptions, 5, 326
- Breach of promise of marriage, 2, 523
- Burden of proof, 5, 344
- Caveat emptor, 5, 341
- Circumstantial evidence to prove, 5, 344
- Concealment**, 5, 336
 - Of facts which one is bound to disclose, 5, 339
 - Passive, 5, 337
 - Unintentional, 5, 338
 - Use of device calculated to induce party to forego inquiry, 5, 337
 - Vendee's concealment of fact of insolvency, 5, 337
 - Where parties are under obligation to reveal facts, 5, 337
- Concurrent jurisdiction of courts of law and equity, 5, 342
- Corporation's liability for, 4, 255
- Damage, 5, 332
- Damages at law, 5, 343
- Deceiving third persons, 5, 331
- Diligence of the complaining party, 5, 322
- Distinguished from caveat emptor, 5, 318
- Duty of party to discover that his property is being sold to another, 5, 331
- Election, 6, 247
- Elements of, 5, 318, 344
- Evidence of value, 5, 345
- Exclusive jurisdiction of equity, 5, 342
- Exemplary damages, 5, 346
- False weights and measures, 7, 800
- Fraud distinguished from, 5, 347
- Fraud in contract, 5, 336
- Fraudulent Promises**, 5, 334
 - Beneficiary in will, promising to carry out intention of testator, 5, 335
 - Evidence of fraud, 5, 334
 - When party liable for in action for deceit, 5, 335
 - Where the promise is device resorted to, to accomplish deception, 5, 334
- General doctrine, 5, 322
- Giving check on bank where maker has no funds, 5, 337
- Good faith of defendant in making representations, 5, 344
- Ignorance and Reliance of Complaining Party**, 5, 327
 - Failure to read contract, 5, 329
 - Means of knowledge equally available to both parties, 5, 327
 - Necessity of investigation, 5, 327
 - Negligence of complainant, 5, 329
 - Representations not sole inducement that led to closing of trade, 5, 328

- Vendor stating what he gave for an article, 5, 328
- Warranty, 5, 328
- What representations may be relied on, 5, 327
- Writing contract over blank signature, 5, 329
- Inducing third party to break his contract with complainant, 5, 331
- Intent that misrepresentation should be acted upon, 5, 330
- Laches, 5, 342
- Liability of principal for agent's deceit, 1, 417
- Materiality and Relevancy of Misrepresentations**, 5, 335
 - Inducement to the closing of a transaction, 5, 336
 - Misrepresentations relating to subject of transaction, 5, 336
 - Necessity that misrepresentations be material and relevant to support an action, 5, 335
 - Representations substantially enhancing the value of the property, 5, 336
 - Subscriptions, 5, 336
 - What are material misrepresentations, 5, 335
 - When not the sole inducement to contract, 5, 336
- Matters of opinion, 5, 324
- Measure of Damages**, 5, 345
 - Cost of litigation, 5, 345
 - Difference in value between that which is actual and that which was represented to exist, 5, 345
 - Interest, 5, 345
 - What considered, 5, 345
- Misrepresentations not made from corrupt motive, 5, 330
- Necessity that false assertion should be made in words, 5, 319
- Not vendee's duty to disclose existence of a mine on land of which vendor does not know, 5, 338
- Presumption as to fraud, 5, 344
- Quantity of land, 5, 326
- Remedy, 5, 342
- Remedy for fraudulent sales, 8, 806
- Representations**
 - As to facts to transpire in future, 5, 325, 335
 - As to price paid by vendee for the land, 5, 326
 - As to the value of goods which can only be known by experts, 5, 324
 - Connected with particular transactions, 5, 331
 - Not relied upon, 5, 331
- Of Agent**, 5, 322
 - Absence of direction from principal, 5, 323
 - Directors inducing persons to purchase stock, 5, 324
 - Independent fraud not within the scope of his agency, 5, 323

- Innocent misrepresentation of agents, 5, 324
 Matters of opinion, 5, 324
 Special agent's acts, 5, 323
 Within knowledge of party, 5, 320
 Sale of animals having contagious disease, 5, 339
 Self-protection, 5, 340
 Statements of the utility and operation of patent machine, 5, 325
 Survival of action for, 7, 267
 The wrongdoer's knowledge of false representations, 5, 319
 Unaccompanied by injury, 5, 331
 Use of device calculated to induce party to forego inquiry, 5, 337
- Warranty**
 Mere expressions of opinion, 5, 325
 What facts must appear in order that transaction will lie, 5, 344
 What is, 5, 318
 What is not, 5, 318
 What representations are material, 5, 321
 Where other representations than those of defendant are relied upon, 5, 332
 Who may rely upon misrepresentations, 5, 333
 Writ of, 5, 346
 Wrongdoer's knowledge of the false representations where representations were acted upon, 5, 320
- DECIDE**, 5, 347
 Against, 5, 348
 Or take part in a decision, 5, 348
 Upon an election, 5, 348
- DECISION**, 5, 348
 Decision and opinion contrasted, 5, 348
 Decision and order, 5, 349
 Record, 20, 489
 Rules of decision, 5, 349
- DECKS**, 5, 349
- DECLARATION**, 3, 58; 5, 349
See DEMURRER; PLEADING.
Declaration in detinue, *see* DETINUE.
For declaration in action of debt, *see* DEBT.
In action of covenant, *see* COVENANT.
Replevin, *see* REPLEVIN.
Action on replevin bond, *see* REPLEVIN.
Trover, *see* TROVER.
- Amendments**, 5, 352
 Changing cause of action, 5, 352
 Clerical mistakes, 5, 353
 Prejudice to proceedings already had, 5, 352
 What is not a change in cause of action, 5, 353
- Answer by defendant as waiver of objections to irregularities, 5, 350
- As Heir**
 Recovery as devisee, 6, 245^m
- Assumpsit, 1, 889
 Commencement, 5, 355
Complaint, *see* PLEADING; *sub-title* UNDER THE CODE.
 Certainty required in, 5, 351
 Showing good cause of action, 5, 350
- Waiver of objections by answering, 5, 350
 Where facts are within knowledge of opposite party, 5, 351
- Conclusion, 5, 357
 Construction, 5, 351
 Construed more strictly against plaintiff, 5, 351
- Counts**, 5, 357
As to joinder of counts, *see* JOINDER OF ACTIONS.
- Common**
 Special contract in which consideration was something other than money, 5, 359
 What are, 5, 358
 Definition, 4, 331
 Demurrer to whole declaration where one count is good, 5, 358
 Goods bargained and sold, 5, 359
 Special, general, or common, 5, 357
 Sufficiency of common counts in case of special agreement, 5, 358
 Validity of verdict where one count is good, 5, 358
- Declaring on contract, 5, 350
 Definition, 5, 349
 Domicile, 5, 872
 How variance from process must be taken advantage of, 5, 351
 Judgments of sister states, 12, 148^u
 Lost will, 13, 1134, 1137
 Marriage, 14, 527
 Necessity of allegation of fraud or mistake in order to prove contemporaneous parol agreement, 4, 560
 Nolle prosequi, 16, 711
- Parties**, 5, 353
 Capacity in which parties sue, 5, 353
 Non-joinder of parties, 5, 353
 Partnership, 5, 353
 Setting out, 5, 353
- Parts of declarations, 5, 354
 Perjury, 18, 332
- Requirements**, 5, 350
 Cause of action must be complete before commencement of suit, 5, 352
 Certainty and precision, 5, 351
 Declaration corresponding with process, 5, 350
 What certainty is required, 5, 351
- Resulting trust, 10, 30
 Scire facias, 21, 854
 Several counts, 18, 561
 Showing sufficient cause of action, 5, 350
- Statement of Cause of Action**, 5, 355
See ASSUMPSIT.
 General or special, 5, 355
 Stating a conclusion of law, 5, 352
 Surplusage, 5, 352
 Title, 5, 354
 Trust use, 5, 368
- Venue**, 5, 354
See VENUE.
 Definition, 5, 354
 Necessity, 5, 354
 In local actions, 5, 354

DECLARATION—Cont'd

Venue—Cont'd

In margin or body of declaration, 5, 354

In transitory actions, 5, 355

Warrant of Attorney

To confess judgment, 28, 689

Whether defective declaration is cured by verdict, 5, 350

DECLARATIONS, 5, 361; 7, 52

See ADMISSIONS; CONFESSIONS; DYING DECLARATIONS; HEARSAY EVIDENCE; JOINDER; RES GESTÆ.

As to insanity, see TESTAMENTARY CAPACITY.

Cure by verdict, see VERDICT.

Action on official bond, 17, 80

Admissibility of declaration of one conspirator against co-conspirators, 4, 631

Admissible as primary evidence, 5, 561

Admissions by prosecutor, 3, 490

Admissions by Silence, 7, 53

Arrest upon civil process, 7, 54

Distinction between statements made by party interested and stranger, 7, 55

Examples, 7, 53-55

Opportunity to speak, 7, 53

Person incapable of hearing or understanding statements, 7, 53

Statements given in evidence in a judicial proceeding, 7, 53

The rule cautiously applied, 7, 55

Against Interest, 5, 366

By deceased person, 7, 71

In criminal cases, 4, 862

When admissible, 5, 366

Against Owner

Declarations of owner to prove dedication, 5, 401

Agent, admissibility, 1, 414

Agent made subsequently to his agency, 1, 415

Ancient Documents, 5, 365

Presumption in favor of correct execution, 5, 365

Proper custody, 5, 365

Shown to have been acted upon, 5, 365

What admissible as, 5, 365

As to Boundaries, 5, 366

Of counties, municipalities, etc., 5, 366

Private, 5, 366

As to lost will, 5, 368

As to Pedigree, 7, 73

See PEDIGREE.

As to Public or General Rights, 5, 364

Distinction between, 5, 364

When admissible, 5, 364, 365

Bankruptcy, 5, 368

Bastardy Proceedings, 2, 152

Declarations made at the time of travail, 2, 153

Declarations made before the birth of the child, 2, 152

Declarations of the putative father, 2, 153

By testators as to contents of wills, 7, 73

Community property, 3, 356

Confessions by agents, 3, 490

Contradicting, 7, 110

Corporations, see *infra*, OFFICERS

Criminal Conspiracy, 4, 631, 865

Acts and Declarations as Evidence

Speeches and publications, 4, 632

Acts and declarations of one conspirator the acts of all, 4, 632

Admissions of declarations of one conspirator against a fellow conspirator though not made in his presence, 4, 594

Declarations after abandonment or consummation of common design, 4, 633

Declarations in furtherance of common design, 4, 633

Declarations must be made in furtherance of the common design, 4, 632

Declarations made after common design has been consummated, 4, 632

Declarations made in absence of the accused, 4, 634

Declarations not in furtherance of common design, 4, 633

Declarations not made in the presence of accused, 4, 634

Declarations of conspirators, 4, 593, 594

Declarations which are merely narrative, 4, 635

False pretenses, 7, 783

Foundation for admissibility of declarations of one conspirator against others, 4, 631

Foundation for admission, 4, 635

Foundation for admission of declaration, 4, 594

Foundation for admission of declarations as evidence, question for jury, 4, 635

In civil cases, 4, 632

Instances of declarations which have been admitted, 4, 594

Larceny, 12, 854

Letters and statements of a co-conspirator, 4, 635

Criminal Conversation

Declarations of wife, 21, 1055

Definition, 5, 361

Election cases, 6, 369, 427

Embezzlement

Declarations of owners of property, 6, 500

Eminent domain cases, 6, 620

Expressions of bodily feeling, 5, 361

False Pretenses, 7, 783

Admissions in writing, 7, 785

Fraudulent Sales

Vendor's declarations, 8, 860

Garnishment

Of defendant, 8, 1235

Of garnishee, 8, 1234

Of third persons, 8, 1235

General rule, 7, 52

Homicide, see DYING DECLARATIONS.

After the homicide, 9, 694

- Contradictory of dying declarations, 9, 679
- Declarations made when not in extremis, 9, 678
- Declarations of deceased not made in defendant's presence, 9, 678
- Declarations of Defendant, 9, 692**
 - Before the Homicide, 9, 692**
 - Statement of purpose in obtaining weapon, 9, 693
 - Where they do not form a part of the *res gestæ*, 9, 692
 - Where they do not show malice, 9, 692
 - Where they do not show motive, 9, 693
 - The Homicide**
 - As proving malice, 9, 695
 - Proof by the defense, 9, 695
 - Proof by the prosecution, 9, 694
 - To explain other declarations, 9, 695
 - Third Parties, 9, 700**
 - After the homicide, 2, 709
 - Before the homicide, 9, 700
 - Confederates and co-conspirators, 9, 700
 - Husband and wife, 9, 808; 14, 527
 - Impeaching person testifying as to declarations, 7, 110
 - In Disparagement of Title, 5, 367**
 - At what time they must have been made, 5, 367
 - Examples, 5, 367
 - When admissible, 5, 367
 - Larceny, 12, 858**
 - Character of possession, 12, 851
 - Competency of witnesses, 12, 860
 - Confessions, 12, 859
 - Conspirators, 12, 854, 859
 - Corpus delicti, 12, 858
 - Corroborated proof, 12, 859
 - Declarations made before, 12, 859
 - Defendant's declaration concerning property, 12, 839
 - Promise to pay, 12, 860
 - Silence, 12, 859
 - Third persons, 12, 860
 - When competent, 12, 858
 - Made in the Ordinary Course of Business, 5, 362; 7, 70**
 - See* BOOKS AS EVIDENCE.
 - Entries made by plaintiff himself, 5, 364
 - Entries must be contemporaneous with acts to which they relate, 5, 362
 - Entries must be within knowledge of person making them, 5, 362
 - Made in discharge of professional duty, 5, 362
 - Photograph, 5, 363
 - Relevancy of, 5, 362
 - To prove to whom credit was given, 5, 364
 - When declarations become admissible, 5, 364
 - When irrelevant, 5, 363
 - Mechanics' liens, 15, 190**
 - Officers and Agents of Private Corporations, 17, 155**
 - Examples, 17, 155, 156
 - In general, 17, 155
 - Representations, 17, 156
 - Scope of agent's authority, 17, 156
 - Of intention, 5, 368
 - Of trust use, 5, 368
 - Partnership, 17, 1313, 1317**
 - Admission of person that he is a partner, 17, 1319
 - As to new business, 17, 1318
 - Continued existence of partnership, 17, 1319
 - Declaration of one person that another is his partner, 17, 1317
 - In general, 17, 1317
 - Of a known partner, 17, 1315
 - Of alleged partner, 17, 1320
 - One a third person, 17, 1315
 - Partner attempting to bind firm, 17, 1319
 - Partner's Declarations as Evidence**
 - Against Firm, 17, 1077**
 - Admission of amount due, 17, 1080
 - Books, 17, 1078
 - Dormant partner, 17, 1077
 - Hostility to other partners, 17, 1078
 - In general, 17, 1077
 - Manner in which matter was treated, 17, 1079
 - Money or goods obtained for use of firm, 17, 1078
 - Not within scope of partnership business, 17, 1079
 - Scope of the business, 17, 1077
 - Statement of account made by one partner, 17, 1079
 - Transaction of partnership business, 17, 1077
 - When and where made, 17, 1078
 - Ratification of, unauthorized act, 17, 1319
 - Separate admissions of each partner, 17, 1317
 - Surviving partners, 17, 1161
 - To disprove partnership, 17, 1315
 - To prove partnership, 17, 1314
 - Privileged communications, 19, 139
 - Receipts, 19, 1112
 - Streets and Sidewalks**
 - To show dedication, 24, 10
 - Telegraphs and telephones, 25, 835
 - To show character of possession, 9, 341
 - Trespass, 26, 657**
 - See* TRESPASS.
 - Trover, 26, 814, 815
 - Trusts and trustees, 27, 301
 - Undue Influence, 11, 157**
 - Declarations of beneficiary, 27, 507
 - Testator's Declarations, 27, 505**
 - After execution of will, 27, 507
 - Feelings toward beneficiaries, 27, 506
 - Ideas and beliefs, 27, 505
 - Idiosyncrasies of testator, 27, 505
 - Influence itself, 27, 506, 507
 - In general, 27, 505

DECLARATIONS—Cont'd

Undue Influence—Cont'd

Testator's Declarations—Cont'd

- Intention of testator, 27, 503, 505
- Matters showing acts of influence, 27, 506
- Nearness of time, 27, 507
- Relation toward beneficiaries, 27, 506
- Res gestæ, 27, 506
- To prove condition of testator's mind, 27, 505

Where declaration itself is in controversy, 5, 361

Wills, 29, 261

DECLARATOR, 5, 369

DECLARATORY ACTIONS, 5, 369

DECLARATORY DECREE OR JUDGMENT, 5, 369

DECLARATORY PART OF LAW, 5, 369

DECLARATORY STATUTES, 5, 369

See STATUTES.

DECLARE, 5, 369

Declare the law, 5, 369

DECLINE, 5, 369

DECOY, 2, 671; 3, 665; 5, 370

Decoying parties within jurisdiction, see SERVICE OF PROCESS.

DECOY LETTERS, 13, 257

Embezzlement, 18, 862

Obscenity, 17, 12

Postal laws, 18, 862

DECREE, 5, 392

See FINAL DECREES.

See generally, JUDGMENT.

As to decree in foreclosure suits, see FORECLOSURE OF MORTGAGES.

In divorce suits, see DIVORCE.

Of sister states, see JUDGMENTS OF SISTER STATES.

Res judicata, see RES JUDICATA.

Action of debt upon, 5, 169, 389

Admiralty, 16, 364

Collision, 16, 364

After expiration of judge's term, 10, 13

Against co-defendants on code of evidence between plaintiffs and defendants, 5, 378

Alimony, 5, 376

Amendments, 5, 380

Based upon matter of record, 5, 380

Clerical errors, 5, 380

Final decrees, 5, 380

Laches on part of party seeking, 5, 380

Matter which would not have been granted, as of course, upon hearing, 5, 380

Rights of third parties, 5, 380

Based on facts not in issue, 5, 378

Before all persons in interest are made parties, 6, 732

Bill in nature of a bill in review, 5, 388

Bill to Carry Decree into Execution, 6, 773
Plea, 6, 797

Bill to Impeach a Decree

On the Ground of Fraud, 6, 797

Bill to suspend or avoid the execution of, 6, 773

By consent, 5, 375

Collateral Attack Upon, 5, 385

Collusive decrees, 5, 387

Fraud, 5, 387

Parties and privies, 5, 387

Conclusiveness of, 5, 381

As to infants, 5, 382

As to persons, 5, 381

Decree against executor, 5, 382

Decree against party in a representative capacity, 5, 383

Decree against party in one capacity, 5, 383

Decree against unknown owner, 5, 382

Lis pendens, 5, 383

Persons neither parties nor privies, 5, 383

Privies, 5, 382

Real parties in interest, 5, 382

Remainder-men, 5, 382

Dative, 5, 394

Declaratory part, 5, 376

Decree forthcoming, 5, 394

Definition, 5, 371, 392

Definitive, 5, 518

Divorce, see DIVORCE.

Effect of, 5, 380-386

As directly devising title, 5, 380

As evidence, 5, 381

Decree of divorce, 5, 386

For conveyance of real estate, 5, 380

On title, 5, 380

Enforcing, 5, 389

Action at law, 5, 389

Action of debt, 5, 169, 389

Assumpsit, 5, 390

Attachment and commitment for contempt, 5, 390

Bill in equity, 5, 390

Depriving party of privileges, 5, 390

Enjoining defendant from disposing of his property, 5, 391

Execution, 5, 390

Scire facias, 5, 390

Security for payment of a money decree, 5, 391

Sequestration, 5, 390

Writ of ne exeat, 5, 391

Enrolling, 5, 379

Executors and Administrators, 6, 407

Decree of immediate payment, 7, 408

Effect of admitting assets, 6, 407

Effect of admitting assets to one claimant, 7, 408

Necessity of taking accounts, 7, 408

Retraction of admission of assets, 7, 408

What amounts to an admission, 7, 408

Final Judgment

Foreclosure, 5, 377; 12, 68

Reference to master, 12, 69

For affirmative relief on bill and answer, 5, 378

For costs, 4, 323

Foreclosure, 5, 377; 12, 68

Foreign decree, see FOREIGN JUDGMENT.

Enforcement of bill in equity, 5, 392

Form and Contents, 5, 376

Alimony, 5, 376

Decrees for accounting, 5, 377

Descriptions, 5, 376

Divorce, 5, 377

Foreclosure, 5, 377

Money decree, 5, 376

Partition, 5, 377

Specific performance, 5, 377

Founded on and supported by pleadings and proofs, 5, 378

Fraud

Bills to impeach decree on ground of, 6, 773

Fraudulent, 5, 387, 388

In absence, 5, 394

In Admiralty, 1, 203

Conclusiveness, 5, 386

Pending appeal, 5, 387

Where court had no jurisdiction of the res, 5, 386

In Chancery

Action of debt upon, 5, 171

Infants, 5, 382; 10, 694; 12, 87

Absolute decree, 12, 87

Decree pro confesso, 5, 378; 10, 694

Judgment by default, 10, 688

Injunction

Against decrees of courts of inferior jurisdiction, 5, 389

Court enjoining its own decree, 5, 389

In personam, 5, 375

In rem, 5, 375

Interest on, 11, 394

Interlocutory or Final, 5, 371, 393, 507

Costs, 5, 375

Decree appointing receiver, 5, 374

Decree dissolving a partnership, 5, 373, 374

Decree of foreclosure, 5, 374

Illustration of interlocutory decree, 5, 372

Injunctions, 5, 372-374

Partition, 5, 373

Reference to a master, 5, 372-374

Under code, 5, 372

What is final decree, 5, 373

What is interlocutory decree, 1, 618

Judgment distinguished from, 12, 63

Lien of, 5, 386

Lost wills, 13, 1132

Money, 5, 376

Nisi, 5, 375, 394

Numbering, entering, enrolling, etc., 5, 378

Nunc Pro Tunc Entries, 5, 379

Rights of third parties, 5, 380

When they will be made, 5, 379

Where clerk failed and neglected to properly enter decree, 5, 379

Where failure to enter was due to parties own neglect, 5, 279

Of constitution, 5, 394

Of locality, 5, 394

Of modification, 5, 394

Of registration, 5, 394

On decree, 17, 185

Opening, 5, 387

Ordering or mandatory part, 5, 376

Partition, 5, 377

As to decrees of partition, see PARTITION.

Partnership, 17, 1294

Final decree, 17, 1294

Personal decree, 17, 1293

Property secretly appropriated, 17, 1294

Where all debts have been paid, 17, 1294

Power of court to set aside, 5, 387, 388

Probate and Letters of Administration, 5, 385; 19, 206

Actual death necessary to give jurisdiction, 5, 386

Appeal, 19, 206

Binding as decrees in courts of equity, 5, 386

Collateral attack, 5, 385; 19, 206

Conclusiveness of probate of a will as to reality, 5, 385

Effect, 19, 206

Examples of collateral attack, 19, 207

Invalid grant of administration, 19, 207

Non-residence of intestate, 19, 207

Party not dead, 19, 207

Power of court of equity to set aside, 5, 386

Want of jurisdiction, 19, 207

Pro Confesso, 5, 375, 394

Against an infant, 5, 378; 10, 694

Patent law, 18, 109

Showing proper service on defendant, 5, 376

Where bill lacks precision, 5, 378

Recitals, 5, 376

Redemption of Mortgage, 20, 625

Effect of dismissal of bill, 20, 625

Extension of time, 20, 625

Time after decree, 20, 625

Where nothing is found due, 20, 625

Reformation of Instruments, 15, 665

Default, 15, 666

Examples, 15, 665, 666

Fraud, accident or mistake, 15, 666

Proceedings at law, 15, 666

When equity will grant relief, 15, 665

Relief against decree, 5, 387

Rendering, 5, 387

Reversal of, 5, 389

Effect upon title of purchaser at judicial sale, 5, 389

Order that money paid under decree be repaid, 5, 389

Restitution, 5, 389

Status of parties after reversal, 5, 389

Specific Performance, 5, 377; 22, 1079, 1080, 1086, 1087

Compensation in lieu of performance, see SPECIFIC PERFORMANCE.

Land situated abroad, see SPECIFIC PERFORMANCE.

DECREE—Cont'd**Specific Performance—Cont'd**

Money compensation, see SPECIFIC PERFORMANCE.

Whether decree passes title, see SPECIFIC PERFORMANCE.

Affects Whom, 22, 1079

In general, 22, 1082

Must bind all parties, 22, 1082

Person of the delinquent party, 22, 1082

Public interest, 22, 1082

Wife of the party, 22, 1082

Contempt of court, 22, 1087

Contract consists of negative covenants, 22, 1086

Conveyance of property, 22, 1087

Equity between the parties, 22, 1081

Execution of writing, 22, 1087

Form, 22, 1083

Alternative form, 22, 1083

Compensation in lieu of performance, 22, 1085

Examples, 22, 1083, 1084

Guided by pleadings and evidence, 22, 1084

Performance conditioned upon compliance by other party, 22, 1084

Injunction, 22, 1087

Mode of enforcement, 22, 1086

Other relief, 22, 1079

Performing the agreement, 22, 1081

Repayment of reimbursement where performance is refused, 22, 1081

Sale of land and payment out of proceeds, 22, 1087

Scope, 22, 1079

Time of performance, 22, 1081

Whether decree has effect of judicial sale, 22, 1080

Subpœna in equity, 24, 180

Superiority of decree over judgment at law, 5, 371

Title, 5, 376

Trusts and Trustees, 27, 306

Examples, 27, 306-308

Extraterritorial effect, 27, 306

Power of court, 27, 306, 307

Reformation, 27, 308

Removal of trustee from the state, 27, 306

Trustee of foreign court, 27, 306

Whether court bound by terms of instrument, 27, 308

United States Courts, 27, 625

Correction, 27, 627

Form, 27, 626

In rem, 27, 626

Whether it binds those not parties, 6, 745

Without prejudice, 5, 384

DECREPIT, 5, 394**DEDICATE**, 5, 395**DEDICATION**, 5, 395

For dedication of manuscript to the public, see COPYRIGHT.

Abandonment, 5, 419

Acceptance, 5, 412; 17, 411; 24, 11, 12

Curing incomplete statutory dedication, 5, 397

Necessity of, 5, 400, 412

Proof of, 5, 414

Formal act of public bodies, 5, 414

Mere travel by public, 5, 415

Mere user alone, 5, 415

Necessity of formal proceedings, 5, 415

Presumption from long user, 5, 415

User of way by public at large, 5, 414

Public's liability for defective highways, 5, 413, 414

Statutory dedications, 5, 396

What time it may be made, 5, 414

Acknowledgment before registration, 5, 396

Adverse possession, 5, 403

Adverse possession against public, 5, 411

Alienation, 5, 418

By civil law, 5, 419

General power of municipal corporation, 5, 419

Where absolute fee passes, 5, 418

Beneficiaries, 5, 399

Bridges, 2, 542; 5, 417

Bridges as nuisances unless accepted by public, 5, 417

Care of bridge, 5, 417

Public utility of bridge, 5, 417

Cemeteries, 3, 51

Classification, 5, 396

Common Law, 5, 397

Defective statutory dedication as common-law dedication, 5, 400

Operates by way of an estoppel in pais, 5, 396

Summary of incidents of common-law dedication, 5, 398

Whether precluded by statutory regulations, 5, 397

Condemnation, 5, 411

Definition, 5, 395

Dower, 5, 920

Drama, 13, 920

Easements, 6, 146

Public's right in land, 5, 412

Effect of, 5, 410

Evidence to Prove, 24, 9

Acts of landowner held insufficient to prove dedication, 5, 409

Ancient documents, 5, 407

Building of street by owner, 5, 403

Circumstances from which intent may be gathered, 5, 402

Declarations of owner, 5, 401

Dedication of government lands, 5, 407

Filing plat, 5, 407

Instances of purpose of adverse use which has been held to show adverse use, 5, 404, 405

Intention, 5, 401

Lapse of time to necessary use of public, 5, 403

- Of waste or unfenced lands, 5, 407
- Platting, 5, 405
- Recording map, 5, 405
- Sale of land with reference to map upon which streets were laid out, 5, 405
- Surveying land into lots, streets, etc., 5, 405
- Where dedication is to owner's interest, 5, 408
- Evidence to Rebut a**, 5, 409; 24, 10
 - Acts held to repel presumption of dedication, 5, 409
 - Maintenance of gate or fence, 5, 410
- Government lands, 5, 407
- Highways, 10, 269
- Intention to Dedicate**, 5, 400; 24, 9
 - Acts of landowner held insufficient to indicate intention, 5, 409
 - Circumstances from which intent may be gathered, 5, 402
 - Essentiality, 5, 400, 401
 - How gathered, 5, 402
 - How signified, 5, 400
 - Proof, 5, 401, 402
- Joint tenants and tenants in common, 11, 1090
- Lands bought with reference to a plat, 6, 145
- Letters**, 13, 252
 - To private individuals, 13, 252
 - To the public, 13, 252
- Literary Property**, 13, 917
 - See COPYRIGHT.
 - Drama, 13, 920
 - Permitting circulation of copies, 13, 918
 - Printing and publishing, 13, 918
 - Used for purpose of instructing others, 13, 918
 - When complete, 13, 918
- Necessity of express acceptance, 5, 414
- Origin, 5, 395
- Parks and Public Squares**, 5, 416; 17, 407
 - Acceptance, 17, 411
 - See *infra*, ACCEPTANCE.
 - Map, 17, 412
 - Necessity, 17, 411
 - Presumption, 17, 411
 - Silence of proprietors, 17, 411
 - By writing, 17, 407
 - Erection of private house upon, 17, 411
 - Form, 17, 407
 - Marking land as public square, 17, 408
 - Revocation, 17, 410
 - Sale of lots with reference to plan, 17, 408
 - Upon water front, 17, 411
 - What amounts to a dedication, 17, 408
 - Whether dedication must be evidenced, 17, 407
 - Whether doctrine is applied to parks and public squares, 17, 407
- Parties, 5, 399
- Party testifying as to intent, 11, 377
- Private ways, 19, 106
- Public buildings and churches, 5, 416
- Public squares, 5, 416; 17, 407
- Public's right in land, 5, 412
- Purpose of**, 5, 416
 - Bridges, 2, 542; 5, 417
 - Highways, 5, 416; 17, 407
 - Public buildings and churches, 5, 416
 - Public squares, 5, 416
- Question of law or fact, 5, 402; 19, 657
- Railroads, 19, 842
- Reservation of right to revoke, 5, 419
- Restrictions**, 5, 417
 - Land dedicated for highway converted into a market, 5, 418
 - Remedy where property was put to a foreign use, 5, 418
 - Use of property restricted to the use to which it was dedicated, 5, 417
- Reversion, 5, 419
- Revocation of, 5, 410, 419
- Sale of land with reference to plat upon which streets are marked out, 5, 407
- School purposes, 5, 416
- Statutory Dedication**, 5, 396, 413; 24, 4
 - Acceptance not necessary, 5, 413
 - Acceptance on part of public, 5, 396
 - Acknowledgment before registration, 5, 396
 - Dedicator limiting duration, 5, 397
 - Defective grant as common-law dedication, 5, 400
 - Operates as a conveyance, 5, 396
 - Strict compliance with statute, 5, 396
 - Whereby an incomplete dedication is cured by an acceptance, 5, 397
 - Whether grant of easement or fee, 5, 397
- Streets and Sidewalks**, 24, 4
 - Acceptance, 24, 11, 12
 - See *infra*, ACCEPTANCE.
 - As against the public, 24, 11
 - As between landowner and others, 24, 12
 - Evidence, 24, 12
 - Implied, 24, 12
 - Necessity, 24, 11
 - Presumed where beneficial, 24, 13
 - Reasonable time, 24, 12
 - Time, 24, 12
 - Whether necessary for statutory dedication, 24, 5
- Common-law dedication, 24, 4
- Conditions, 24, 7, 14
- Deed referring to street as boundary, 24, 7
- Definition, 24, 4
- Dower, 24, 13
- Effect**, 24, 13
 - Concludes owner, 24, 13
 - Conditions limiting right to public, 24, 13
 - Easement in public, 24, 13
 - Fee, 24, 13
 - Statutory dedication, 24, 5, 13
 - Warranty, 24, 14
- Evidence to Prove**, 5, 402; 24, 9
 - Acts of owners, 24, 9
 - Declarations, 24, 10

DEDICATION—Cont'd**Streets and Sidewalks—Cont'd****Evidence to Prove—Cont'd**

Evidence of party, 24, 9

Evidence to rebut dedication, 5, 409;
24, 10

Examples, 24, 9-11

Insufficient evidence, 24, 10

Payment of taxes, 24, 11

Question of law or fact, 24, 11

Situation of land, 24, 11

Express common-law dedication, 24, 5

Implied dedication, 24, 4, 7

Intent, 5, 400; 24, 9

Express dedication in writing, 24, 7

Expressed, 24, 9

How proved, 24, 9

Parol evidence to contradict express
dedication, 24, 7

Plats, 24, 5

Reasonable time for acceptance, 24, 12

Recorded plats, 24, 5

Statutory Dedication, 5, 396, 413; 24, 4

Compliance with statute, 24, 5

Invalid, good as common-law dedi-
cation, 24, 5

Necessity of acceptance, 24, 5

Right which public takes, 24, 5

Substantial compliance, 24, 5

To take effect in futuro, 24, 5

Warranty, 24, 14

Whether public takes fee in easement,
24, 5, 13, 14, 35**Who May Dedicate**, 3, 398; 24, 7

A state, 24, 8

City, 24, 8

Commissioner in partition, 24, 8

Corporation, 5, 398; 24, 8

County, 24, 8

Equitable owner, 5, 398; 24, 8

Executors and administrators, 24, 8

Guardians, 24, 8

Infants, 24, 8

Landlord and tenant, 24, 9

Married women, 5, 398; 24, 8

Mortgagor, 5, 398; 24, 8

Person in possession without title,
24, 8

Remainder-man, 5, 398; 24, 9

Trustee, 5, 399; 24, 8

United States, 24, 8

What Constitutes, 5, 400

Length of possession required, 5, 402

Necessity of deed or writing, 5, 401

Necessity that legal title should pass
from owner, 5, 401

Question of intention, 5, 400

Time as an ingredient, 5, 401

Who May Dedicate, 5, 398; 24, 7

Corporations, 5, 399; 24, 8

Equitable owner, 5, 399; 24, 8

Married women, 5, 399; 24, 8

Mortgagor, 5, 398; 24, 8

Owner or proprietor, 5, 398

Remainder-men, 5, 398; 24, 8

Tenants, 5, 399

Trustees, 5, 399; 24, 9

**DEDICATION OR ABANDONMENT OF
AN INVENTION**, 5, 420

Abandonment after patent, 5, 422

Abandonment irrevocable, 5, 422

Acquiescence in public use by others, 5,
421Cases which under the circumstances
have been held not to have been
abandonment, 5, 420, 421Cases which under the circumstances
have been held to amount to an
abandonment, 5, 420, 421Delay after application for but before
grant of patent, 5, 420

Delay in applying for a patent, 5, 420

Intention, 5, 420

Unauthorized and surreptitious use of in-
vention, 5, 421**DEDUCT**, 5, 422**"DEDUCTION,"** 5, 422

Agent's power to deduct, 1, 361

"DEEDED," 5, 422**DEEDS**, 5, 423; 13, 773*See* ACKNOWLEDGMENTS; ALIENS;
CORPORATIONS (sub-head CONVEY-
ANCES); COVENANT, ACTION OF; ES-
CROWS; ESTOPPEL; FORGERY;
FRAUDS, STATUTE OF; FRAUDULENT
CONVEYANCES; IMPLIED COVE-
NANTS; JUDICIAL SALES; LOST
PAPERS; MARRIAGE SETTLEMENTS;
NOVATION; PAYMENT.*See generally*, POWERS.*See* RECORDING ACTS; SUBSEQUENT
PURCHASERS; VENDOR AND PUR-
CHASER.*Absolute deed as mortgage*, *see* EQUI-
TABLE MORTGAGES.*Alienation*, *see* RESTRAINTS OF ALIEN-
ATION.*Alterations and Interlineations*, *see*
ALTERATION IN INSTRUMENTS.*As to capacity of grantor to make a
deed, and the capacity of grantee to
receive it*, *see* GRANTOR AND GRAN-
TEE.*Covenants*, *see* COVENANT; REAL
COVENANTS.*Of trees*, *see* TREES.*Penalties*, *see* LIQUIDATED DAMAGES.*Registration*, *see* RECORDING ACTS.*Separation deeds*, *see* SEPARATION.*Tax deeds*, *see* TAX TITLES.*Trust deeds and power of sale mort-
gages*, *see* TRUST DEEDS AND POWER
OF SALE MORTGAGES.*Voluntary and fraudulent conveyances*,
see FRAUDULENT CONVEYANCES.

Abbreviations in, 1, 16

Acceptance, *see infra*, DELIVERY AND
ACCEPTANCE.Agent's authority to execute, 3, 829; 5,
439

Agent's signature, 1, 385

Ambiguities in, 1, 538

Appurtenants, 1, 641; 5, 454

How determined, 5, 455

- Land to pass as appurtenant to land,
5, 455
What included under, 5, 454
- Attestation**, 1, 938; 5, 442, 457
Acknowledgment in presence of witnesses, 5, 442
Necessity of, 5, 442
Validity as between parties where proper attestation is wanting, 5, 442
- Authentication of**, 1, 1024
- Canceling**, 2, 719
- Champerly and Maintenance**
Deed a nullity, 3, 82
When void for, 3, 80, 81
Component parts of, 5, 453
- Conditions**, 5, 457; 8, 444
Against alienation, 13, 794
- In Lease**
Assignment, 13, 802
Payment of rent, 13, 801
Of property devised or conveyed not to be subject to debts of devisee or grantee, 13, 800
Parol, 13, 797
Repugnant, 13, 798
Effect, 13, 798
Examples, 13, 799
- Conditions precedent**, 13, 775
- Conditions precedent and subsequent**, 13, 774
- Conditions Subsequent**, 13, 775, 779
Breach of condition, 13, 775, 781, 785
Construction, 13, 777
Demand, 13, 781
Demand of performance, 13, 774
Duration, 13, 778
Effect of alienation, 13, 778
Effect of breach, 13, 781
Enforcement of forfeiture in equity, 13, 786
Entry, right of, 13, 786
Illegal conditions, 13, 778
Impossible conditions, 13, 778
Infancy or coverture of grantee, 13, 778
Necessity, 13, 775, 785
Necessity of express terms, 13, 777
Performance, 13, 778
Putting in windows, 13, 784
Release, 13, 779
Release of condition, 13, 779
Restrictions and stipulations, 13, 792
Right of entry, 13, 786
- Termination of Estate Upon Condition**, 13, 785
Grantor in possession, 13, 785
How terminated, 13, 785
Necessity of entry, 13, 775, 785
Time of performance, 13, 780
Use of premises for certain purposes, 13, 782, 793
- Use of Property for Certain Purposes**
Cessation of use, 13, 784
Examples, 13, 782-784
Intoxicating liquors, 13, 782
Land conveyed for county purposes, 13, 784
- Sale of lots, 13, 783
Validity of conditions, 13, 782
- Waiver of Condition**, 13, 779
By conduct of grantor, 13, 779
Continuing condition, 13, 780
Conveyance of right of entry, 13, 780
Examples, 13, 780
Expressly dispensing with condition, 13, 779
Waiver in whole or in part, 13, 780
What sufficient, 13, 779, 780
Waiver of forfeiture, 13, 775
What constitutes sufficient entry, 13, 786
Who bound by condition, 13, 778
Who may take advantage of breach, 13, 786
- Consideration**, 5, 435
See FRAUDULENT CONVEYANCES.
Gambling consideration, *see* GAMBLING CONTRACTS.
Illegal consideration, *see* ILLEGAL CONTRACTS.
Presumption of, *see* SEALS.
Acknowledgment of, by grantor, 5, 436
Acknowledgment only prima facie evidence of character and amount of consideration, 5, 437
Common-law conveyances, 5, 435
Conveyances operating under statutes of usage, 5, 436
Infant's deed, 5, 426
Natural love and affection, 16, 234
Necessity of, 5, 435
Parol evidence, 5, 436
Where one seeks priority over an unrecorded deed, 5, 453
- Construction**
Construction of covenants in deeds, *see* COVENANT, ACTION OF.
A question for the court, 11, 241
Contemporanea expositio est optima et fortissima in lege, 2, 497
Description of boundaries, 2, 496
Falsa demonstratio non nocet, 2, 497
First part of description prevailing over latter, 2, 498
In favor of grantee, 2, 498
More favorable to the grantee, 2, 496
Special description controls general, 2, 498
- Trusts**, 27, 74
Examples, 27, 74-81
In general, 27, 74
Power of trustee, 27, 78
Strict construction, 27, 74
- Corporations**
Officers and Agents of Private, 17, 153
Board of directors, 17, 153
Deed not made in name of corporation, 17, 154
Individual members of board, 17, 153
Personal liability of agent, 17, 154
Signature of agent, 17, 154
Who may seal a deed, 17, 153

DEEDS—Cont'd**Date**

- Necessity of, 5, 77, 446
- Parol evidence to show that deed was not delivered on day of date, 5, 446
- Presumption that deed was executed and delivered on day of date, 5, 445

Debtor and Creditor

- Property devised or conveyed not subject to debts of devisee or grantee, 13, 800

Deed-Poll, 5, 453

- Covenant upon, 4, 467

Defeasance, 5, 510**Definition, 3, 825, 826; 5, 423, 441**

- Of execution, 5, 439

Delivery and Acceptance, 5, 445

- Delivery to third party*, see ESCROW.

- Acceptance by grantee when deed is delivered to third person, 5, 449
- Acceptance some time subsequent to delivery, 5, 449

- Acceptance where grantee is under legal disabilities, 5, 449

Agent, 5, 424

- Confidential relation between grantee and person receiving deed, 5, 449

- Deed declared to be delivered in presence of witnesses, 5, 447

- Deed must be completed before delivery, 5, 445

- Delivery after death of grantor, 5, 446

- Delivery must be absolute and unconditional, 5, 448

- Delivery of deed to husband for benefit of wife, 5, 449

- Delivery subject to right of recalling deed, 5, 448

- Delivery to parent of deed for infant child, 5, 449

- Delivery to third person for grantee, 5, 448

- Effect of deed after delivery and acceptance, 5, 445

- Effect of deed until delivery and acceptance, 5, 445

- Instruction, examples of, 11, 268, 270, 271

- Intention controls the question of sufficiency of delivery, 5, 447

- Necessity of, 5, 445

- Necessity of acceptance, 5, 446

- Necessity of date to validity of deed, 5, 446

- No title passes without acceptance, 5, 446

- Parol evidence to show that deed was not delivered on day of date, 5, 446

- Presumption of acceptance, 5, 446, 449

- Presumption of delivery, 5, 447; 13, 1089

- Presumption that deed was delivered on day of date, 5, 445

- Proof of, 4, 523

- Questions of Law and Fact, 19, 637**

- Escrow, 19, 639

- Mixed questions of law and fact, 19, 638

- Questions of fact, 19, 637

- Questions of law, 19, 637

- True rule, 19, 638

- Rebutting presumption of acceptance, 5, 449

- Rebutting presumption of delivery, 5, 447

- Recording, 20, 552**

- Prima facie evidence in record, 20, 552

- Whether record equivalent to delivery, 5, 447; 20, 552

- Where grantee is a corporation, 5, 448

- Where grantor intends execution to have effect of delivery, 5, 447

- Where there are several grantees, 5, 446

Delivery to Obligee

- When an escrow and when a deed, 6, 859, 860

Description of Land

- See *infra*, MORE OR LESS.

- Mistake, 15, 646

- Mistake in amount of land conveyed, 15, 646

Description of Parties, 5, 432

- See generally, as to name of parties in instruments, NAME.

- Christian name as well as surname, 5, 432

- Deeds of fictitious persons, 5, 432

- Delivery of deed of fictitious person to another, 5, 432

- Effect of not sufficiently describing grantor or grantee, 5, 432

- Middle name, 5, 433

- Mistake in name where party can be identified, 5, 432

- Naming grantees of future estates, 5, 433

- Naming persons taking an equitable interest, 5, 433

- Parol evidence to show true party, 5, 433

- What sufficient, 5, 432

- Destruction of unrecorded deed, 1, 503

Distinguished from Wills, 29, 145

- Alteration of deed by subsequent will, 29, 150

- Compliance with wills act, 29, 149

- Conveyance of undivided interest, 29, 149

- Conveyance to trustees, 29, 149

- Directing personal representative to pay, 29, 146

- Examples, 29, 145-150

- In general, 29, 145

- Instrument held not testamentary, 29, 148

- Intent of maker, 29, 149

- Interest in present, 29, 145

- Mutual agreement, 29, 147

- Revocation at pleasure, 29, 145

- Duress, 6, 81

- Escrow distinguished from, 6, 858

Estoppel

After-acquired title, 9, 46

Name, 16, 131

Estoppel by deeds, see **ESTOPPEL**.**Evidence**

Parol evidence to show that deed was not delivered on day of date, 5, 446

Exceptions, see *infra*, **RESERVATION**.**Execution**

By agent, 3, 829; 5, 439

Meaning of term, 7, 117

Exemplification, 7, 482

Filling blanks in, 1, 519

"For and during," 8, 94

Forfeiture, 8, 445

Forgery of, 8, 453

Fraudulently altering, 8, 475

Fraud, 5, 430

Fraud in Execution, 21, 900

Presumption of consideration, 21, 900

Remedy at law and equity, 21, 900, 901

Surreptitiously substituting deed in place of one intended, 21, 900

Fraudulently Destroyed

Constructive trusts, 10, 65

Gift of

Necessity of delivery of deed, 8, 1331

Give a deed, 8, 1356

"Good and sufficient deed," 8, 1358

Governed by *lex loci rei sitæ*, 3, 565

Habendum, 5, 456

Habitual drunkard, 5, 426

History, 3, 825

Husband and Wife, 14, 567See *infra*, **MARRIED WOMEN**.As to separation deeds, see **SEPARATION**.

Delivery in escrow, 14, 567

Effect in equity, 14, 567

Estoppel, 14, 567

Husband as trustee, 14, 567

In general, 14, 567

Intervention of trustee, 14, 567

Words necessary to exclude husband's rights, 14, 567

Illegal Conditions, 13, 778**Sealed Instruments**

Presumption in favor of consideration, 21, 899

Implied Covenants, 9, 962, 966

In England, 9, 962

In United States, 9, 962

Under and subject to, 9, 962

Impossible conditions, 13, 778

Infants, 5, 426; 10, 628

Infant's right to avoid his acts, 10, 628

Prejudicial acts, 10, 628

Ratification and Avoidance, 5, 427; 10, 649

Conveyance to an infant, 10, 653

Implied ratification, 5, 427; 10, 649

Inconsistent deeds, 10, 653

Prior deed, 10, 653

Promise to make deed of affirmance, 10, 650

Reasonable time for disaffirmance, 10, 651

I-D—24

Restoration of Consideration, 5, 427; 10, 654

At law, 10, 656

Avoidance of partnership, 10, 656

Effect of retention, 10, 654

Necessity, 10, 654

Right of action to recover, 10, 655

Use and occupation, 10, 656

Wasted consideration, 10, 655

Revocation by deed, 10, 652

Revocation of easement, 10, 651

Statute requiring disaffirmance within certain time, 10, 651

Subsequent deed of infant, 10, 652

Within what time avoidance may be made, 5, 427; 10, 643, 649

Void or voidable, 10, 628, 632

Injunctions

Breach of condition, 10, 942

Insane Grantors, 5, 426; 11, 146

After the finding of the inquisition, 11, 147

Conveyance by matter of record, 11, 146

Declared void by statute, 11, 147

Deed made in lucid interval, 11, 148

Deeds by monomaniacs, 11, 148

Feoffment, 11, 146

Insane settler, 11, 147

Ratification, 5, 427; 11, 148

Ratification inferred, 5, 427; 11, 148

When void or voidable, 11, 146

Where deed is equivalent to feoffment, 11, 146

Insane persons, 5, 426; 11, 146

Issue, 11, 876

Whether word of purchase, 11, 876

Larceny

Indictment, 12, 814

Latent deed, 12, 910

License, 13, 543

Married Women, 5, 427; 14, 626*Acknowledgment*, see **ACKNOWLEDGMENT**.See *infra*, **HUSBAND AND WIFE**.See **SEPARATE PROPERTY OF MARRIED WOMEN**.**Agreement to Give Deed**, 14, 635

Acknowledgment, 14, 635

Enforcement in equity, 14, 635, 636

Equitable separate estate, 14, 636

Examples, 14, 635

Formalities, 14, 635

Husband's agreement to convey, 14, 637

Joinder of husband, 14, 636

Privy acknowledgment, 14, 635-637

Property held as trustee, 14, 635

Specific performance, 14, 637

Validity, 14, 635

When agreement is valid, 14, 636

Where her contracts are valid, 14, 636

At Common Law, 5, 427; 14, 626

Barring dower, 14, 627

Civily dead, 14, 627

Fines and common recovery, 14, 627

Vol. I.

DEEDS—Cont'd**Married Women—Cont'd****At Common Law—Cont'd**

- In general, 14, 626
- Joint deed of husband and wife, 14, 627
- Statutes, 14, 627
- Validity, 14, 626
- When valid, 14, 627

Avoidance, 14, 633

- Acknowledgment of signature, 14, 633
- Against whom fraud may be claimed, 14, 633
- Assent during coverture, 14, 634
- Bona fide purchaser, 14, 633
- Certificate perfect, 14, 633
- Conclusiveness of certificate, 14, 633
- Declaration, 14, 634
- Denying assent, 14, 634
- Denying having read deed, 14, 634
- Duress, 5, 430; 14, 633
- Examples, 14, 634
- Forgery, 14, 633
- Fraud, 14, 633
- Impeachment of certificate by officer, 14, 633
- Party with notice of defects, 14, 633
- Res gestæ, 14, 634
- Unsupported testimony of wife, 14, 633

Confirmation, 14, 628, 631

- By act of party, 5, 427; 14, 631
- By Courts of Equity, 14, 632
- Capacity of party, 14, 632
- Deed which should be recognized in good conscience, 14, 633
- Examples, 14, 632, 633
- In general, 14, 632
- Invalid at law, 14, 632
- Reformation, 14, 632
- To prevent injustice, 14, 633
- When grantor has power to convey, 14, 632

By Curative Statutes, 14, 631

- Validity, 14, 631
- When authorized by constitution, 14, 631
- By parol, 14, 619
- By reacknowledgment and recording, 14, 619
- Effect of subsequent assent, 14, 631
- Illustration, 14, 631
- Intermediate deed, 14, 631
- Necessity of reacknowledgment, 14, 631
- Necessity of redelivery, 14, 631
- Parol adoption, 14, 631

Coverture and Infancy, 14, 593

- Attainment of full age, 14, 593
- Estoppel, 14, 594
- How wife can confirm deed, 14, 593
- Making another conveyance, 14, 594
- Restoration of consideration, 14, 594
- Separate property, 14, 594

- Termination of coverture, 14, 593
- Whether deed can be avoided during coverture, 14, 593

Equitable Separate Property, 14, 628

- Capacity, 14, 628
- Formalities, 14, 628
- Rule to determine capacity, 14, 628
- Execution, 14, 629
- Husband permanent non-resident, 14, 606

Joinder of Husband, 5, 428; 14, 629

- At common law, 14, 629
- Necessity, 14, 629
- Signature alone, 5, 428; 14, 629
- When unnecessary, 14, 629

Powers of Attorney, 14, 634

- Executing private power, 14, 634
- Formalities, 14, 635
- Joinder of husband, 14, 635
- Necessity of privy examination, 14, 635
- Power by implication, 14, 634
- Property held as at common law, 14, 634
- Release of dower, 14, 634
- Revocation by marriage, 14, 635
- Statutory regulation, 14, 634
- Unconnected with conveyance of land, 14, 635
- When she has powers of feme sole, 14, 634

Privy examination, 14, 629**Ratification, 5, 427; 14, 631****Recording, 14, 629****Statutory Separate Property, 14, 628**

- Capacity in general, 14, 628
- Compliance with statute, 14, 628
- Confirmation, 14, 628
- Examples, 14, 628
- Particular mode of execution, 14, 628
- Where no forms are prescribed by statute, 14, 628

Under Statutes, 5, 428

- Acknowledgments, 14, 627
- Compliance with statutes, 5, 428; 14, 627
- General scope, 14, 627

Married women as grantees, 5, 430

- Void or voidable, 5, 427
- Mines and mining claims, 15, 511

More or Less, 15, 717

- Deeding excess, 15, 720
- Deviation of ten or fifteen per cent., 15, 718
- Effect of the words, 15, 717
- Effect of warranty, 15, 721
- Equivalent to sale of land in gross, 15, 718
- Examples in which excess was held to exceed limit covered by the words, 15, 719
- Examples in which quantity was held not to exceed limit covered by the words, 15, 718, 719
- Materiality of words expressing quantity, 15, 720
- Metes and bounds, 15, 720

- Misrepresentations, 15, 721
- Mutual risk of vendor and vendee, 15, 717
- Reasonableness of deficiency, 15, 718
- Reasonableness of excess, 15, 718
- Small portion more than quantity, or if there be a small quantity less, 15, 717
- Waiver of warranty, 15, 717
- Mortmain, 5, 431
- Names of parties, 5, 433
- Necessity of description of boundaries, 2, 496
- Obtained by Fraud**
 - Constructive trusts, 10, 63
- Obtaining signature to, by false pretenses, 7, 742
- Of Gift, 8, 1331**
 - Deed must be under seal, 8, 1331
 - Necessity of delivery of property, 8, 1331
 - Writing without seal is evidence that gift was intended, 8, 1331
- Of guardian, 9, 120
- Of indenture and deeds-poll, 5, 453
- Only lands which comply with description pass, 2, 498
- Operative Words of Conveyances, 5, 438**
 - "Give, grant, bargain and sell," 5, 438
 - Necessity of, 5, 438
 - Technical words not necessary, 5, 438
 - Words in past tense, 5, 438
- Parol Evidence, 3, 829; 5, 423; 16, 872; 17, 422**
 - Acknowledgment of receipt of money, 17, 434
 - Application of rule, 17, 422
 - Conditions, 17, 423
 - Examples, 17, 423
 - Growing crops, 17, 423
 - Parol reservation of crop, 17, 423
 - Reservation or limitation, 17, 423
 - Several parts of deeds, 17, 422
- Persons under disabilities as grantors, see GRANTOR AND GRANTEE, see infra, INFANTS; INSANE PERSONS; MARRIED WOMEN.*
- Pleadings**
 - Recitals, 20, 470
- Possibility, conveyance of a mere, 5, 434
- Power of Attorney to Execute, 5, 439**
 - By married woman, 5, 439
 - Death of agent revokes, 5, 440
 - General agency, 5, 439
 - Manner in which deed must be executed, 5, 440
 - Necessity of, 5, 439
 - Premises in name of agent, 5, 440
 - Ratification of agents to the deed, 5, 439
 - Signature of agent, 5, 440
 - Statutory power of wife, 5, 439
- Powers, 18, 926
- Premises, 5, 454; 19, 4
- Presumption**
 - As to regularity of title, 7, 98
 - In favor of correct execution of ancient, 5, 365
 - Sealing and delivering, 19, 51
- Priority**
 - Judgment lien, 12, 111
- Profert and Oyer, 18, 508**
 - At common law, 18, 508
 - Demurrer, 18, 511
 - Effect of demanding oyer, 18, 510
 - Effect of failure to demand oyer, 18, 510
 - Effect of profert, 18, 510
 - Letter of administration, 18, 510
 - Letters testamentary, 18, 510
 - Necessity, 18, 508
 - On what instrument required, 18, 509
 - Profert unnecessarily made, 18, 511
 - Records of superior court, 18, 509
 - What is meant by craving oyer, 18, 510
 - When oyer is demandable, 18, 510
 - Whether party must make use of oyer, 18, 511
 - Whether refusal is error, 18, 511
- Proof of**
 - Exemplification, 7, 482
- Proposal and Acceptance**
 - Necessity of, 3, 859
- Proviso, 19, 298
- Questions of Law and Fact**
 - Date, 19, 636
 - Delivery, 19, 637
- Ratification**
 - Deed obtained by duress, 5, 430
 - Or disaffirmance, 5, 426
 - Verbal, 1, 386
- Reading of deed, when necessary, 5, 443
- Receipts, 19, 1114, 1125
- Recitals controlling operation of instrument, 4, 469
- Recitals, covenants by, 4, 469
- Reddendum, 5, 457
- Reformation of Instruments, 15, 655**
 - Assignee's right to reformation, 15, 658
 - Boundaries, 2, 496; 15, 655, 656
 - Correction after sale on foreclosure, 15, 658
 - Defective deed of married women, 15, 662
 - Deficiency, 15, 659
 - Describing tract as containing certain number of acres, 15, 660
 - Description, 15, 655
 - Different conveyances in which same mistake was made, 15, 658
 - Examples, 15, 655-663
 - Foreclosure proceedings on mortgage, 15, 658
 - Great difference between estimated and real quantity of land, 15, 661
 - In general, 15, 655
 - Intention to convey more land than deed covers, 15, 659
 - Interest conveyed, 15, 661
 - Judicial sale, 15, 659
 - Land conveyed by metes and bounds, 15, 655
 - Mistake as to quantity of land, 15, 657

DEEDS—Cont'd**Reformation of Instruments—Cont'd**

- Mistake in date, 15, 661
- Mistake in names of parties, 15, 661
- Mistake in names of points of compass, 15, 662
- Mistake in numbers, 15, 662
- Mistake set up by way of defense, 15, 655
- More or less, 15, 659
- More or less land than sold, 15, 656
- Omission of formality by married women, 15, 662
- Omission of name of trustee, 15, 663
- Representative of grantor, 15, 658
- Seals, 15, 661
- Statutes of frauds, 15, 658
- What mistakes may be corrected, 15, 655
- Where grantor has no interest, 15, 662
- Where there is no warranty, 15, 657
- Words of inheritance, 15, 661

Registration, see RECORDING ACTS.

- Date of record, 5, 453
- Necessity of consideration, where priority is sought over unrecorded deed, 5, 453
- What time priority acquired by registration takes effect, 5, 453

Relation, 20, 737

- Admissibility of deed executed subsequent to the commencement of an action involving title, 20, 731

Release of condition, 13, 779**Requisites, 5, 423****Rescission, 21, 63**

- As to contracts generally, see RESCIS-SION.*

- As against strangers, 21, 64

- As between parties, 21, 63

- By parol, 16, 872

- Cloud on title, 21, 64

- Disability, 21, 63

- Failure of Consideration, 21, 63

- See generally, VENDOR AND PUR-CHASER.*

- Forgery, 21, 64

Fraud, 21, 64

- Examples, 21, 64

- Extortion, 21, 64

- Judgment creditor, 21, 64

- Time of application, 21, 64

- Mistake, 21, 37, 63

- Separation deeds, 22, 70, 71

Reservations and Exceptions, 5, 455; 13, 787

- Assignment of privileges, 13, 788

- Construction, 13, 789

- Construing of reservation as an excep-tion, 13, 789

- Distinctions, 13, 787

Exception

- Distinguished from reservation, 7, 113

- Of minerals, 13, 787

- Partition by tenant in common, 13, 788

- Passageway, 13, 790

- Repugnant reservation, 5, 456; 13, 791

- Reservation to third persons, 5, 456; 13, 788

- Standing wood, 13, 790

Res Gestæ, 21, 118

- Declarations after transaction has been concluded, 21, 119

- Examples, 21, 118-120

- Terms of settlement, 21, 119

- When admissible, 21, 118

Res Judicata

- Validity, 21, 248

- Deed conveying two pieces of land, 21, 248

- Fraudulent conveyances, 21, 249

- In general, 21, 248

- Judgment as to one piece where two are conveyed in deed, 21, 248

- Questions of boundary, 21, 250

- Void deed, 21, 248

- Restrictions and stipulations, 13, 792

Restrictive Clause

- Livery stable keepers, 13, 936

- Return of unrecorded deed, 1, 503

Seal, see SEAL.

- Scroll, 5, 442

- What constitutes sufficient, 5, 442

Sealing, 5, 441

- As to seals to instruments generally, see SEALS.*

- Necessity of, 5, 441

- Party affixing seal himself, 5, 441

- Reference to, in attestation clause, 5, 441

- Setting aside for frauds, 10, 66

Sheriff's deed, see SHERIFF'S SALE.

- Mistake, 15, 676

- Signature by agent, 1, 385

- Signature of, 1, 337

Signing, 5, 440

- As to signature to instruments gener-ally, see SIGN-SIGNING.*

- By mark, 5, 441

- Necessity of, 5, 440

- Statute of frauds, 5, 441

Specialties, 3, 825**Spelling, 23, 1**

- Substitution of simple contract for sealed instrument, 16, 871

Sufficient Writing, 5, 423

- Complete before delivery, 5, 424

- Paper or parchment, 5, 423

- What constitutes, 5, 423

Tenendum, 5, 456; 25, 944**Thing to Be Conveyed, 5, 433**

- Conveyance of crops, see CROPS.*

- Easements, profits, or minerals, 5, 433

- Freehold interest requires a deed, 5, 433

- Standing trees, 5, 433

- Trees, see TREES.*

Trover, 26, 769

- Measure of damage, 26, 847

Trusts

- Construction, 27, 74

- Examples, 27, 74-81

- In general, 27, 74

- Power of trustee, 27, 78
 Strict construction, 27, 74
 Unacknowledged deed, proof for record, 1, 939
Use of Premises for Certain Purposes, 13, 782
 Cessation of use, 13, 784
 Examples, 13, 782-784
 Intoxicating liquors, 13, 782
 Land conveyed for county purposes, 13, 784
 Sale of lots, 13, 783
 Validity of the conditions, 13, 782
Vendor and Purchaser
Preparation of the Deed of Conveyance, 28, 130
 Duty in England, 28, 130
 Duty in United States, 28, 130
 Examples, 28, 130-132
 No default before deed is prepared, 28, 131
 Purchaser's duty, 28, 130
 Vendor's duty, 28, 130
 Voidable or void, 5, 426
Waiver of Condition, 13, 779
 By conduct of grantor, 13, 779
 Continuing condition, 13, 780
 Conveyance of right of entry, 13, 780
 Examples, 13, 780
 Expressly dispensing with condition, 13, 779
 Waiver in whole or in part, 13, 780
 What sufficient, 13, 779, 780
 When clouds upon title, 2, 298, 299
Wills, see *infra*, **DISTINGUISHED FROM WILLS**.
Whether an Instrument May Operate Partly as a Deed and Partly as a Will, 29, 150
 Examples, 29, 150
 In general, 29, 150
DEEM, 5, 458
DEEMED
 Equivalent to adjudged, 1, 193
DEEPENING, 5, 458
DEEPLY, 5, 459
DE FACTO, 5, 92
De Facto Corporation
 Partnership, 23, 876
 Powers, rights, etc., 19, 801
De Facto Government, 8, 1380; 12, 313
 Legislative acts, 11, 364
 Legislature of confederate states, 12, 313
 Whether the confederate states were a de facto government, 8, 1380-1386
De Facto Legislature, 23, 158
 Where de jure legislature continues to exert and exercise its right, 23, 158
 Where de jure officer is forced to retire, 23, 157
 Which legislature will courts recognize, 23, 158
DE FACTO OFFICERS, 5, 93
 Acknowledgments, 1, 144
Actions Against
 Justifying under office, 19, 562u*
 Assisting, 17, 14
 Bond of, 2, 466l
 Bribery, 2, 531
Collateral Attack Upon Right to Office, 5, 106; 19, 396
 Where officer attempts to justify under color of his office, 6, 378
 Whether the question as to his right to office can be decided in an action between third parties, 19, 396
Corporations, see *infra*, **OF PRIVATE CORPORATIONS**.
 County commissioners, 4, 378
 Definition, 2, 466l; 19, 394
 Definition of officer de jure, 19, 394
Directors
 Calls and assessments, 23, 806
 Distinguished from officers de jure, 19, 394
 Election officer, 6, 304
 Embezzlement by, 6, 488
 Extortion, 7, 587
 Injunctions, 6, 393
Judge, 5, 103; 12, 23
Special or substitute judges, see **SPECIAL JUDGE**.
Appointment by constitutional authority, 12, 23
 Attack by writ of error, 12, 23
 Attack upon judgment by appeal, 12, 23
 Attack upon judgment by habeas corpus, 12, 23
 Collateral attack upon jurisdiction, 12, 23
 Decree by, 12, 13
 Definition, 12, 23
 Habeas corpus, 9, 236
 Necessity of quo warranto, 12, 23
 Special or substitute judge, 12, 24
 Suit for salary, 12, 24
 Validity of judgment, 12, 23
 Whether protected from liability, 12, 24
 Writs of error, 12, 23
Justice of the Peace, 12, 511
 Action by people to try the title to the office, 12, 396
 Collateral attack upon election or appointment, 12, 396
 Distinguished from de jure, 12, 396
 Parol evidence, 12, 396
 Person neglecting to take official oath, 12, 396
 Persons neglecting to give official bond, 12, 396
 Right of de jure officer against intruders, 12, 396
 Validity of acts, 12, 396
 What are de facto justices, 12, 396
 When there is no office to fill, 12, 396
 Liability for misfeasance, 19, 495
Mandamus, 14, 181
 Municipal officers, 14, 207
 Removals, 14, 201-207

DE FACTO OFFICERS—Cont'd**Mandamus—Cont'd**

To compel to perform official acts, 14, 207

To try title to office, 6, 383

May take acknowledgments, 1, 144

Necessity of direct proceedings, 6, 378

Notary Public, 16, 753

When notary's term has expired, 16, 754

Obstructing justice, 17, 14

Office or court, 5, 92

Of Private Corporations, 5, 93

Bankrupt officer, 5, 94

Distinction between officer de facto of corporation and de facto government officer, 5, 93

How created, 5, 94

Laches of the corporation, 5, 94

Personal liability of officer, 5, 95

Ratification by the corporation, 5, 94

Removal of officer, 5, 95

Third parties bound to corporation by acts of officer, 5, 95

Validity of their acts, 5, 94

Who are, 5, 93

Presumptions, 19, 51

Provisions against holding two offices, 19, 408

Public Officers, 5, 96, 103

Acting without appointment or election, 5, 96

Action for malfeasance or misfeasance in office, 5, 108

Acts invalid as to United States, 5, 108

Acts valid as to public, 5, 107

Appointed or elected by persons without authority to appoint or elect, 5, 103

Appointment without authority, 5, 100

Criminal liability for malfeasance in office, 5, 109

Definition, 5, 96

Early cases defining de facto officers, 5, 97-102

Enjoining de facto assessors from making an assessment, 5, 107

Holding over after his term of service has expired, 5, 105

Holding over after office is abolished, 5, 105

Holding over after officer becomes disqualified, 5, 105

Irregularity in exercise of electing or appointing power, 5, 104

Joint officers elected under an unconstitutional law, 5, 104

Judges, 5, 103; 12, 23

Liability of municipality to pay salary over again to the officer de jure, 5, 110

No difference as to right between fees and salaries, 5, 109

Officer ineligible, 5, 103

Officer must be in actual possession of office, 5, 106

Office without legal existence, 5, 105

Person elected or appointed under an unconstitutional law, 5, 104

Proof of official character, 5, 106

Respective rights of de jure and de facto officers to compensation attached to office, 5, 109

Responsibility, 5, 108

Right as to compensation, 5, 109

Right of de facto municipal officer to compensation, 5, 109; 19, 531

Right of de jure officer to recover salary received by de facto incumbent, 5, 111; 19, 532

Right to office cannot be attacked collaterally, 5, 106; 19, 396

Suit for money received by him under cover of office, 5, 108

Suit on officer's bond, 5, 108

Undertaking to justify an official act complained of, 5, 109

Valid appointment or election, but officer fails to qualify, 5, 103

Validity of their acts, 5, 107

Where law under which he was appointed is unconstitutional, 5, 96

Where officer has failed to conform to some requirement, 5, 96

Where officer was ineligible, 5, 96

Who are, 5, 96

Without a known appointment or election, but under such circumstances of reputation or acquiescence as were calculated to induce people to suppose him an officer, 5, 103

Quo warranto, 19, 396

Ratification, 17, 164

Salary, 5, 109; 19, 531

De jure officer recovering, 5, 111; 19, 532

De jure officer's right to recovery from de facto officer, 19, 532

Payment to de facto officer as defense to action by de jure officer, 19, 532

Schools, 5, 93

Validity of contract with teacher, 21, 757, 758

Service of process, 22, 108

Sheriffs, 22, 529

Acts good as to third parties, 22, 529

Examples, 22, 529

Ineligibility, 22, 529

Justifying his acts, 22, 529

Liability for acts of deputy, 5, 637

Questioning validity of acts in a collateral proceeding, 22, 529

Suretyship, 24, 878

Taxation

Assessment, 25, 203

Usurpers, 19, 396

Validity of Acts, 19, 395

As to the government, 19, 395

As to third persons, 19, 395

Protection as to himself, 19, 395

DE FAIRE ECHELLE, 5, 112

DEFALCATION, 5, 459

DEFAMATION, see **LIBEL AND SLANDER**.

DEFAULT, 5, 460

See **DISCONTINUANCE**.

As to the debt, default, or miscarriage in the statute of frauds, see **FRAUDS, STATUTE OF**.

Witnesses, see **WITNESSES**.

Against

Administrators, 5, 462, 496s; 7, 383

Corporations, 5, 496s

Infants, 5, 396s

Married women, 5, 496s

Partnership, 5, 496s

State, 5, 496s

As an Admission, 5, 460, 465

Action of trespass, 5, 464

Action on promissory note, 5, 463

Allegation of fraud extrinsic to cause of action, 5, 466

By party not served, 5, 467

By party served, 5, 467

Character in which defendant was sued, 5, 465

Character in which plaintiff sues, 5, 465

Damages, 5, 465

Dower interest of widow, 5, 463

Effect of default on part of defendant, 5, 462

Effect of judgment by default in various actions, 5, 461-464

Facts not averred, 5, 464

In action against administrator or executor, 5, 462, 496s; 7, 383

In action of assumpsit, 5, 462

In equity, 5, 496z⁸³

In matrimonial suits, 5, 467

Judgment operates as an admission of plaintiff's cause of action, 5, 461

Jurisdictional facts, 5, 465

Legal right to recover, 5, 464

Mortgage foreclosure, 5, 463

Sufficiency of petition, 5, 465

What is admitted, 5, 461

Where there are several parties, 5, 496u

As an Estoppel, 5, 467

Binding alike upon plaintiff and defendant, 5, 469

How far defendant has, 5, 468

In another action, 5, 468

Obtaining leave to come in and defend, 5, 468

On other actions and proceedings, 5, 469

As to part of claim, 5, 496x

Common counts, 5, 503

Conclusiveness of Judgment, 5, 470

Default regularly entered, 5, 471

Confirmation

Admission of, 5, 496g

Manner of, 5, 496g

When void, 5, 496g

Costs, 5, 496z⁴⁶

As condition precedent to reversal, 5, 496z⁴⁶

Judgment standing as security, 5, 496z⁴⁷

Security for, 5, 496z⁴⁷

Seeking out other party and tendering, 5, 496z⁴⁷

What must be paid, 5, 496z⁴⁷

Counterclaim without denial of cause of action, 5, 496w

Damages

Assessment of

At what term they should be made, 5, 496z¹⁰

By clerk, 5, 496z¹, 496z⁸; 19, 562e

By court, 5, 496z⁸

By justice of the peace, 5, 496z⁸

Defective return of inquiry, 5, 496z¹⁰

Discretion of court, 5, 496z⁵

How made, 5, 496z⁸

Inquisition and return, 5, 496z¹⁰

Notice of inquiry, 5, 496z¹⁰

Order for a Writ of Inquiry, 5, 496z⁹

Personal injuries, 5, 496z⁹

When to be executed by a judge, 5, 496z¹⁰

Right of defaulted defendant to cross-examine witnesses, 5, 496z⁴

Rule for judgment must be entered, 5, 496z⁵

Setting aside inquest, 5, 496z¹⁰

Sheriff's Jury, 5, 496z⁶

Instances in which right to a jury has been allowed, 5, 496z⁶, 496z⁷

Several defendants, 5, 496z⁷

When defendant has right to a jury, 5, 496z⁸

Where demand is not a mere money demand, 5, 496z⁶

Statute of jeofails, 5, 496z¹⁰

Time when assessment must be made, 5, 496z⁵

When made, 5, 496z⁵

Where neither party requires a jury, 5, 496z⁸

Where no judgment of default has been taken, 5, 496z¹⁰

Judgment not a confession of any fact necessary to assessments of damages, 5, 466

Proof of, 5, 465

Default of issue, 11, 891

Defendant's Failure to Appear at Trial, 5, 496x

Affirmative plea not verified by affidavit, 5, 496y

Effect of affirmative plea, 5, 496y

Effect of counterclaim, 5, 496y

Effect on plaintiff's claim, 5, 496x

Judgment nil dicit, 5, 496y

Practice, 5, 496y

Denial of only part of counts, 5, 496x

Divorce Suits, 5, 467, 764, 811, 827

Necessity of proof, 5, 467

Does not cure entire want of necessary allegations in declaration, 5, 473

Effect of, 5, 467

On rights of defendant, 5, 496r

Where defense of coverture might be set up, 5, 470

Effect on judgments, 5, 470

DEFAULT—Cont'd

Effect upon jurisdictional questions, 5, 468

Entry by clerk, 5, 496^g

Executors and administrators, 5, 462, 496^s; 7, 383

Failure to answer interrogatories, 11, 535

Failure to appear, 5, 496^x

Garnishment, 8, 1246

Attachment of garnishee's person, 8, 1247

Conditional judgment, 8, 1248

Effect of, 8, 1247

Judgment upon, 8, 1247

Necessity of proof of amount claimed before judgment, 8, 1247

Necessity of proof of service of process, 8, 1248

Omission by assignee to set aside judgment, 8, 1248

Process, 8, 1248

Scire facias, 8, 1248

Setting aside judgment from default, 8, 1248

When garnishee is in default, 8, 1247

Where garnishee is considered as a witness, 8, 1247

In ejectment, 6, 245^x

In Equity, 5, 496^z⁸³

Action on penal bond, 5, 502

Amendments, 5, 499

Appeal where judgment was without jurisdiction, 5, 504

As an Admission, 5, 496^z⁸³

All distinct and positive allegations, 5, 496^z⁸³

Allegations involving penalty, forfeiture, etc., 5, 497

Amount of damages, 5, 497

Default by one of several parties, 5, 498

Material allegations, 5, 497

Matters of fact, 5, 496^z⁸³

Proofs necessary, 5, 496^z⁸⁴, 497

Refusal to answer, 5, 496^z⁸⁴

Supplemental bill, 5, 497

Uncertain allegations, 5, 497

Bill for divorce, 5, 467, 764, 811, 827

Bill or complaint, 5, 505

Bill taken before the expiration of the time given to answer, 5, 500

Conclusiveness of decree, 5, 498

Damages

Amount not admitted, 5, 497

Defendant who has appeared, 5, 504

Defense by one of several defendants in interest of all, 5, 498

Discretion of court in requiring proof, 5, 502

Disposes with proof on hearing, 5, 465

Effect of, 5, 496^z⁸⁸

Entry of default, 5, 498

Entry upon record, 5, 502

Exceptions to insufficient bill, 5, 505

Filing exhibits, 5, 506

Final decree, 5, 499, 501

Hearing when bill is taken pro confesso, 5, 502

Infants, 5, 505, 506

Insufficient pleading, 5, 501

Insufficient return on subpoena, 5, 504

Interlocutory judgment, 5, 507

Irregular decree, 5, 500

Issue undisposed of, 5, 500

Lunatics, 5, 506

Necessity of some evidence, 5, 502

Necessity of taking the bill pro confesso, 5, 505

Non-residents, 5, 506

Notice of subsequent proceedings, 5, 501

Notice to defendant, 5, 502

On failure to appear and plead, 5, 498

Opening and Setting Aside

Affidavit of merits, 5, 508

After order of reference, 5, 507

Causes, 5, 509

Discretion of court, 5, 508

Excuses, 5, 507

In New York, 5, 508

Opening decree after enrollment, 5, 507

Order as a matter of course, 5, 509

Terms, 5, 509

To let in unconscionable defense, 5, 509

When decree will be opened and set aside, 5, 508

Practice, 5, 499

Proof of demand, 5, 502

Questions as to sufficiency of evidence . . . on appeal, 5, 506

Requisites, 5, 504

Rules governing practice in equity, 5, 501

Service by publication, 5, 504

Service of decree nisi, 5, 501

Service or appearance, 5, 504

Subsequent proceedings, 5, 505

Sufficiency of the bill, 5, 505

The order pro confesso, 5, 501

Upon demurrer, 5, 501

Waiver of default, 5, 509

What time decree may be taken, 5, 500

What time entitled to the bill, 5, 499

When bill may be taken pro confesso, 5, 498

When bill should be dismissed, 5, 501

When decree may be entered, 5, 502

When default becomes final, 5, 499

Where demurrer is overruled, 5, 499

Infants, 5, 496^e; 9, 157

Validity of, 12, 87

Inquiry, writ of, 5, 496^z⁹

Joint Parties, 5, 475

Notice to appear and defend necessary to entitle judgment of a sister state to full faith and credit, 5, 474, 476

Of one of the parties not served where judgment is entitled to full faith and credit in a sister state, 5, 475

Where all are not served, 5, 475

Judgment

- Against married women, 5, 470
- By Default**, 5, 496*h*
 - For *assessment of damages*, see DAMAGES.
- Entering, 5, 496*h*
- Exceeding amount demanded in complaint, 5, 496*s*
- For interest, 5, 496*s*
- Judgment lien, 12, 104
- Judgment on Application to Court**, 5, 496*z*²
 - Action on unliquidated money demand, 5, 496*z*²
 - Amount of demand ascertained by court, 5, 496*z*³
 - Examples of when application to court is necessary, 5, 496*z*²
 - In Mississippi, 5, 496*z*³
 - Proof necessary after default, 5, 496*z*³
 - Proof of default, 5, 496*z*³
 - Proof of demand, 5, 496*z*³
 - Proof of indorsement, 5, 496*z*⁴
 - Upon report of referee, 5, 496*z*²
 - Upon special verdict of jury, 5, 496*z*²
 - When application is necessary, 5, 496*z*²
- Judgment presumed to be valid, 5, 496*h*
- Judgment in sister state, 5, 465-476
- Judgment when there are several joint defendants, 12, 77
- Judgment Without Application to Court**
 - Action against several defendants, 5, 496*z*
- Assessment by Clerk**, 5, 496*z*¹
 - Where the action is on a promissory note payable in money, 5, 496*z*²
- Clerk acts in a ministerial capacity, 5, 496*z*
- Discretion of clerk, 5, 496*y*, 596*w*
- Judgment for greater relief than that prayed for, 5, 496*z*
- Proof of default, 5, 496*z*¹
- Statute strictly construed and closely followed, 5, 496*z*
- What cases clerk may enter, 5, 496*y*
- When assessment by clerk necessary, 5, 496*z*²
- Where demurrer has been filed, 5, 496*z*
- Justice of the Peace**, 12, 451
 - Appeal, 12, 482
- Justice's Judgment**, 12, 470
 - Defendant failing to appear, 12, 471
 - Justice's duty to hear evidence, 12, 471
 - Non-suit, 12, 471
 - Notes, 12, 471
 - Presumption that justice heard evidence, 12, 471
 - Setting aside, 12, 471
- Lunatic, 5, 496*f*
- Mechanics' liens, 15, 176, 195
- Motion to change venue, 5, 473
- Neglect or default, 16, 385
- Notice**
 - Defective notice, 5, 496*m*
 - Defective return, 5, 496*z*⁵⁵
- Summons and Appearance**, 5, 476, 496*z*⁵⁴
 - See SERVICE OF PROCESS.
 - Acknowledgment of service, 5, 480

- Constructive service, 5, 481
- Defective service, 5, 485, 496*z*⁵⁵
- Necessity of appearance where defendant has been served, 5, 481
- Necessity of service, 5, 479
- Non-resident defendant, 5, 478
- Radically defective summons, 5, 479
- Return, 5, 479, 480, 482
- Service by publication, 5, 481, 496*z*⁵⁷
- Service by unauthorized person, 5, 478
- Service must appear affirmatively, 5, 477, 479
- Statute must be strictly followed, 5, 477
- Substantial compliance with statute, 5, 481
- Where one of defendants files cross-complaint setting up new matter, 5, 486
- Where petition has been stricken from the files, 5, 478
- Of Defendant**, 5, 496*o*
 - Allowance of demurrer to answer, 5, 496*t*
 - Amendment of petition, 5, 496*q*
 - Answer filed out of time, 5, 496*q*
 - Appeals without answer, 5, 496*o*
 - Failure by one of several defendants to plead, 5, 496*t*
 - Failure to Answer**, 5, 496*o*
 - Amended complaint, 5, 496*t*
 - Failure to comply with order, 5, 496*t*
 - Remedy of, 5, 496*r*
 - What relief might be granted, 5, 496*s*
 - Where defendant appears and does not plead, 5, 496*r*
 - Withdrawal of appearance, 5, 496*r*
- Of Plaintiff**
 - After plaintiff has been non-suited, 5, 496*o*
 - Defective petition, 5, 496*n*
 - Failure to reply to new matter, 5, 496*o*
 - Failure to serve the complaint, 5, 496*n*
 - Motion for taxation of costs, 5, 496*o*
 - Proceedings before justice of peace, 5, 496*o*
 - Where new matter alleged by defendant is a complete defense, 5, 496*o*
- Opening and Setting Aside**, 5, 496*z*¹¹
 - See *infra*, IN EQUITY.
 - Advice of counsel, 5, 496*z*⁸¹, 496*z*⁸²
 - Affidavit of marriage, 5, 496*z*¹⁵
 - Affidavit of Merits**, 5, 496*z*³⁶, 496*z*⁵¹
 - Attorney's affidavit, 5, 496*z*³⁶
 - Nature of defense, 5, 496*z*³⁶
 - Of attorney, 5, 496*z*⁵¹
 - What affidavit should contain, 5, 496*z*⁵¹
 - What is sufficient affidavit, 5, 496*z*³⁶
 - Affidavit should be accompanied with an answer, 5, 496*z*¹⁷
 - After enrollment, 5, 496*z*⁵⁸
 - Amendment, 5, 496*z*²⁰
 - Application at first opportunity, 5, 496*z*²³

DEFAULT—Cont'd**Opening and Setting Aside—Cont'd****Application, When Made, 5, 496z⁵⁰**At a subsequent term, 5, 496z⁵⁰Default upon which no judgment has been entered, 5, 496z⁴⁹Due diligence, 5, 496z⁴⁸During term in which judgment was rendered, 5, 496z⁴⁸Where judgment has been entered, 5, 496z⁴⁹Where judgment is obtained by fraud, surprise, or mistake, 5, 496z⁵⁰**Application, Where and How Made, 5, 496z²⁵, 496z⁵⁰**Court by which judgment was rendered, 5, 496z⁵⁰Lower court, 5, 496z⁶¹No particular form required, 5, 496z⁵¹Notice, 5, 496z⁵⁰Clear case must be made out, 5, 496z¹²Costs, 5, 496z¹⁶, 496z⁴⁶Death of counsel, 5, 496z⁴⁴Defective complaint, 5, 496z⁵⁴Defendant admitting cause of action, 5, 496z³³Defendant's negligence, 5, 496z⁴⁰Defendant twice in default, 5, 496z⁴²Delay in making application, 5, 496z²³, 496z²⁴Diligence, 5, 496z³³**Discretion of Court, 5, 496z¹¹, 496z⁵⁸**Abuse of discretion, 5, 496z⁶¹After negligence of party, 5, 496z⁵⁸Divorce, 5, 496z⁶²In actions at law, 5, 496z⁶¹In New York, 5, 496z⁵⁸Interference of appellate court, 5, 496z⁶⁰Motion for new trial, 5, 496z⁶³Review upon appeal, 5, 496z⁶⁰, 496z⁶²Due diligence, 5, 496z¹⁶, 496z⁴⁸Effect of lack of affidavit, 5, 496z¹⁷Evidence in mitigation of damages, 5, 496z³⁴Excusable neglect, 5, 496z³⁹**Excuses, 5, 496z²⁶, 496z⁶⁵**Accident or mistake, 5, 496z²⁷**Advice**Of attorney, 5, 496z³¹Of counsel, 5, 496z⁴²Announcement that case will not be tried, 5, 496z²⁹, 496z³²Application by a receiver, 5, 496z³⁰Assurance of co-defendant that he would protect suit, 5, 496z³⁰Attendance on court, 5, 496z²⁹Attendance upon grand jury, 5, 496z²⁸Business engagements, 5, 496z²⁹Change in time of holding court, 5, 496z²⁹Detention of attorney, 5, 496z³⁸Engagement in another suit, 5, 496z⁴⁸Failure to notify defendant's attorney, 5, 496z³⁰For not having pleaded, 5, 496z¹⁶Ignorance, 5, 496z²⁷Illness of attorney, 5, 496z²⁸Illness of members of defendant's family, 5, 496z²⁸Illness of the party, 5, 496z²⁷Loss of papers, 5, 496z⁴¹Military service, 5, 496z²⁸Mistake of attorney, 5, 496z³¹Mistake of counsel, 5, 496z⁴³Misunderstanding of counsel, 5, 496z³²Motive for delay, 5, 496z³⁸Neglect of clerk of court, 5, 496z²⁹Negligence of attorney, 5, 496z³¹, 496z⁴³Negotiations for a settlement, 5, 496z²⁹Sickness of attorney, 5, 496z³¹State's prison, 5, 496z²⁸Stipulations between parties, 5, 496z²⁹What not sufficient, 5, 496z³³Failure to give notice, 5, 496z⁵⁴For material defects, 5, 496z⁵⁴For what cases will be set aside, 5, 496z¹¹Grounds upon which judgment has been set aside, 5, 496z¹⁷, 496z¹⁹Ignorance of law, 5, 496z³⁴Imposing conditions, 5, 496z⁵⁹In actions of divorce, 5, 496z¹⁴In admiralty courts, 5, 496z¹⁴In Alabama, 5, 496z¹²In Illinois, 5, 496z¹²In Indiana, 5, 496z¹²In Kansas, 5, 496z¹³In Minnesota, 5, 496z¹⁸In Nebraska, 5, 496z¹³In Nevada, 5, 496z¹³In New York, 5, 496z¹³In Pennsylvania, 5, 496z¹⁸In Wisconsin, 5, 496z¹³Injunction, 5, 496z¹⁴Insufficient return, 5, 496z¹⁹Insufficient service, 5, 496z¹⁹Irregularities, 5, 496z²²Judgment by mistake, without notice, 5, 496z⁵⁵Judgment standing as security, 5, 496z⁴⁷Laches, 5, 496z⁴⁰Loss of papers, 5, 496z³⁷Misnomer of plaintiff, 5, 496z⁵⁶Mistake of counsel as to time to answer, 5, 496z⁴⁴Motion to set aside default, 5, 496z¹²Must pay the sum actually due, 5, 496z⁶²Must pay the sum equitably due, 5, 496z⁶²Neglect, 5, 496z³⁹Neglect to plead good defense, 5, 496z³⁹Negligence to employ counsel, 5, 496z⁴⁴Notice and motion to set aside, 5, 496z⁵⁰Notice of motion to set aside, 5, 496z²⁴Oral agreement between parties, 5, 496z³¹Payment into court of amount admitted to be due, 5, 496z⁴⁵Premature judgment, 5, 496z⁵⁶

Reasonable terms and conditions, 5, 496⁴⁵
 Remedy in Indiana, 5, 496⁵⁰
 Service by publication, 5, 496¹⁹
 Setting aside judgment without regard to the merits as irregular, 5, 496²²
 Showing good defense, 5, 496²⁸
 Sickness of party, 5, 496⁴⁰
 Statute authorizing opening of judgments, 5, 496⁵⁸
 Sufficiency of excuse, 5, 496²⁵
 Technical defense of defendant, 5, 496¹²
Terms, 5, 496⁴⁵, 496⁵⁹
 As to security, 5, 496⁴⁷
 Costs, 5, 496⁴⁶
 To let in an unconscionable defense, 5, 496⁵²
 To let in defense of counterclaim, 5, 496⁵³
 To let in defense of money won at play, 5, 496⁵⁴
 To let in defense of statute of frauds, 5, 496⁵³
 To let in defense of ultra vires, 5, 496⁵²
 To let in defense of usury, 5, 496⁵²
 To permit technical defense, 5, 496⁴²
 Upon payment of costs and affidavit of merits, 5, 496⁴⁶
 Validity of erroneous judgment until reversed, 5, 496²³
 Variance, 5, 496²¹
 Want of jurisdiction, 5, 496⁵⁶
 What affidavit must show, 5, 496¹⁶
 What defendant must show, 5, 496¹², 496¹⁵
 What defenses will be let in, 5, 496, 496³⁴
 What irregularity will open, 5, 496²²
 What must be shown on application, 5, 496²⁶
 What time motion must be made, 5, 496¹⁴
 When application should made, 5, 496²³
 When default will be open, 5, 496²⁶
 When judgment setting aside will itself be set aside, 5, 496¹²
 When judgment will not be set aside, 5, 496²⁰, 496²¹
 When set aside, 5, 496¹⁶, 496⁴⁶
 When special affidavit of merit is required, 5, 496¹⁶
 Where appearance has been withdrawn, 5, 496¹⁷
 Where judgment was obtained by fraud or surprise, 5, 496¹⁶
 Whether sworn answer is equivalent to affidavit of merit, 5, 496¹⁵
Partial, 5, 496^w
 As to part of claim, 5, 496^x
 Denial of only part of counts, 5, 496^x
 Statement admitting counterclaim, 5, 496^w
 Where answer contains no denial, but sets up a counterclaim, 5, 496^w

Partition, 17, 745

 Course to be taken by court in case of, 17, 745
 Effect of, 17, 745
 Irregularity in taking, 17, 745
 Source of reference, 17, 745
 Sufficiency of proof upon reference, 17, 745
 Where complainant makes default, 17, 745
Partnership, 17, 1253
Personal judgment on constructive service, 5, 482
Pleadings, 5, 483
 Action on promissory note, 5, 483
 Amendment introducing entirely new cause of action, 5, 485
 Complaint showing no legal cause of action, 5, 486
 Compliance with law in filing declaration, 5, 484
 Cross-complaint setting up a new matter, 5, 486
 Defective complaint, 5, 483
 Demurrer, 5, 487
 Filing answer before default, 5, 487
 Filing declaration after judgment, 5, 486
 Sufficiency of, 5, 483
 Various action, 5, 484
 Verification of complaint, 5, 485
 When no declaration has been filed, 5, 486
 Where one of counts will support a judgment, 5, 486
 Where petition is lost or destroyed, 5, 486
Practice, 5, 496^h
 Defendant's failure to appear at trial, 5, 496^y
Relating to Taking, Entering and Final Judgment, 5, 496^h
 Compliance with Statute, 5, 496^l
 Where proceedings are ex parte and in rem, 5, 496^l
 Entry of default, 5, 496^l
 Federal courts, 5, 496^f
 In Alabama, 5, 496^h
 In Arkansas, 5, 496ⁱ
 In Georgia, 5, 496ⁱ
 In Iowa, 5, 496ⁱ
 In Maine, 5, 496ⁱ
 In Maryland, 5, 496ⁱ
 In Massachusetts, 5, 496ⁱ
 In Michigan, 5, 496^j
 In Minnesota, 5, 496^j
 In Mississippi, 5, 496^j
 In Missouri, 5, 496^j
 In New Jersey, 5, 496^j
 In New York, 5, 496^j
 In North Carolina, 5, 496^k
 In Pennsylvania, 5, 496^k
 In South Carolina, 5, 496^k
 In Tennessee, 5, 496^k
 In Texas, 5, 496^k
 In Vermont, 5, 496^k
 In Virginia, 5, 496^k

DEFAULT—Cont'd**Practice—Cont'd****Relating to Taking, Entering and Final Judgment—Cont'd**In Wyoming, 5, 496*k*Jointly, 5, 496*l*, 496*n*Whether a decree should be final or interlocutory, 5, 496*f*

Preliminary examination, 12, 416

Preliminary steps, 5, 474

Quo warranto, 19, 683

Record, 5, 496*m*; 20, 482Failure of clerk to copy summons in the, 5, 496*n*Proceedings for divorce, 5, 496*n*Showing affirmatively that proceedings are according to law, 5, 496*n*Showing notice, 5, 496*n*

Reformation of instruments, 15, 666

Regularity presumed, 5, 496*z*²³Remedy of defendant, 5, 496*r***Res Judicata**, 21, 268

Facts at variance with judgment, 21, 269

Whether conclusive, 21, 268

Right to ask instructions, 5, 473

Setting Aside Judgment of*See infra*, **OPENING AND SETTING ASIDE**.Nature of defense, 5, 496*z*³⁶**Several Defendants**, 5, 496*e*Judgment entered against one, 5, 496*z***Several Parties**, 5, 474Action on joint promissory note, 5, 496*w*Default as to one and judgment against another, 5, 496*v*Failure to plead by one of several defendants, 5, 496*t*

Judgment against some where all are served, 5, 474

Judgment by default as to one defendant, and verdict as to another, 5, 475

One of whom is not served, 5, 474

Plea of general issue, 5, 496*v*

Where all do not appear or plead, 5, 498

Where defense of one is available to others, 5, 496*w*Where demurrer of one is undisposed of, 5, 496*v*Where one fails to plead, issue as to others must be disposed of, 5, 496*w*

Special counts, 5, 503

Summons and AppearancePublication of summons, 5, 496*z*⁵**Terms**Setting aside, 5, 496*z*⁴⁸**The Default**, 5, 487

Amended petition, 5, 487

Answer filed after judgment is rendered, 5, 488

Answer filed out of time, 5, 489

Answer struck out as frivolous, 5, 490

Confirmation, 5, 496*g*

Entered as last day of term, 5, 495

Entering default at subsequent term, 5, 489

Failure to appear and plead, 5, 487

Judgment, 5, 496*h*

Judgment against party failing to plead, 5, 487

Notice of appearance served by defendant, 5, 489

Presumption that defendant has no defense, 5, 487

Rule day, 5, 487

Rules to pleading, 5, 488

Services and default on the same day, 5, 489

When It May or May Not Be Taken, 5,490, 496, 496*e*, 496*s*Against infants, 5, 496*s*Against partnership, 5, 496*s*Agreement by parties to consider plea filed, 5, 496*d*Amended declaration, 5, 496*a*Before time to answer has expired, 5, 496*a*Continuance granted, 5, 496*f*

Day prior to that set for trial, 5, 496

Death of sole plaintiff, 5, 496*g*Defective answer, 5, 496*d*Defective petition, 5, 496*n*

Entered as of the day of default, 5, 495

Exceptions not disposed of, 5, 496*e*

First day of term, 5, 491

General issue on file, 5, 496*a*Grounds upon which a judgment for default will be set aside, 5, 496*z*¹⁷, 496*z*¹⁹Infants, 5, 496*e*

Instances, 5, 492-494

Insufficient answer, 5, 496*b*Judgment for costs appearing upon record, 5, 496*g*Judgment of non-suit, 5, 496*g*Material motion pending, 5, 496*b*Plea filed and not disposed of, 5, 496*a*Plea filed before time by leave of court, 5, 496*e*Presumption that pleas were filed before judgment, 5, 496*b*Taken after a bill of particulars, 5, 496*f*

Taken during time which defendant might plead, 5, 495

Time to plead, 5, 494

Unverified answer, 5, 496*d*What pleadings will prevent a default, 5, 496*b*Where an issue remains undisposed of, 5, 496*a*

Where defendant has not been served with notice, 5, 496

Where demurrer is undisposed of, 5, 496*c*

Where frivolous demurrer is filed, 5, 496

Where issue has been joined, 5, 496*a*, 496*w*Where issue is undisposed of, 5, 496*r*

Where no rejoinder is filed, 5, 496

Where writ is made returnable on no specific day, 5, 496*a*

Where defendant demurs, motion to quash, 5, 489
 Where plea to one of several counts is stricken out, 5, 489
Withdrawal of Appearance and Plea, 5, 490
 Record should show issuance and service of process, 5, 490
 Variance in name, 5, 472
 Verification of complaint, 5, 485
Waiver of, 5, 496*m*, 496*z*¹¹
 Failure to object to filing of answer, 5, 473
 Objections to form of proceedings, 5, 472
 What constitutes, and when authorized, 5, 474-496*m*
 Withdrawal of appearance, 5, 496*p*
DEFEASANCE, 5, 510
DEFEAT
 Or obstruct, 5, 513
DEFEATED, 5, 512
DEFECT, 5, 513
 Clerical or other, 5, 515
 Defective description, 5, 515
Defective Title
 Injunctions, 10, 808
 In condition of ways, 5, 514
 In sense of deficiency, 5, 515
 Of parties, 5, 514
DEFENDANT, 5, 516
 See PARTIES TO ACTION.
 Absent, 5, 516
 Material, 5, 517; 14, 976
 Said, 5, 517
DEFENSE, 5, 515
 See PLEADING; SELF-DEFENSE.
 Affidavits of, *see* MERITS (AFFIDAVITS OF).
 Of Action
 Malicious prosecution, 14, 51
DEFICIENCY, 5, 517
DEFINE, 5, 517
DEFINITE, 5, 517
 Failure of issue, 5, 517
DEFINITION, 5, 518
 See LETTERS ROGATORY; WORDS AND PHRASES.
DEFINITIVE, 5, 518
 Decrees, 5, 518
DEFORCE, 5, 519
DEFORCEMENT, 5, 519
 Of widow's dower, 5, 519
DEFRAUD, 4, 601; 5, 519
 See CHEAT; CRIMINAL CONSPIRACY.
 Conspiracy to cheat and, 4, 601
 Hinder, delay and defraud, 5, 519
 Intent to, 5, 519
DELAY
 Nunc Pro Tunc Entries
 Time within which application must be made, 5, 379
DEL CREDERE, *see* COMMISSION MERCHANTS.
DEL CREDERE COMMISSIONS, *see* COMMISSION MERCHANTS.

DELEGATION OF AUTHORITY, *see* AGENCY; CONSTITUTIONAL LAW; CORPORATIONS; MUNICIPAL CORPORATIONS; PUBLIC OFFICERS; MUNICIPAL SECURITIES; STATUTES.
DELIBERATE
 Premeditate and deliberate, 5, 520
DELICATE, 5, 521
DELINEATE, 5, 521
DELINQUENCY, 5, 521
DELIRIUM TREMENS
 Excuse for crime, 4, 714
DELIVERY, 5, 521
 See SALES.
 For delivery of deed, *see* DEEDS.
 Of bills and notes, *see* BILLS AND NOTES.
 Of bonds, *see* BONDS.
 Constructive or symbolical delivery, 2, 1, 550
 Of bond, 2, 458
 Of Goods
 Misdelivery as conversion, 2, 890
 Port of delivery, 18, 838
 Trust deeds and power of sale mortgages, 26, 873
 Usages and customs, 27, 791
DELIVERY BOND, *see* FORTHCOMING BOND.
DEMAND, 5, 522
 See generally, PAYMENT; PROTEST.
 As to demand for surrender of fugitive, *see* EXTRADITION.
 As to demands upon bills and notes, *see* BILLS AND NOTES.
 Avowry, *see infra*, PLEADING.
 Actions, 5, 526
 At what time demand should be made, 5, 528*e*
 By attorney, 5, 528*d*
 By suit, 5, 528*g*
 By whom, 5, 528*d*
 Cause of Action Arising on Demand, 5, 527
 Actions ex contractu, 5, 527
 Actions ex delicto, 5, 527, 528
 Enticing away apprentice, 5, 528
 Enticing away servant, 5, 528
 Enticing away wife, 5, 528; 9, 834
 Nuisance, 5, 528
 Refusal waives demand, 5, 527
 Whether thing stipulated for lies within knowledge of opposite party, 5, 527
 Demand at defendant's house, 5, 528*e*
 Demand by agent, 5, 528*f*
 Demand by attorney, 5, 528*d*
 Demand made in street, 5, 528*e*
 Demand of public officer, 5, 528*f*
 Effect of excessive demand, 5, 528*g*
 Effect of specific objection, 5, 528*g*
 How advantage is taken of want of demand, 5, 528*h*
 Manner of making, 5, 528*e*
 Objection where the demand is irregular, 5, 528*g*
 Of an agent, 5, 528*d*

DEMAND—Cont'd**Actions—Cont'd**

Offer to pay as waiver of objection to demand, 5, 528^h

Plea

Want of demand, 5, 528^h

Proper manner, 5, 528^f

Reasonable time and place, 5, 528^e

Sufficiency, 5, 528^d

Suitable places, 5, 528^e

Waiver of right of action after demand, 5, 528^h

When Necessary, 5, 527, 528

Actions ex contractu, 5, 527

Actions ex delicto, 5, 528

Defendant's liability peculiarly in the knowledge of the plaintiff, 5, 528

Enticing away apprentice, 5, 528

Enticing away servant, 5, 528

Enticing away wife, 5, 528; 9, 834

Instances, 5, 528

Money received on consideration which fails, 5, 528^b

Nuisance, 5, 528

To hold security, 5, 528

Undertaking in usual form, 5, 528

When contract payable in goods, 5, 528

Where undertaking is collateral, 5, 528

Whether thing stipulated for lies within knowledge of opposite party, 5, 527

When Unnecessary, 5, 528a

Because of duty of contract, 5, 528^c

Debt payable in personal property, 5, 528^d

Mortgage payable upon demand, 5, 528^d

Promise to do a certain thing, 5, 528^c

Refusal, 5, 528^b

Stipulating to do a thing in a specific event, 5, 528^b

Suit to restrain transfer of note, 5, 528^d

When defendant concealed, 5, 528^c

Where defendant holds plaintiff's money, 5, 528^a

Where definite time is fixed for performance, 5, 528^a

Where demand is waived, 5, 528^b

Where money is due, 5, 528^a, 528^c

Where plaintiff is unable to comply, 5, 528^b

When useless, 5, 528^a

Where facts are equally known to defendant, 5, 528^d

Whether demand must be in writing, 5, 528^f

Award, the necessity of demand for, 1, 715

Bank's negligence in making, 2, 111

Bills and Notes

Excuses, 5, 528^{z8}

To Charge Indorser

Demand within reasonable time, 5, 528^{z8}

By letter, 5, 528^{z7}

By pledgee after default, 2, 47

Certificates of deposit, 5, 528^{z86}

Checks, 5, 528^{z86}, 528^{z80}

Charge drawer, 5, 528^{z58}

Day, 5, 528^{z80}

Of date or day following, 5, 528^{z80}

Delay as an acceptance, 5, 528^{z84}

Drawn on Saturday and presented on Monday, 5, 528^{z82}

How far drawer discharged by laches, 5, 528^{z83}

How far laches presumed, 5, 528^{z84}

Negotiation and circulation of bank check, 5, 528^{z82}

Payment of draft by, 5, 528^{z81}

Post-Dated, 5, 528^{z83}

Falling due on Sunday, 5, 528^{z84}

Sent to drawee for collection, 5, 528^{z84}

What is reasonable time, 5, 528^{z81}

What is unreasonable delay, 5, 528^{z82}

When made, 5, 528^{z80}

When payment is stopped, 5, 528^{z58}

Within reasonable time, 5, 528^{z81}

Claim

When synonymous with, 3, 275

Claims and demands, 3, 274

Commission merchants or factors, 3, 332

Contingent demand, 3, 804

Contracts to deliver property, 5, 528^{z46}

Contribution

Necessity of demand for, 4, 3

Debt and demand distinguished, 5, 158

Definition, 5, 526

Deposit, 5, 579

Irregular deposit, 5, 579

Necessity of, 5, 579

When not necessary, 5, 579

Detinue

Entitling plaintiff to damages, 5, 653

Property tortiously taken, 5, 653

When demand must be made before suit, 5, 652

When necessary, 5, 653

Distinguished from debt, 5, 526

Dower, 5, 528^{z20}

By Whom Made, 5, 528^{z22}

Agent or attorney, 5, 528^{z28}

When in person, 5, 528^{z23}

Description of premises, 5, 528^{z24}

Effect of limiting time, 5, 528^{z24}

Excessive allowance, 5, 528^{z24}

Excessive demand, 5, 528^{z24}

How Authority to Demand

Conferred, 5, 528^{z22}

Proved, 5, 528^{z22}

How made, 5, 528^{z21}

Oral or in writing, 5, 528^{z21}

Sufficiency of demand, 5, 528^{z23}

Unnecessary by statute, 5, 528^{z21}

Upon Whom Demand Should Be Made, 5, 528^{z22}

By statute, 5, 528^{z22}

Devisee, 5, 528^{z22}

Guardian, 5, 528^{z22}

Owner, 5, 528^{z22}

Tenant, 5, 528^{z22}

- When upon owner, 5, 528^{z33}
 Where land was held in severalty by two or more, 5, 528^{z23}
 What authority demand includes, 5, 528^{z22}
When Necessary, 5, 528^{z20}
 By divorced wife, 5, 528^{z20}
 Entitled to damages, 5, 528^{z21}
 Where husband did not die seised, 5, 528^{z20}
 When unnecessary, 5, 528^{z21}
 Whether it must be on demand, 5, 528^{z21}
Drafts, 5, 528^{z85}
 Delay excused, when, 5, 528^{z85}
 Effect of due presentation, 5, 528^{z86}
 Evidence of due presentation, 5, 528^{z86}
 Payable at sight, 5, 528^{z85}
 What diligence required, 5, 528^{z85}
 What is reasonable time, 5, 528^{z85}
 Embezzlement, 6, 502
Executors and Administrators, 7, 285
 See DEBTS OF DECEDENTS.
 For goods mortgaged, 5, 528^{z4}
 Fraudulent sales, 8, 849
Gambling Contracts
 Necessity of demand on stake-holder, 8, 1000
 Waiver of demand, 8, 1000
 Garnishment, 8, 1149, 1154
Holder
 By assignee for benefit of creditors, 5, 528^{z8}
Husband and Wife
 Harboring wife, 5, 528; 9, 834
 Instruction, examples of, 11, 268
Interest, 5, 528^{z25}
 Accounts, 5, 528^{z28}
 As to amount, 5, 528^{z29}
 By consent without demand, 5, 528^{z27}
 Contribution cases, 5, 528^{z28}
 Debtor prevented by law from payment on demand, 5, 528^{z29}
 Debts of decedents, 5, 528^{z30}
 Debts payable on demand, 5, 528^{z26}
 Duty to pay over without previous demand, 5, 528^{z27}
 Freight, 5, 528^{z28}
 From beginning of suit, 5, 528^{z28}, 529^{z29}
 From service of summons, 5, 528^{z29}
 Goods sold and delivered, 5, 528^{z28}
 In case of conversion, 5, 528^{z27}
Legacies and Devises
 Legacies charged upon land, 5, 528^{z29}
 Money collected by an agent, 5, 528^{z27}
 Money paid by surety, 5, 528^{z27}
 On money paid as usury, 5, 528^{z26}
 On money paid by mistake, 5, 528^{z26}
 Payable from time suit is brought, 5, 528^{z29}
 Service performed, 5, 528^{z26}
 Statutes, 5, 528^{z27}
 Suits for wages, 5, 528^{z26}
Trustee, 5, 528^{z30}
 Trustee neglecting payment within a reasonable time, 5, 528^{z30}
 Trustee who disclaims relationship, 5, 528^{z30}
 Upon bonds, 5, 528^{z32}
 Upon contracts and accounts, 5, 528^{z25}
 Upon notes, 5, 528^{z32}
 Upon taxes illegally exacted, 5, 528^{z31}
 Use of trust money by trustee, 5, 528^{z30}
 Vexatious delay in payment of claim, 5, 528^{z27}
 When account is unliquidated, 5, 528^{z25}
 When demand unavailing, 5, 528^{z29}
 When demand unnecessary, 5, 528^{z27}
 When necessary, 5, 528^{z25}
 Where contract calls for interest "after demand," 5, 528^{z26}
 Where property is loaned, 5, 528^{z26}
 Whether interest should be computed and added to principal sum, 5, 528^{z25}
 Wrongful refusal to pay, 5, 528^{z28}
Judgment
 Pleading, 12, 149^h
Landlord and Tenant
 Mortgagee, 26, 758
 Summary proceedings, 12, 758^v
Legacies and Devises, 5, 528^{z30}, 528^{z29}
 Where executor is legatee, 5, 528^{z30}
Limitation of Actions, 13, 721
 From time of demand, 13, 721
 Note payable after demand, 13, 722
 Note payable on demand, 13, 722
 Local assessments, 25, 564
Logs and Lumber, 13, 1022, 1026
 Delivery, 13, 1026
Lost Papers
 Bills and notes, 13, 1147
Mandamus, 14, 106
 Bill of exceptions, 14, 124
 Inspection of corporation books, 14, 157
 Levy of taxes, 14, 189
 Necessity, 14, 106
 Omission or neglect, 14, 106
 Public officers, 14, 141
 Refusal by conduct, 14, 106
 What amounts to refusal, 14, 106, 107
 When sufficient, 14, 106
 Mutual demands, 16, 16
 National banks, 16, 206
 Necessity of, against banker, 2, 101
 Necessity to support an action, 1, 181
 Partnership, 17, 1081
 Payment at any time on day of maturity, 2, 401
Production of Documents
 Corporate Books, 19, 236
 Proper time or place, 19, 236
 Showing demand by affidavit, 19, 236
 Showing refusal, 19, 236
 What meant by refusal, 19, 237
Railroad Bonds, 19, 728
 Insolvency of company, 19, 728
 When demand necessary, 19, 728
 Receiptor, 22, 547, 549
Rent
 Forfeiture, 12, 758^l

DEMAND—Cont'd**Replevin, 5, 528h**

- Action before demand, 5, 528g
- Action on replevin bond, 20, 1142, 1144
- Demand by suit, 5, 528p
- Effect of failure to allege, 5, 528p
- Justice of the peace, 12, 494
- Manner of making demand, 5, 528o
- Non-suit, 5, 528p
- Oral and in writing, 5, 528p
- Sufficiency, 5, 528n
- Suit as demand, 5, 528p
- Time of making demand, 5, 528n, 528q
- Upon whom made, 5, 528n, 528o
- What constitutes, 5, 528p
- When action is premature, 5, 528q

When Necessary, 5, 528h

- After purchase, 5, 528j
- From plaintiff, 5, 528i
- From purchaser in good faith, 5, 528i
- Officer in possession, 5, 528i
- Under statute, 5, 528j
- Upon purchaser from bailee, 5, 528i
- Where defendant is in rightful possession, 5, 528h

When Unnecessary, 5, 528j, 528m**Before suit is brought, 5, 528n****Goods**

- In custody of an officer, 5, 528m
- Obtained by fraudulent pretenses, 5, 528l
- Unlawfully obtained, 5, 528l
- One holding property without title, 5, 528j
- Property obtained by fraud, 5, 528l
- Purchaser from bailee, 5, 528j
- Reasonable time, 5, 528n
- Upon breach of condition, 5, 528m
- Upon judgment to return, 5, 528m
- Where both parties claim title, 5, 528k
- Where conversion can be established without demand, 5, 528j
- Where holder claims title, 5, 528k
- Where holder obtained possession by process of law, 5, 528j
- Where property was sold at judicial sale, 5, 528k

Sales

- Before bringing action where goods are wrongfully sold, 21, 568

Specific Performance, 22, 1042

- Complainant's duty to make demand, 22, 1042
- Excuses for not making demand, 22, 1042
- Examples, 22, 1043
- Pleading, 22, 1070
- Showing demand and refusal, 22, 1042

Stockholders

- Payment of subscription, 23, 811

Sufficiency

- Under statute, 5, 528b
- Sunday, 5, 85; 24, 576
- Supplementary Proceedings, 24, 624**
- Contempt, 24, 667

Taxation

- Collector in default, 25, 350

Necessity, 25, 278

- Whether demand necessary to create a lien, 25, 270

Trover, 26, 728

- At home of holder, 5, 528z⁸
- Authority not shown, 5, 528z⁶
- By agent, 5, 528z⁷
- By letter, 5, 528z⁷
- By partner after dissolution, 5, 528z⁷
- Examples, 26, 728, 729
- Former demand insufficient, 5, 528z⁶
- One excuse waives others, 5, 528z¹⁹
- Oral or writing, 5, 528z⁶
- Property in the hands of one entitled to its possession, 5, 528r
- Reasonable doubt as to title, 5, 528z⁶

Refusal, 5, 528z⁴, 528z⁵

- By bona fide purchaser, 5, 528z¹⁷
- By co-tenant, 5, 528z¹¹
- By pledgee, 5, 528z¹⁷
- Co-tenant destroying the property, 5, 528z¹¹
- Co-tenant selling whole chattel, 5, 528z¹¹
- Defendant not in possession, 5, 528z⁹
- Effect of offer to return subsequent to demand, 5, 528z¹⁹
- Evidence of conversion, 5, 528z¹⁵
- One excuse waives others, 5, 528z¹⁹
- Property in custody of law, 5, 528z⁹
- Property previously converted, 5, 528z¹⁰
- Qualified, 5, 528z¹⁰
- Reasonable hesitancy, 5, 528z¹⁰
- Silence equivalent to, 5, 528z¹⁸
- Waiver of excuses, 5, 528z¹⁹
- What constitutes conversion, 5, 528z¹⁴
- When defendant could not deliver, 5, 528z⁸
- When not a conversion, 5, 528z⁸
- Where agent holding for principal, 5, 528z¹⁴

Sufficiency, 5, 528z⁵

- Agent, 5, 528z⁴
- By agent, 5, 528z⁵
- By joint owner, 5, 528z⁵
- By whom, 5, 528z⁵
- Demand of payment or satisfaction, 5, 528z⁵
- Excessive demand, 5, 528z⁴
- Exhibiting title, 5, 528z⁴
- In joint possession, 5, 528z⁵

Tender subsequent to demand and refusal, 26, 731

- Upon member of dissolved firm, 5, 528z⁷

- Waiver of previous conversion, 5, 528z¹⁸
- When demand necessary, 26, 729
- When indefinite, 5, 528z⁶

When Necessary, 5, 528r

- Bailee of goods, 5, 528r
- Bona Fide Purchaser, 5, 528s**
- Or mortgagee, 5, 528t
- Confusion of goods, 5, 528s
- Generally, 5, 528r
- Holder in possession without fault, 5, 528r

In case of lawful seizure by officer, 5, 528^t
 Intermingling of goods, 5, 528^s
 Property in the hands of one entitled to its possession, 5, 528^r
 When conversion cannot otherwise be shown, 5, 528^t
When Unnecessary, 5, 528^t
 Against officer, 5, 528^u
 Bona fide purchaser, 5, 528^w
 By agent, 5, 528^x
 By partner, 5, 528^x
 By pledgee, 5, 528^v
 By widow, 5, 528^z³
 Confusion of goods, 5, 528^z³
 Conversion by agent, 5, 528^x
 Conversion by vendee in conditional sale, 5, 528^v
 Conversion through mistake, 5, 528^x
 Defendant's control and possession, 5, 528^u
 Duress and imprisonment, 5, 528^z²
 Fraudulent taking, 5, 528^z²
 Goods sold without owner's authority, 5, 528^v
 Intermingling of sheep, 5, 528^z³
 Officer levying upon property of a stranger, 5, 528^u, 528^v
 Property obtained by duress, 5, 528^z²
 Property obtained by trespass, 5, 528^z²
 Property taken tortiously, 5, 528^z²
 Sale by sheriff, 5, 528^z¹
 Sale of plaintiff's goods, 5, 538^z¹
 Seizure and removal of property, 5, 528^z²
 Theft, 5, 528^w
 Tortious taking, 5, 528^w
 Void judicial sale, 5, 528^w
 When it need not be proven, 5, 528^z³
 When it would be unavailing, 5, 528^v
 Where actual conversion can be proved, 5, 528^w
 Where defendant's original possession was lawful, 5, 528^x
 Where possession was acquired by tort, 5, 528^u
 Whether proof of actual conversion, 5, 528^t
 Wrongful taking by stranger, 5, 528^z¹
 Wrongful use of property, 5, 528^z¹
 Under statute, 5, 528^z⁵
 Upon a certificate of deposit, 2, 106
 Upon dies non iudicatus, 5, 85; 24, 576
 Upon trustees, 5, 528^z³⁰
Usages and Customs
 Banks and banking, 27, 868, 871
 Vendor and purchaser, 28, 146
 Wages, 14, 771
Waiver
 Refusal as waiver of demand, 5, 527, 528^q
 Waiver of, by bank, 2, 102
I-D—25

When Made
 Presumption as to time of making, 5, 528^z⁷⁴
When Necessary
 To check, 5, 528^z⁴²
 To support an action, 1, 181
 When not required, 1, 181
When Required
 Permits to do a certain act, 1, 181
 Promise to pay a stranger, 1, 181
 To support action of contract, 1, 181
 Where debt is payable in personal property, 1, 181
 Where place of payment is uncertain, 2, 403
DEMENTIA
 Excuse for crime, 4, 720
DEMESNE, 5, 537
DEMIJOHN, 5, 537
 Distinguished from bottles, 2, 482
DEMI-MARK, 5, 537
DEMISE, 5, 538
 See LEASES.
 Right of entry, 6, 245^m
 What covenant is implied from, 5, 538
DEMOLISH, 5, 541
DEMONSTRATIVE, 5, 541
DEMURRAGE, 5, 542
 See LAY DAYS.
 For demurrage liens, see MARITIME LIENS.
Acceptance of Goods as Evidence of
 Agreement, 5, 543
Collision, 16, 354
 Allowance of damages, 5, 548; 16, 354
 Amount of damage, 5, 548; 16, 354
 Commencement of lay days, 5, 547
 Consignee's liability, 5, 543
 Construe, 5, 544
 Customary dispatch, 5, 544
Damages, 5, 548
 Collision cases, 5, 548; 16, 354
 Instances of compensation allowed, 5, 548
 Loss of service must be shown, 5, 548
 Market value, 5, 548
 Measure of, 5, 548; 16, 354
 Stipulated demurrage, 5, 548
 Where no lay days are stipulated for, 5, 548
 Where vessel is sunk, 5, 548
 Definition, 5, 542
Delay
 Through negligence of owners or agents of vessel, 5, 543
 Which falls upon charterer, 5, 542
 Delivery of bill as delivery of cargo, 5, 543
 Dispatch, 5, 544
 Express contracts for, 5, 542, 543
 Failure to load in turn, 5, 546
 Implied contract, 5, 546
 In usual and customary time, 5, 545
 Liability in rem and in personam, 5, 549
 Maritime liens, 14, 439
 Parol evidence, 5, 545
 Procedure, 5, 549

DEMURRAGE—Cont'd

- Quick dispatch, 5, 544
- Rainy days, 5, 544
- Reasonable dispatch, 5, 546
- Running days, 5, 544
- Substituted mode of discharge, 5, 547
- Usage, 5, 545
- When the time is expressly ascertained, 5, 542
- "With usual dispatch of port," 5, 545
- Words and phrases construed, 5, 544
- Working days, 5, 544

DEMURRER, 5, 588; 18, 511

Cure by verdict, see **VERDICT**.

Abatement in, 4, 778

At Law, 5, 558

Consideration of entire record, 5, 560; 18, 514

Court considers all pleading, 5, 561

Defect of parties, 5, 560

Demurrer to all counts when only one is defective, 5, 561

Effect of demurrer, 5, 560; 18, 512

Filing two declarations in same cause, 5, 560

Formal defects, 5, 560; 18, 512, 513

Formal objections, 5, 559

General nature of demurrer, 5, 558

General or special, 5, 559; 18, 512, 514

Grounds for demurrer, 5, 560

Judgment, 5, 561; 7, 966

For plaintiff, 5, 562

Interlocutory or final, 5, 561, 562

Leave to amend, 5, 562

Leave to amend after, 5, 562

Motion in arrest, 5, 562

On plea in abatement, 5, 561

Manner of filing and hearing of demurrer, 5, 560

Misjoinder of parties, 5, 560; 10, 1015²³; 18, 497

Parties to Action

Misjoinder of parties to demurrer, 5, 560

Several issues both in law and of fact, 5, 561

Speaking demurrer, 5, 560

Want of capacity in plaintiff, 5, 560

What court will consider, 5, 560

What it admits, 5, 560

When general demurrer is sufficient, 5, 559

When special demurrer is necessary, 5, 559

Where no cause of action appears, 5, 560

Where some counts in plea are good, 5, 559

Bill of Discovery, 2, 205; 5, 557; 6, 788

To relief prayed for in bill of discovery, 2, 201

Bill of review, 2, 269; 5, 558

Code Pleading, 18, 489

Several pleas, 11, 1015²¹⁰

Counterclaim, 2, 427

Cause of action for which court has no jurisdiction, 22, 429, 430

Cause of action over which court has no jurisdiction, 22, 429

Complaint containing no cause of action, 22, 429

Demurrer merely to, 22, 427

Demurrer to answer both as a counterclaim and a defense, 22, 428

Demurrer to one defense or counterclaim and replying to others, 22, 428

Demurrer to one part of counterclaim and replying to another, 22, 428

Demurrer to reply, 22, 432

Facts taken as true if not demurred or replied to, 22, 429

Failure to demur, 22, 427

Failure to support counterclaim by proof, 22, 430

Motion at trial, 22, 427

Motion to strike out as irrelevant, 22, 427

Objection that facts set up did not constitute cause of action, 22, 430

Specifying particular objection, 22, 428

Substantial defects in pleading, 22, 428, 429

Whether failure to demur waives objections to counterclaim, 22, 428

Criminal Procedure

Definition, 4, 777

Demurrer in attachment, 4, 778

In Alabama, 4, 778

In Iowa, 4, 779

In Kentucky, 4, 778

In Michigan, 4, 779

In Ohio, 4, 779

Judgment of, 4, 778

Leave to plead where demurrer has been overruled, 4, 778

Necessity of writing, 4, 777

Seldom used in practice, 4, 778

What demurrable, 4, 779

Definition, 5, 549; 18, 511

Effect of demurrer, 18, 512

Excuse for not pleading, 18, 511

Negative defects, 18, 512

Positive defect, 18, 512

Departure from precedent, 18, 581

Distinguished from non-suit, 16, 723

Duplicity, 18, 563

Effect of demurrer, 5, 560; 18, 512

Effect of Demurrer in Opening Record, 18, 514

Discontinuance, 18, 515

As to one of several defendants, 18, 516

Cure, 18, 516

Failure to enter nolle prosequi, 18, 516

Examination of whole record, 5, 560, 561; 18, 514

General principles, 18, 514

Plea in abatement, 18, 514

Where plaintiff mistakes cause of action, 18, 515

Where several pleas have been filed, 18, 514

Excuse for not pleading, 18, 511
 Final judgment, 12, 65
 Garnishment, 8, 1100
General, 5, 559; 18, 512
 Defects in form, 5, 560; 18, 512, 513
 Definition, 18, 512
 Distinction between matter of form
 and matters of substance, 18, 513
 Plea in abatement, 18, 513
 Statute of Elizabeth, 18, 512
 Statute of 4th and 5th Anne, 18, 513
In Equity, 5, 550; 6, 781
 Adequate remedy in law, 5, 554
 Admiralty, 5, 554
 Admitting truth of facts stated in bill,
 5, 551
 Allegation of causes of demurrer, 6,
 782
 Amendment of bill, 5, 553
 Another suit pending, 5, 556
 As a bar, 5, 552
 As to demurrers generally, 6, 781
 As to form, 6, 785
 As to substance, 6, 785
 Bankruptcy, 5, 554
 Barred by length of time, 5, 556
 Bill of review, 2, 269; 5, 558
 Bill of revivor, 2, 273; 5, 558; 6, 790
 Cross-bill, 5, 558; 6, 790
 Deficiencies in matters of form, 5, 556
 Definition, 5, 550
Demurrer
 In two distinct parts of bill, 5, 550
 To bills not original, 5, 557
 To discovery, 2, 205; 5, 557
 To jurisdiction, 5, 554
 To Prayer for Relief
 In bill to perpetuate testimony, 2,
 283
 Demurring and pleading same part of
 a bill, 5, 550
 Demurring, pleading and answering at
 same time, 5, 550
 Designating points designed to be
 covered, 5, 552
 Different kind of demurrers, 6, 781
 Distinguished from plea, 6, 791
 Error apparent on face of bill, 6, 782
 Foreign matter alleged by defendant,
 5, 551
 Form, 6, 782
 For multifariousness, 5, 555; 6, 786
 For non-joinder of parties, 6, 786
 For uncertainty, 6, 785
 For want of proper parties, 6, 785
 Frame of demurrer, 5, 552
 Framed with reference to nature of a
 bill, 5, 553
 Framing demurrer to part of bill and
 answer with reference to another, 5,
 554
 General nature, 5, 550
 General or special, 5, 552; 6, 783
 Good as to some of the defendants and
 bad as to others, 6, 786
 Good in part and bad in part, 5, 550;
 6, 783

Grounds, 5, 554
 Bill of review, 2, 269; 5, 558
 Bill of revivor, 2, 273; 5, 558; 6, 790
 Cross-bill, 5, 558
 Demurrers to bills not original, 5,
 558
 Demurrers to discovery, 2, 205; 5,
 557
 Various, 5, 557
 Incapacity of parties, 5, 555; 6, 784
Injunctions, 10, 1006
 Demurrer and motion to dissolve
 pending at same time, 10, 1007
 What court will consider, 10, 1006
 Jurisdiction, 5, 555
 Laches, 6, 787; 13, 770, 771
 Matter cognizable in court of law 6,
 784
 Misjoinder of parties, 6, 786
 Multifariousness, 5, 555; 6, 786
 Only applicable to bill, 5, 552
 Ore tenus, 6, 783
 Original bills, 5, 554
 Personal disability of plaintiff, 5, 555
 Plaintiff having no interest in subject,
 5, 555
 Plaintiff not entitled to relief prayed,
 5, 555
 Plaintiff's abode not stated, 5, 556
 Plaintiff's right after overruling, 5, 553
 Pleading at the same time, 6, 783
 Pleas and answers, 6, 803
 Probate or divorce, 5, 554
 Setting out cause of demurrer, 5, 552
 Several causes assigned for demurrer,
 5, 550
 Several defendants joining in demurrer,
 5, 550
 Signature of counsel, 5, 553
Specific Performance, 22, 1073
 Bill fatally defective on its face, 22,
 1073
 Defects not apparent upon the face,
 22, 1073
 Stating facts which do not appear
 upon face of bill, 5, 551
 Statute of fraud, 5, 556; 6, 786
 Statute of limitations, 6, 787; 13, 770,
 771
 Statutory jurisdiction, 5, 555
 Supplemental bill, 5, 557; 6, 790
 To answer, 1, 606
To Bill of Discovery, 2, 205; 5, 557; 6,
 788
 Causing defendant to criminate him-
 self, 6, 789
 Discovery material, 6, 789
 Grounds, 5, 557
 Plaintiff showing no title, 6, 789
 Subjecting defendant to forfeiture,
 6, 789
 To bill of interpleader, 6, 789
 To bill of revivor, 2, 273; 5, 558; 6, 790
 To bills of relief, 6, 783
 To cross-bills, 5, 558; 6, 790
 To jurisdiction, 6, 784
 To particular part, 6, 782

DEMURRER—Cont'd**In Equity—Cont'd**

- To person, 6, 784
- To separate and distinct parts of bill, 6, 783
- To supplemental bills, 5, 557; 6, 790
- To the relief, 5, 554
- Want of proper parties, 5, 555
- What demurrer admits, 6, 781, 782
- When demurrer is a proper defense, 5, 551
- When general demurrer is sufficient, 5, 552
- When it lies, 6, 781
- When too extensive, 5, 550
- Where no claim set out in bill is proper for jurisdiction, 5, 554
- Where plaintiff's case as stated does not entitle him to a decree, 5, 552
- Whether it must be sworn to, 5, 553
- Intervention, 17, 489, 648
- Joinder, 11, 1015¹²
 - Under the Code, 11, 1015⁴**
 - Allegation, 11, 1015⁶
 - Different causes of action erroneously joined, 11, 1015⁶
 - Form of demurrer, 11, 1015⁶
 - Two causes joined in one paragraph, 11, 1015⁴
 - Waiver, 11, 1015⁷
 - When not allowed, 11, 1015⁶
- Judgment against executors and administrators, 7, 383
- Judgment of demurrer of information, 10, 709
- Judgment or Decree, 5, 561
 - Whether final, 7, 966
- Jurisdiction, 12, 309
- Laches, 12, 609
- Larceny, 12, 830
- Libel and Slander, 13, 477
 - Admitting truth of libelous matter, 13, 477
 - Form of words laid in count, 13, 477
 - General demurrer to two counts, 13, 477
 - To answer, 13, 477
 - When overruled, 13, 477
- Limitation of actions, 6, 787; 13, 770, 771
- Mandamus, 14, 224
 - Return, 14, 234**
 - Judgment non obstante, 14, 233
 - Special demurrer, 14, 232
- Married women, 14, 655-660
- Mechanics' liens, 15, 176
- Misjoinder, 5, 560; 11, 1015²³; 18, 497
 - Demurrer to one count, 11, 1015², 1015²⁸
 - General demurrer, 11, 1015²²
- Misnomer, 16, 128; 17, 606
- Motions, 15, 889
- Negative defects, 18, 512
- New trial, 16, 514, 661
- Ore tenus, 5, 553
- Patent Law, 18, 97
 - Defenses to action for infringement, 18, 90, 93

- In general, 18, 97
- Laches, 18, 97
- Question of pleading, 18, 97
- To what demurrer must apply, 18, 98
- Waiver of right to demurrer, 18, 98
- Pleading**
 - At Same Time, 11, 1015²¹⁰**
 - Statute of Anne, 11, 1015²¹⁰
 - To several parts of declaration in covenant, 4, 543
 - Under the Code, 18, 496**
 - Demurrer to answer, 18, 497
 - Demurrer to reply, 18, 497
 - Former suit pending, 18, 497
 - Generally, 18, 496, 497
 - Grounds for demurrer, 18, 496
 - Misjoinder of causes of action, 18, 497
 - Misjoinder of parties, 18, 497
 - Want of jurisdiction, 18, 497
 - Want of legal capacity to sue, 18, 497
- Pointing out proper parties to enable plaintiff to amend, 5, 556
- Positive defect, 18, 512
- Receiver**
 - Appointment while demurrer is pending, 20, 29
- Res Judicata, 21, 279**
 - Examples, 21, 269, 270
 - How far conclusive, 21, 269
 - In general, 21, 269
- Scire facias, 21, 869
- Service of Process**
 - As waiver of defects in process, 22, 169
- Special, 5, 559; 18, 514**
 - Abolition, 18, 514
 - Origin and nature, 18, 514
- Special traverse, 18, 550
- Statute of limitations, 18, 553
- To declaration in covenants, 4, 543
- To Evidence, 5, 563**
 - Conflicting, 5, 563
 - Credibility of witnesses, 5, 563
- Judgments, 5, 564**
 - Stands in place of verdict, 5, 564
- Mechanics' liens, 15, 191
- Specification of facts to be admitted, 5, 563
- To interrogatories, 5, 564
- Waiver of formal objections, 5, 564
- What is, 5, 563
- What is admitted by it, 5, 563
- Where evidence is uncertain or circumstantial, 5, 563
- Writ of error, 5, 564
- To whole declaration where one count is good, 5, 358
- Trade-marks, 26, 498
- Under Codes, 18, 493**
 - Frivolity, 18, 504
- Where pleading shows that contract sued upon was champertous, 3, 86
- DENIZATION, 5, 564**
 - In South Carolina, 5, 564

- DENIZEN**, 5, 566
DENOMINATION, 5, 566
DENOUNCEMENT, 5, 567
DENTIST, 5, 567
See MALPRACTICE; PHYSICIANS AND SURGEONS.
 Contract in restraint of trade, 10, 945
 Undue influence, 27, 474
DENY, 5, 567
DEPART, 5, 567
DEPARTMENT, 5, 568
DEPARTURE, 5, 568
 Pleading, 18, 579
DEPEND, 5, 568
DEPENDENCY, 5, 569
DEPENDENT, 3, 265; 5, 569
 Dependent promises, 19, 283
DEPENDING
 Suit, 5, 568
DEPONENT, 5, 570
DEPOSIT, 5, 570
See BANKS AND BANKING; CERTIFICATE OF DEPOSIT; NATIONAL BANKS; *see generally*, BAILMENT.
Deposit of earnest money, *see* FRAUD, STATUTE OF; SALES.
Deposit of title deeds, *see* EQUITABLE MORTGAGES.
 As collateral for loan, 2, 97
 Bailee's right to possession, 2, 57
 Base coin, 2, 100
 Capacity to make a contract, 5, 572
 Charging owner for necessary expenses, 5, 577
 Conventional depositary, 5, 577
 Conventional sequestrations, 5, 571
 Conversion, 5, 578
 Definition, 2, 43; 5, 570
Degree of Care Required
 Of depositary, 2, 52
 Where bailment is for sole benefit of bailee, 2, 54
 Demand, 5, 579
Depositary's Duty
 As joint owner, 5, 573
 Degree of negligence, 5, 574
 Delivery, 5, 578
 Setting up title in himself, 5, 577, 578
 Taking same care of goods as of his own, 5, 574
 To keep chattels with reasonable care, 5, 572
To Return Thing Deposited, 5, 576
 Accession, 5, 576
 Property received in fraud of depositor's creditors, 5, 577
 Where owner is a stranger to depositary, 5, 576
 What answerable for, 5, 573
 Where property is taken out by judicial process, 5, 578
 Depositary selling goods, 5, 578
 Distinguished from mandate, 14, 241
 Divisions, 5, 570
 Embezzlement by bank cashier, 5, 574
Estoppel
 Depositary, 7, 28
 Forfeiture, 8, 446
 Forged bills, 2, 100
General, 8, 1292
 Relation between banker and customer in case of general deposit, 2, 93
 General and special, 2, 93
Gross Negligence
 Of depositary, 2, 53; 5, 572
 Question of law or fact, 5, 573
 Involuntary, 5, 571
Irregular, 5, 571
 Demand, 5, 579
 Judicial sequestrations, 5, 571
 Knowingly deposited, 12, 525
 Lien of bank on funds of depositors, 2, 97
 Measure of damages for refusal to return, 5, 578
 "Money on deposit," 15, 711
 National banks, 5, 574; 16, 160
 Nature of transaction, 5, 571
 Necessary, 5, 570
 Ordinary care, 5, 573
 Property subject to, 5, 571
 Quasi, 5, 571, 575
 Repayment of, 2, 101
Requisites of Contract, 5, 572
 Consent, 5, 572
 Delivery, 5, 572
 Intent, 5, 572
Rights and Obligations
 Of depositary, 5, 572
 Of parties, 5, 572
 Right to demand delivery at once, 5, 578
 Right to inspect books, 2, 100
 Sequestrations, 5, 571
 Set-off against a deposit, 2, 98
Special, 2, 43; 5, 571
 Banker's bailee, 2, 94
 Examples of, 2, 43
 National banks, 16, 160
Suit by Depositary
 Against tort-feasor, 5, 576
 Replevin, 5, 576
 Trespass, 5, 576
 Trover, 5, 576
 Title in case of general deposit, 2, 93
 Voluntary, 5, 571
 When statute of limitations begins to run, 5, 579
 Whether depositary has special property in subject, 5, 576
 With bankers, 2, 93
DEPOSITIONS, 5, 581; 7, 107
See BILL OF DE BENE ESSE; BILL OF DISCOVERY; BILL TO PERPETUATE TESTIMONY; INTERROGATORIES.
Admissible as Evidence, 5, 604
 Appearance of witness, 5, 604
 Cause on which the deposition was taken de bene no longer existing, 5, 604
 Conflicting depositions, 5, 606
 Death of party, 5, 610
 Inability of witness to attend, 5, 604
Objections, 5, 610
 Determined by law as it stands at time of trial, 5, 612

DEPOSITIONS—Cont'd**Admissible as Evidence—Cont'd****Objections—Cont'd**

- Hearsay evidence, 5, 613
- Illegal testimony, 5, 613
- Illustrations, 5, 610-613
- Leading questions, 5, 612
- What time they should be made, 5, 610-613

Pregnant women, 5, 606

Proof of witness's inability to appear, 5, 604

Reading a part of depositions, 5, 606

Right of opposite party to use depositions, 5, 607

Sick witness, 5, 605

Subsequent trial of case, 5, 610

Taking in Another Suit, 5, 608

Agreement, 5, 608

Between other parties, 5, 609

Objections not pertinent upon former trial, 5, 608

Suit between same parties, 5, 608

When court will admit, 5, 604

When formal objections taken, 5, 610

When objection to substance taken, 5, 610

Witness about to leave state, 5, 606

Affirmation, 5, 596

Alterations, 5, 602

Amending certificate, 5, 601

Answering all interrogatories, 5, 597

Answers not pertinent, 5, 598

Answers not responsive, 5, 597

Bona fides, 5, 582

By what law governed, 5, 582, 612

Caption, 5, 618

Certificate, 5, 617

Amendment, 5, 601

Commissioner for state, 5, 618

Examination of witness under oath, 5, 620

Following statutory form, 5, 617

Notary public or justice of the peace, 5, 618

Official character of officer certifying, 5, 617

Showing on its face where taken, 5, 617

Substantial compliance with statute, 5, 616

When deposition is taken by person named in commission, 5, 618

Clerical errors, omissions, etc., 5, 583

Commissioner

Application of power, 5, 588

Attorney of one of parties, 5, 587

Certifying that he is not akin to parties, 5, 618

Employment of counsel, 5, 588

Objections to, 5, 588

Official Character

How official character shown, 5, 617, 618

Presumption of regularity, 5, 588

Relationship of party to attorney, 5, 587

Showing that commissioner is not akin

to parties, 5, 618

Signature of, 5, 620

Who may act, 5, 587

Competency of, 5, 582

Competency of witnesses, 5, 599

Contempt, 5, 600

Continuances, 5, 599

Record, 5, 599

Regularity, 5, 599

Where neither party appears, 5, 599

While awaiting depositions, 3, 815

Contradictory declarations after deposition is taken, 29, 788

Costs, 5, 621

When expenses of commission are taxable as, 4, 327

Where transaction is not bona fide, 5, 582

Criminal Cases, 5, 621

Witnesses since deceased, 4, 855

Death or disability of witness during examination, 5, 599

Definition, 5, 581

Definition of deponent, 5, 570

Disbursements of, 5, 621

Distinguished from affidavits, 16, 770

Distinguished from stenographer's notes, 5, 581

Evasive answers, 5, 598

Examination of Witnesses, 5, 596

Answering all interrogatories, 5, 597

Answers not pertinent, 5, 598

Answers not responsive, 5, 597

Answers written by party or attorney, 5, 600

Answers written by witness himself, 5, 601

Attorney's presence, 5, 596

Competency, 5, 599

Contempt, 5, 600

Death or disability of witnesses during examination, 5, 599

Deposition written by witness before his examination, 5, 600

Evasive answer, 5, 598

Examination on interrogatories and cross-interrogatories, 5, 601

Interpreters, 5, 598

Presence of commissioner, 5, 600

Reading questions as well as answers, 5, 601

Refusal or omission to answer interrogatories, 5, 597

Relevancy of testimony, 5, 596

Right to appear by counsel, 5, 596

Who should write out answer, 5, 600

Witness consulting with his counsel during examination, 5, 596

Exhibits, 5, 602, 619

Referring to, in body of deposition, 5, 602

Sworn copy, 5, 602

Filing, 5, 620

Hearsay evidence, 5, 613

Illegal testimony, 5, 613

Impeaching by second depositions, 5, 606

- Impeaching witness, 5, 607
- In election cases, 6, 420
- Informer, 10, 725
- In perpetuam, 5, 621
- Interpreters, 5, 598
- Jury room, 12, 377
- Leading questions, 5, 612
- Letters rogatory, 5, 581
- Lost, 5, 620
- Motion to quash, 5, 591
- Motion to Suppress**, 5, 613
 - Discretion of court, 5, 613
 - Insufficient grounds, 5, 614
- Waiver**
 - Where objection does not seem to have been ruled upon, 5, 611
- When made, 5, 610, 611
- Non-resident party, 5, 590
- Notary Public**
 - Capacity to act as affected by interest, 16, 774
 - Compelling attendance of witnesses, 16, 770
 - Contempt of court, 16, 770
 - Power to take, 16, 770
 - Subpœnas, 16, 770
- Notice**, 5, 592
 - Allowance for travel, 5, 593
 - Computation of time, 5, 593
 - Due notice, 5, 594
 - Order specifying notice, 5, 593
 - Reasonable notice, 5, 593
 - Service, 5, 594
 - Service on attorney, 5, 594
 - Service on one co-defendant, 5, 594
 - Time, 5, 593
 - Time of service, 5, 592
 - Time of taking, 5, 593
 - To whom given, 5, 592
 - Written or verbal, 5, 592
- Oath**, 5, 595
 - Affirmation, 5, 596
 - Before or after evidence is reduced to writing, 5, 596
- Certificate**, 5, 620
 - Of commissioners that oath had been taken, 5, 595
 - Discretion of the court, 5, 595
 - Presumption, 5, 595
 - Statutory oath, 5, 595
 - Variance, 5, 596
 - Witnesses should be sworn by commissioner, 5, 595
- Objection on cross-interrogatories, 5, 615
- Objections to an Interrogatory**, 5, 615
 - General objection to part of interrogatory, 5, 615
 - Specifying ground of objection, 5, 615
- Open Commission**, 17, 209
 - Commissioners, 17, 211
 - Definition, 17, 209
 - Distinguished from other commissions, 17, 209
 - Examination, 17, 211
 - Motion, 17, 210
 - Return, 17, 212
 - The order, 17, 211
- When granted, 17, 209
- Party to suit, 5, 590
- Perjury, 18, 305
- Place of taking, 5, 591
- Power of court to award, 5, 588
- Pregnant women, 5, 606
- Rape, 19, 966
- Reading a part of, 50, 606
- Reading testimony to witness, 5, 601
- Refusal or omission to answer interrogatories, 5, 597
- Rejection of deposition where deponent fails to answer material question, 5, 597
- Relevancy of testimony, 5, 596
- Residence of Witnesses**, 5, 590
 - How proved, 5, 590
 - Stating residence in interrogatory, 5, 590
- Return**, 5, 619
 - Delivery by mail, 5, 620
 - Notice of, 5, 620
- Sealing, 5, 590
- Sick witness, 5, 605
- Signature**
 - Of commissioner, 5, 620
- Statute Authorizing**, 2, 284
 - Strictly construed, 2, 284; 5, 583
- Statutory proceedings, 5, 582
- Strict Compliance with Statute**, 2, 284; 5, 583
 - Clerical errors, omissions, etc., 5, 583
 - Competency, 5, 583
 - Date, 5, 586
 - Idem sonans, 5, 583
 - Inclosing in envelope directed to clerk, 5, 586
 - Indorsements, 5, 586
 - Mistake in name of state, 5, 586
- Name**, 5, 583
 - Of clerk, 5, 586
 - Omission of signature of clerk, 5, 585
 - Omission of word "carefully," 5, 587
 - Requisites, 5, 615
 - Various omissions and irregularities, 5, 583, 586
 - Witness not sworn, 5, 585
- Submission to jury, 5, 607
- Subpœna, 5, 591
- Substantial Compliance with Statute**
 - Caption, 5, 619
 - Certificate, 5, 617
 - Return, 5, 619
- Supplementary proceedings, 24, 637
- The Commission**, 5, 588
 - Disinterested magistrate, 5, 589
 - Grounds for taking, 5, 589
 - Non-resident parties, 5, 588
 - Notice to defendant, 5, 589
 - Sealing, 5, 589
- Time of Taking**, 5, 592
 - Notice, 5, 593
- United States Commissioners**
 - Power to Take Depositions de Bene Esse, 27, 555
 - Caution, 27, 556
 - Commissioner an attorney, 27, 555
 - Compelling appearance, 27, 556

DEPOSITIONS—Cont'd**United States Commissioners—Cont'd****Power to Take Depositions de Bene Esse—Cont'd**

- Custody of depositions, 27, 557
- In general, 27, 555
- Interested commissioner, 27, 555
- In what causes, 27, 555
- Notice, 27, 555**
 - Name of witness, 27, 556
 - Notice in writing to opposite party, 27, 555
 - Notice must be reasonable, 27, 556
 - Time and place of examination, 27, 556
 - What notice must contain, 27, 556
- Oath, 27, 556
- Oral or written interrogatory, 27, 556
- Reducing testimony to writing, 27, 556, 557
- Signature, 27, 557

United States Courts**Depositions de Bene Esse, 27, 620**

- Compliance with statutory requisites, 27, 620
- Depositions under a dedimus potestatum and in perpetuum, 27, 621
- Equity and common-law actions, 27, 620
- Examples, 27, 620, 621
- In general, 27, 620
- Party showing that he has sought to obtain witness, 27, 621
- Statutory provisions, 27, 620
- Where attendance of witness can be secured, 27, 621
- Whole truth, 27, 621

Depositions Under a Dedimus Potestatum and in Perpetuum

- Examples, 27, 621, 622
- In general, 27, 621

Unskilful or unlearned commissioners, 5, 588**Waiver of Objections, 5, 616**

- By party at whose instance deposition was taken, 5, 616
- Formal objections, 5, 616
- Objection on specified grounds, 5, 615
- Party appearing and taking part in examination, 5, 616
- Presence of opposing attorney who declines to take any part, 5, 616
- Use of deposition on former trial without objection, 5, 616

Where witness has testified upon a former trial, 9, 333**Who May Take, 5, 587**

- Justice of the peace, 5, 595
- Witness about to leave state, 5, 606

Witnesses

- Time of making objection as to competency, 29, 649
- Written by witness before his examination, 5, 600

DEPOT, 5, 622; 23, 115*See STATIONS.***DEPRECIATION, 5, 623****DEPRIVE, 5, 623****DEPUTY, 5, 623***See AGENCY.**Deputy sheriff, see SHERIFFS.***Acts Which May Be Performed by Deputy,**

- 5, 624
- Acknowledgments, 1, 144; 5, 624
- Deputy sheriff acting in his own name, 5, 625
- Ministerial acts, 5, 624
- Papers issued in deputy's own name, 5, 624
- Process signed by deputy clerk, 5, 624
- Assessors, 5, 640
- Clerk, 5, 639**
 - Incompatible offices, 19, 562y
 - Papers issued in clerk's own name, 5, 624

Collector, 5, 639**Collector of Revenue, 21, 326**

- Remission of penalties, 21, 337

Constables, 5, 638; 22, 566**Coroner, 5, 637**

- Power of coroner to appoint, 5, 637
- Service of summons, 5, 637
- Definition, 5, 623
- Distinguished from agent and assignee, 5, 624

Duration of office, 19, 562n**Judicial notice, 12, 205****Judicial sales, 12, 210****Marshal, 5, 638; 22, 565**

- Deputy marshal distinguished from deputy sheriff, 5, 638
- Liability for money received, 5, 633
- Liability of third parties, 5, 638
- Officer of the United States, 5, 638
- May take acknowledgment, 1, 144; 5, 624

Name

- In Whose Name Power Should Be Exercised, 5, 624; 19, 469**
 - During sickness or necessary absence of principal officer, 19, 469
 - In name of principal, 19, 469
 - Where deputy is an officer known to law, 19, 469

Notary Public, 5, 639; 16, 773**Authority to act, 16, 773****Notice to deputy, 16, 806****Postmaster, 18, 851, 852****Principal's Liability for Default, 19, 495**

- Appointment of person notoriously unfit, 19, 496
- Burden of proof, 19, 497
- Co-operation in wrong, 19, 496
- Default of private servants, 19, 496
- Negligence in making appointments, 19, 496
- Negligence in superintendent's department, 19, 496
- Postmasters, 19, 497
- When subordinates are public officers, 19, 495
- When subordinates are selected by him, 19, 495
- Who is a private servant, 19, 497

- Recording officer, 20, 557
 Res judicata, 21, 162
Sheriff's Sales, 22, 595, 598
 Deputy purchaser where sale is conducted by principal, 22, 598
 Executing deed, 22, 689
 Who are deputies, 22, 598
Taxation
 Assessors, 25, 203
 United states courts, 27, 574
DERELICTION, 5, 640
DERELICTS, see **TREASURE TROVE**.
Salvage, 21, 682
 Abandoned vessel prima facie evidence of derelict, 21, 684
 Abandonment, 21, 683
Amount of Compensation Awarded, 21, 692
 Discretion of court, 21, 692
 Examples, 21, 692, 693
 Fair compensation for actual service, 21, 693
 General rule, 21, 693
 How determined, 21, 692
 One-half of property salvaged, 21, 693
 Service of extraordinary merit, 21, 693
 Two-thirds, 21, 693
 First finder, 21, 682
 In general, 21, 682
 Intention of crew in abandoning the vessel, 21, 684
 Onus to prove intention to return, 21, 684
 What constitutes case of derelict, 21, 682
 When master and crew have only left to obtain assistance, 21, 683
DESCEND, 5, 640
DESCENDANTS, 5, 641; 17, 178; 27, 65; 29, 347
 Equivalent to issue, 5, 641
 Whether issue includes, 11, 870
DESCENT, see **SUCCESSION**.
 Collateral, 3, 310
 Distinguished from alienation, 1, 466
 Immediate descent, 9, 935
DESCRIBE, 5, 641
DESCRIPTION
 Defective, 5, 515
 Like description, 13, 661
DESECRATION, see **CEMETERIES**.
DESERT—DESERTION, 5, 642
 See **DIVORCE**; **MILITARY LAW**; **SEAMEN**.
DESERT LANDS, 19, 310
DESERVING, 5, 642
DESIGN, 5, 643
 Manifest design, 14, 250
 Premeditated design, 9, 541
DESIGNATE, 5, 643
 Equivalent to appoint, 1, 631
DESIRABLE, 5, 644
DESIRE, 5, 643
 My desire, 16, 110
DESPATCH, 3, 148; 5, 644
DESPERATE, 5, 644
DESTINATION, 5, 644
 Port of destination, 18, 838
DESTROY, 5, 644
DESTRUCTION
 Loss or destruction, see **INDICTMENT**.
 Of buildings to prevent the spreading of fire, see **FIRE DEPARTMENT**.
DESTRUCTIVE, 5, 645
DETAIL, 5, 646
DETAIN, 5, 646
DETAINER, see **FORCIBLE ENTRY AND DETAINER**.
DETAINMENT, 5, 648; 14, 378
 Marine insurance, 14, 378
DETECTIVE
 Divorce, 5, 830
DETENTION, 5, 648; 14, 332
DETERGENT, 5, 649
DETERMINABLE, 5, 649
 Fees, 5, 649; 6, 878
 Dower, 5, 892
DETERMINATION, 5, 649
DETERMINE, 5, 650
DETINUE, 5, 651
 See generally, **RECAPTION**.
 Amount of recovery, 5, 656
Bailment, 5, 654, 655; 18, 526
 Wrongful refusing to make restitution, 2, 57
 Compared with trespass and trover, 5, 651
 Counsel fees, 5, 656
 Definition, 5, 651
Demand
 Entitling plaintiff to damages, 5, 653
 Goods taken by force, 5, 653
 When may be made before suit, 5, 652
 When necessary, 5, 653
 Detain, 5, 646
 Distinguished from replevin, 20, 1045
Election of Actions, 5, 656
 Replevin and detinue, 5, 656
 Trover and detinue, 5, 656
Evidence
 Of possession, 5, 657
 Title, 5, 657
 Executors and administrators, 18, 526
General Issue, 18, 526
 At common law, 18, 526
 Bailment, 18, 526
 Executors and administrators, 18, 526
 Gift of goods, 18, 526
 Hilary rules, 18, 526
 Lien, 18, 527
 Operation of non detinet, 18, 526
 Pledge of goods, 18, 526
 What admissible under, 18, 526
 Husband and wife, 9, 800
 Joinder with debt, 11, 993
 Joinder with trover, 11, 994
 Judgment, 5, 657
 Lien, 18, 526, 527
 Lost papers, 13, 1062
 Mandamus, 14, 97
 Measure of damages, 5, 656
 Mines and mining claims, 15, 605
 Money, 5, 652

DETINUE—Cont'd

Mortgage of a chattel, 3, 203

Non detinet, see *infra*, GENERAL ISSUE.**Parties to Action**, 5, 654**Defendant**, 5, 654

Bailee, 5, 655

Co-tenants, 5, 655

Executors or administrators, 5, 654

Husband and wife, 5, 655

Plaintiff, 5, 654

Bailee, 5, 654

Mortgage of property, 5, 654

One who has not entire interest in

property, 5, 654

Person having special property, 5, 654

Title of, 5, 654

Pleadings, 5, 655**Declaration**, 5, 655

Certainty required, 5, 655

Plaintiff's right to property, 5, 655

Plea, 5, 655

Liens, 5, 655, 656

When necessary, 5, 655

Possession, 5, 652-657**Replevin**

Assessment of damages, 28, 305

Res judicata, 21, 238

Set-off, 22, 240

Survival against personal representative,

7, 333

Survival of action for detinue, 7, 266

Title of plaintiff, 5, 652-654

Variance, 5, 658

Verdict, 5, 657

Assessment of damages, 28, 304

When Action Will or Will Not Lie, 5, 652

Death or destruction of chattel, 5, 653

Defendant not in possession of chattel,

5, 653

Failure to deliver a specific chattel, 5,

652

Generally, 5, 652, 653

Kind of property recovered, 5, 652

Means by which defendant obtains

possession, 5, 652

Money, 5, 653

Pledge, 5, 653

Title to plaintiff, 5, 652

To Recover

Charters and title to deeds, 5, 652

Money, 5, 652

Whether *ex contractu* or *ex delicto*, 5, 651**DEVASTAVIT**, see EXECUTORS AND AD-

MINISTRATORS.

Waste distinguished from, 28, 868

DE VENTRE INSPICIENDO, 19, 4

See PREGNANCY.

DEVIATION, 5, 568; 6, 658*Carrier's liability for deviation*, see

CARRIERS OF GOODS.

Marine Insurance, 14, 373

Change of voyage, 14, 373

Effect, 14, 373

Examples, 14, 373

From what time policy is avoided, 14,

373

What constituted deviation, 14, 373

DEVICE, 5, 660**DEVISE**, 11, 374; 29, 125, 349

See DEVISEES; LEGACIES AND DE-

VISES; SUCCESSION.

Devise and bequest, 2, 183

DEVISEE, 5, 660**DEVISEE'S POSSESSION**

Mortgages, 15, 811

DEVOLUTION, see SUCCESSION.**DEVOLVE**, 5, 660**DICE**, 5, 661**DICE THROWING**, see GAMING.**DICTA**, 5, 661See *RES JUDICATA*; *STARE DECISIS*.

As precedent, 23, 21

Definition, 23, 19

Effect on stare decisis, 23, 19

How they may become part of the law,

23, 20

Obiter dictum, 5, 661; 17, 1

Part of the law, 23, 20

Points outside the record, 23, 21

Reversal, 23, 20

Stare decisis, 5, 663

Weight of, 5, 661

What are, 23, 21

Where decision might have been upon

different ground, 5, 664

DICTATION, 5, 666**DID**, 5, 666**DIE**, 5, 667; 6, 105**DIE BY HIS OWN HAND**, see LIFE IN-

SURANCE.

DIES NON JURIDICUS, 5, 667

See DAY.

Service of process, 22, 112

Sheriff's sales, 22, 591

Sunday, 24, 574

Arrest in civil cases, 24, 576

At common law, 24, 574

Attachment, 24, 578

Award, 24, 574

Criminal process, 24, 578

Demand, 24, 576

Examples, 24, 575-579

Execution, 24, 576

Injunction, 24, 579

Inquest, 24, 575

Instructions to jury, 24, 578

Issue of process, 24, 575

Judgment rendered, 24, 577

Judicial proceedings, 24, 574

Notice, 24, 575

Publication of notices in Sunday news-

papers, 24, 577

Public officers, 24, 577

Sentence, 24, 577

Service of process, 24, 575

Verdict received on Sunday, 24, 577

What embraced by judicial proceed-

ings, 24, 574

DIFFERENCES, see GAMBLING CON-

TRACTS.

DIFFICULTY, 5, 667**DIG**, 5, 667**DIGNITIES**

Annexation to estate, 10, 357

- Definition, 10, 356
 In United States, 10, 357
DILIGENCE, 5, 668; 16, 405
 Due, 6, 41
DILIGENTLY, 5, 668
DILUTE, 5, 668
DIP, 5, 668; 15, 506, 568
 Of a mine, 1, 614
DIPLOMA, 5, 668
DIPSOMANIA, 5, 668
DIRECT, 5, 544, 668
 Direct tax, 5, 669
 In the sense of appoint, 5, 669
DIRECT TAXES
 See TAXATION.
DIRECTING VERDICT
 Involuntary non-suit, *see* NON-SUIT.
 At what stage of the trial to be given,
 11, 247
 Court compelling party to demure to
 evidence, 5, 564
 Evidence establishing plaintiff's cause,
 11, 244
 Libel and slander, 13, 497
 Malicious prosecution, 14, 51
Master and Servant
 Negligence, 14, 874
Negligence, 16, 466
 Master and servant, 14, 874
 No evidence of negligence at railroad
 crossing, 4, 938
Scintilla of Evidence, 11, 244; 21, 851
 In English courts, 11, 244
 In federal courts, 11, 244
 In state courts, 11, 244
 Negligence, 16, 466
 Variance, 11, 247
 When error to refuse, 11, 245
 When evidence is insufficient in law, 11,
 245
 Where court bound to set verdict aside,
 11, 246
 Where there is no evidence, 11, 243
DIRECTION, 5, 670
"DIRECTLY," 3, 146; 5, 670; 21, 534
DIRECTLY BY SEA, 14, 332
DIRECTORS, 17, 81
 See BANKS AND BANKING; OFFICERS
 OF PRIVATE CORPORATIONS.
 As to liability upon deceptive prospectus,
 see CORPORATIONS.
 Manufacturing corporations, *see* MANU-
 FACTURING CORPORATION.
 Acquiring interests adverse to stock-
 holders, 27, 209
 Acting in a Foreign State, 17, 161
 See MEETINGS.
 Implied authority, 17, 162
 Whether officer must reside within the
 state, 17, 161
 Action between stockholders and direct-
 ors, 5, 734
 Admissions, 17, 100
 Annual Report, 17, 115, 116
 Answer, 17, 118
 Bad faith, 17, 117
 Complaint, 17, 118
 Fraudulent purpose, 17, 117
 Ignorance, 17, 117
 Intent, 17, 117
 Liability of directors for failing to file,
 17, 116
 Purpose for which reports are required
 to be filed, 17, 116
 Statutory requirement, 17, 116
 What is sufficient compliance, 17, 117
 What officer liable, 17, 117
 Whether corporation must file report,
 17, 115
 Who has right of action against direc-
 tors, 17, 117
Appointment of Subagents, 17, 57, 90
 Cessation of agent's authority, 17, 59
 Delegation of authority, 17, 58
 Examples, 17, 58-61
 Matters of discretion, 17, 60
 Personal confidence reposed in the
 directors, 17, 58
 President and cashier of bank, 17, 58
 Termination of board of directors, 17,
 59, 91
 When power cannot be delegated, 17,
 58
Assignments for the Benefit of Creditors,
 17, 123
 By majority of directors, 17, 124
 Effect of, 17, 123
 Power of directors, 17, 124
**Authority to Represent Two Companies in
 Their Mutual Dealings**, 17, 161
 Implied authority, 17, 161
 Validity of contract, 17, 161
Bonds, 17, 106
 Acts of individuals, 17, 153
 Authority to sell bonds, 17, 106
 Purchasing bonds of the company, 17,
 106
 Borrowing money, 17, 103
Certificates
 Issuing Fraudulent Certificates, 17, 113
 Knowingly issuing illegal and spuri-
 ous stock, 17, 113
 Liability to purchaser, 17, 113
 Or articles of association stating the
 names of, 4, 195
Compensation, 17, 119, 166-169
 By-law passed after services rendered,
 17, 121
 Director claiming increased compensa-
 tion, 17, 120
 Examples, 17, 122
 In absence of by-law, 17, 119
 Quorum of board, 17, 121
 Relation of board of directors, 17, 119
 Services not pertaining to the office,
 17, 121
 To what compensation entitled, 17,
 121
 Validity, 17, 120
 When directors may recover for
 services, 17, 119
 Whether directors can bind corpora-
 tion as to compensation, 17, 120
 Contribution, 4, 7

DIRECTORS—Cont'd

Corporations' liability for reports circulated by directors, 4, 265

Creditors, 17, 11

Director's preference, 17, 104, 122

Examples, 17, 111

Injunction, 17, 111

Misapplication of assets, 17, 111

Nonfeasance, 17, 111

When liable to creditors, 17, 111

Cumulative voting, 4, 956

Dealings

Of directors, see infra, FIDUCIARY RELATIONS.

Of directors with company, see infra, FIDUCIARY RELATIONS.

In Property of Corporation for Own Benefit

Constructive trust, 10, 76

With corporation for their own benefit, 8, 648, 649; 17, 91, 116

Debts, Liability for, 17, 113

Amount of recovery, 17, 115

Debts for which directors are personally liable, 17, 113

Debts for which liability is incurred, 17, 114

Enforcement in equity, 17, 114

Examples, 17, 113-115

Failure to file annual report, 17, 115

Indebtedness exceeding the capital stock, 17, 113

Liability to creditors as a whole, 17, 114

Liability to individual creditor, 17, 114

Making corporation assume debts, 17, 113

Object of statutes, 17, 115

Statutory personal liability, 17, 113

What must be shown in order to recover, 17, 115

Where liability can be enforced, 17, 114

Deeds, 17, 152, 153

Definition, 17, 81

Dividends

Declaring, 17, 107

Abuse of power, 17, 107

Clear right to dividend, 17, 108

Discretion of directors, 17, 107

Dividend from capital, 17, 108

In absence of charter provision, 17, 107

Jurisdiction of court of equity, 17, 107, 108

Not leaving sufficient funds to meet losses, 17, 107

Preference to one class of stockholders, 17, 108

Refusal to declare, 17, 107

Stockholder's remedy, 17, 107

When court will interfere, 17, 107

Duties and Liabilities, 17, 109

Annual reports, see infra, ANNUAL REPORTS.

For breach of trust, see infra, FIDUCIARY RELATIONS.

Absent directors, 17, 109, 113

Acts for which directors vote, 17, 109

Acts which director does not oppose, 17, 109, 113

Creditors, 17, 111

Debts, 17, 113

Amount of recovery, 17, 115

Enforcement in equity, 17, 114

Examples, 17, 113-115

Failure to file annual report, 17, 115

For which directors are personally responsible, 17, 113

For which liability is incurred, 17, 114

Indebtedness exceeding the capital stock, 17, 113

Liability to creditors as a whole, 17, 114

Liability to individual creditor, 17, 114

Making corporation assume debts, 17, 113

Object of statutes, 17, 115

Statutory personal liability, 17, 113

What must be shown in order to recover, 17, 115

Where liability can be enforced, 17, 114

Fraudulent Representations, 17, 115, 116

Acts of agents, 17, 116

Annual reports, 17, 116

Prospectus, 17, 117

Solvency, 17, 116

Subscription to stock, 17, 116

Issuing Fraudulent Certificates, 17, 113

Knowingly issuing illegal and spurious stock, 17, 113

Liability to purchaser, 17, 113

Knowledge as to provisions of law, 17, 109

Liability for loss occasioned, 17, 109

Mistakes, 17, 119

Negligence, 17, 109

Shareholders, 17, 110

Accounts, 17, 110

Breach of duty to the corporation, 17, 110

Corporation as necessary party, 17, 110

Examples, 17, 110

Remedy for violation of corporate rights, 17, 110

To Creditors, 17, 111

Examples, 17, 111

Injunction, 17, 111

Misapplication of assets, 17, 111

Nonfeasance, 17, 111

When liable to creditors, 17, 111

Unauthorized Acts, 17, 118

Examples, 17, 118

Liability for loss, 17, 118

Loans made on personal security, 17, 118

Transcending powers, 17, 118

Ultra vires contract, 17, 118

Election, see OFFICERS AND AGENTS OF PRIVATE CORPORATIONS.

Disputing right to hold election, 17, 42

Embezzlement, 6, 477

Fiduciary Relations, 8, 648, 649; 17, 91, 116

Abuse of confidence, 17, 91

Advancing individual interests, 17, 93

Arrangements to carry on business, 17, 99

Assets, 17, 98

Contracts Between Corporations and Directors, 17, 96, 101

Examples, 17, 101, 102

Fraud on rights of corporation, 17, 102

Nature and terms of the contract, 17, 101

Validity, 17, 101

Void or voidable, 17, 102

Contracts in good faith, 17, 96

Contracts made with themselves, 17, 93

Corporation insolvent, 17, 99

Creditors and stockholders may pursue property into the hands of purchasers, 17, 95

Dealing in good faith, 17, 96

Dealing of directors, 17, 95

Dealing on his own behalf, 17, 92

Dealing with corporation in good faith, 17, 95

*Liability, see infra, DUTIES AND LIABILITIES.***Liability for Breach of Trust**, 17, 111

Absent directors, 17, 109, 112

Director not opposing acts, 17, 109, 113

Gross negligence, 17, 112

In equity, 17, 111

Misapplication, 17, 112

Stockholders, 17, 112

Ultra vires act, 17, 112

Willful abuse of trust, 17, 112

Loan at excessive interest, 17, 103

Loan of money, 17, 103

Mortgages, 17, 104

Preference in case of insolvency, 17, 104

Purchase, 17, 93

Purchase of bonds, 17, 106

Purchasing property of corporation, 17, 95

Real estate, 17, 98

Redemption of property, 17, 96

Relationship of trustee, 17, 91

Sale, 17, 93

Sale of influence, 17, 95

Sale of property necessary for transaction of business, 17, 96

Seeking their own advantage, 17, 93

Selling stock to themselves, 17, 106

Setting aside contracts, 17, 96

Speculating with funds of company, 17, 97

Taking advantage of position as director, 17, 97

Fraudulent Representations, 17, 115

Acts of agents, 17, 116

Annual reports, 17, 116

Prospectus, 17, 117

Solvency, 17, 116

Subscription to stock, 17, 116

Generally, 17, 81

Imprisonment for debt, 10, 228

Individual liability, 17, 171

Injunctions, 10, 953

Abuse of power, 10, 953

Change of corporate powers, 10, 957

Consolidation of company, 10, 957

Corporate name, 10, 958

Creating a monopoly, 10, 954

Destruction of franchise, 10, 956

Deviation from original undertaking, 10, 955

Diligence required, 10, 958

Discretion of court, 10, 956

Ecclesiastical corporations, 10, 956

Election of officers, 10, 957

English authorities, 10, 954

Enterprise not contemplated by charter, 10, 954

Examples, 10, 953, 954

Expulsion of members, 10, 956

Illegal stock, 10, 958

Misappropriation of funds, 10, 953

Negligence in exercise of corporate powers, 10, 954

Refusal to defend suits, 10, 953

Trust relationship, 10, 953

Ultra vires, 10, 958

Unauthorized issue of shares, 10, 953

Use of funds for unauthorized purpose, 10, 954

Violation of duty, 10, 953

Violation of injunction, 10, 959

What must be shown, 10, 955

When enjoined, 10, 953

Insolvency of Corporation

Preference, 17, 104, 122

Laches, 12, 586

Lateral or branch railroad, 12, 942

Loans, 17, 103

Management of corporation, 23, 851

Mandamus

To compel the directors to call a meeting for the election of officers, 4, 289

To reinstate or admit to office directors, 4, 289

Meetings, 17, 83*Quorum, see generally, QUORUM.*

Directors must act as a board, 17, 83

In a foreign state, 17, 162

Individual acts of directors, 17, 83

Majority acting, 17, 83

Majority as a quorum, 17, 83

Meeting in foreign state, 17, 86

Minutes of, 17, 86

As a memorandum within the statute of frauds, 17, 87

Contract within statute of limitations, 17, 87

Verbal order, 17, 86

What should be entered, 17, 86

DIRECTORS—Cont'd**Meetings—Cont'd****Notice, 17, 84**

By-laws, 17, 85

By mail, 17, 85

Failure to receive, 17, 85

Necessity of, 17, 84

Presumption of, 17, 85

Requisites, 17, 85

Number necessary to meet and act,
17, 83

Place of, 17, 86

President's authority to convene, 17,
131

Presumption of regularity, 17, 85

Quorum, 17, 83, 84

Misapplication of funds, 17, 159, 160

Misrepresentations of DirectorsInducing persons to purchase stock,
5, 324

In prospectus, 8, 643

Mistakes, 17, 119

Notice, 17, 99

**Official Bonds, see OFFICERS AND
AGENTS OF PRIVATE CORPORATIONS.**

Director on officer's bond, 17, 65

Place of MeetingRight to hold meeting outside the state,
8, 356**Powers, 17, 87***See infra*, FIDUCIARY RELATIONS.*Declaring dividends, see infra*, DIVI-
DENDS.**Appointment of Agents, 17, 57, 90**Officers and agents of private corpo-
rations, 17, 90Authorizing one member to sign se-
curities, 17, 91**Bonds, 17, 106**

Authority to sell, 17, 106

Purchasing bonds of company, 17,
106

Cessation of agent's authority, 17, 91

Change in character of corporation,
17, 89

Charter and by-laws, 17, 87, 88

Committees, 17, 90

Contracts, 17, 90

Debts, 17, 88, 90

Delegation of, 17, 90

Discretionary, 17, 91

Examples, 17, 87

Express powers, 17, 89

Implied Powers, 17, 88-90

Contracts, 17, 90

Debts, 17, 88, 90

Pledges, 17, 88, 90

Limitation of powers, 17, 87, 88

Pledges, 17, 88, 90

Reserved powers of shareholders, 17,
88, 89

Scope of general power, 18, 89

Stock, 17, 105, 106

Delegation of power, 17, 105

Director taking stock in another
company, 17, 106

Increasing capital stock, 17, 105

Selling stock to themselves, 17, 106

To Bind Company, 17, 100

Admissions, 17, 100

Admissions of one director, 17, 100

Charter and by-laws of corporation,
17, 101

Contract, 17, 101

Contract between two corporations,
17, 102

Majority of directors, 17, 101

Representations, 17, 100

Representations of one director, 1
100

To lease property, 17, 105

To loan and borrow money, 17, 103

To Mortgage Property, 17, 103

Foreclosure, 17, 104

In absence of charter or statute pro-
hibition, 17, 103

Mortgage to themselves, 17, 104

Provision in by-laws, 17, 104

Quorum, 17, 104

Regular meeting of directors, 17, 104
When directors may mortgage, 17,
103, 104

To settle pending suit, 17, 174

Whether delegated authority, 17, 87

Whether legislature can increase
power, 17, 90Whether subject to control of stock-
holders, 17, 87Winding up business of company, 17,
108**Preferences, 17, 122**Favoring particular shareholders, 17,
123

In case of insolvency, 17, 104

Qualification, 17, 81

Bankruptcy, 17, 81

Books as evidence as to who are stock-
holders, 17, 81

Election of disqualified person, 17, 81

In absence of statute, 17, 81

Persons not stockholders, 17, 81

Railroads

Power as to construction, 19, 873

Securities, 19, 699

Ratification, 17, 163

Receivers, 20, 71-76

Redemption from judicial sale, 17, 96

Refusal to SueAuthorizing stockholder to sue for cor-
poration, 4, 282

Representations, 17, 100

Resignation, 17, 169

Resulting trust, 10, 47

Rights of creditors against, 5, 735

Sale of property, 17, 152, 153

Service of process, 22, 120

Serving as inspectors, 17, 46

Speculating, 17, 97

Stock, 17, 105, 106Approval of directors to transfer of
stock, 23, 645

Delegation of power, 17, 105

Director taking stock in another com-
pany, 17, 106

- Increasing capital stock, 17, 105
Levy of Call, 22, 805
 De facto directors, 23, 806
 Delegated by directors, 23, 805
 Delegated by stockholders, 23, 805
 Fixing amounts and times of payment, 23, 806
 Implied power, 23, 805
 In absence of charter provisions to contrary, 23, 805
 Quorum, 23, 806
 Ratifying call made without authority, 23, 805
 Where vested in stockholder, 23, 805
Right of Directors to Transfer Stock, 23, 641
 Early doctrine, 23, 641
 Examples, 23, 641, 642
 Modern law, 23, 642
 Mortgage, 23, 642
 Selling stock to themselves, 17, 106
Stockholders
 Examples of relation between, 23, 784, 785
 Forfeiture, 23, 820
 Relation between, 23, 784
 Trust relation, 23, 784
 Suit by, in corporate name, 4, 280
Trust Deeds and Power of Sale Mortgages
 Purchasing at sale, 24, 933
Trust relations, see *infra*, FIDUCIARY RELATIONS.
Ultra Vires
Personal Liability, 17, 119; 27, 391
 Acts beyond officer's authority, 27, 391
 Acts expressly prohibited, 27, 391
 Acts for the benefit of the corporation, 27, 392
 Engaging in ultra vires transaction, 27, 391
 Examples, 27, 391-393
 Officers acting in good faith, 27, 392
 Savings bank, 27, 392
 When they may declare stock dividends, 5, 744a
 Whether directors' meetings may be held out of the state, 4, 207
 Winding up business of company, 17, 108
DIRECTORY STATUTES, see STATUTES.
DISABILITIES, 5, 670; 16, 93
 See HUSBAND AND WIFE; INFAMY; INFANTS; INSANITY; MARRIED WOMEN.
DISABLE, 5, 671
DISBAR, see ATTORNEY AND CLIENT.
DISBARMENT, see ATTORNEY AND CLIENT.
DISBURSEMENTS
 Necessary disbursements, 16, 372
DISCHARGE, 5, 671
 See ACQUITTED.
In bankruptcy, see *infra*, ABSOLUTE STAY OF INTERMEDIATE PROCEEDINGS.
In insolvency, see INSOLVENCY
Of contracts, see CONTRACTS.
 Charge and discharge, 3, 119
 In payment and discharge of, 8, 81
 Port of discharge, 14, 346
DISCLAIMER, 5, 672
 See TRUSTS AND TRUSTEES.
 In equity, 6, 804
DISCLOSE, 5, 672
DISCLOSURE, 5, 673
DISCONTINUANCE, 5, 674, 678
 See ACTIONS; JOINDER OF PARTIES; NOLLE PROSEQUI; NON-SUIT.
 Dismiss, 5, 691
 Distinguished from non-suit, 16, 723.
 Divorce cases, 5, 766
Effect of Demurrer in Opening Record
 Cure, 18, 516
 Discontinuance as to one of several defendants, 18, 516
 Failure to enter nolle prosequi, 18, 516
 Election cases, 6, 413
 Estates, 5, 678
In Pleading, 5, 674
 Definition, 5, 674
 Effect, 5, 674
Joint Parties, 5, 676; 17, 576
 Statute, 17, 576
 Where contract is joint, 17, 576
 Where defendants have a personal defense, 17, 576
 Where law allows imprisonment for debt, 17, 577
 Whether plaintiff can discontinue as to any of the defendants, 5, 675; 17, 576
Of Action, 5, 674
 Act changing time for holding terms of court, 5, 675
 After defendant has filed a set-off, 5, 676; 22, 230
 As to effect of, 5, 677
 As to one of several defendants, 5, 676; 17, 576
 As to one of two or more causes of action, 5, 677
 Cause, 5, 678
 Continuance of an action as to one co-defendant, 5, 675; 17, 576
 Cure, 5, 677
 Definition, 5, 674
 Discontinuance as to any court, 5, 677
 Discontinuance barred with non-suit, 5, 675
 Ends particular action, 5, 677
Failure
 Of clerk to docket a case, 5, 675
 Of clerk to note continuance, 5, 675
 To continue process from term to term, 5, 675
 To transmit transcript of court where change of venue has been taken, 5, 675
 Improper and unwarranted continuances, 5, 675
 Proceeding to trial, 5, 677
 Submission to arbitration, 5, 675
 Successive continuances, 5, 675

DISCONTINUANCE—*Cont'd***Of Action**—*Cont'd*

Voluntary withdrawal of a suit by plaintiff, 5, 676

What amounts to, 5, 675

Where discontinuance would result in injury to defendant, 5, 676

Whether a bar to a subsequent, 5, 677

Set-off, 5, 676; 22, 230

DISCONTINUE, 5, 678**DISCOUNT**, 5, 678; 22, 211

Distinguished from set-off, 5, 679; 22, 211

DISCOVERY, see ANSWER; BILL OF DISCOVERY.

Patent law, 18, 143

DISCRETION, 5, 681**DISCRIMINATION**, see FREIGHT; INTERSTATE COMMERCE.**DISEASE**, 5, 682

See VENEREAL DISEASES.

Feigned disease, see MEDICAL JURISPRUDENCE.

Caused by negligence of another, 4, 31

Contagious Disease

Negligence, 16, 418

Contributory negligence, 4, 90

Expulsion from train, 19, 904

Injuries aggravated by disease, 5, 43

Local disease, 13, 989

Lodgings and apartments, 13, 1015

Negligence, 16, 443

Disease aggravated, 16, 443

Predisposition to disease, 16, 443

Whether disease is an intervening, efficient cause, 16, 444

Serious disease, 22, 105

Sickness or, 5, 683

DISFIGURE, 5, 683**DISFRANCHISEMENT**, see AMOTION; ELECTIONS.

For expulsion from religious societies, see RELIGIOUS SOCIETIES.

Voluntary associations, see SOCIETIES AND CLUBS.

By-Laws

Disobedience to, 2, 711

Causes for Expulsion, 5, 685

Court to examine into sufficiency of, 5, 686

Held insufficient, 5, 687

Held sufficient, 5, 687

Offenses against society and law, 5, 686

Offenses which have no immediate relation to society, 5, 686

Collateral attack upon expulsion, 5, 685

Definition, 5, 684

Distinguished from amotion, 5, 684

Expulsion by board, 5, 688

Finality of decision, 5, 689

For crime, 4, 725

Mandamus, 5, 689

Mode of expulsion, 5, 688

Not a cruel or unusual punishment, 4, 725

Notice, 5, 688

Opportunity to be heard, 5, 688

Remedy for illegal expulsion, 5, 689

Right to Expel, 5, 684

Charter right, 5, 684

Corporations for profit, 5, 684

Implied right, 5, 684

DISGUISE, 5, 690**DISHONOR**, see CHECKS.

For notice of dishonor, see BILLS AND NOTES.

DISINTERESTED, 5, 690**DISMISS**, 5, 691**DISMISSAL**, see DISCONTINUANCE; RETRAIT.**DISOBEDIENCE**, 5, 692**DISORDER**, 5, 692**DISORDERLY CONDUCT**, 5, 692**DISORDERLY HOUSE**, see GAMING HOUSE.

Actions, 5, 694

Bawdy House, 5, 693-695

Accessories, 5, 696

Actions and defenses, 5, 696

Definition of house of ill-fame, 5, 695

Evidence of bad character of woman frequenting house, 5, 697

Habitual act of one person, 5, 695

Indictment, 5, 696, 16, 965

For letting tenement, 5, 700

Specifying time, 5, 696

Knowledge of owner, 5, 700

Liability

Of owner renting the house, 5, 699

Of owner's agent, 5, 700

Married women, 5, 695

Necessity of showing particular acts of prostitution, 5, 696

Proof of general reputation, 5, 696, 697

Proof that house was kept for purpose of gain, 5, 696

Single act of prostitution, 5, 695

Single room, 5, 695

Solicitations outside of house, 5, 696

Surety for the peace, 5, 696

What constitutes bawdy house, 5, 699

Woman living by herself, 5, 695

Boat as house of ill-fame, 5, 693

Criminal liability of wife, 4, 699, 701

Definition, 5, 693

Explaining visit to disorderly house, 5, 787

Gaming House, 5, 693, 701

Billiards, 5, 702

Indictable nuisance, 5, 701

Tenpins, 5, 701

What constitutes, 5, 701

Indictment, 5, 696; 16, 965, 966

For keeping, 5, 694

What sufficient, 5, 694

Infamous crime, 10, 605

"Keep," 12, 516

"Lewd house," 13, 273

Libel and slander, 13, 336, 345, 351

Municipal corporation's power to suppress, 4, 655

Noises must be unusual, 5, 693

One person only disturbed, 5, 694

Regulations, 20, 724

- Rescission of lease where owner discovers that house is to be used for disorderly purpose, 3, 888
- Resort to it as evidence of adultery, 5, 786, 787
- Tippling-house, 26, 18
- What constitutes, 5, 693
- Whether indictable, 5, 694
- Whether it must be a dwelling-house, 5, 695
- Whether private action will lie, 16, 974
- DISORDERLY PERSONS**, 5, 702
- DISPARAGEMENT**, 5, 702
- DISPATCH**, 5, 544
- “Customary dispatch,” 3, 149
- “Dispatch in discharging,” 3, 149
- Lay days, 12, 972
- “With all possible dispatch,” 3, 148
- With usual dispatch of post, 5, 545
- DISPENSATION**, 5, 703
- DISPLACE**, 5, 703
- DISPOSE OF**, 5, 703
- DISPOSITION**
- Final, 7, 965
- Secret disposition, 21, 994
- DISPOSSESSION**, 5, 704
- DISPUTE**, 5, 704
- Matter in, 5, 704; 14, 997
- DISQUALIFY**, 5, 704
- DISSEISIN**, 5, 704
- See ADVERSE POSSESSION.
- Joint tenancy, 11, 1062
- Joint Tenants**
- As to adverse possession between, see JOINT TENANTS AND TENANTS IN COMMON.
- DISSEIZOR**, 6, 205
- DISSOLUTION**, see CORPORATIONS; MUNICIPAL CORPORATIONS.
- DISTANCE**, 5, 704
- DISTIL**, 5, 705
- DISTILLER**, 5, 705
- DISTINCT**, 5, 705
- DISTRESS**, 5, 706; 12, 7570
- Actions against corporation for illegal, 4, 279
- After expiration of lease, 5, 707
- After tender, 5, 711
- Against subtenant, 12, 7579
- Against Whom Distress Will Lie, 12, 7579
- Executors and administrators, 12, 7579
- Relation of landlord and tenant, 12, 7579
- Subtenant, 12, 7579
- Tenant, 12, 7579
- Animals *feræ naturæ*, 5, 709
- Appraising and selling the goods, 5, 709
- Assignment for benefit of creditors, 12, 7579
- Bond taken as security for rent, 5, 706
- Breaking outer door, 5, 708
- Chattels in immediate use of tenant, 5, 709
- Crops, 5, 710
- Definition, 5, 706
- District of Columbia, 5, 712
- Entering by an open door or window, 5, 708
- Exceptions, 5, 709
- Executors and administrators, 7, 393
- Fixtures, 5, 710
- Generally, 12, 7570
- Goods taken in execution, 5, 710
- Goods used in trade, 5, 710
- Ground rents, 9, 63
- Horse in livery stable, 13, 937
- How Extinguished**, 5, 707
- Tender, 5, 707
- How Made**, 5, 708
- Constable or bailiff, 5, 708
- In person, 5, 708
- Name of person to whom rent is due, 5, 708
- Written authority, 5, 708
- In Alabama, 5, 711
- In Illinois, 5, 712
- In Indiana, 5, 712
- In Louisiana, 5, 711
- In Maryland, 5, 712
- In Mississippi, 5, 711
- In New England states, 5, 711
- In New Jersey, 5, 712
- In Ohio, 5, 711
- In Pennsylvania, 5, 712
- In South Carolina, 5, 711
- In Tennessee, 5, 711
- In Wisconsin, 5, 711
- Insolvency, 11, 183
- Interest, 5, 711; 11, 387
- Inventory, 5, 709
- Joint tenants and tenants in common, 11, 1095
- Judgment, 12, 7579
- Lodgings and Apartments**, 13, 1008
- Furnished apartments, 13, 1014
- “Making distress,” 14, 4
- Must be on the demised premises, 5, 708
- Necessity of actual demise, 5, 706
- Necessity of reversion, 5, 710
- Period of rent unpaid, 1, 1
- Receivers**, 20, 127
- Property in hands of receivers, 20, 139
- Right to distrain, 20, 327
- Relation of landlord and tenant, 12, 7579
- Rent**
- Fixed and certain, 5, 706
- Not payable in money, 5, 706
- Replevin**
- Pleas, 20, 1100
- Venue**, 20, 1080
- Description of property upon which distress was levied, 20, 1081
- Jurisdiction, 20, 1080
- Whether Property Distrained May Be Replevied**, 20, 1074
- Examples, 20, 1074
- Tender, 20, 1074
- When the action will lie, 20, 1074
- Right to Distress**, 5, 706
- How Extinguished**, 12, 7570
- Assignment for benefit of creditors, 12, 7579

DISTRESS—Cont'd**Right to Distress—Cont'd****How Extinguished—Cont'd**

Effect of landlord's taking chattel

mortgage, 12, 757*p*Effect of landlord's taking note, 12, 757*p*Rent must be due, 12, 757*o*, 757*p*Rent must be fixed and certain, 12, 757*o*

Right to re-enter reserved, 5, 707

Second, 5, 711

Seizure, 5, 708

States in which it has been abolished, 5, 712

Statutory provisions, 5, 711

To enforce what demands, 5, 706

Trespass, 26, 602

Warrant of, 5, 708

Wharfage, 29, 95

What can be distrained, 5, 709

What done with thing distrained, 5, 710

What may be distrained, 12, 757*r***When to Distrain, 5, 708**

Day after rent is due, 5, 708

Daytime, 5, 708

Where rent is payable in advance, 5, 708

Who May Distrain, 5, 707; 12, 757*q*Examples, 12, 757*q*Heir at law, 12, 757*q*

Husband and wife, 5, 707

One of several joint tenants, 5, 707

Tenant distraining under tenant, 5, 708

Tenants in common, 5, 707; 12, 757*q***Wrongful and Excessive, 5, 711**

Interest, 5, 711

Remedy, 5, 711

Second distress, 5, 711

Whole rents should be restrained for at once, 5, 711

DISTRIBUTE, 5, 712**DISTRIBUTION, 5, 712***For statute of descent and distribution, see SUCCESSION.***DISTRICT, 5, 712**

Equivalent to port, 5, 713

Interchangeable with plantation, 26, 122

Interchangeable with precinct, 26, 122

More interior, 5, 713

Of Alaska, 5, 713

Of Columbia

Whether municipal corporation, 15, 953

DISTRICT ATTORNEY, 5, 713*See ATTORNEY GENERAL.**Comments on the refusal of the defendant to testify, see CRIMINAL PROCEDURE; WITNESSES.*

Admissions by, 3, 490

Appointment of election, 5, 714

Associate or Assistant Counsel, 5, 718

Compensation, 5, 718, 721

Power of court to appoint, 5, 718

Attendance upon grand jury, 9, 15

Civil suit, 5, 716

Comment of, 5, 717

Compensation, 5, 718

Apportionment of fees, 5, 720

Conviction, 5, 719

Extra services, 5, 720

In civil cases, 5, 719

Legislative control, 5, 718,

Of associate counsel, 5, 718, 721

Percentage of forfeited recognizance, 5, 720

When entitled to, 5, 719

Conducting prosecution in another county, 5, 717

Court's discretionary power to appoint associate counsel, or attorney pro tempore, 5, 718

Definition, 5, 713

Disqualification, 5, 714

Duration of office, 5, 714

Duties of the office, 5, 715

Indictment, 5, 715

Indictment or information in discretion of district attorney, 4, 734; 10, 703

Insulting language by, upon trial, 5, 718

Limitations, 5, 717

Malfeasance in office, 5, 714

Malicious prosecution, 14, 41

Mandamus, 14, 131

Nolle prosequi, 5, 716; 16, 714

Power, 5, 716

Conducting prosecution in another county, 5, 717

General control over proceedings, 5, 716

Limited to his own district, 5, 716

Right to enter grand jury room, 5, 716

Staying proceedings in criminal courts, 5, 716

Terminates at expiration of his term, 5, 716

To enter nolle prosequi, 5, 716; 16, 714

To pass upon continuances, 4, 835

To prosecute suit, 5, 716

Proceeding by indictment or information at his discretion, 4, 734; 10, 703

Prosecution of criminal cases, 5, 715

Pro tempore, 5, 716

Residence in district, 5, 713

Right to file information, 4, 734; 10, 703

Right to prosecute for homicide, 9, 650

Suppression of Evidence, 24, 709

Duty to call all witnesses whose names are on the back of indictment, 24, 710

United States commissioners, 27, 559

United States Courts, 27, 579

Accounting to the government, 27, 580

Compensation, 27, 579

In general, 27, 579

Special counsel of the government, 27, 580

Who eligible to office, 5, 713

DISTRICT COURTS, see UNITED STATES COURTS.*See generally, COURTS.*

DISTRICT TELEGRAPH COMPANIES,

25, 893

DISTURBANCE, 5, 721

DISTURBING MEETING, 5, 721; 20, 796

Camp meeting, 2, 716

Camp meeting after people have retired, 5, 723

Congregation not actually engaged in religious worship, 5, 722

Constitutionality of statute, 20, 796

Discordant singing, 5, 723

Disturbance of any member of congregation, 5, 723

Fighting, cursing, etc., after congregation has been dismissed, 5, 724

Indictment, 5, 722

At common law, 5, 721

Character of disturbance, 5, 722

Describing place, 5, 722

Generally, 5, 722

Instances of disturbing, 5, 723

Mischievous or heedless conduct, 5, 723

"Place of worship," 18, 465

Singing school, 5, 722

Statutes regulating offense, 5, 721

Sunday school, 5, 722

Using profane language, 5, 723

What constitutes, 5, 723

What is a meeting, 5, 772

What is not, 5, 723

When persons are "assembled," 1, 823

Whether act must be willful, 5, 723

Whether common law is abrogated by statute, 5, 721

"DITCH," 5, 723

See DRAINS AND SEWERS.

And drain, 5, 723

DIVERS

On divers other days, 10, 590

Other matters, 1, 660

DIVERT, 5, 724

DIVIDE, 5, 724

DIVIDENDS

See REMAINDERS; STOCK.

Agreement to Pay

Out of capital, 5, 744

Without regard to earnings, 5, 729

Bequest of, 5, 733

Bill in equity, 5, 732

Capital stock defined, 5, 728

Directors

Duty in Declaring, 5, 725; 17, 107

Discretion of directors, 5, 726; 17, 107

Discrimination in apportionment, 5, 726

Dividend must be equal and just, 5, 726

Exclusive power of directors, 5, 725

Imposing terms of time and place of payment, 5, 725

Interference by equity, 5, 726; 17, 107

On all stock, 5, 726

Retaining profits for proper corporate purposes, 5, 726

Stock dividends, 5, 726

Willfully withholding profits, 5, 726

Power to Declare Dividends, 5, 725; 17, 107

Abuse of power, 17, 107

Clear right to dividend, 17, 108

Discretion of directors, 5, 726; 17, 107

Dividend from capital, 17, 108

In absence of charter provisions, 17, 107

Jurisdiction of court of equity, 5, 726; 17, 107, 108

Not leaving sufficient funds to meet losses, 17, 107

Preference to one class of stockholders, 17, 108

Refusal to declare, 17, 107

Stockholder's remedy, 17, 107

When courts will interfere, 17, 107

Enjoining payment of, 5, 734

False and fictitious dividends as misrepresentations, 5, 334

Garnishment, 8, 1154

Guaranteed or Preferred Stock, 5, 743; 23, 603, 611

See STOCK.

Agreement to pay out of capital, 5, 744

Assignment of preferred stock carries with it the undivided arrears, 23, 615

Definition, 5, 743

Floating debt, 23, 608

From What Funds Payable, 23, 611

Contract to pay whether earnings justify or not, 23, 612

Earning and Profits, 23, 611

Contract to pay whether earnings justify or not, 23, 612

In general, 23, 611

Net earnings, 23, 612

Net income, 23, 613

Statutory guaranty of specific dividend, 23, 612

Surplus earnings, 23, 613

Net earnings, 23, 612

Statutory guaranty, 23, 612

Surplus, 23, 613

General nature, 23, 611

Guaranteed synonymous with preferred, 5, 743

Holder's right depends on provisions of certificate, 5, 744

Net earnings, 5, 744

Payment of Arrears, 23, 614

Assignment of preferred stock, 23, 615

Common stock, 23, 615

English law, 23, 615

Examples, 23, 614, 615

In general, 23, 614

Interest, 23, 615

Out of subsequent profits, 23, 614

When arrearages cannot be carried over, 23, 615

DIVIDENDS—Cont'd**Guaranteed or Preferred Stock—Cont'd**

Rights of stockholders as to assets, 5, 743, 744

What is meant by guaranty of dividends, 23, 611

Statute of frauds, 23, 595

Interest

Preferred dividends, 23, 613

Legacies and devises, 13, 21

Mandamus, 5, 732

Paid from proceeds of forfeited stock, 5, 729

Paid out of capital stock, 5, 729

Paid when company is indebted, 5, 729

Preferred dividends, 23, 610

Preferred stock, 19, 763, 764

Profit defined, 5, 729

Purchasers of Stock

Dividend declared after purchase, 5, 742

Dividend declared out of purchase, 5, 742

Dividends payable at a future time, 5, 743

Equitable title, 5, 743

Rights of Creditors, 5, 743

Against directors, 5, 735

Against stockholders, 5, 734

Proceeding in equity against stockholders, 5, 734

Proceeding in his own name, 5, 735

Source from which funds to be divided were acquired, 5, 736

Whether right to sue at law supersedes equitable remedy, 5, 735

Rights of Stockholders, 5, 729

After dividend has been declared, 5, 731

A party not becoming owner of stock until after fund to be divided has been acquired, 5, 733

Assignee of shares, 5, 730

Bill in equity to compel payment, 5, 732

Equitable owner, 5, 731

In stock dividends, 5, 744^c

Interest where dividend is withheld, 5, 730

In what payable, 5, 732

Legal and beneficial owner of shares, 5, 729

Mandamus to compel payment, 5, 732

Only at time dividend is payable, 5, 730

Right to maintain action for, 5, 731

Several actions, 5, 732

Source from which funds were acquired, 5, 732

Statute of limitations, 5, 732

Time during which fund to be divided was acquired, 5, 736, 742

Time during which funds were acquired, 5, 732

When dividend is paid to an unauthorized person, 5, 732

When it can be required to pay, 5, 731

Who is entitled to dividend, 5, 729

Who may maintain action for, 5, 732

Statute of limitations, 5, 732

Stock Dividends, 5, 744^a

Become a part of capital, 5, 744^d

Character, 5, 744^a

Definition, 5, 740

Denial of stockholder's right, 5, 744^c

Entitling holder to vote, 5, 744^d

Injunction with Restraint

Foreign corporations, 8, 379

Life tenant and remainder-men, 5, 738

Old stock purchased by company, 5, 744^c

Stockholder's right of subscription to new stock, 5, 744^c

When they may be declared, 5, 744^a

Whether they constitute a distribution of capital, 5, 744^b

Taxation, 25, 650

See **TAXATION CORPORATE.**

Corporation non-taxable, 25, 650

Definition of dividends, 25, 650

Examples, 25, 650

Taxability of dividends, 25, 650

DIVIDEND WARRANT, 28, 735**DIVISION**

Final, 7, 965

DIVISION OF OPINION, see UNITED STATES COURTS.**DIVORCE, 5, 745**

See **ALIMONY; CRIMINAL CONVERSATION.**

See generally, **MARRIAGE.**

See **NULLITY OF MARRIAGE; SÆVITIA.**

For the meaning of the term *cohabit—cohabitation*, see **COHABIT—COHABITATION.**

Abandonment, definition, 1, 3

Abatement, 5, 773

By death of husband, 5, 130

Death of Either Party, 5, 773

Pending appeal, 5, 774

Death of party after case is taken under advisement by court, 5, 773

Party dying after case has been fully tried, 5, 774

Statutes, 5, 773

Where other relief is prayed for in bill, 5, 773

Absolute divorce at common law, 1, 469

Adultery, 5, 781

As a crime, see **ADULTERY.**

Act must be voluntary, 5, 781

Allegations, 5, 782

Bill of particulars, 5, 783

Cases illustrating strictness required in alleging offenses, 5, 783

Defendant's pregnancy, 5, 782

General, 5, 782

Person, 5, 782

Place, 5, 782

Specific charge, 5, 782

Time, 5, 782

Venereal disease, 5, 782

Belief that wife is divorced, 1, 213; 5, 781

Bigamy, 5, 781

Bona fide belief that wife is dead, 5, 781

Collusion, 5, 819
 Active or passive, 5, 819
 Allegation of, 5, 820
 Defined, 5, 819
 Husband supporting wife, 5, 820
 Lapse of time as evidence of, 5, 826
 Parties acting in concert, 5, 820
 Proof of, 5, 820
 What constitutes, 5, 819, 820
Condonation, 5, 820
 Allegation, 5, 823
 An act on part of both parties, 5, 821
Condition
 Broken, 5, 823
 Expressed or implied, 5, 823
 That defendant shall reform, 5, 823
 Conditional, 5, 821-823
 Defined, 5, 820
Forgiveness, 5, 820
 Acceptance, 5, 822
 Expressed or implied, 5, 821
 Given advisedly, 5, 822
 Inferred from sexual intercourse, 5, 821
 Obtained by force, 5, 822
 Lapse of time as evidence of, 5, 826
 Negated in bill, 5, 824
 Strictness of proof required, 5, 824
 Suspicion without proof, 5, 822
Confessions
 Of adultery, 3, 442; 5, 788, 828
Connivance
 Active or passive, 5, 816
 Acts not intended to lead wife into adultery, 5, 818
 Allegation, 5, 818
 Bad judgment of husband, 5, 817
 Entrapping wife into adultery, 5, 817
 Laying a trap to discover adultery, 5, 818
Proof, 5, 819
 Of general connivance, 5, 819
 Of knowledge of adultery, 5, 819
 Strictness of proof required, 5, 819
 What constitutes, 5, 817
 When allegation is necessary, 5, 818
Cruelty, 5, 781
Defenses, 5, 788
 Deed of separation, 5, 815
 Definition, 5, 781
 Desertion, 5, 781
 Insane woman, 5, 781; 11, 141
 Invalid divorce as defense, 1, 213; 5, 781
 Living in, 5, 782
 Other party single, 5, 781
 Party who is prohibited from marrying, 5, 839
 Place of commission, 5, 778
 Presumption as to continuance, 5, 787
Proof, 5, 783
 Anti-nuptial unchastity, 5, 788
 Circumstances from which adultery may be inferred, 5, 785
 Circumstantial evidence, 5, 784

Criminal intent and opportunity, 5, 786
 Defendant's bad character for chastity, 5, 787
 Defendant's familiarity, 5, 787
 Degree of proof required, 5, 785
 Explaining visit to house of ill-fame, 5, 787
 Husband and wife on bad terms, 5, 787
 Living in same house, 5, 784
 Must correspond with allegations, 5, 783
 Nature of, 5, 784
 Non-access, 5, 785, 829
 Occupying same room, 5, 785
 Of good character to rebut presumption of adultery, 5, 787
 Of particular offense alleged, 5, 783
 Opportunities with suspicious circumstances, 5, 786
 Opportunity, 5, 786
 Presumption as to continuance, 5, 787
 Resorting to house of ill-fame, 5, 786
 Seen in same bed, 5, 785
 Showing criminal attachment, 5, 786
 Suspicious circumstances, 5, 786
 Variance, 5, 783
 Venereal disease, 5, 785
 Verdict in an action of criminal connection, 5, 788
 Where several offenses are alleged, 5, 783
 Whether same amount of evidence is required as in criminal cases, 5, 785
Recrimination, 5, 824
 Adultery as a defense, 5, 825
 Allegations, 5, 826
 Any cause for divorce as a, 5, 824
 Any cause of defense against any other, 5, 825
 Defined, 5, 824
 During what stage of case plea must be made, 5, 826
 Instances of, 5, 825
 Proof, 5, 826
 Statutes making a "like offense" a defense, 5, 825
 Strictness of proof required, 5, 826
 Under ecclesiastical law, 5, 824
 What sufficient, 5, 826
 When there is a general denial, 5, 826
 Time of, 5, 778
Witnesses, 5, 788
 Evidence of young children, 5, 788
 Husband and wife testifying, 5, 788
 Testimony of paramour, 5, 788
 Woman ravished, 5, 781
Affidavit
 Non-resident, 5, 811
 Amendments, 5, 765
 A mensa et thoro at common law, 1, 469

DIVORCE—Cont'd

Answer, 5, 812

As evidence, 5, 812

General denial, 5, 812

Joining defenses, 5, 812

In form of a cross-bill, 5, 813

Swearing to, 5, 812

Appeal, 5, 842

Conclusiveness

Prima facie validity, 5, 842, 843

Upon parties and third parties, 5, 842

Bill, Libel, or Complaint, 5, 774, 798

Adultery, 5, 782

Allegation dependent on prostitute, 5, 782

Bill of particulars, 5, 783

Cases illustrating strictness required

in alleging offenses, 5, 783

Defendant's pregnancy, 5, 782

General allegation, 5, 782

Person, 5, 782

Place, 5, 782

Specific charge, 5, 782

Time, 5, 782

Venereal disease, 5, 782

Allegation, 5, 774

Of Cruelty, 5, 797

Allegations, too general, 5, 798

General allegations, 5, 797

In statute, 5, 797

Material facts, 5, 797

Minuteness as to time, place, and circumstances, 5, 797

Special allegations, 5, 797

Of desertion, 5, 805

Of habitual drunkenness, 5, 807

Refusal to support, 5, 808

That defendant is a non-resident, 5, 811

Alleging authority of court, 5, 774

Amendment, 5, 776

Cause for divorce, 5, 775

Custody of children, 5, 776

Decree of nullity under bill for divorce, 5, 776

Dismissing by consent, 5, 813

Effect of Defects, 5, 776

Improperly signed, 5, 777

Scandalous, 5, 777

Surplusage, 5, 777

Want of a jurisdictional fact, 5, 777

Want of proper prayers in the allegation, 5, 777

Facts necessary to give the court jurisdiction, 5, 774

Form, 5, 774

In general, 5, 774

Injunction to prevent alienation of property, 5, 776

Joinder of Several Causes of Action, 5, 776

Cause for absolute divorce with cause for limited divorce, 5, 776

Collateral suit, 5, 776

Suit for ancillary relief, 5, 776

Two or more causes for the same kind of divorce, 5, 776

Limited divorce granted under general prayer, 5, 776

Marital interference during suit, 5, 776

Marriage, 5, 774, 775

Negating defenses, 5, 775, 816, 824

Prayer, 5, 775

Relief desired, 5, 775

Signature, 5, 774

By attorney, 5, 774

Such further relief as case may require, 5, 776

Supplementary complaints, 5, 776

Swearing to, 5, 774

Terms of statute, 5, 774

Vague or insufficient allegation, 5, 777

Bill of Particulars, 5, 765, 798

Adultery, 5, 783

Causes for, 5, 777

Adultery, see *infra*, ADULTERY.Cruelty, see *infra*, CRUELTY.Desertion or abandonment, see *infra*,

DESERTION OR ABANDONMENT.

Conviction of crime, 5, 800, 809; 19, 85

Crime, 5, 809

Discretionary Causes for Divorce, 5, 780

Appeal, 5, 780

Constitutionality of statutes, 5, 780

Discretion to refuse divorce for specified cause, 5, 781

Distinct and specified causes, 5, 780

Exercise uniform, 5, 780

Extent of discretion, 5, 780

In Connecticut, 5, 780

In Delaware, 5, 780

In Illinois, 5, 780

In Indiana, 5, 780

In Iowa, 5, 780

In Kentucky, 5, 780

In Maine, 5, 780

In Maryland, 5, 780

In North Carolina, 5, 780

In Tennessee, 5, 780

In Washington, 5, 780

In Wisconsin, 5, 780

Insanity, 5, 781

Offense in nature of a specified cause, 5, 781

Division of, 5, 779

General provisions, 5, 777

Habitual drunkenness, 5, 809

Imprisonment, 5, 800, 809; 19, 85

Insanity, 5, 809; 11, 141

Law of the forum, 5, 778

Obtaining divorce in another state, 5, 809

Place of commission, 5, 778

Refusal of marriage intercourse, 5, 800; 9, 811

Refusal to support, 5, 807

Time of committing offense, 5, 778

Voluntarily living apart, 5, 799

Where causes are named others are excluded by implication, 5, 750

Where no causes are named by statute, 5, 750

Character (in evidence), 3, 113; 5, 787

Children, see *infra*, CUSTODY.

Cohabitation and repute, 14, 530

Collusion, see *infra*, DEFENSES.

Validity of agreement for the collusive conduct of a divorce suit, 3, 880

Comity and International Law

Country having control over status, 5, 753

Conclusiveness of Decree

As to jurisdictional facts, 5, 763

Confessions and Admissions. 3, 442-445; 5, 788, 828

Admissibility, 5, 828

Cruelty, 5, 798

Whether granted on confessions alone, 5, 828

Conflict of Laws

Applicable only where court has jurisdiction over parties and subject-matter, 5, 752

As to alimony, costs, etc.; where party has not been summoned, 5, 762

Comity and international law, 5, 753

Considered generally, 5, 750

Constitutional provisions, 5, 752

Decree granted though it has no extra-territorial effect, 5, 750

Divorce granted by court of one party's domicil, 5, 760

Divorce granted by domicil of both parties, 5, 759

Divorce Granted in Different States, 5,

391, 752; 14, 505

General rule, 14, 506, 507

In Maryland, 14, 507

In North Carolina, 14, 507

Neither of parties domiciled, 5, 391, 752; 14, 507

Notice, 14, 506

Only one of parties domiciled in state, 14, 506

Property rights, 14, 506

Status of parties, 14, 507

Statute Providing that Guilty Party

Shall Not Marry After Divorce, 5, 839, 841; 14, 507

In New York, 14, 507

United States constitution, 14, 506

Valid as to one and not as to another, 14, 505

Validity, 14, 505

Due service of process, 3, 712; 5, 753

Marriage of Person Divorced for Adultery

See *infra*, MARRIAGE.

Validity, 3, 600; 14, 504

Portion of decree in personam, 5, 752

Portion of decree in rem, 5, 752

Summary of rules, 5, 759

United States constitutional provision, 5, 752

Valid as to domiciled party, 5, 761

Validity of legislative divorce, 5, 747

Voluntary appearance, 5, 753

Where both parties are domiciled in state granting divorce, 5, 757

Where court has jurisdiction over status of both parties, 5, 753

Where granted by court of state where neither party is domiciled, 5, 762

Where neither party is domiciled in state granting divorce, 5, 758

Where wife has separate domicile, 5, 758

Connivance, see *infra*, ADULTERY.

Constitutional Law, 5, 752, 757, 759

Constitutionality of law permitting discretionary divorce, 5, 780

Divesting of vested rights, 5, 746

Effect of constitutional provision, 5, 752

Impairing obligation of contracts, 3, 753; 5, 747

Legislative divorce, 5, 747

Continuance, 5, 766

Contracts to Induce, 9, 920

Contract to have defense withdrawn, 9, 921

Fraudulent divorce, 9, 920

Illegality, 9, 920

Inducing wife to sue for divorce, 9, 920

Costs

Attorney's liability for unnecessary delicate petition for divorce, 4, 316

Husband's liability for, 4, 319

Where husband prevails, 4, 319

Wife's liability for, 4, 319

Criminal Conspiracy

To obtain a fraudulent divorce, 4, 604

Cross-bill, 5, 813

Cruelty, 5, 788

Adultery and cruelty as ground for divorce, 5, 781

Allegations, 5, 797

General, 5, 797

In statute, 5, 797

Material facts, 5, 797

Minuteness as to time, place and circumstances, 5, 797

Special, 5, 797

Too general, 5, 798

Both parties to blame, 5, 796

By husband to wife, 5, 791

By wife to husband, 5, 791

Communicating disease to wife, 5, 793; 9, 812

Conduct endangering life, limb, or health, 5, 793

Defenses, 5, 798

Definition, 5, 790

Denial of sexual intercourse, 5, 800; 9, 811

Excessive indulgence of sexual intercourse, 9, 812

Great provocation, 5, 792, 796, 797

Indignities, 5, 789

Definition, 5, 790

Instances, 5, 795

Intent, 5, 791

Great provocation, 5, 792

How proved, 5, 792

Insane person, 5, 791; 11, 141

Willfulness, 5, 791

DIVORCE—Cont'd**Cruelty—Cont'd**

- Justifiable conduct, 5, 796
- Mutual combat, 5, 796
- Particular phase of and special cause for divorce, 5, 789
- Persistence, 5, 792
- Proof**, 5, 798
 - Abusive language, 5, 798
 - Bruises, 5, 798
 - Confession, 5, 798
 - Corresponding with allegation, 5, 798
 - Of intent, 5, 792
 - Res gestæ, 5, 798
 - Under general allegations, 5, 798
 - What may be shown, 5, 798

Repetition, 5, 792

Restraint of wife, 9, 814

Sævitia, 5, 790

Single act of, 5, 792

Venerable disease, 5, 793; 9, 812

What Constitutes, 5, 790

- Apprehensions, 5, 794
- Bodily injury, 5, 793
- Charge of unchastity, 5, 794
- Charging wife with crime, 5, 791
- Charging with crime, 5, 795
- Cruelty to children, 5, 794
- Dependable circumstances, 5, 793
- Disagreeable temper and rudeness, 5, 791
- Ignorant mistakes, 5, 791
- Indecent conduct, 5, 794
- Intercourse, 5, 795
- Maltreating children, 5, 791, 795
- Mental and moral injury, 5, 793
- Mental sufferings, 5, 793
- Neglect, 5, 791
- Obscene language, 5, 794
- Single acts, 5, 792
- Slightly touching wife, 5, 793
- Threats, 5, 794
- To pregnant woman, 5, 793
- Vices, gaming, gross extravagance, etc., 5, 791

Want of affection, 5, 791

Whipping of wife, 5, 792, 795, 796

What may not be justifiable, 5, 797

Whipping of wife, 5, 792, 795, 796

Wording of various statutes, 5, 789

Custody of Children in, 5, 832; 17, 354, 355; 372

- Access by party not having custody, 5, 837
- Amendment of decree, 5, 837
- Award of custody pendente lite, 5, 833
- Awarding custody to third party, 5, 836

Award of custody upon determination of suit, 5, 833

Children of nearly same age, 5, 835

Collateral impeachment of decree, 5, 836

Constituting infants wards of court, 5, 837

Disposition upon bill for alimony, 5, 836

Effect of decree, 5, 836

Effect of divorce obtained in a sister state, 5, 391

Extra-territorial effect of decree, 5, 837

Fitness of parties, 5, 834

Habeas corpus proceedings, 5, 833; 9, 247

Inherent jurisdiction of courts, 5, 832

Injunctions, 10, 985

Innocent and successful party, 5, 835

Judicial discretion, 5, 835

Jurisdiction of courts, 5, 832

Legal rights of party not having custody, 5, 837

Liability of party not having custody, 5, 837

Modification of decree in absence of statute, 5, 837

Religious belief, 5, 836

Religious education, 5, 836

Requiring children to be kept within jurisdiction, 5, 837

Restraining party from interfering with custody, 5, 837

Scope of decree, 5, 837

Separate proceeding by habeas corpus, 5, 836

Statute providing for amendment of decree, 5, 837

Statutory jurisdiction of courts, 5, 832

Tendency of court to favor mother, 5, 835

Welfare of infant controls, 5, 833

Where child has reached age of discretion, 5, 834

Where divorce is denied, 5, 836

Whether child included by decree, 5, 836

Decree, 5, 377, 838

With prohibition against Marriage, see *infra*, MARRIAGE.

Binding defendant personally, 5, 763

By default, 5, 811

Conclusiveness, 5, 842

As to third party, 5, 848

Collateral attack upon void decree, 5, 844

Res adjudicata, 5, 847

Void and voidable decrees, 5, 843

Void decrees, 5, 843

Different kinds of, 5, 838

Dismissal without prejudice, 5, 847

Divorce a Mensa et Thoro, 5, 840

Curtesy and dower, 5, 840, 921

Effect upon legal condition, 5, 841

Survivor as widow or widower, 5, 841

Whether it destroys the marriage relations, 5, 840

Whether it enables a party to marry again, 5, 840

Effect of, 5, 386

One party divorced and the other not, 5, 840

Parties contracting with and suing each other, 5, 839

- Vinculo matrimonii, 5, 839
 - Whether divorced party is a widower or personal representative, 5, 840
 - Woman as feme sole, 5, 839
 - Vacating Decree**, 5, 846
 - Legitimacy, 5, 846
 - In admiralty, 5, 386
 - Maiden name, 5, 482
 - Nisi, 5, 838
 - Of nullity, 5, 748, 839
 - Of nullity distinguished from decree of divorce, 5, 747
 - Of vinculo matrimonii, 5, 839
 - Reopening, 5, 811
 - Res adjudicata, 5, 847
 - To dismiss a complaint, 5, 838
 - Valid as to one of parties, 5, 748
 - Void**
 - Collateral attack upon, 5, 844
 - Fraud, 5, 843
 - Fraudulent decree, 5, 844
 - Jurisdiction, 5, 843
 - Record only prima facie evidence, 5, 843
 - Setting aside, 5, 844
 - Want of jurisdiction shown in proceeding, 5, 844
 - What renders decree void, 5, 843
 - Wholly or partly, 5, 843
 - Voidable**, 5, 844
 - Application by party who has committed fraud, 5, 845
 - Application by third party, 5, 855
 - Causes for avoidance, 5, 845
 - Fraud, 5, 845
 - Fraudulent decrees, 5, 844
 - In what courts they can be avoided, 5, 844
 - Irregularity, 5, 845
 - Marriage on part of one of parties, 5, 846
 - Person who can apply, 5, 845
 - Power of court to vacate its judgment, 5, 844
 - Proceedings in vacating decree, 5, 846
 - Statutes as to vacating decrees, 5, 844, 845
 - Want of jurisdiction, 5, 845
 - Void or voidable, 5, 748, 843
 - What decrees are void, 5, 843
 - Default**, 5, 467, 811, 812, 827
 - Of plaintiff, 5, 467
 - Defenses**, 5, 813
 - Agreement to compromise a suit, 5, 815
 - Allegations**, 5, 815
 - Answering in complaint, 5, 815
 - Negating defenses, 5, 816
 - Where the bill exhibits a good defense, 5, 815
 - Collusion**, 5, 819
 - Active or passive, 5, 819
 - Allegation of, 5, 820
 - Compared with connivance, 5, 814
 - Defined, 5, 819
 - Husband supporting wife, 5, 820
 - Lapse of time as evidence of, 5, 826
 - Parties acting in concert, 5, 820
 - Proof of, 5, 820
 - What constitutes, 5, 819, 820
 - Condonation**, 5, 820
 - Acceptance of forgiveness, 5, 822
 - An act on part of both parties, 5, 821
 - Allegation, 5, 823
 - Condition**
 - Broken, 5, 823
 - Expressed or implied, 5, 823
 - That defendant shall reform, 5, 823
 - Conditional, 5, 821, 823
 - Defined, 5, 820
 - Definition, 5, 814
 - Forgiveness**, 5, 821
 - Expressed or implied, 5, 821
 - Given advisedly, 5, 822
 - Inferred from sexual intercourse, 5, 821
 - Obtained by force, 5, 822
 - Lapse of Time**, 5, 814
 - As evidence of, 5, 826
 - Negated in bill, 5, 824
 - Strictness of proof required, 5, 824
 - Suspicion without proof, 5, 822
 - Whether court will take notice of, 5, 816
- Connivance**, 5, 816
 - Active or passive, 5, 816
 - Acts not intended to lead wife into adultery, 5, 818
 - Allegation, 5, 818
 - Bad judgment of husband, 5, 817
 - Compared with collusion, 5, 814
 - Defined, 5, 816
 - Entrapping wife into adultery, 5, 817
 - Lapse of time as evidence of, 5, 826
 - Laying a trap to discover adultery, 5, 818
 - Proof**, 5, 819
 - Of general connivance, 5, 819
 - Of knowledge of adultery, 5, 819
 - Strictness of proof required, 5, 819
 - Volenti non fit injuria, 5, 817
 - What constitutes, 5, 817
 - When allegation is necessary, 5, 818
 - Deed of separation**, 5, 815
 - Desertion**, 5, 805, 806
 - Allegation**
 - Of habitual drunkenness, 5, 807
 - Of refusal to support, 5, 808
 - Collusion, 5, 806
 - Condonation, 5, 806
 - Conduct entitling deserter to divorce, 5, 805
 - Connivance, 5, 806
 - Consent**, 5, 804
 - How proved, 5, 804
 - Cruel and outrageous conduct, 5, 805
 - Definition**
 - Of refusal to support, 5, 808
 - Of habitual drunkenness, 5, 807
 - Habitual drunkenness, 5, 806
 - Imprisonment, 5, 809
 - Insanity, 5, 809
 - Justified separation, 5, 805
 - Obtaining divorce in another state, 5, 809

DIVORCE—Cont'd**Defenses—Cont'd****Desertion—Cont'd****Proof of**

- Habitual drunkenness, 5, 807
- Refusal to support, 5, 808
- Recrimination, 5, 806
- Refusal to support, 5, 807
- Revocation of consent, 5, 804
- What constitutes habitual drunkenness, 5, 807

General provisions, 5, 813**Insanity, 5, 815****Lapse of time, 5, 814****Limitations, Laches, or Delay, 5, 826**

- Presumption of acquiescence, 5, 826
- Statute of limitations, 5, 827
- Unreasonable delay as defense, 5, 826

What is unreasonable delay, 5, 827**When statute begins to run, 5, 827****Recrimination, 5, 814, 824**

- Adultery as a defense, 5, 825
- Allegations, 5, 826
- Any cause for divorce as a, 5, 824
- Any cause of defense against any other, 5, 825
- Cruelty, 5, 796
- Defined, 5, 824
- During what stage of case plea must be made, 5, 826
- Instances of, 5, 825
- Proof, 5, 826
- Statutes making a "like offense" a defense, 5, 825
- Strictness of proof required, 5, 826
- Under ecclesiastical law, 5, 824
- What is sufficient, 5, 826
- When there is a general denial, 5, 826

Statutes, 5, 814**Defendant a prostitute, 5, 782****Defendant's pregnancy, 5, 782****Definitions, 5, 746****Of desertion, 5, 642****Of divorce a mensa et thoro, 5, 747****Of divorce a vinculo matrimonii, 5, 747****Separation deeds, 22, 75****Demurrer, 5, 798****Desertion or Abandonment, 5, 799****Adultery and, 5, 781****Allegations, 5, 805****Consent****How proved, 5, 804****Defenses, 5, 805, 806****Allegation of**

- Habitual drunkenness, 5, 807
- Refusal to support, 5, 808
- Collusion, 5, 806
- Condonation, 5, 806
- Conduct entitling deserter to divorce, 5, 805
- Connivance, 5, 806
- Cruel and outrageous conduct, 5, 805
- Definition of**
 - Habitual drunkenness, 5, 807

Of refusal to support, 5, 808**Habitual drunkenness, 5, 806****Imprisonment, 5, 809****Insanity, 5, 809****Justified separation, 5, 805****Obtaining divorce in another state, 5, 809****Proof of habitual drunkenness, 5, 807****Proof of refusal to support, 5, 808****Recrimination, 5, 806****Refusal to support, 5, 807****What constitutes habitual drunkenness, 5, 807****Definition, 5, 799****Denial, 9, 812****Effect of consent, 5, 804****Implied consent, 5, 804****Intent****Absence during sickness, 5, 803****Imprisonment, 5, 803****Must be willful, 5, 802****Party expecting renewal of cohabitation, 5, 803****Party that drives other away, 5, 803****Party who refuses to receive back deserter, 5, 804****Permanent, 5, 803****What is meant by willful, 5, 803****When desertion begins, 5, 803****Meaning of ceasing to cohabit, 5, 800****Offer to resume cohabitation, 5, 801****Power of husband to name place of habitation, 5, 802****Proof, 5, 805****Revocation of consent, 5, 804****Separation or cessation of cohabitation, 5, 800****Uninterrupted separation, 5, 801, 800****What breaks a course of desertion, 5, 801****What Constitutes, 5, 799****Absence unheard of, 5, 800****Imprisonment, 5, 800****Party who drives other away, 5, 803****Presumption from fact of parties living apart, 5, 799****Refusal of support, 5, 801****Refusing to receive back deserter, 5, 804****When it begins, 5, 801, 803****Wife's duty to follow husband, 5, 802****Discontinuance, 5, 766****Discretion of court in setting aside judgment by default, 5, 496⁸²****Dissenting to decree, 5, 813****Distinguished from nullity of marriage, 14, 532****Domicil, 5, 754, 869****Actual residence, 5, 755****Alimony, 5, 762****Bona fide residence, 5, 755****Costs, 5, 762****Definition, 5, 754****Divorce granted by court of domicil of both parties, 5, 759****Divorce granted by court of one party's domicil, 5, 760**

- Effect of United States constitutional provision, 5, 752
 Existing at time of suit, 5, 755
Extraterritorial, Effect of
 Jurisdiction depends upon domicil, 5, 757
 Husband's right to fix the, 5, 755
 Length of residence, 5, 754
 Notice by publication, 5, 760
 Offense committed in another state, 5, 758
 Parties married in another state, 5, 758
 Permanent and not a mere visit, 5, 755
 Prohibition against marriage, 5, 762
 Residence and domicil compared, 5, 754
 Separate domicil of husband and wife, 5, 755
 State where neither party is domiciled, 5, 762
 Temporary absence, 5, 755
 Test of divorce jurisdiction, 5, 757
 Valid as to one party, 5, 761
 What is, 5, 757
 Where both parties are domiciled in state granting divorce, 5, 757
 Where husband and wife are divorced a mensa et thoro, 5, 756
 Where neither party is domiciled in state granting divorce, 5, 758
 Where wife has separate domicil, 5, 758
 Where wife is in fault, 5, 756
 Wife guilty of conduct which justified husband in leaving her, 5, 756
Dower, 5, 887
Barring
 Husband's bankruptcy, 5, 923
 Divorce a mensa, 5, 840, 921, 922
 Divorce a vinculo, 5, 528²¹, 888, 921, 922
 Granted by a foreign court, 5, 922
 Of divorced wife, 5, 528²⁰
 Statutes, 5, 922
Statutory Provisions
 Where wife is innocent, 5, 528²¹
 Effect of decree of, 5, 386, 840
Effect of Divorce Obtained in Sister State, 14, 505
 See infra, CONFLICT OF LAWS.
 Collateral proceeding in another state, 5, 391
 Where both parties are domiciled in state rendering divorce, 5, 391
 Where both parties submitted to court's jurisdiction, 5, 391
 Where parties had different domicils, 5, 391; 14, 507
 Where party left state expressly to obtain divorce, 5, 391
 Effect of, upon community property, 3, 359
 Ex post facto laws, 7, 529
Extraterritorial effect of, *see infra*, CONFLICT OF LAWS.
 Final judgment, 12, 68
 Fraudulent, 5, 843-846
 Fraudulent assignments, 5, 771
 Guardian ad litem, 5, 767
 Imprisonment for debt, 10, 230
 Indecent evidence, 5, 829
Indignities, 5, 789
 What constitutes, 5, 790
 Infancy, 5, 767
Insanity, 11, 141
 As a cause, 5, 781; 11, 141
 As a defense, 5, 815; 11, 141
Insane Persons
 As complainant, 5, 768
 As defendant, 5, 770
 Legal separation, 5, 770
 Nullity suit, 5, 770
 Statute permitting guardian to sue, 5, 770
 Suit for alimony, 5, 770
 When suit is brought when party is insane, 5, 768
Judge
 Former counsel, 12, 56
Judgment by Default
 Record, 5, 496ⁿ
Judicial, 5, 747
 Absolute or limited, 5, 747
 Definition, 5, 747
Jurisdiction, 5, 748
Comity and International Law, 5, 753
 See infra, CONFLICT OF LAWS.
 Divorce contrary to public policy and morality, 5, 753
 What divorce will be recognized, 5, 753
 Consent, 5, 758
Courts Having, 5, 748
 "Civil causes both at law and in equity," 5, 749
 Express words, 5, 749
 In England, 5, 748
 Naming causes excludes others, 5, 750
 State courts, 5, 749
 United States courts, 5, 749
 Where no causes for divorce are named, 5, 750
 Domicil, test of, 5, 758
Effect of United States Constitution, 5, 752
 Applicable only where court has jurisdiction over parties and subject-matter, 5, 752
 Constitutional provisions, 5, 752
 Court having jurisdiction over parties in their married status, 5, 752
 Due service of process, 5, 753
 Ecclesiastical courts, 5, 748
 Portion of decree in personam, 5, 752
 Portion of decree in rem, 5, 752
 Voluntary appearance, 5, 753
 Where both parties are domiciled out of state, 5, 752
 Where court has jurisdiction over status of both parties, 5, 753
 Elements of, 5, 748
 Equity, 5, 764

DIVORCE—*Cont'd***Jurisdiction**—*Cont'd*

In Personam and in Rem, 5, 751

So far as it relates to alimony, 5, 751

So far as it relates to children, 5, 752

So far as it relates to costs, 5, 751

So far as it relates to prohibition against marriage, 5, 751

So far as it relates to status, 5, 751

Legally and extraterritorially considered, 5, 750

Record only prima facie evidence of, 5, 843

State and international laws, 5, 758

Statutory, 5, 749

Void for want of, 5, 843

Jury trial, 5, 764

Legislative, 5, 746

Constitutional prohibition, 5, 747

Definition, 5, 746

Extraterritorial validity of, 5, 747

Power of legislature to grant, 3, 683, 684

Legitimacy of children born after divorce, 2, 141

Libel and slander, 13, 303

Maiden name, 5, 842

Marriage, 5, 831; 14, 505

See infra, **CONFLICT OF LAWS; PROOF.**

Valid as to one and not as to another, 14, 505

Validity, 14, 505

When there has been a decree of nullity, 14, 503

When there has been a limited divorce, 14, 504

When there has been an absolute divorce, 14, 503

When There Has Been a Prohibition Against Another, 3, 600; 5, 839, 841; 14, 504, 507

Absence of innocent party unheard of, 14, 505

Applied to existing marriage, 14, 504

Bigamy, 14, 505

Court annulling decree, 14, 504

Court permitting to marry, 14, 504

During life time, 5, 841

Effect, 14, 504

Effect of prohibition in another state, 14, 505

Effect outside of state, 5, 841

Guilty party, 14, 504

In Maryland, 5, 841; 14, 504

In New York, 5, 842; 14, 504, 507

In North Carolina, 5, 841

Part of decree, 14, 504

Regarded as a penalty, 5, 841

Statute, 14, 504

Statute as to others, 5, 841

Statutory authority, 14, 504

Until some further decree, 5, 841

Validity, 14, 504

Validity of marriage, 14, 504

When marriage is a bigamy, 5, 839

Whether party may be guilty of adultery, 5, 839

Where there has been a decree appealed, 14, 503

Name, 16, 117

Nature of Action, 5, 828

Criminal prosecution, 5, 751

Proceedings partly in personam and partly in rem, 5, 751

Sui generis, 5, 751

New trial, 5, 766

Non-access, 5, 785, 829

Notice, 5, 809

Advertisements, 5, 810

Alimony where party has not been summoned, 5, 762

Costs

Where party has not been summoned, 5, 762

Effect of summons and publication, 5, 811

Judgment by default, 5, 811

Kinds of, 5, 809

Necessity of, 5, 809

Ne exeat, 5, 810

Prohibition against marriage where parties have not been summoned, 5, 763

Publication, 5, 759, 810

Affidavit of non-resident, 5, 811

Constructive statutes, 5, 811

Defendant in person, 5, 811

Temporary absence, 5, 811

Sending notice by mail, 5, 810

Service of process, 5, 810

Waiver of by appearance, 5, 810

Nunc pro tunc judgments, 5, 766

Parties to Suit, 5, 766

Calling for explanation of suspicious circumstances, 5, 772

Criminal conversation cases, 5, 766

Disabilities, 5, 770

Ecclesiastical practice as to wife, 5, 766, 767

Effect of coverture, 5, 766

Effect of infancy, 5, 767

Effect of insanity, 5, 768

How the wife sues and defends, 5, 766

Insane party, 5, 768

Insane person as complainant, 5, 768

Insane person as defendant, 5, 770

Minor husband or wife, 5, 767

Represented by judiciary, 5, 772

Spendthrifts, 5, 770

State as party, 5, 772

State represented by counsel, 5, 772

Statutes permitting wife to sue alone, 5, 767

Third Persons as Parties, 5, 771

Alleged paramour, 5, 771

In general, 5, 771

Persons interested in husband's property as co-defendant, 5, 771

Suggestions by, as amici curiæ, 5, 771

Void when complainant is insane, 5, 770

Who may be complainants, 5, 766

Vol. I.

- Wife's next friend, 5, 767
 Wife suing and defending in her own name, 5, 766
 Wife suing or sued in equity, 5, 767
 Place of commission of offense, 5, 778
 Power of state, 5, 746
Presumptions
 Regularity, 9, 48
 Probate and letters of administration, 19, 189, 192
Procedure
 Delegation of authority by judge, referee, or master, 5, 765
 Equitable, 5, 764
 Functions of judge, 5, 764
 In divorce cases, 5, 763
 Master in chancery, 5, 765
 Practice of ecclesiastical courts, 5, 764
 Referees, 5, 765
 Production of papers, 5, 766
Proof, 5, 827; 14, 521
See infra, ADULTERY.
 Burden of, 5, 828
Confessions and Admissions, 3, 442-445;
 5, 788, 828
 Admissibility, 5, 828
 Obtained by fraud, 5, 828, 829
 Whether granted on confessions alone, 5, 828
Marriage, 5, 831
 By what proved, 5, 831
 Celebration, 5, 831
 Cohabitation and repute, 5, 832
 Contract, 5, 831
 One marriage alleged and another proved, 5, 832
 Necessity of, 5, 827
 Presumption of innocence, 5, 828
 Rules of evidence, 5, 828
 Specific allegations, 5, 831
 Strictness required, 5, 828
 Sufficiency of, 5, 828
Witnesses
 Husband and wife, 7, 101
 Prostitutes, 5, 788
 Reasonable doubt, 19, 1087
Receivers
 Against husband, 20, 56
 Husband fraudulently disposing of his interest, 20, 56
 Husband out of the jurisdiction of the court, 20, 56
 In general, 20, 56
 Reference to a master, 14, 930-932
Res Judicata, 21, 130
 Foreign judgments, 21, 281
 Judgments of sister states, 21, 285
 Restoration of wife's property, 1, 485
 Retrospective statute, 5, 778
 Right of trial by jury, 3, 721
Sævitia, 21, 440
Separation Between Husband and Wife, 22, 58
 Definition, 22, 58
 Definition of separation of deeds, 22, 58
 Rescission, 22, 70
Separation Deeds, 22, 59
 See MARRIAGE SETTLEMENTS.
 Agreement by which suit is avoided, 22, 58, 59
Avoidance, 22, 70
 As to grounds for the rescission of contracts generally, *see* RESCIS-SION.
 Adultery, 22, 70
 Adultery while living apart, 22, 71
 Coverture, 22, 70
 Examples, 22, 70-72
 Fraud, 22, 70
 Infancy, 22, 70
 Resumption of cohabitation, 22, 70
 Undue influence, 22, 70
Consideration, 22, 67
 As between the parties, 22, 67
 Conciliation, 22, 67
 Examples, 22, 67
 Existing creditors, 22, 67
 Family's interest, 22, 67
 Forbearance not to sue for divorce, 22, 67
 Husband's duty to support wife, 22, 67
 Indemnifying husband against wife's debts, 22, 67
 Mutual consent, 22, 67
 Necessity, 22, 67
 Definition, 22, 58
Effect, 22, 73
 As to divorce, 22, 75
 In general, 22, 73
 Power of wife, 22, 73
 Statutory modifications, 22, 74
 Whether bar to suit for divorce, 22, 75
 Effect in equity, 22, 59
Enforcement, 22, 72
 Breach of covenants, 22, 72
 Examples, 22, 72
 In equity, 22, 72
 In general, 22, 72
 In law, 22, 72
 Where the separation has not taken place, 22, 72
 Essentials, 22, 67
 Form, 22, 66
 Historical view, 22, 59
 In England, 22, 59
 In United States, 22, 61
Provision for Children, 22, 68
 Arrangement in the deed, 22, 69
 Child's welfare, 22, 68
 English law, 22, 69
 Examples, 22, 68, 69
Requisites, 22, 66
Separation in pais, 22, 60
Statutes, 22, 61
 Generally, 22, 61
 In Alabama, 22, 61
 In Arizona, 22, 62
 In Arkansas, 22, 62
 In California, 22, 62
 In Colorado, 22, 62
 In Connecticut, 22, 62

DIVORCE—Cont'd**Separation Between Husband and Wife—***Cont'd***Separation Deeds—Cont'd****Statutes—Cont'd**

In Dakotas, 22, 62
 In Florida, 22, 62
 In Georgia, 22, 62
 In Idaho, 22, 62
 In Illinois, 22, 62
 In Indiana, 22, 62
 In Iowa, 22, 62
 In Kansas, 22, 62
 In Kentucky, 22, 62
 In Louisiana, 22, 63
 In Maine, 22, 63
 In Maryland, 22, 63
 In Massachusetts, 22, 63
 In Michigan, 22, 63
 In Minnesota, 22, 63
 In Mississippi, 22, 63
 In Montana, 22, 64
 In Nebraska, 22, 64
 In Nevada, 22, 64
 In New Hampshire, 22, 64
 In New Jersey, 22, 64
 In New York, 22, 64
 In North Carolina, 22, 65
 In Ohio, 22, 65
 In Oklahoma, 22, 65
 In Oregon, 22, 65
 In Pennsylvania, 22, 65
 In Rhode Island, 22, 65
 In South Carolina, 22, 65
 In Tennessee, 22, 65
 In Texas, 22, 66
 In Utah, 22, 66
 In Vermont, 22, 66
 In Virginia, 22, 66
 In Washington, 22, 66
 In West Virginia, 22, 66
 In Wisconsin, 22, 66
 Wife's power to contract, 22, 61

Validity, 22, 59

Whether against public policy, 22, 59, 60

Separation Without Deed, 22, 75

Witnesses, see WITNESSES.

At common law, 22, 75

Contract to wife as a feme sole, 22, 75

Examples, 22, 75-78

Husband's Liability for Wife's Support, 22, 78

Alimony, 22, 78

Bona fide offer to return, 22, 83

Borrowing money, 22, 80

Compulsory Statutes, 22, 85

Generally, 22, 85

In Alabama, 22, 86

In California, 22, 86

In Colorado, 22, 87

In Connecticut, 22, 87

In Dakotas, 22, 87

In Delaware, 22, 87

In England, 22, 86

In Florida, 22, 87

In Georgia, 22, 87

In Indiana, 22, 87

In Iowa, 22, 87

In Kansas, 22, 88

In Kentucky, 22, 88

In Louisiana, 22, 88

In Maine, 22, 88

In Maryland, 22, 88

In Massachusetts, 22, 85

In Michigan, 22, 88

In Minnesota, 22, 88

In Mississippi, 22, 88

In Missouri, 22, 88

In Nebraska, 22, 88

In New Hampshire, 22, 88

In New Jersey, 22, 89

In New Mexico, 22, 89

In New York, 22, 89

In North Carolina, 22, 89

In Ohio, 22, 89

In Oklahoma, 22, 89

In Pennsylvania, 22, 90

In Rhode Island, 22, 90

In South Carolina, 22, 90

In Tennessee, 22, 90

In Texas, 22, 90

In Vermont, 22, 90

In Virginia, 22, 91

In Washington, 22, 91

In West Virginia, 22, 91

In Wisconsin, 22, 91

In Wyoming, 22, 91

Debts incurred by wife, 22, 79

Expenses in legal proceedings, 22, 82

Express prohibition, 22, 81

Funeral expenses, 22, 82

General notification not to give

wife credit, 22, 81

Husband's knowledge of goods

supplied, 22, 80

In general, 22, 78

Insanity, 22, 85

Medical attendance, 22, 79

Necessaries, 22, 79

Necessaries furnished at peril of

tradesman, 22, 81

Necessaries where husband was

wrongdoer, 22, 82

Pauper, 22, 85

Presumption of agency, 22, 79

Putting wife elsewhere than in his

own home, 22, 83

Sævitia, 22, 83

Separation not mutually voluntary,

22, 79

Separation with sufficient allow-

ance, 22, 80

Statute law, 22, 78

What are necessaries, 22, 79, 80

Where husband has made no stip-

ulation for wife's support, 22, 78

Where plaintiff knows that hus-

band has discarded wife for

adultery, 22, 84

Wife living in open adultery, 22,

84

- Wife pledging husband's credit, 22, 78
 Wife's adultery, 22, 84
 Wife's bigamy, 22, 84
 In Alabama, 22, 76
 In Arkansas, 22, 76
 In California, 22, 76
 In Idaho, 22, 76
 In Illinois, 22, 76
 In Kentucky, 22, 76
 In Maryland, 22, 76
 In Massachusetts, 22, 76, 77
 In Mississippi, 22, 77
 In New York, 22, 77
 In Pennsylvania, 22, 77
 In South Carolina, 5, 749; 22, 77
 In Texas, 22, 77
 In Vermont, 22, 77
 In Virginia, 22, 78
 Rights and liabilities of husband, 22, 75
 Rights in general, 22, 75
 Several steps in divorce, 5, 763
Service of Process, 22, 145
 Examples, 22, 145, 146
 In general, 22, 145
 Necessity of actual service, 22, 146
 Personal notice, 22, 145
 Publication, 22, 145
 Whether divorce is in rem or in personam, 22, 145
Set-Off
 Counterclaim, 22, 400
 Slaves and slavery, 22, 794
 Sodomy, 22, 833
 South Carolina, 5, 778
 Special judge, 12, 26
 State as party, 5, 772
 Statutes creating new grounds for, 3, 761
 Suits are sui generis, 5, 749
 Suit-money, 4, 319
 Suspension of the right of cohabitation, 9, 811
 Time of committing offense, 5, 778
 United States jurisdiction, 5, 746
 Variance, 5, 783
 Venereal disease, 5, 782, 785, 793, 795
 Venue, 28, 220
 Where bill can be taken pro confesso, 5, 764
 Where party appears, 5, 763
Witnesses
 Accomplices, 5, 830
 Children, 5, 830
 Detectives, 5, 830
 Friends, 5, 830
Husband and Wife, 5, 829
 At common law, 5, 829
 Express statutes, 5, 830
 Nullity suits, 5, 830
 Statute removing incapacity arising from interest, 5, 829
 Number of witnesses, 5, 831
 Prostitutes, 5, 830
 Relatives, 5, 830
 Servants, 5, 830
DO, 5, 848
 Doing business, 25, 661
DOCKAGE, 5, 848
DOCKET, 5, 849
Judge's docket, see JUDGE; MINUTES.
See generally, RECORD.
 Appearance docket, 20, 494
 Execution docket, 20, 494
 Judgment docket, 20, 493
 To strike a, 5, 851
DOCKS, 5, 851
 Expert and opinion evidence, 7, 509
Municipal Corporations
 Legislative control, 15, 990
 Whether manufacturing corporation, 14, 269
DOCK WARRANTS, 5, 582
See WARRANTS.
DOCTOR, see MALPRACTICE; PHYSICIANS AND SURGEONS; PRIVILEGED COMMUNICATION.
DOCUMENTARY, 5, 853
Documentary evidence, see BOOKS AS EVIDENCE; PRODUCTION OF DOCUMENTS.
DOCUMENTS, see PRODUCTION OF DOCUMENTS.
 Definition, 7, 45
 Of title, 5, 854
DOG, see ANIMALS.
DOING
 Doing business, 2, 701
DOLLAR, 5, 854
See COUNTERFEITING; MONEY.
 Promissory notes payable in dollars, 5, 855
 Spanish, 5, 855
DOMAIN
 Public domain, 19, 303
DOMESTIC, 5, 856
See MASTER AND SERVANT.
DOMESTIC FIXTURES, see FIXTURES.
DOMICIL, 5, 857
See NON-RESIDENT; RESIDENCE.
As to what transactions are governed by the law of domicil, see CONFLICT OF LAWS.
Collateral inheritance tax, see SUCCESSION TAXES.
 Acquired, 5, 859
Acquisition of, 5, 861
 Domicil of birth, 5, 861
 Domicil of Choice, 5, 861
 How acquired, 5, 862
Intention, 5, 864
 Alone, 5, 862
 Nature of residence, 5, 863
Residence, 5, 863
 Alone, 5, 862
 What residence necessary, 5, 863
 Whether it can be acquired in itinere, 5, 863
 Domicil of origin, 5, 861
 Foundling, 5, 861
 How effected by foreign law, 5, 863
 Illegitimate child, 5, 861
Intention
 Alone, 5, 862

DOMICIL—*Cont'd***Acquisition of**—*Cont'd***Intention**—*Cont'd*

- Elements, 5, 864
- Legitimate child, 5, 861
- Legitimized child, 5, 861
- Residence alone, 5, 862, 863
- What is, 5, 861

Adult of unsound mind, 5, 869

Alimony, 1, 468

Birth, 5, 861

- Presumed to continue, 5, 865
- Retained until another acquired, 5, 859

Change of, 5, 865

Burden of proof, 5, 865

Infants, 5, 866

- Apprentices, 5, 868
- Change of male infant's domicil by marriage, 5, 866
- Change with domicil of father, 5, 866
- Emancipated minors, 5, 866
- Father's mother after death of father, 5, 866
- How affected by mother's marriage, 5, 867
- Illegitimate infant, 5, 866
- Power to change, 5, 866
- Whether orphan's domicil follows guardian, 5, 867

Lunatics, 5, 869, 878

Power to change, 5, 878

Married Women, 5, 868

- Cannot acquire separate domicil from husband, 5, 868
- Changes with change of husband's domicile, 5, 868
- Divorced women, 5, 869
- Domicil of husband, 5, 868
- In case of desertion, 5, 869
- Where wife lives apart from her husband, 5, 868, 869
- Widow, 5, 869

Choice

- Intention, 5, 864
- Compared with inhabitancy, 5, 858
- Corporations, 4, 206; 8, 330
- Declarations to show intent, 9, 331
- Definition, 5, 754, 857
- Definition of dwell, 6, 100
- Distinguished from non-resident, 16, 718
- Distinguished from residence, 6, 275; 21, 123, 124

Enemy's domicil, 11, 479

Evidence of, 5, 870

- Acts which have been held to show intention, 5, 873, 874
- Any circumstances, 5, 870

Ascertainment of

- Length of time of residence, 5, 875
- Mode of residence, 5, 875
- Prima facie evidence, 5, 875
- Buying burial place, 5, 871
- Deposit of plate and valuables, 5, 871
- Direct expressions of intention, 5, 872
- Exercise of political rights, 5, 871

Expression of Intention, 5, 872

Asevidence of domicil, 5, 872

Indirect expression of intention, 5, 873

Inferred from acts, 5, 873

Naturalization of person, 5, 872

Offering or refusing to vote, 5, 872

Ownership or purchase of land, 5, 871

Place of person's death or burial, 5, 872

Presence, 5, 870, 871

Of man's wife and family, 5, 875

Presumption of continuance, 5, 870

Residence, 5, 873, 875

Abroad, 5, 877

Inconsistent with intention to reside permanently, 5, 877

In place of business, 5, 876

arious circumstances tending to show domicil, 5, 870-872

Guardian and Ward, 9, 100

Change from one county to another, 9, 100

Change from one state to another, 9, 100

Husband and Wife, 5, 754, 868; 9, 813

Domicil of husband, 9, 813

Domicil of Wife, 5, 868; 9, 813

Cannot acquire separate domicil from husband, 5, 868

Changes with change of husband's domicil, 5, 868

Divorced women, 5, 869

Domicil of husband, 5, 868

In case of desertion, 5, 869

Where wife lives apart from her husband, 5, 868, 869

Widow, 5, 869

Illegitimate child, 5, 861

In bastardy, 2, 129

In one state, residence in another, 5, 858

Jurisdiction

Summary of rules, 5, 759

Law of

Governing majority, 3, 515

Governing personal property, 3, 514

Legitimate child, 5, 861

Legitimized child, 5, 861

Lunatics, 5, 869

Married Women, 5, 754, 868; 9, 813*See* **DIVORCE**.

Distinct domicil of husband and wife, 5, 755

Separate domicil of married women, 5, 755

Nature of, 5, 859

Necessity of for grant of alimony, 1, 468

Of Corporations, 4, 206; 8, 330

In general, 8, 330

State from which it derives its existence, 8, 330

Two domicils, 8, 330

Of Particular Persons, 5, 878

Ambassadors, 5, 981

Invalids, 5, 879

Lunatics, 5, 878

Persons in service of government, 5, 882

Prisoners, 5, 879

Seamen, 5, 881
 Students, 5, 882
 Origin, 5, 859
 Presumption of continuance, 5, 859, 865, 870
 Presumption that once acquired continues, 5, 860

Probate

Jurisdiction, 19, 164
 Abandonment of domicil, 19, 166
 As affecting, 19, 164
 Burden of proof, 19, 165
 Death in itinere, 19, 165
 Dismissal within limits of jurisdiction at the time of death, 19, 164
 Domicil of origin, 19, 166
 In England, 19, 166
 Intention to settle in another domicil, 19, 165
 Place of destination, 19, 165
 Two domicils, 19, 165
 What constitutes a domicil, 19, 165

Public officers, 19, 402
 Questions of law and fact, 5, 872; 19, 658

Railroads, 19, 791
 Rebutting presumption arising from residence, 5, 877

Residence

Abroad, 5, 869
 And domicil compared, 5, 754
 As evidence, 5, 875
 Res judicata, 21, 130
Taxation, 25, 135
 Burden of proof, 25, 135
 Examples, 25, 135, 136
 Loss of old domicil before acquisition of new, 25, 136
 Question of law or fact, 25, 135
 Removal to avoid taxation, 25, 136
 Removal with intention to remain, 25, 135
 Transient, 25, 136
 Whether person may have more than one, 5, 860

DOMINION

Foreign, 8, 280

DOMINOES, see GAMING.

DONATE, 5, 882

See GIFT.

DONATIO INTER VIVOS, see GIFTS.

DONATIO MORTIS CAUSA, see GIFTS.

DONATION CAUSA MORTIS, see GIFTS.

DOOMING, 5, 883

DOORS, 5, 883

Breaking Into

See SERVICE OF PROCESS.
 To arrest, 1, 723, 746
 What are outer and what are inner doors, 1, 723

DORMANT

Dormant Partnership, see PARTNERSHIP.

DOTAGE, 5, 883

See INSANITY.

DOUBT, see REASONABLE DOUBT.

I-D—27

DOWER, 5, 884

As to covenants against incumbrances, see REAL COVENANT.

As to widow's allowance pending allotment, see QUARANTINE.

As to widow's allowance, see EXECUTORS AND ADMINISTRATORS.

Abatement

Devise in lieu of dower, 13, 145

Admeasurement of

Right of trial by jury, 3, 721

Alien woman, 1, 461

Annuity in Lieu of

Apportionable, 1, 596

Annuity

Not abatable, 1, 595

Antiquity of, 5, 884

As adverse possession, 1, 237

As an Incumbrance, 5, 905, 908

Priorities, 5, 908

Assigned stage, 5, 885

Assignment, 5, 886, 923

Against common right, 5, 925

Appointment of another officer, 5, 927

By legal proceedings, 5, 925

By metes and bounds, 5, 924, 927

By officer of court, 5, 924

Costs, 5, 926

Depreciation, 5, 931

Effect of, 5, 923

Against common right, 5, 925

On dower, 5, 923

Elections in bill, 5, 926

Equitable defenses, 5, 926

Estates in common, 5, 928

Failure of, 5, 923

For the Benefit of Creditors

Wife joining to bar, 1, 856

Gross sum in lieu of dower, 5, 929

Guardian making, 5, 924

Guardians power to assign, 9, 116

Improvements, 5, 927, 929

Against heir or devisee, 5, 929

Against husband's alienee, 5, 929

Pleading, 5, 930

What they include, 5, 930

Incorporeal property, 5, 928

In equity, 5, 925

Legal defenses, 5, 926

Necessity of writing, 5, 925

Notice to tenant, 5, 927

Of common right, 5, 924

Of dower in equitable estates, 5, 926

Officer acting vexatiously, 5, 927

Officer making assignment a ministerial officer, 5, 927

Out of what dower may be assigned, 5, 926

Proof of death of husband, 5, 926

Proof of seisin, 5, 926

Property not capable of division, 5, 928

Quantity not alone to be considered, 5, 927

Rents and profits, 5, 928

Return of officer, 5, 927

Rooms in house, 5, 928

DOWER—Cont'd**Assignment—Cont'd**

Setting off portion of the lands in lieu of what widow is strictly entitled to, 5, 924

Several tracts of land, 5, 927

Statute of frauds, 5, 925

Statutory methods of, 5, 925

Strict conformance with law, 927

Surplus where lands are sold to satisfy a paramount loan, 5, 929

Surrogates' courts, 24, 996

Tenant's duty, 5, 924

Validity of assignment without legal proceedings, 5, 924

When assignment by metes and bounds necessary, 5, 924, 927

Where widow's right is contested in equity, 5, 626

Who are proper parties, 5, 926

Widow's Right

To assignment, 5, 923

To damages after detention at common law, 5, 932

To damages for detention in the United States, 5, 932

To damages with dower, 5, 931

To share the mesne profits with dower, 5, 932

Without legal proceedings, 5, 924

At Common Law, 5, 885

Elements, 5, 885

Barring, 5, 909

Adverse possession, 5, 920

By Act of Husband, 5, 911

Acts of husband during coverture, 5, 912

Conveyance for purpose of defeating dower, 5, 912

Deed made on day of marriage, 5, 911

Deed unexecuted and unrecorded, 5, 911

Fraudulent as to creditors, 5, 911

Husband's agreement to convey, 5, 911

Incumbrances before marriage, 5, 911

Judgment confessed on day of marriage, 5, 911

Retrospective effects of statutes, 5, 912

Secret disposition on part of husband, 5, 912

Statutes permitting husband to bar dower, 5, 912

By Act of Wife

Abandonment, 5, 912

Adultery, 5, 912

During coverture, 5, 91

Elopement and adultery, 5, 912; 6, 447

By Ante-Nuptial Settlement, 5, 909

At common law, 5, 909

By legal jointure, 5, 909

Enforcement in equity of, 5, 909

In equity, 5, 909

Statutes, 5, 909

Statutes of usage, 5, 909

By Post-Nuptial Settlement, 5, 910

At common law, 5, 910

Collection, 5, 911

Complying strictly with statutes relating to release of dower, 5, 910

Statutes giving married women full power to contract, 5, 910

Where wife has enjoyed consideration for release of dower, 5, 911

Collateral satisfaction, 5, 909

Dedication to public uses, 5, 920

Deed, 14, 627

Defeating dower by legal proceedings, 5, 921

Defeating dower by termination of husband's estate, 5, 921

Election, 5, 911, 918; 6, 252

See infra, **ELECTION.**

Between her husband's will and dower, 5, 917, 918

By what law governed, 5, 919

Conditional, 5, 918

Death of widow before election, 5, 919

Effect of, 5, 919

Equitable jointure, 5, 916

In a way inconsistent, 5, 917

Infant widow, 5, 918, 919

In lieu of dower, 5, 917

Insane widow, 5, 918

Instrument must dispose of some part of settler's estate, 5, 917

Jointure made during coverture, 5, 918

Manner and time of, 5, 918

Married before, 5, 919

May be by deed or will, 5, 917

Parole evidence to show that it was, 5, 917

Particular mode named, 5, 918

Priority

Between widow and creditors, 5, 919

Between widow and devisees, 5, 919

Provision must be in lieu of dower, 5, 916

Statutes requiring widow to elect, 5, 918

Where husband has exchange lands, 918

Where time has expired for, 5, 918

Where widow elects to take dower, 5, 919

Where wife has wasted consideration, 5, 911

Whether it must be made by widow in person, 5, 918

Widow a purchaser, 5, 919

With existence of dower, 5, 917

Eminent domain, 5, 920

Estoppel, 5, 920

Granted by foreign court, 5, 922

Jointure, 5, 815, 909

Definition of, 5, 915

- Definition of equitable, 5, 916
- Definition of legal, 5, 916
- Distinguished from dower after assignment, 5, 918
- Election, 5, 918
- Equitable, 5, 916
- In equity, 5, 916
- Legal, 5, 916
- Requisites to legal, 5, 916
- Under statutes of usages, 5, 916
- Where wife is evicted from jointure lands, 5, 917
- Laches, 5, 920
- Statutes, 5, 922
- Statutes of limitations, 5, 920
- Whether wife must be party to suit, 5, 921
- Wife's Release of Dower**, 5, 912
 - By whom release can be set up, 5, 915
 - Consideration, 5, 914
 - Conveyance in a representative capacity, 5, 915
 - Effect upon her own property, 5, 915
 - Executing release herself, 5, 914
 - Grantee a mere stranger, 5, 914
 - Grantee must hold under husband, 5, 914
 - Husband joining in deed, 5, 913
 - Infant wife, 5, 914
 - Insane wife, 5, 914
 - Joining with husband's attorney, 5, 914
 - Joining with husband's guardian if insane, 5, 914
 - Leaving blanks, 5, 914
 - Mistake in description, 5, 915
 - Not good at law, 5, 912
 - Presumption, 5, 913
 - Release by parole, 5, 913
 - Release by power of attorney, 5, 914
 - Release operates by way of estoppel, 5, 914
 - Release to husband, 5, 914
 - Requisites, 5, 913
 - Revocation, 5, 913
 - Signature for purpose of releasing dower, 5, 913
 - Strict compliance with statute, 5, 912
 - Subsequent title in wife, 5, 915
 - When deed becomes inoperative, 5, 915
 - Whether execution must be at same time with husband, 5, 913
 - Whether particular form is required, 5, 913
 - Wife joining in execution of deed, 5, 913
- Bequest in Lieu of**
 - Abatement**, 13, 137
 - Bequest exceeding value of right relinquished, 13, 137
 - Bequest to husband, 13, 138
 - Bequest to wife of interest in general estate, 13, 138
 - Creditors, 13, 138
 - Express direction of testator, 13, 138
 - In Massachusetts, 13, 138
 - Lien on realty, 13, 138
 - Necessity of the words "in lieu of dower," 13, 137
 - Pretermitted children, 13, 138
 - Statutes providing that bequest to wife shall be construed in lieu of dower, 13, 137
 - What bequests are in lieu of dower, 13, 137
 - Where testator never had any land, 13, 140
 - Whether bequest in lieu of dower has priority over specific legacies and devises, 13, 138
- Birth of issue, 5, 886
- Citizenship, 5, 887
- Consummate**, 5, 906
 - See infra*, INCIDENTS OF CONSUMMATE DOWER AFTER ASSIGNMENT.
 - Vested right, 5, 906
 - When dower becomes consummate, 5, 906
 - Whether right of action on estate, 5, 906
- Consummate stage, 5, 885
- Death of husband, 5, 886
- Death of Husband as a Requisite**, 5, 886, 888
 - Proof of death of husband, 5, 888
- Deed to bar, 14, 627
- Definition, 5, 884; 6, 722; 11, 374
- Deforcement of dower, 5, 519
- Demand**, 5, 528²⁰
 - By Whom Made**, 5, 528²¹
 - When in person, 5, 528²³
 - Description of premises, 5, 528²⁴
 - Effect of limiting time, 5, 528²⁴
 - Excessive allowance, 5, 528²⁴
 - Excessive demand, 5, 528²⁴
 - How authority to demand conferred, 5, 528²²
 - How authority to demand proved, 5, 528²²
 - How made, 5, 528²¹
 - Oral or in writing, 5, 528²¹
 - Sufficiency of demand, 5, 528²³
 - Unnecessary by statute, 5, 528²¹
 - Upon Whom Demand Should Be Made**, 5, 528²²
 - Agent or attorney, 5, 528²³
 - By statute, 5, 528²²
 - Devisee, 5, 528²²
 - Guardian, 5, 528²²
 - Owner, 5, 528²²
 - Tenant, 5, 528²²
 - When upon owner, 5, 528²³
 - Where land was held in severalty by two or more, 5, 528²³
 - What authority did demand include, 5, 528²²
- When Necessary**, 5, 528²⁰, 528²¹
 - Divorced wife, 5, 528²⁰
 - Entitled to damages, 5, 528²¹
 - Where husband did not die seised, 5, 528²⁰

DOWER—*Cont'd***Demand**—*Cont'd*

Whether it must be made on demand,
5, 528²¹

Distinguished from dos of civil law, 5,
884

Divorce, 5, 528²⁰, 904, 912; 6, 447

Ejectment, 6, 233, 242, 245^e

Election, 5, 911, 918; 6, 252

Barring dower by election, see *infra*,
BARRING DOWER.

An estate for life, 6, 253

Annuity or rent charge, 6, 253

Devise of lands to widow and others in
equal shares, 6, 253

Devise of part of land to widow with
directions as to sale of rest, 6, 253

Effects of, 6, 254

Lands taken by devise, 6, 253

Mode of election, 6, 254

Presumption, 6, 253

Statutes governing, 6, 253

Time of election, 6, 254

When election will be required, 6, 252

Elopement, 5, 921; 6, 447

Equitable estates, see *infra*, IN EQUI-
TABLE ESTATES.

Equity of redemption, 15, 812

Estate Subject to, 5, 885, 892

Base or qualified fees, 5, 892

Conditional estates, 5, 892

Determinable fees, 5, 892

Equitable estates, 5, 893, 894

Estate in fee exchanged for another, 5,
892

Estates at will, 5, 893

Estates for years, 5, 893

Estates in common and coparcenary
5, 893

Estates in remainder or reversion, 5, 892

Estates tail, 5, 892

Fee simple, 5, 892

Joint estates, 5, 893

Life estates, 5, 893

Partnership estates, 5, 893

Estoppel, 14, 640

Whether widow estops by joining with
husband in conveyance, 7, 6

Executory Interests, 20, 965

Birth of children who would have in-
herited estate, 20, 966

Examples, 20, 965, 966

Where limitation is by way of use of
devise, 20, 967

Where the particular estate is defeated,
20, 965

Whether limitation is conveyance at
common law, 20, 967

Gradual changes in law relating to, 5,
884

Ground rents, 9, 64

Homestead in dower, 9, 435

Inchoate

Action for its protection, 5, 905

As a valuable consideration, 5, 905

Husband's bankruptcy or divorce, 5,
904

Incidents of, 5, 904; 20, 619

Contingent and not a vested right,
5, 904

Partition**Parties Defendants**

Inchoate rights of dower, 17, 720

Sale of, 5, 905

Stage, 5, 885

Statute of limitations, 5, 905

What it is, 5, 904

When dower is inchoate, 5, 904

Whether it has a present value, 5, 905

Whether it has many incidents of
property, 5, 905

Whether it is a covenant against in-
cumbrances, 5, 905

Whether it is an incumbrance, 5, 905

Whether it justifies vendee in carrying
out contract, 5, 905

Whether subject to execution, 5, 905

Whether vested or contingent right, 5,
904

Wife a party to any suit affecting it,
5, 905

Incidents of, 5, 904

**Incidents of Consummate Dower After As-
signments**, 5, 907

See *infra*, CONSUMMATE DOWER.

Alienation, 5, 907

Betterments, 5, 908

Incidents of freehold estate for life, 5,
907

Leases, 5, 907

Liability for debts, 5, 907

Liens paramount to dower, 5, 908

Payment of taxes and charges, 5, 907

Release

Alienation, 5, 907

Betterments, 5, 908

Incidents of freehold estate for life,
5, 907

Leases, 5, 907

Liability for debts, 5, 907

Liens paramount to dower, 5, 908

Payment of taxes and charges, 5, 907

Vegetables and crops, 5, 908

Waste, 5, 908

Where widow is seised, 5, 907

Vegetables and crops, 5, 908

Waste, 5, 908

Whether widow is seised, 5, 907

Incidents of Consummate Dower Before

Assignment, 5, 906

Charged with debts in equity, 5, 907

Ejectment, 5, 906

Execution, 5, 907

Mortgage, 5, 907

Partition, 5, 906

Release, 5, 907

Right of entry, 5, 906

Sale of dower, 5, 906

Transferring equity, 5, 907

Trespass, 5, 906

Vested rights, 5, 906

Whether widow is seised, 5, 906

Whether widow must be party to pro-
ceedings against land, 5, 906

- In Coke's time, 5, 885
- In **Dower Lands**, 5, 893
 - Dos de dote peti non debet, 5, 893
 - Exceptions, 5, 893
- In **Equitable Estates**, 5, 893, 894
 - Common-law doctrine, 5, 894
 - Contracts for purchase of land, 5, 896
 - Defeated by alienation, 5, 897
 - Distinguished from equitable rights, 5, 896
 - Husband's equity perfect and complete, 5, 896
 - In Alabama, 5, 895
 - In Arkansas, 5, 895
 - In Connecticut, 5, 895
 - In Delaware, 5, 895
 - In England, 5, 895
 - In Florida, 5, 895
 - In Georgia, 5, 895
 - In Illinois, 5, 895
 - In Kentucky, 5, 895
 - In Maine, 5, 895
 - In Maryland, 5, 895
 - In Massachusetts, 5, 895
 - In Missouri, 5, 895
 - In New Hampshire, 5, 895
 - In New Jersey, 5, 895
 - In New York, 5, 895
 - In North Carolina, 5, 895
 - In Ohio, 5, 895
 - In Oregon, 5, 895
 - In Pennsylvania, 5, 895
 - In Rhode Island, 5, 895
 - In South Carolina, 5, 895
 - In Tennessee, 5, 895
 - In Vermont, 5, 895
 - In Virginia, 5, 895
 - In West Virginia, 5, 895
 - In Wisconsin, 5, 895
 - Interest that would pass to heirs, 5, 896
 - Legal title perfected after husband has disposed of estate, 5, 897
 - Necessity of husband dying seised, 5, 897
 - Property not fully paid for, 5, 902
 - Retrospective effect of statute giving power, 5, 894
 - States in which common-law rule prevails, 5, 894
 - Title to land not perfected, 5, 896
 - Where all purchase-money of land has been paid, 5, 896
 - Where part of purchase-money of land has been paid, 5, 896
- In **Mortgaged Property**, 5, 899; 15, 812
 - See *infra*, **PURCHASE-MONEY MORTGAGES**.
 - Equity redemption, 5, 899; 15, 812; 20, 619
 - Foreclosure**, 5, 902; 15, 812
 - After husband's death, 5, 902
 - Destroying widow's rights, 5, 902
 - Making widow party to suit, 5, 902
 - Mortgage foreclosed during coverture, 5, 902; 20, 619
 - Mortgagee's interest, 5, 899
 - Mortgagor's interest, 5, 899
 - Mortgagor's interest after default, 5, 899
 - Purchase-money secured by mortgage, 5, 903
 - Redemption**, 5, 900; 15, 812; 20, 619
 - Assignment, 20, 619
 - By widow herself, 5, 901; 20, 619
 - Contribution by widow, 5, 901
 - Mortgage executed before or after marriage, 20, 619
 - Requiring personal representative to redeem, 5, 900
 - Saving widow's dower as far as possible, 5, 900
 - Where assignee of equity of redemption redeems, 5, 900
 - Where holder of equity buys in mortgage, 5, 901
 - Where husband has assigned equity of redemption, 5, 900
 - Where husband has redeemed, 5, 902
 - Where mortgagee buys in equity of, 5, 901
 - Where right is inchoate, 20, 619
 - Whether widow is entitled to whole contribution when she pays whole debt, 5, 901
 - Whether widow must pay whole debt when she redeems, 5, 901
 - Surplus on foreclosure of mortgage, 24, 960
 - Until default and foreclosure, 5, 900
 - Where mortgage is not paramount to dower, 5, 899
 - Where widow has released rights in mortgage, 15, 812
 - Where wife has not joined in mortgage, 5, 899
 - Whether mortgagee has taken possession, 5, 900
- In **Partnership Property**, 5, 897
 - Defeated by alienation, 5, 898
 - Paramount claims of creditors, 5, 898
 - Realty, 17, 854
 - Realty bought with partnership funds, 5, 897
 - Where partnership agreement declares realty to be personalty, 5, 898
 - Whether dower exists, 5, 897
 - Whether property is partnership property, 5, 899
 - Wife need not be made party to suit against partnership property, 5, 898
 - Wife need not join in deed, 5, 898
- In **Property Not Fully Paid for**, 5, 896, 902
 - Calling on personal representative to satisfy lien, 5, 904
 - Dower until claim of vendor is asserted, 904
 - Enforcement of lien after her husband's death, 5, 904
 - Equitable lien, 5, 903
 - Making wife party to proceedings, 5, 904
 - Purchase-money secured by mortgage, 5, 903

DOWER—Cont'd**In Property Not Fully Paid for—Cont'd**

Purchaser taking free of dower, 15, 904

Superiority of liens for purchase-money of lands, 5, 902

Vendor having parted with legal title, 5, 903

Vendor obtaining legal title, 5, 902

Wife's rights as against parties other than vendor, 5, 904

In reversion, 6, 896

Joint and Common Property, 11, 1087

Estates in common, 11, 1075, 1087

In states where survivorship has been abolished, 11, 1087

Survivorship, 11, 1087

Kinds of, 5, 884, 885

Laches, in Claim for, 12, 597

In Missouri, 12, 598

Lapse of twenty years, 12, 597

Less than twenty years, 12, 598

Limitation of actions, 13, 768

Marriage as a Requisite, 5, 886, 887

As to what constitutes a valid marriage generally, see MARRIAGE.

Common-law marriage, 5, 887

Voidable marriage, 5, 887

Void marriage, 5, 887

Wife at time of his death, 5, 887

Marriage of insane person, 11, 141

Marshaling assets, 14, 691

Mechanics' Liens

Priority, 15, 97

Mortgaged property, see infra, IN MORTGAGED PROPERTY; PURCHASE-MONEY MORTGAGES.

Naturalized widow, 5, 565

Object of the law, 5, 885

Parcenary, 17, 316

Partition, 17, 692, 701

Costs, 17, 813

Parties Defendant, 17, 720

Inchoate right of dower, 17, 720

Statutes authorizing joinder of widow, 17, 722

Where husband has divested himself of title before partition, 17, 721

Whether sale divests dower rights, 17, 721

Widow of deceased tenant in common, 17, 720

Widow of deceased tenant in severalty, 17, 720

Rights of co-tenant's wife, 17, 676

Where doweress holds a different estate in co-tenancy, 17, 702

Whether doweress can resist proceedings, 17, 701

Whether tenant in dower is a co-tenant, 17, 701

Wife's inchoate right to dower, 17, 702

Partnership property, see infra, IN PARTNERSHIP PROPERTY.

Priorities between liens, 5, 908

Priority

Judgment lien, 12, 111

Proof of Marriage

Cohabitation and repute, 14, 529

Property Subject to

Annuities, 5, 891

Commons, 5, 890

Fairs and markets, 5, 891

Fines, heriots and estovers, 5, 891

Grass, fruits, etc., 5, 892

Hereditaments, 5, 890

Lands and tenements, 5, 890

Manors and advowsons, 5, 890

Mills and ferries, 5, 891

Mines already opened, 5, 891

Offices, 5, 891

Piscary, 5, 891

Rents, 5, 891

Stock of corporations, 5, 891

Tithes, 5, 890

Wild lands and lands covered with water, 5, 891

Purchase-Money Mortgages, 19, 580

Grantee estopped to deny grantor's suit, 19, 581

Husband beneficially seised, 19, 581

Mortgage and deed not one act, 19, 581

Priority in general, 19, 580

Priority where wife does not join in execution of mortgage, 19, 580

Right to dower in the equity of redemption, 19, 581

Statutes, 19, 590

Whether wife has right to dower, 19, 581

Wife's right as against third persons, 19, 580

Quarantine, 5, 923

Receiver

For protection of dower, 20, 324

Release, see infra, BARRING.

Release to husband, 5, 914

Requisites of dower in general, 5, 886

Residence, 5, 886

Reversion, 21, 348

Seisin, 5, 886

As a requisite, 5, 888

At time of husband's death, 5, 890

Beneficial seisin, 5, 888, 889

During coverture, 5, 890

Estate in coparcenary, 5, 890

Estoppel of Third Party to Deny Seisin, 5, 888

Defenses which establish that husband's seisin is not sufficient, 5, 889

Setting up better title in himself, 5, 889

Where party has accepted conveyance from husband, 5, 889

Husband administrator or trustee, 5, 889

Immediate seisin of freehold, 5, 890

In law, 5, 888

Joint estates, 5, 890

Husband, 5, 885

Necessity that deed be recorded, 5, 888

- Possession under a warranty deed, 5, 888
 Sole or joint, 5, 890
 Transitory, 5, 889
 Where seisin last only a short time, 5, 889
 Wrongful, 5, 888
 Sheriff's sales, 22, 577, 626
Specific Performance
 Compensation for outstanding dower, 22, 945
 Dower as defect in vendor's title, 22, 951
 Indemnity for dower interest, 22, 946
Statute of Frauds, 8, 672
 Assignment of dower, 8, 696
 Sale of right of dower, 8, 696
Subrogation, 24, 228
 Widow discharging lien on estate, 24, 281
 Supplementary proceedings, 24, 642
 Surplus on foreclosure of mortgage, 24, 960
 Taxation, 25, 124
Tenancy in Common, 11, 1075, 1087
 Guardian in socage for minor heirs, 11, 1076
 Indiana statute, 11, 1076
 Whether widow is with children, 11, 1075
 Trust deeds and power of sale mortgages, 26, 964
 Under the statute, 5, 886
 Vendor's lien, 28, 167, 173, 182
Waste
 Action Against Doweress, 28, 912
 Assignment of estate to third person, 28, 912
 Examples, 28, 912
 Statute of Gloucester, 28, 912
 The husband of a tenant in dower, 28, 912
 Injunction, 28, 929
 Jointresses, 28, 903
Tenant's Liability, 28, 893
 Customary use of lands, 28, 894
 Discrimination between reversionary interests, 28, 893
 Forfeiture of dower estate, 28, 894
 Liability for permissive waste, 28, 894
 The husband of a tenant in dower, 28, 895
 Wild lands, 28, 893
 Writ of waste, 28, 905
 Widow's failure to answer, 5, 463
 Widow's right to retain mansion house, 5, 923
 Wife as party to suit against land, 5, 921
Wife's Release of, see *infra*, BARRING.
- DOWN**, 6, 1
 Cut, 4, 970
 Keep down, 12, 515
 Keep down interest, 6, 1
 Knock, 6, 1
- DOWRY**, 6, 1
DRAFT, 6, 1
See MILITARY LAW.
 Draft and tare distinguished, 25, 3
DRAFTS
See BILLS AND NOTES; CHECKS.
As to presentment and demand of payment, see DEMAND.
- Surface Waters**
As to measure of damages, see SURFACE WATERS.
- DRAINS AND SEWERS**, 6, 2
See IRRIGATION; LOCAL IMPROVEMENTS.
See generally, SURFACE WATERS.
 Definition of ditch and, 5, 723
 Definition of drain, 6, 2
 Definition of sewers, 6, 2; 10, 307
 Due process of law, 6, 49
Easements to Drain through Lands of Another, 6, 16, 17
 Conferred by parol license, 6, 18
 Duties of owner of easement, 6, 19
 Implied grant, 6, 19
 Revocation, 6, 19
 Health, 9, 321
 Injunctions, 10, 852
 Liability for breakage of drain, 8, 68
Local Assessments, 6, 3, 5, 12; 10, 275; 25, 510
 Apportionment, 6, 13; 25, 516
 Constitutionality, 6, 12
 Drains, 25, 512
 Examples, 25, 510-513
 Generally, 25, 510
 Grant of power to improve streets, 25, 510
 In England, 25, 511
 Legislature prescribes modes of meeting expenses, 6, 13
 Must be uniform, 6, 12
 Only benefit can be assessed to the lot, 6, 8, 13
 Only property which is actually benefited can be assessed, 6, 13
 Power to assess property, 25, 510
 Pumping works, 25, 512
Sewers, 6, 20; 25, 510
 Arbitrary, 6, 20
 Assessment by area of lots, 6, 21
 Assessment by front-footage, 6, 20
 Further assessment for continuation of sewer, 6, 21
 In another town, 25, 512
 Lands benefited though not in line of sewer, 6, 21
 Right of legislature to confer power upon municipality, 6, 20
- Master and Servant**
 Liability of contractor, 14, 834
 Mines and mining claims, 15, 582, 584
Municipal Corporations, 6, 28; 24, 942
See infra, RIGHTS OF MUNICIPALITY.
 Abandonment, 6, 29
 Absence of notice of bad condition of sewer, 6, 28
 Accidents caused by construction, 6, 25

DRAINS AND SEWERS—Cont'd

Municipal Corporations—Cont'd

- Charging abutting owner with repairs, 6, 28
- Compelling municipality to construct sewer, 6, 24
- Connecting, 6, 29
- Construction of drains and sewers, 24, 947
- Degree of care required, 6, 23
- Devising plans, 6, 25
- Discretion of city, 24, 942
- Duty to provide suitable drains and sewers, 6, 28; 15, 1147
- Error in judgment, 24, 945
- Flooding property of private owners, 6, 24
- For injuries caused by defective, 5, 8
- Generally, 6, 23; 24, 942
- Insufficiency of sewer, 24, 947
- Judicial and municipal duties, 6, 23
- Liability as private corporation, 6, 23
- Liability for failure to exercise power, 6, 24
- Municipal duties distinguished from quasi judicial, 6, 24
- Negligence in devising plans, 6, 26
- Negligence in discharge of duty, 6, 24
- Negligence of city in connecting, 6, 29
- Overflowing private property, 6, 28
- Property owner's liability in connecting with sewer, 6, 29
- Removal by, 15, 1184
- Repairing, 6, 28
- What plans are subject to revision by courts, 6, 26, 27
- Whether devising plan is ministerial or quasi judicial, 6, 25
- Municipal taxation, 15, 1246
- Nuisance, 10, 846
- Police power, 18, 750
- Pollution of waters, 28, 975

Private Drains, see generally, SURFACE WATERS.

- Increasing flow of stream by means of drain, 6, 16

Liability

- To lower proprietor, 6, 15
- Right of owner of land to collect stagnant water by means of drains, 6, 16
- Right to divert water by means of drain, 6, 16
- Right to drain for purpose of agriculture, 6, 15
- Water collecting in an artificial channel and discharging on lower lands, 6, 15, 16

Public Drains, 6, 2

Constitutionality of Statutes, 6, 2

- By whom such statute may be invoked, 6, 9
- Distinction between exercise of police and exercise of taxing power, 6, 7
- Local assessments, 6, 12
- Statute authorizing institution of proceedings to have swamp owned

- in common drained at the expense of all, 6, 8
- Under eminent domain, 6, 6, 13
- Under exercise of taxing power, 6, 6
- Under police powers, 6, 6
- Under taxing power, 6, 10

Eminent Domain, 6, 14

- Public purpose, 6, 14
- When power may be exercised, 6, 14
- Legislative power concerning, 6, 2

Liability

- Of owner for drain in absence of statute, 6, 7

Local Assessments, see *infra*, LOCAL ASSESSMENTS.

Statutes, 6, 2

Under Police Power

- Statute authorizing institution of proceedings to have swamp land owned in common drained at the expense of all, 6, 8

Under Taxing Power, 6, 10

- Preservation of public health the public purpose, 6, 10
- Public purpose, 6, 10
- When courts will interfere, 6, 10
- Who determines when purpose is public, 6, 10

"Repairs," 20, 1040

Rights of Municipality as to Sewers, 6, 19

- As to discharging sewage, 6, 22
- Creating a nuisance, 6, 22
- Corporation to judge of necessity and manner of exercising power, 6, 20
- Essentialities under statute, 6, 23
- In general, 6, 19

Local Assessments for, 6, 20

- Arbitrary assessments, 6, 20
- Assessment by front-footage, 6, 20
- By area of lots, 6, 21
- Further assessment for continuation of sewer, 6, 21
- Lands benefited though not in the line of sewers, 6, 21

- Right of legislature to confer power on municipality, 6, 20

Obstructing navigation, 6, 23

- Regarded as an improvement to highway, 6, 20

- Right to discharge surface water on land of others, 6, 22

- Right to divert surface water, 6, 22

Statute of frauds, 8, 667

Statutes

- Constitutional provisions requiring that subject shall be expressed in the title, 23, 242

- Streets, right to lay, in streets, 24, 34, 114

DRAM, 6, 29

DRAMATIC, 6, 29

- Composition, 6, 29

DRAW, 6, 30

- First draw, 8, 21

DRAWBACK

- Revenue laws, 21, 319

DRAWEE, 2, 315

DRAWER, 2, 315
 Good drawer, 8, 1359
DRAWBRIDGES, 2, 549
DRAY, 6, 30; 28, 521
DREDGE, 6, 30
DRESSMAKERS
 Contract in restraint of trade, 10, 946
DRIFT-WAYS, 19, 108
See generally, PRIVATE WAYS.
DRINK, 6, 30
 By the, 6, 31
DRIVE, 6, 31
As to immoderate driving, see BRIDGES;
 STREETS.
 Conduct and manage, 6, 31
 Driving or conducting cattle, 3, 43
DROVE, 6, 31
DROVER, 6, 31
DROVERS' PASSES, see TICKETS AND
 FARES.
DRUGGIST, 6, 31
See generally, MALPRACTICE; PHYSI-
 CIANS AND SURGEONS.
See POISON AND POISONING.
 Contract in restraint of trade, 10, 945
 Contributory negligence, 6, 32
 Definition, 6, 31
 Degree of care required of, 6, 31
 Inevitable accidents, 6, 31
Intoxicating Liquors, 11, 576, 692, 732
 Absolute prohibition against sale, 11,
 733
 Belief that medicine was not intoxi-
 cating, 11, 733
 Bonds, 11, 679
 Disguising, 11, 576
 Giving away, 11, 738
 In Indiana, 11, 734
 In Iowa, 11, 734
 In Kansas, 11, 734
 In Missouri, 11, 734
 In Nebraska, 11, 735
 In North Carolina, 11, 734
 License fee, 11, 670
 License for mixing with other ingre-
 dients, 11, 576
 Necessity of license, 11, 642, 736
 Place of sale, 11, 738
Prescriptions
 By physician who is also a druggist,
 11, 738
 Keeping intoxicating liquors to mix
 with other ingredients, 11, 737
 Necessity, 11, 736
 Necessity of writing, 11, 737
 Physician's, 11, 732
 Recording, 11, 739
 Sale of pure alcohol, 11, 738
 Separate prescription for each sale,
 11, 737
 Sufficiency, 11, 736
 When physician's prescription not a
 defense, 11, 733
 When prescription no defense, 11,
 737
 Sale as a beverage, 11, 736
 Sale as a medicine, 11, 576

Sale by Drug Clerks, 11, 717
 Clerk having no license, 11, 717
 Responsibility of druggists, 11, 717
 Sale for medicinal purposes, 11, 717
 Sale by druggists who are also physi-
 cians, 11, 738
 Sale by druggist without license, 11,
 735
 Sale to be drunk upon the premises,
 11, 736
 Sunday sales, 11, 692
 United States license, 11, 755
 Verbal or written prescription, 11, 732
 Where the article cannot be used as
 an intoxicating drink, 11, 576
 Liability of remote vendor, 6, 32; 10,
 159
 Liability where he warns buyer of na-
 ture of poisonous character of drug, 6,
 32
 Mandamus, 11, 679
 Negligence, 6, 31; 10, 160
 Negligent labeling of a poison as harm-
 less by, 5, 8
 Registered pharmacist, 6, 33
Revenue Laws
 Sale of intoxicating liquor without
 United States license, 21, 329
 Sunday, 11, 692; 24, 331, 535
DRUGS, 6, 33
 Administered as an assault, 1, 804
 Implied warranty, 10, 159
 Liability and damages, 10, 159
 Liability for injuries from negligence,
 10, 160
 Liability of manufacturer when sale is
 made to dealer, 6, 32; 10, 159
 Sunday, 24, 331, 535
DRUMMERS, see COMMERCIAL TRAV-
 ELS.
DRUMMING, 15, 1191
DRUNKARD, 6, 34; 11, 706
See DRUNKENNESS; HABITUAL DRUNK-
 ARD.
DRUNKENNESS, 6, 35
See CIVIL DAMAGE ACT; HABITUAL
 DRUNKENNESS; LIFE INSURANCE, as
 to warranty and stipulation of temper-
 ance
As a defense to crime, see CRIMINAL
 LAW.
 Arrest for, 1, 736
As a Defense to Contracts, 3, 862; 11, 773
See infra, RESCISSION.
 Bill or note made during, 2, 346; 11,
 776
 Bond made while drunk, 2, 450
 Degree of drunkenness, 11, 775
 Distinction between expressed and im-
 plied contracts, 11, 777
 Implied contracts, 11, 777
 Innocent holder of promissory note,
 11, 776
 Necessities, 11, 776
 Promissory note, 11, 776
 Ratification, 11, 775
 Rescission, 11, 775

DRUNKENNESS—Cont'd**As a Defense to Contracts—Cont'd**

- Specified performance, 11, 778
- To an express contract, 11, 773
- Voluntary intoxication, 11, 773
- When equity will give relief, 11, 778
- Whether contract void or voidable, 11, 773

As a Defense to Homicide, 9, 615

- Fixing the degree, 9, 617
- Intent, 9, 617
- Irresistible desire for liquor, 9, 616
- Mania a potu, 9, 618
- Premeditation, 9, 617

Capacity as Grantor of Deed, 9, 24

- Connivance on part of grantee to intoxication, 9, 24
- Degree of intoxication, 9, 24
- Equity setting conveyance aside, 9, 24
- Reasoning power must be seriously impaired, 9, 24
- Unfair advantage, 9, 24
- When incapable of giving intelligent consent, 9, 24

Confessions made during, 3, 442**Contributory Negligence, 4, 78; 16, 411**

- Degree of care required of drunken person, 4, 79
- Drunkenness as evidence of negligence, 4, 79
- Voluntary incapacity as an excuse, 4, 79
- Where defendant had notice of plaintiff's drunkenness, 4, 79
- Where drunkenness is proximate cause of injury, 4, 79
- Whether drunkenness constitutes contributory negligence per se, 4, 78

Drunkard, 6, 34**Executors and Administrators, 21, 367**

- Capacity of drunkard, 7, 176
- Found intoxicated, 7, 976
- Habitual drunkards as lunatics, 2, 346
- Impeaching witness, 29, 807
- In aggravation of homicide, 9, 618
- Instruction, examples of, 11, 267, 268, 270, 274
- Intemperance, 11, 365
- Intoxicated person injured by carrier of passengers, 2, 751
- Intoxication, 11, 566
- Judge, 16, 520

Libel and Slander, 13, 303, 306, 337, 361

- Mitigation of damages, 13, 440

Master and servant, 14, 788**Municipal corporations, 15, 1191****Negligence, 16, 411****New trial**

- Counsel, 16, 528
- Parties, 16, 537
- Witnesses, 16, 541
- Opinion evidence as to, 7, 507

Pleading

- General issue in assumpsit, 18, 540

Probate and letters of administration, 19, 196**Rescission of Contract, 21, 42****See infra, AS A DEFENSE TO CONTRACT.****Sale, 21, 56****Specific performance, 22, 1027****Stations (railroad), 23, 126****Streets and sidewalks, 24, 103****Testamentary Capacity, 25, 990**

- Burden of proof, 25, 991
- Delirium from intoxication, 25, 991
- Habitual drunkenness, 25, 990
- Impaired mind, 25, 992
- In general, 25, 990

Trusts and Trustees

- Ground for removal, 27, 86

Vendor and purchaser, 28, 85, 86**Witnesses, 29, 614**

- Competency in general, 29, 614
- Credibility, 29, 614
- How competency determined, 29, 614
- Intoxication at time of trial, 29, 614

DRY GOODS, 6, 35**DUCES TECUM, see SUBPOENA.****DUE, 6, 36****See generally, DEBT.****Become due, 6, 38****Debts due, 5, 158, 164****Debt and due synonymous, 5, 158****Debt, dues, and demands, 5, 159****Due and owing, 6, 40; 17, 298****Due and payable, 6, 40****Due care, 2, 732; 6, 40****Due cause, 3, 44; 6, 40****Due course, 6, 40****Due course of law, 6, 40****Due diligence, 6, 41****Due east, 6, 153****Due notice, 6, 42; 16, 789****Due return, 6, 42****Due rights, 6, 42****Due security, 6, 42****Due west, 6, 42****Grow Due, 6, 39****Synonymous with become due, 6, 39****In sense of payable, 6, 36****Justly due, 3, 188; 6, 39; 12, 382, 514****Legally due, 6, 39****Nothing due, 6, 38, 39****Now due, 6, 39****Sum due, 6, 39****Synonymous with owing, 6, 36****What may be due, 6, 39****DUE-BILL****Clearing-house due-bill, 3, 285****Whether negotiable, 16, 480****DUELLING, 6, 53****Bearer of a challenge, 2, 159****Challenge, 4, 669; 6, 53; 13, 500**

- Expression of readiness to accept a challenge, 6, 54

Form of words, 6, 53**Whether an offense, 6, 53****Consent, 6, 54****Definition, 6, 53****Disfranchisement, 6, 54****Evidence, 6, 54****Jurisdiction, 6, 54**

- Malice presumed from agreement, 9, 550
 Practice, 6, 54
 Public officers, 19, 411
- DUE PROCESS OF LAW**, 3, 714-718; 4, 446; 6, 43; 17, 474
See CONSTITUTIONAL LAW.
- Actions in rem, 3, 715
 As applied to judicial proceedings, 6, 44
 "Betterment laws," 3, 718
 Commitment for trial, 6, 51
 Condemnation under power of eminent domain, 3, 718
- Contempt**
 Indefinite imprisonment for, 9, 218
- Costs, 17, 474
- Curative Acts**
 Where deed was positively void, 3, 760
- Declaratory statutes, 3, 718
 Definition, 6, 43; 19, 224
 Divorce against non-resident, 3, 715
 Does not mean merely an act of the legislature, 3, 714
 Due course of law, 6, 40
 Duelling, 6, 53
 Equivalent to "the law of the land," 3, 714
 Extending to executive and administrative, as well as to judicial proceedings, 3, 715
- Extradition**, 7, 654
 Authority of the federal courts, 7, 654
 Discharge after trial, 7, 655
 Discharge before trial, 7, 655
 Trial under unconstitutional law, 7, 655
 What is due process of law, 7, 654
 Where the proceedings have been regular, 7, 654
- Fellow Servants**
 Statute rendering employer liable, 7, 862
- Function of the supreme court, 22, 140, 141
- Habeas corpus, 9, 174
- Impounding stock, 10, 187
- Indictment by grand jury, 6, 49
- Instances, 6, 40, 50-52
- Intoxicating Liquors**, 6, 53; 11, 595
 Examples, 11, 596
 Examples of unconstitutional law, 11, 597
 General rule as to constitutionality of statutes, 11, 595
 Ordinances of municipality, 11, 629
 Prohibiting manufacture, 11, 596
 Whether prohibition deprives, 11, 595
- Judicial power where vested, 3, 715
- Jurisdiction, 3, 715
- Law of the land, 6, 43, 45, 46
- Laws regulating conduct of business, 3, 717
- Local assessments, 6, 47, 49; 25, 502
- Meaning of term, 3, 714
- Necessity of jurisdiction, 3, 715
- Necessity of process, 22, 108
- Necessity of service, 19, 224, 225
- Notice, 16, 807
 Necessity, 16, 807
- Whether personal notice necessary, 16, 807
- Onerous conditions to sue, 17, 475
- Ordinance, 17, 259
- Ordinance authorizing sale of animals running at large without notice to owner, 3, 718
- Police power, 3, 716; 18, 760
- Power of the legislature, 22, 141
- Proceedings by information, 10, 706
- Railroad commissions, 8, 911, 912
- Service of Process**, 19, 224
 Action in personam, 12, 147*
 Necessity of personal service, 12, 147*
 Service by publication, 22, 140, 141
- Taxation**, 6, 47; 25, 54
 Application of statutory provisions, 25, 54
 Examples, 25, 54, 55
 Forfeiture, 25, 406
 In general, 25, 54
 Notice, 25, 54
 Opportunity to be heard, 25, 54
 Statute validating void assessment, 25, 54
 Summary proceedings, 25, 299
 Trial by judicial tribunal, 25, 55
 Trial by jury, 25, 55
- Tax deeds, 3, 716
- Territories, 25, 957
- Time of entering judgment, 17, 474
- Validity, 6, 44
- Vested rights, 3, 718
- What must concur to give validity to judicial proceedings, 6, 44
- Whether it must be according to course of common law, 6, 47
- DURING**
 The voyage, 6, 100
- DULY**
 Duly arrested, 6, 55
 Duly qualified, 6, 55; 19, 592
 Duly recorded, 6, 55
 Duly sworn, 6, 55
- DUMMY LINES**, *see* RAILROADS; STREET RAILROADS.
- DUMB**, 6, 55
- DUNCE**, 6, 55
- DUNNAGE**, 6, 55
See BALLAST.
- DUPLICATE**, 6, 56
See COPY.
- DUPLICATE TAXATION**, *see* TAXATION; TAXATION (CORPORATE).
- DUPLICITY**, 6, 56
See PLEADING.
- DURATION**, 6, 56
- DURESS**, 6, 57
See generally, UNDUE INFLUENCE.
See THREATS AND THREATENING LETTERS.
Admissions, *see* CONFESSIONS.
Taxation, *see* TAXATION.
- Actions and Defenses**, 6, 90
 Admissions, 6, 99
 Agents, 6, 91
 Assumpsit, 6, 95

DURESS—Cont'd**Actions and Defenses—Cont'd**

- Equity, 6, 92
- Must be brought within a reasonable time, 6, 58
- Note in hands of bona fide holder, 6, 96
- Party to the action, 6, 58
- Person against whom redress is sought must be party to act of duress, 6, 91
- Personal offense, 6, 90

Admissions, 9, 354

Apparent power to enforce threat, 6, 58

Arrest**Imprisonment, 6, 63**

- Contract as a condition of deliverance, 6, 64
- Equitable contracts, 6, 64
- Instances, 6, 62-64
- Lawful, 6, 62
- Married by person under arrest for bastardy, 6, 63
- Must be unlawful, 6, 62
- Notes obtained, 6, 63
- Oppression under lawful process, 6, 62

Assignment of life insurance policy, 14, 583

As specie of fraud, 8, 649

Assumpsit

To recover money paid under, 1, 887

Attachment, 6, 76

At time of giving note but not at time of paying it, 6, 60

Bills and notes, 2, 395

Bond entered into under, 2, 450

Business Necessities, 6, 71

- Compelling payment of money, 6, 71
- Forcing creditor to accept part payment of debt, 6, 72

Payment of licenses, 6, 72

By public officers, 6, 77

Colore officii, 6, 77

Compulsion

- Of legal process, 6, 62, 75
- To discharge a legal duty, 6, 58

Confederate money, 15, 707

Confessions obtained under, 3, 469

Contracts**Rescission, 21, 43**

- Duress of third person, 21, 43
- Extreme necessity and distress, 21, 43

Husband and wife, 21, 43

Parent and child, 21, 43

Crimes, 6, 89

- Committed under, 6, 89
- Order of master, 6, 90
- Orders of superior, 6, 90

Deeds, 6, 81; 9, 25

Arrest, 9, 25

Duress of husband, 5, 430

Duress per minas, 9, 25

General rule, 6, 81

Instances, 6, 82, 83

Married woman, 14, 633

Must be at instigation of grantee, 5, 430

Obtained by, 5, 430

Ratification of contract, 5, 430

Threat of legal proceedings, 9, 25

Void or voidable, 9, 25

What amounts to, 5, 430

Defense to mortgage foreclosure, 8, 230

Definition, 6, 57

Excessive Charge by Common Carriers, 6, 78

Common-law right, 6, 80

Exceptions, 6, 80

Fear of imprisonment, 9, 25

Excessive charge for public duty, 6, 77

Excuse for Crime

Commands from master or other person in authority, 4, 693, 707

Fear of death, 4, 707

Fear of personal injury or imprisonment, 4, 707

Mere apprehension of suffering mischief, 4, 707

Physical force, 4, 707

Threats of future injury, 4, 707

Guaranty, 9, 81

Homicide, 9, 613

Illegal

Detention of property, 6, 74

Seizure, 6, 77

Tolls, 6, 61

Improper use of process of court, 6, 62, 76

Lease, 6, 83

Man of reasonable courage, 6, 57

Marriage, 6, 81

Examples, 14, 510, 511

Nullity suit, 14, 534

What invalidates, 14, 510

Married Women

Deed, 14, 633

Mere threats which cause no real apprehension, 8, 649

Mortgages, 6, 84; 15, 764

Duress of son, 6, 92

Executed by wife by reason of threats against husband, 6, 93

Must proceed from party receiving benefit, 6, 60

Necessity of demand in trover, 5, 528²

Necessity of protest, 6, 77, 80

Negligence, 16, 407

Of agent, 6, 80

Of Goods, 6, 57, 60

Illegal detention of property, 6, 74

Illegal tools, 6, 61

Instances, 6, 60, 61

Of person, 6, 57, 60

Of wife, 6, 93

Parent and child, 6, 92

Payment

Mere threat to sell, 18, 222

Of account under, 1, 119

Voluntary, 18, 218

Per Minas, 6, 57, 64

Act must be performed under influence of threat, 6, 66-68

- Apparent power to enforce threat, 6, 58
 Belief that person was capable of carrying out threat, 6, 64
 Instances, 6, 64-70
 Judicial process, 6, 69
 Legal right to perform threat, 6, 71
 Money paid under a distress, 6, 71
 Person of ordinary courage, 6, 64
Threat
 Of arrest, 6, 69
 Of criminal prosecution, 6, 69
 Of lawful imprisonment, 6, 69
 Of unlawful imprisonment, 6, 69
 Such as would naturally excite fear, 6, 64
 Threats which cause reasonable apprehension, 8, 649
 To employ colorable legal authority, 6, 70
 Threatening a civil suit, 6, 71
 What constitutes, 6, 58
 When it exists, 6, 64
 When money is paid involuntarily, 6, 69
 Person against whom redress is sought must be party to act of duress, 6, 58
 Plea of guilty under, 6, 89
Principal and Surety, 6, 96
 Duress of principal, 6, 96
 Promise of marriage obtained by, 2, 523
Protest
 Effect of, 6, 87
 Necessity of, 6, 87
 Public officers, 6, 87
 Public duty, 6, 77
 Questions of law and fact, 19, 658
Ratification, 6, 88
 Delays, 6, 89
 Implied, 6, 88
 Receipt given under, 1, 120
 Redemption of land, 6, 84
 Refusal of personal services, 6, 75
 Refusal to deliver property, 6, 74
Release, 20, 748
 Claims for personal injury, 20, 763
Rescission of Contract, 21, 43
 Duress of third persons, 21, 43
 Extreme necessity and distress, 21, 43
 Husband and wife, 21, 43
 Parent and child, 21, 43
 Seamen, 21, 921
 Specific performance, 22, 1027
Suretyship, 24, 731
 Contracts executed under, 24, 731
 Duress of principal, 24, 731
 Examples, 24, 731
Taxation
Recovery of Taxes Paid, 25, 468
 Examples 25, 469
 Levy and sale, 25, 469
 Necessity of actual duress, 25, 468
 Protest 25, 468
 Threats of sale, 25, 469
 To clear title, 25, 469, 470
 Warrant in the nature of an execution, 25, 469
 What constitutes, 25, 469
 Threats, see *infra*, PER MINOS; see **THREATS**.
Trover
 In obtaining possession of property, 26, 739
 Trusts and trustees, 27, 315
 Undue influence distinguished from, 27, 453
 Vendor and purchaser, 28, 86
 When a payment is to be considered compulsory, 6, 59
 When money paid under may be recovered, 6, 61
 Where none of person or goods, 6, 58
DURING, 6, 99
 During pleasure, 6, 99
 During term time, 6, 100
 During their lives, 6, 99
 During the trial, 6, 99
 During widowhood, 6, 100
 For and during, 8, 94
"DUST," 6, 100
 Nuisances, 16, 950
DUTY, 6, 100
 See **REVENUE LAWS**.
 Distinguished from debt, 5, 159
 Synonymous with debt, 6, 100
 Taxation distinguished from, 25, 15
DWELL, 6, 100
DWELLING, 6, 101
 Health, 9, 322
 Private, 6, 101
 To live and carry on business, 13, 928
DWELLING HOUSE, 2, 677, 678; 6, 101
 Larceny from, see **LARCENY**.
 Burglary, see **BURGLARY**.
 As compared with house, 9, 778
 Definition, 1, 765
 Election laws, 6, 103
 Homicide, in defense of, 9, 606
 In burglary, 2, 671, 672
 In law of arson, 1, 758, 764
 Mansion, 14, 255
 Messuage, 15, 386
 Private dwelling house, 19, 95
 Statute of frauds, 8, 667
 When house becomes, 1, 769
DWELLING PLACE, 6, 104
DYING
 Without issue, see **ISSUE**.
DYING DECLARATION, 6, 105; 7, 70; 9, 679
 Abortion, 6, 106
Admissibility
 Discretion of court, 6, 128; 9, 670
 Not depending upon character of defense, 6, 136
 At what time death must take place, 9, 682
 Children, 6, 133
 Civil cases, 6, 107
 Condition of declarant, 6, 134
 Constitutionality of admission, 3, 735
 Constitutional provision as to being confronted with witnesses, 7, 658

DYING DECLARATION—*Conf'd*

Constitutional provision that accused shall be confronted with witnesses, 6, 106

Contradictory to other declarations of deceased, 9, 689

Court determining competency, 6, 128; 9, 670

Credit

Questions for jury, 6, 130

Declarant unconscious, 6, 134

Declaration partly in writing and partly in parol, 9, 681

Declarations in writing, 6, 129

Definition, 6, 105

Degree of Credit

Whether entitled to same as witness under oath, 6, 121

Evidence for Prisoner, 6, 131

Character of deceased, 6, 131

Declarations exonerating prisoner, 6, 132

Religious belief of deceased, 6, 132

State of mind of deceased, 6, 131

Expectation of approaching death, 9, 679

Expectation or hope of recovery, 6, 107

Homicide

Declarations of deceased before act causing death, 9, 676

Declarations of deceased not made in presence of defendant, 9, 677

Venue, 6, 107; 9, 681, 730

Hope of Recovery

Afterwards abandoned, 6, 116

Declarations not admissible, 6, 113

Faint, 6, 109

Identified by others than declarant, 6, 120

Inference, 6, 128

Instances, 6, 107-120

Requisite preliminary proof, 6, 127

Review of English cases, 6, 118

Subsequent hope, 6, 117

How expectation of approaching death is shown, 9, 681

How made, 6, 120

Husband and wife, 6, 134; 9, 807

Impeaching, 9, 681

By contradictory statements, 9, 724

In answer to leading questions, 6, 121

In articulo mortis, 6, 107

Inference of consciousness of immediate death, 6, 108

Interval of time between declaration and death, 6, 122

Made by signs, 6, 120

Memorandum, 15, 277

Necessity that there should be a statement of pending death, 6, 108

Not reduced to writing, 6, 130

Other evidence of same facts, 6, 128

Perjury, 18, 331

Practice, 6, 135

Previous declarations affirmed under sense of impending death, 6, 116

Proof of parol declarations, 6, 130

Questions of Law and Fact

Admissibility, 6, 128; 9, 670

Credit, 6, 130

Weight of declarations, 6, 130

Requiring jury to withdraw, 9, 670

Requisite Preliminary Proof, 6, 127

Expectation of impending death, 6, 127

Hope of recovery, 6, 127

Inference, 6, 128

Question for court, 6, 128

Statement that declarations were made with sense of impending death, 6, 127

Res Gestæ, 6, 123

Before or after act, 6, 123

Civil cases, 6, 107

Fullness and clearness, 6, 127

Instances, 6, 123-127

Name of deceased, 6, 125

Name of person committing homicide, 6, 125

Only those things to which declarant might have testified, 6, 126

Opinion or belief, 6, 126

Restricted to, 6, 123

Threats of defendant, 6, 124

What constitutes, 6, 123

Where two persons are killed, 6, 125

Robbery, 6, 106

Sense of impending death, 6, 107

Several, 6, 134

Situation of party who makes them, 6, 107

Solicitation, 6, 121

Two dying by same hands, 6, 107

Weight of dying declarations, 9, 681

When admissible, 6, 106; 9, 681

Where two persons are guilty, 6, 125

Whether expectation of immediate death is necessary, 9, 680

EACH, 6, 136; 11, 370

In each case, 3, 29

Offense, 6, 137

With each other, 13, 279

EAR, 6, 137

Ear mark, 14, 457

EARNEST, 21, 477

See FRAUDS, STATUTE OF.

EARNEST MONEY, *see* FRAUD, STATUTE OF.

See SALES.

EARNINGS, 6, 138; 14, 668; 25, 646

As to the assignment of future earnings, *see* ASSIGNMENTS.

Of married women, *see* HUSBAND AND WIFE; SEPARATE PROPERTY OF MARRIED WOMEN.

Supplementary proceedings, *see* SUPPLEMENTARY PROCEEDINGS.

Net earnings, 16, 487; 23, 612

Surplus earnings, 23, 613

EARTH, 6, 138

Earth and gravel, 6, 139

Earth oils, 3, 287

Excavation of earth, 6, 139

EASEMENTS, 10, 360

See APPURTENANCES; CEMETERIES; DEDICATION.

See generally, PROFIT À PRENDRE.

See HIGHWAY; LATERAL AND SUBJACENT SUPPORT; MILLS; PARTY WALLS; PRESCRIPTION; PRIVATE WAYS.

Navigable waters, see NAVIGABLE WATERS.

Abandonment, 1, 6; 6, 147

Definition, 6, 148

Easement created by deed, 6, 148

Permanent obstruction of common way, 6, 148

Presumption, 6, 147

Apparent Easements

Definition of, 1, 615

Appurtenant, 6, 140

Characteristics and incidents, 6, 142

Claim to

Effect upon fee, 1, 297

Conditions, 19, 1050

Continuous, 6, 141

Definition, 1, 615

Dedication, 6, 145, 146

Definition, 6, 139

Discontinuous, 5, 678; 6, 141

Distinguished from license, 6, 141; 13, 541

Distinguished from Profit à Prendre, 6, 142; 19, 271

Assignability, 19, 261

Held independently of dominant estate, 19, 261

Inheritability, 19, 261

Profits à prendre in gross, 19, 261

Rights of profit, 19, 261

Taking water, 19, 262

Distinguished from servitude, 22, 208

Division of dominant estate, 6, 152

Ejectment, 6, 232

Eminent Domain

Appropriation under, 6, 530

Essential qualities, 6, 142

Estoppel, 7, 21

Extent and mode of use, 6, 152

Extinguished by license, 13, 548

Flooding, 15, 585

Gas Companies

Right to use of streets, 8, 1281

Guardian's power to grant, 9, 115

How Acquired or Created

Easements of necessity, 6, 144

Grant, 6, 143

Implied, 6, 143

Passing with estate, 6, 143

Prescription, 6, 143

Prescription or grant, 6, 143

Reservation, 6, 143

How Lost or Extinguished, 6, 146

Abandonment, 6, 147

License, 13, 548

Merger, 6, 146

Release, 6, 146

Incorporeal hereditaments, 6, 142

In gross, 6, 140

Injunctions, 10, 847

Parties, 10, 798

Water rights, 10, 852

Interpretation, 11, 538

Judgment lien, 12, 107

Landlord and tenants, 12, 708

Legislative grant, 19, 1050

License, 6, 142; 13, 545, 548

License in connection with estoppel, 13, 548

Light and Air, 6, 152

See ELEVATED RAILROADS.

General doctrine, 3, 170

Necessary easements, 16, 371

Negative easements, 16, 384

Non-user, 1, 3

Parol license, 6, 142

Partition, 17, 774, 785

Sale instead of division, 17, 794

Perpetuities, 18, 344, 353

Pews, 18, 414

Pipe lines, 18, 460

Prescription

Easements of light and air, 6, 152

Public, 6, 146

Rebutting presumption, 6, 145

Presumed from unity of grant, 19, 55

Quasi easements, 6, 140, 141

Real Covenants

Covenant for seisin, 19, 980

Right of public to float logs, 2, 470

Rights and Liabilities of Parties, 6, 140

Action for unlawful obstruction, 6, 150

Changes, 6, 150, 151

Easements will remain same as when acquired, 6, 149

Enlarging use, 6, 149

Permanent injury to inheritance, 6, 151

Purchaser after extinguishment, 6, 150

Redress at law, 6, 151

Redress in equity, 6, 151

Repairs, 6, 149

Sheriff's sales, 22, 631

Specific Performance

As defect of title, 22, 952

Statute of frauds, 6, 143; 8, 696

Taxation

Appurtenant to realty, 25, 123

To Drain through Lands of Another, 6, 18

Conferred by parol license, 6, 18

Duties of owner of easement, 6, 19

Implied grant, 6, 19

Revocation, 6, 19

Trespass for obstruction of easement, 6, 594

Turnpikes, 27, 327

Ways from necessity, 6, 144, 145

Whether property, 19, 286

EAST, 6, 153

Due, 6, 153

EASTERLY, 6, 153**EATING-HOUSE, 6, 153****EAVES-DRIP, see SURFACE-WATERS.****EAVESDROPPING, 6, 153**

Definition, 6, 153

Indictable nuisance, 6, 154

EAVESDROPPING—Cont'd

- Listening about grand-jury rooms, 6, 153
- Procedure, 6, 154
- Proving more than one offense, 6, 154
- What constitutes offense, 6, 153

EBONY

- Manufactures of ebony, 14, 259

ECCLESIASTICAL, 6, 154**ECLECTIC, 6, 154****ECUMENICAL, 6, 154****EDITION, 5, 155****EDITOR, 6, 155****EDUCATE, 6, 156**

See EDUCATION.

See generally, PARENT AND CHILD; SCHOOLS; UNIVERSITIES AND COLLEGES.

Support and education, 6, 156

EDUCATION, 6, 158

See PARENT AND CHILD; SCHOOLS; UNIVERSITIES AND COLLEGES.

"An English education," 6, 645

Bureau and commissioner of education in United States, 6, 160

Compulsory education, 21, 764

Constitutional provisions guaranteeing right of, 6, 159

Construction of Term

In a deed, 6, 161

In a will, 6, 162, 163

In statute, 6, 161

Educational corporations, 6, 160

Educational qualifications to right of suffrage, 6, 160

Education defined, 6, 158

In England, 6, 158

In Ireland, 6, 158

In Scotland, 6, 158

Indians, 10, 444

Infant's necessities, 10, 661

Orders of court as to, 6, 161

Parent and Child, 17, 346

Apprentices, 17, 347

Assigning services for benefit of parent, 17, 347

Father's right to bind out children, 17, 347

Habeas corpus, 17, 348

Informalities, 17, 348

Mother's right, 17, 347

Statutory regulations, 17, 348

Duty of parent, 17, 346

Religious education, 17, 346

Trade or profession, 17, 346

Whether absolute duty, 17, 346

Succession Taxes

Exemption from taxation, 24, 445

Trusts for Education, 3, 128

See CHARITIES.

EFFECT

With effect, 29, 519

EFFECTED, 1, 307**EFFECTS, 6, 169, 174**

See GOODS.

"All and singular my effects," 6, 175

"All my estates and effects," 6, 179

Articles and effects, 6, 194

Claims and, 3, 274; 6, 187

"Effects, stock, books, and book debts, 6, 194

"Effects whatsoever and wheresoever," 6, 181

Equivalent to property, 6, 174

Estate and effects, 6, 193

Faith, credit and effect, 6, 173

Garnishment, 8, 1161

Goods, chattels and effects, 6, 187

Goods, effects and credits, 6, 188

Goods, merchandise and effects, 6, 189

Household effects, 6, 185; 9, 782

Like, 6, 171; 13, 662

Master's effects, 6, 192

Means and effects, 6, 186

Of evidence, 6, 173

Property and effects, 6, 187

Sale of effects, 6, 194

Securities or effects, 6, 190

Take, 6, 171

To prosecute with, 6, 170

To that, 6, 172

What Kinds of Personality Included in, 6, 182

Debts, 6, 182

Limited to articles ejusdem generis, 6, 184

EFFECTUAL, 6, 196**EITHER, 6, 195**

Equivalent to any, 1, 611

EJECTMENT, 6, 195

See generally, ENTRY, WRIT OF.

Abatement, 6, 214, 245j

In California, 6, 214

In Colorado, 6, 214

In Connecticut, 6, 214

In Illinois, 6, 214

In Louisiana, 6, 214

In Maine, 6, 214

In Maryland, 6, 214

In Massachusetts, 6, 214

In Michigan, 6, 214

In Mississippi, 6, 214

In New Hampshire, 6, 214

In New Jersey, 6, 214

In Pennsylvania, 6, 214

In Rhode Island, 6, 214

In Tennessee, 6, 214

In Vermont, 6, 214

In Wisconsin, 6, 214

Abstract of Title, 6, 215

In Alabama, 6, 215

In Georgia, 6, 215

In Iowa, 6, 215

In Maine, 6, 215

In Mississippi, 6, 215

In New Jersey, 6, 215

In Pennsylvania, 6, 215

In Texas, 6, 215

Action for recovery, 6, 200

"Actual occupant," 6, 593

Admissions, 5, 245j; 6, 245n

Adverse Possession, 6, 204, 235

As a bar, 6, 235

Co-tenants, 6, 236

Disseisor defined, 6, 205
 General rule as to, 6, 236
 In Maine, 6, 204
 In Massachusetts, 6, 205
 In North Carolina, 6, 204
 In Ohio, 6, 204
 In South Carolina, 6, 204
 In West Virginia, 6, 205
 Mere lapse of time without adverse possession, 6, 235
 What constitutes, 6, 236
Alienation by Person in Possession, 6, 210
 In Colorado, 6, 210
 In Iowa, 6, 210
 In Minnesota, 6, 210
 In Oregon, 6, 211
 Amendment, 6, 245*j*
 Appeal, 6, 245*cc*
 As substitute for bill in equity, 6, 230
 As to evidence, 6, 245*g*
 Bare possession, 26, 32
 By coparceners, 6, 244
 By holder of fee in public highway, 6, 241
 By joint tenants, 6, 244
 By mortgagee, 6, 245
 By owner of land taken by railroad company, 6, 241
 By purchaser at sheriff's sale, 6, 231
 By purchaser of equity of redemption, 6, 245*a*
 By widow before dower is assigned, 5, 906
 Code system, 6, 200
 Costs, 6, 245*y*
Co-tenants, 6, 206, 244, 245, 245*m*; 11, 1095, 1130
 Defendant's evidence, 6, 245*p*
 Proof of ouster, 6, 245*m*
Damages and Mesne Profits, 6, 217, 245*y*
 In Alabama, 6, 217
 In Arkansas, 6, 217
 In Colorado, 6, 217
 In Georgia, 6, 217
 In Illinois, 6, 217
 In Indiana, 6, 217
 In Iowa, 6, 217
 In Kentucky, 6, 217
 In Maine, 6, 217
 In Maryland, 6, 217
 In Massachusetts, 6, 217
 In Michigan, 6, 217
 In Minnesota, 6, 218
 In Mississippi, 6, 218
 In Missouri, 6, 218
 In Nebraska, 6, 218
 In New Jersey, 6, 218
 In New York, 6, 218
 In Oregon, 6, 218
 In Pennsylvania, 6, 218
 In South Carolina, 6, 218
 In Tennessee, 6, 218
 In Texas, 6, 218
 In Vermont, 6, 218
 In Virginia, 6, 218
 In West Virginia, 6, 218

Defendant's Evidence

Forced issue—tenant in common, 6, 245*p*
 Landlord's title, 6, 245*p*

Defendant's Title

Ancestor's seisin disputed, 6, 245*o*
 Outstanding title, 6, 245*u*

Defenses, 6, 245*q*

Equitable Defenses, 6, 245*q*
 At common law, 6, 245*r*
 Under the statute, 6, 245*q*
 Mortgage, 6, 245*s*
 Outstanding title, 6, 245*u*, 245*r*
 Title, 6, 245*q*
 Where landlord enters as defendant, 6, 245*s*

Definition of disclaimer, 5, 672

Definition Under Code, 6, 201

In Alabama, 6, 201
 In Arkansas, 6, 201
 In California, 6, 201
 In Colorado, 6, 201
 In Connecticut, 6, 201
 In Delaware, 6, 201
 In Illinois, 6, 201
 In Indiana, 6, 201
 In Iowa, 6, 201
 In Louisiana, 6, 201
 In Wisconsin, 6, 201

Disabilities, 6, 222

In Illinois, 6, 222
 In South Carolina, 6, 222
 In Tennessee, 6, 222
 In Virginia, 6, 222

Disclaimer, 6, 245*p*

Discovery of plaintiff, 6, 215

Disseisin, 6, 200

Election between ejectment and trespass, 6, 231

Eminent Domain, 6, 593

As to the construction of railroads in streets, see RAILROADS.

As to the construction of street railways, see STREET RAILWAYS.

Change of grade, 6, 538

Granting time to company to pay damages, 6, 593

Streets of city, 6, 593

Unlawful entry, 6, 593

Waiver of right, 6, 594

English statutes, 6, 200

Entry

By grantee of state, 6, 232

Estoppel, 6, 245*k*; 7, 19

Evidence, 6, 216

In Alabama, 6, 216
 In Arkansas, 6, 216
 In Colorado, 6, 216
 In Illinois, 6, 216
 In Indiana, 6, 216
 In Kentucky, 6, 216
 In Maine, 6, 216
 In Maryland, 6, 216
 In Massachusetts, 6, 216
 In Michigan, 6, 216
 In Mississippi, 6, 217
 In Missouri, 6, 217

EJECTMENT—*Cont'd***Evidence—*Cont'd***

- In Oregon, 6, 217
- In Pennsylvania, 6, 217
- In Rhode Island, 6, 217
- In Tennessee, 6, 217
- In Texas, 6, 217
- In Vermont, 6, 217
- In Virginia, 6, 217
- In West Virginia, 6, 217

Executors and administrators, 7, 271

Feigned issues, 6, 203

For coal mine, 3, 314

For What Ejectment Lies

- Dower, 6, 233
- Easements, 6, 232
- Fixtures, 6, 232
- Incorporeal hereditaments, 6, 232
- Interest in lands, 6, 232
- Land under water, 6, 233
- Mere privilege, 6, 234
- Owner of fee in a highway, 6, 233
- Right of way, 6, 232
- Trespass on lands, 6, 232

History of, 6, 197

- In Virginia, 6, 199
- In West Virginia, 6, 199

Imprisonment for debt, 10, 216

Improvements, 6, 218, 245^c

- At common law, 6, 245^c
- Constitutionality of statutes, 6, 245^{bb}
- In Alabama, 6, 218
- In Arkansas, 6, 218
- In California, 6, 218
- In Colorado, 6, 218
- In Connecticut, 6, 218
- In Illinois, 6, 218
- In Indiana, 6, 219
- In Iowa, 6, 219
- In Kentucky, 6, 219
- In Massachusetts, 6, 219
- In Michigan, 6, 219
- In Minnesota, 6, 219
- In Mississippi, 6, 219
- In Missouri, 6, 219
- In Nebraska, 6, 219
- In New Hampshire, 6, 219
- In New Jersey, 6, 219
- In New York, 6, 219
- In Ohio, 6, 219
- In Oregon, 6, 219
- In South Carolina, 6, 219
- In Tennessee, 6, 219
- In Texas, 6, 219
- In Vermont, 6, 219
- In Virginia, 6, 219
- In West Virginia, 6, 219
- In Wisconsin, 6, 218, 219
- Measure of recovery, 6, 245^{aa}
- Prerequisites to recovery, 6, 245^{bb}
- Strict construction of statutory provisions, 6, 245^{aa}
- Tenant in common, 6, 245^{aa}
- Under the statutes, 6, 245^{aa}
- When claimed to be made, 6, 245^{bb}
- When recovery for improvements does not lie, 6, 245^{bb}

- In Arkansas, 6, 200
- In Colorado, 6, 200
- In Connecticut, 6, 200, 201
- In Indiana, 6, 200
- In Iowa, 6, 200
- In Kansas, 6, 200
- In Kentucky, 6, 200
- In Minnesota, 6, 200
- In North Carolina, 6, 200
- In Ohio, 6, 200
- In Oregon, 6, 200
- In South Carolina, 6, 200
- Injunction, 6, 245^{dd}; 10, 809
- Instruction, examples of, 11, 267-274
- Interest Required to Sustain Action, 6, 202**
 - In Arkansas, 6, 202
 - In Georgia, 6, 203
 - In Illinois, 6, 202
 - In Indiana, 6, 203
 - In Iowa, 6, 203
 - In Maine, 6, 203
 - In Massachusetts, 6, 203
 - In Michigan, 6, 203
 - In Missouri, 6, 203
 - In Oregon, 6, 203
 - In Tennessee, 6, 203
 - In Virginia, 6, 203
 - In West Virginia, 6, 203
 - In Wisconsin, 6, 202, 203
- Joinder of Actions, 6, 214**
 - In California, 6, 214
 - In Colorado, 6, 214
 - In Georgia, 6, 214
 - In Kentucky, 6, 215
 - In Louisiana, 6, 215
 - In New York, 6, 215
 - In North Carolina, 6, 215
 - In Ohio, 6, 215
 - In Oregon, 6, 215
- Joinder of Parties, 6, 245^h**
 - Co-tenants, 6, 245
- Joinder of Parties Generally, 6, 207**
 - In Iowa, 6, 207
 - In Missouri, 6, 207
 - In New Jersey, 6, 207
 - In New York, 6, 207
 - In Ohio, 6, 207
 - In Tennessee, 6, 207
 - In Texas, 6, 207
 - In Virginia, 6, 207
 - In Wisconsin, 6, 207
- Joinder with foreclosure under codes, 11, 1015^f
- Joint tenants and tenants in common, 6, 206, 244, 245, 245^m; 11, 1095, 1130
- Judgments, 6, 220, 245^v**
 - Against casual ejector, 6, 245^t
 - By default, 6, 245^x
 - Growing crop, 6, 245^t
 - In Alabama, 6, 220
 - In Arkansas, 6, 220
 - In Colorado, 6, 220
 - In Delaware, 6, 220
 - In Florida, 6, 220
 - In Georgia, 6, 220
 - In Illinois, 6, 220

- In Indiana, 6, 220
- In Iowa, 6, 220
- In Maine, 6, 220
- In Maryland, 6, 220
- In Massachusetts, 6, 220
- In Michigan, 6, 220
- In Minnesota, 6, 220
- In Mississippi, 6, 220
- In Missouri, 6, 221
- In Nebraska, 6, 221
- In New Hampshire, 6, 221
- In New Jersey, 221
- In New York, 6, 221
- In North Carolina, 6, 221
- In Oregon, 6, 221
- In Pennsylvania, 6, 221
- In South Carolina, 6, 221
- In Tennessee, 6, 221
- In Texas, 6, 221
- In Vermont, 6, 221
- In Virginia, 6, 221
- In West Virginia, 6, 221
- In Wisconsin, 6, 221
- Is admissible evidence in bar, 6, 245^w
- Mesne profits, 6, 245^w
- Party coming in pendente lite, 6, 245^t
- Plaintiff's title terminating, 6, 245^t
- States in which two judgments are required to bar action, 6, 220
- To what the recovery is confined, 6, 245^w
- What interest may be recovered, 6, 245^t
- When and When Not Conclusive, 245^w,
245^v**
- After acquired title, 6, 245^v
- At common law, 6, 245^w
- In Georgia, 6, 245^v
- In Kentucky, 6, 245^v
- In Louisiana, 6, 245^v
- In Minnesota, 6, 245^v
- In New Jersey, 6, 245^v
- In Pennsylvania, 6, 245^v
- In Tennessee, 6, 245^v
- In Wisconsin, 6, 245^v
- When conclusive, 6, 245^v
- Jurisdiction, 6, 211**
- In California, 6, 211
- In Maryland, 6, 211
- In New York, 6, 211
- In Rhode Island, 6, 211
- In United States Courts, 6, 223**
- Amount in controversy, 6, 223
- Colorable conveyance, 6, 224
- Equitable title, 6, 223
- Legal title, 6, 223
- Necessity of showing paramount legal title, 6, 223
- New trials, 6, 224
- Landlord and Tenant, 6, 207, 237; 12, 758^t**
- In Arkansas, 6, 207
- In California, 6, 207
- In Delaware, 6, 207
- In Georgia, 6, 207
- In Illinois, 6, 207
- In Indiana, 6, 207
- In Kansas, 6, 208
- In Kentucky, 6, 208
- In Louisiana, 6, 208
- In Maryland, 6, 208
- In Massachusetts, 6, 208
- In Michigan, 6, 208
- In Minnesota, 6, 208
- In Mississippi, 6, 208
- In New Hampshire, 6, 208
- In New Jersey, 6, 208
- In New York, 6, 208
- In North Carolina, 6, 208
- In Oregon, 6, 208
- In Pennsylvania, 6, 208
- In Rhode Island, 6, 208
- In South Carolina, 6, 208
- In Tennessee, 6, 208
- In Virginia, 6, 208
- In Wisconsin, 6, 208
- Instances, 6, 237
- Necessity of demand, 12, 758^t
- Necessity of notice to quit, 12, 738^t
- Possessory action, 12, 758^w
- Re-entry, 6, 237
- Subtenant, 12, 758^t
- Tenant holding over, 12, 758^t
- Tenant repudiating tenancy, 12, 758^t
- When the relationship exists, 6, 237
- Legacies and devises, 13, 152, 188
- Lodgings and apartments, 13, 1007
- Lost deed, 2, 305
- Mesne Profits, 11, 1005, 1006**
- And profits in one court, 11, 1006
- Trespass for, 6, 245^v
- Mines and Mining Claims**
- Plaintiff relying on strength of his own title, 15, 558
- By mortgagor, 6, 245^a
- Municipal corporations, 15, 1185
- Nature of Action, 6, 225**
- Under Statutes, 6, 225**
- In Connecticut, 6, 225
- In Illinois, 6, 225
- In Louisiana, 6, 225
- In New York, 6, 226
- In Wisconsin, 6, 225
- Whether personal, mixed, or real, 6, 225
- Necessity of strict legal title, 26, 36
- New Trial, 6, 222, 245^{cc}; 16, 596**
- Actions to enforce liens, 16, 597
- Action to quiet title, 16, 598
- Common law, 16, 596
- Conditions, 16, 599, 600
- Construction of statute, 16, 597
- Costs, 16, 600
- Court in which actions must be brought, 16, 601
- Court's discretion, 16, 601
- Damages, 16, 600
- Disputed boundaries, 16, 598
- Effect of the statute, 16, 596
- Examples, 16, 599
- Forcible entry and detainer, 16, 597
- Fraudulent conveyances, 16, 597
- In Colorado, 6, 222
- In Illinois, 6, 222
- In Indiana, 6, 222

EJECTMENT—Cont'd**New Trial—Cont'd**

- In Michigan, 6, 222
- In Nebraska, 6, 222
- In New York, 6, 222
- In Wisconsin, 6, 222
- Judgment before new trial can be demanded, 16, 599
- Necessity for demand, 16, 600
- Notice, 16, 600
- Partition, 16, 597
- Statutory provisions, 16, 596
- Time within which applications must be made, 16, 601
- Waiver of objections, 16, 601
- What included by statute, 16, 597
- Whether more freely granted than in other cases, 16, 596
- Whether new trial will be granted, 16, 596
- Whether right is granted to both parties, 16, 599

North and south, 6, 200**Notice to Quit, 6, 238**

After foreclosure of mortgage, 6, 240

Co-tenants, 6, 240

Disclaimer, 6, 239

Examples of when notice is or is not necessary, 6, 238-241

Mortgagor, 6, 240

Necessity of relationship of landlord and tenant, 6, 238

Purchaser from mortgagor, 6, 240

Tenancy from year to year, 6, 239

Tenant at sufferance, 6, 239

Tenant at will, 6, 240

Who entitled to, 6, 238

Occupancy, 6, 245*g***Occupying claimant, 6, 245*cc*****One form of action, 6, 200****Ouster, 6, 245*m***

One co-tenant against another, 6, 245*m*

Proof of, 6, 245*m*

Outstanding Title, 6, 245*n*, 245*r*; 26, 32

Discussion of the doctrine, 26, 32-35

Doctrine that outstanding title always defeats plaintiff, 26, 32

Necessity of strict legal title, 26, 36

Origin of doctrine, 26, 35

Outstanding title of government, 26, 35

Plaintiff recovering on strength of his own title, 26, 32

Plaintiff showing a better right, 26, 32

Sheriff's deed, 6, 245*o*

When defendant may invoke, 26, 32

Where prima facie title is shown by plaintiff, 6, 245*o*

Parties, 6, 205**Co-Tenants, 6, 206**

See *infra*, CO-TENANTS.

In Arkansas, 6, 206

In Colorado, 6, 206

In Georgia, 6, 206

In Indiana, 6, 206

In Iowa, 6, 206

In Kansas, 6, 206

In Michigan, 6, 206

In Minnesota, 6, 206

In Missouri, 6, 206

In Nebraska, 6, 206

In New Jersey, 6, 206

In New York, 6, 206

In Ohio, 6, 206

In Oregon, 6, 206

In Tennessee, 6, 206

In Virginia, 6, 206

In West Virginia, 6, 206

In Wisconsin, 6, 206

Heir or devisee, 6, 206

Joinder of Co-Tenants and Tenants in

Common, 6, 206

In Illinois, 6, 206

In Maine, 6, 206

In Maryland, 6, 206

In Massachusetts, 6, 206

In Missouri, 6, 206

In Pennsylvania, 6, 207

In Rhode Island, 6, 207

In Wisconsin, 6, 207

Vendor and vendee, 6, 206

Parties Defendant, 6, 209, 245*c*

Actual occupant, 6, 245*c*

Adverse claimants, 6, 245*d*

Coparceners, 6, 245*e*

Corporations, 6, 245*d*

Dower, 6, 245*e*

Holder of tax title, 6, 245*f*

Husband and wife, 6, 245*e*

In Alabama, 6, 209

In Arkansas, 6, 209

In Colorado, 6, 209

In Georgia, 6, 209

In Illinois, 6, 209

In Indiana, 6, 209

In Iowa, 6, 209

In Kentucky, 6, 209

In Louisiana, 6, 209

In Maryland, 6, 209

In Massachusetts, 6, 209

In Michigan, 6, 209

In Mississippi, 6, 209

In Missouri, 6, 209

In New Jersey, 6, 209

In New York, 6, 209

In North Carolina, 6, 209

In Oregon, 6, 209

In Pennsylvania, 6, 209

In Tennessee, 6, 210

In Texas, 6, 210

In Vermont, 6, 210

In Virginia, 6, 210

In West Virginia, 6, 210

In Wisconsin, 6, 210

Infants, 6, 245*e*

Landlord, 6, 245*f*

Mortgagee, 6, 245*e*

One claiming title, 6, 245*c*

Person exercising acts of ownership,

6, 245*d*

Privy, 6, 245*c*

Servants, 6, 245*e*

Tenant at will, 6, 245*e*

- Vendor and vendee, 6, 245*d*
- Parties Generally**
- In California, 6, 205
- In Kansas, 6, 205
- In Minnesota, 6, 205
- In Mississippi, 6, 205
- In Ohio, 6, 205
- In Vermont, 6, 205
- Parties Plaintiff**, 6, 208, 241
- Administrator, 6, 243
- Agent, 6, 243
- Committee of imbecile, 6, 243
- Coparceners, 6, 244
- Corporations, 6, 242
- Devisee, 6, 242
- Dower, 6, 242
- Executor, 6, 244
- Grantor and grantee, 6, 241
- Guardian, 6, 243
- Heir, 6, 244
- In Arkansas, 6, 208
- In Indiana, 6, 208
- In Louisiana, 6, 208
- In Maryland, 6, 209
- In New York, 6, 209
- In Oregon, 6, 209
- In Pennsylvania, 6, 209
- In Rhode Island, 6, 209
- In South Carolina, 6, 209
- In Wisconsin, 6, 209
- In general, 6, 241
- Joint tenants, 6, 244
- Mortgagee, 6, 245
- Mortgagor, 6, 245*a*
- Party without title, 6, 245*b*
- Public officers, 6, 242
- Remaindermen, 6, 242
- Reversioner, 6, 242
- Tenant at sufferance, 6, 243
- Tenant at will, 6, 243
- Tenant for years, 6, 243
- Tenants in common, 6, 244
- The state, 6, 245*b*
- Trustee, 6, 241
- Vendor and vendee, 6, 241
- Ward, 6, 243
- Parties to Actions**
- Real party in interest, 17, 550
- Statutes abolishing fictitious plaintiffs and defendants, 6, 203
- Petitory action, 6, 225
- Plaintiff's Evidence**, 6, 245*k*
- Admissions, 6, 245*n*
- Claim for the whole, proof of part, 6, 249*n*
- Declaration as heir, recovery as devisee, 6, 245*n*
- Possession, 6, 245*m*
- Proof of ouster, 6, 245*m*
- Right of entry, 6, 245*m*
- Tenant by curtesy, 6, 245*n*
- Title, 6, 245*k*
- Title from a common source, 6, 245*n*
- Plaintiff's Title**, 6, 226, 245*b*, 245*k*
- Burden of proof, 245*k*
- Equitable title, 6, 229
- Joint demise, 6, 245*l*
- Legal title, 6, 223
- Modifications of rule, 6, 226
- Patent, 6, 232
- Sheriff's deed, 6, 245*l*
- Statutes requiring action to be brought in name of real party, 6, 230
- Weakness of his adversary's title, 6, 226
- When defendant is mere trespasser, 6, 226
- Whether proof must conform precisely to the averment, 6, 245*l*
- Plaintiff's Title Terminating**, 6, 210
- In Arkansas, 6, 210
- In California, 6, 210
- In Colorado, 6, 210
- In Illinois, 6, 210
- In Indiana, 6, 210
- In Iowa, 6, 210
- In Kansas, 6, 210
- In Michigan, 6, 210
- In Minnesota, 6, 210
- In Missouri, 6, 210
- In Nebraska, 6, 210
- In New York, 6, 210
- In Ohio, 6, 210
- In Oregon, 6, 210
- In Pennsylvania, 6, 210
- In South Carolina, 6, 210
- In Tennessee, 6, 210
- In Vermont, 6, 210
- In Virginia, 6, 210
- In West Virginia, 6, 210
- In Wisconsin, 6, 210
- Pleadings**, 6, 211, 245*g*
- Adverse title, 6, 245*k*
- Amendment, 6, 245*j*
- Day of ouster, 6, 245*j*
- Description of the Land**, 6, 245*k*
- Accuracy required, 6, 245*k*
- In Louisiana, 6, 245*h*
- General prayer for relief, 6, 245*k*
- In Alabama, 6, 211
- In Arkansas, 6, 211
- In Colorado, 6, 211
- In Florida, 6, 211
- In Georgia, 6, 211
- In Illinois, 6, 211
- In Indiana, 6, 212
- In Iowa, 6, 212, 245*g*
- In Kansas, 6, 212, 245*g*
- In Kentucky, 6, 212
- In Louisiana, 6, 245*h*
- In Maine, 6, 212
- In Maryland, 6, 212
- In Massachusetts, 6, 212
- In Michigan, 6, 212
- In Minnesota, 6, 212
- In Mississippi, 6, 212
- In Missouri, 6, 212
- In Nebraska, 6, 213
- In New Hampshire, 6, 213
- In New Jersey, 6, 213
- In New York, 6, 213, 245*g*
- In Ohio, 6, 213
- In Oregon, 6, 213
- In Pennsylvania, 6, 213

EJECTMENT—Cont'd**Pleadings—Cont'd**

In Tennessee, 6, 213

In Texas, 6, 213

In Vermont, 6, 213

In Virginia, 6, 213

In West Virginia, 6, 214

In Wisconsin, 6, 214

The Demise, 6, 245ⁱIn the name of a dead man, 6, 245ⁱ

Laid prior to day of plaintiff's right

of entry, 6, 245ⁱNecessity of, 6, 245ⁱTenants in common, 6, 245ⁱThe interest claim, 6, 245^kThe ouster, 6, 245^j**Possession**

In Louisiana, 6, 231

Plaintiff's Title Terminating, 6, 210

In Arkansas, 6, 210

In California, 6, 210

In Colorado, 6, 210

In Illinois, 6, 210

In Indiana, 6, 210

In Iowa, 6, 210

In Kansas, 6, 210

In Michigan, 6, 210

In Minnesota, 6, 210

In Missouri, 6, 210

In Nebraska, 6, 210

In New York, 6, 210

In Ohio, 6, 210

In Oregon, 6, 210

In Pennsylvania, 6, 210

In South Carolina, 6, 210

In Tennessee, 6, 210

In Vermont, 6, 210

In Virginia, 6, 210

In West Virginia, 6, 210

In Wisconsin, 6, 210

Presumptions, 6, 216, 234

Proof that defendant was in possession,
6, 245^m

Possession and color of title, 26, 27

Possession, Right of, 6, 228At time of commencement of suit, 6,
228In plaintiff, 6, 245^m

Plaintiff's right to, 6, 227, 228

Possession, writ of, 6, 245^{cc}**Practice, 6, 215**

In Alabama, 6, 215

In Colorado, 6, 215

In Illinois, 6, 215

In Maryland, 6, 215

In North Carolina, 6, 215

In Pennsylvania, 6, 215

In Tennessee, 6, 215

In Texas, 6, 215

Miscellaneous Provisions, 6, 222

In Alabama, 6, 222

In Arkansas, 6, 223

In Massachusetts, 6, 223

In Michigan, 6, 223

In Mississippi, 6, 223

In New Hampshire, 6, 223

In Pennsylvania, 6, 223

In Vermont, 6, 223

In Virginia, 6, 223

In West Virginia, 6, 223

Presumptions, 6, 216, 234

Free possession, 6, 234

Private ways, 19, 110

Privity, 6, 245^cMere stranger, 6, 245^c

Purchaser pending suit, 13, 898

Questions of Law and FactTenancy, 6, 245^p**Railroads**By abutting owner where ordinary
railroad is laid in street, 23, 1093Entering upon land over which it has
not acquired right of way, 19, 840

Injunction, 19, 845

Owner of land permitting railroad to
enter and construct its road, 19, 841**Receivers, 20, 55**

In aid of ejectment, 20, 325

Jurisdiction of equity, 20, 57

Property in hands of, 20, 138

Relation, 20, 733

Res Judicata

Partition, 21, 242

Title, 21, 244

Trespass, 21, 245

Whether conclusive at common law,
21, 244

Right of entry, 6, 228

Right to begin and reply, 6, 245^g**Service of Process, 6, 211, 245^g²¹**

In Florida, 6, 211

In Georgia, 6, 211

In Illinois, 6, 211

In Indiana, 6, 211

In Iowa, 6, 211

In Minnesota, 6, 211

In Pennsylvania, 6, 211

Sheriff's Sales, 22, 660

Examples, 22, 660, 661

What must be shown, 22, 660

Statute of Limitations, 6, 235

At common law, 6, 235

Pleading, 6, 235

Under the statutes, 6, 235

Statutes and codes, 6, 200

Statutory provisions in the United
States, 6, 200**Street Railways**By abutting owner where ordinary
railroad is laid in street, 23, 1093

Streets, 15, 1185

Streets and Sidewalks

Whether abutter may maintain, 24, 38

Survival

Against personal representative, 7, 333

Of action for ejectment, 7, 266

Taxation

Notice to redeem, 25, 427

Tenant by curtesy, 6, 245ⁿTitle from a common source, 6, 245ⁿ,
245^s**Trespass, 6, 594**To try title, see **TRESPASS**.

Abutting owner, 6, 595

- Diverting a stream, 6, 595
 Entry under unconstitutional law, 6, 594
 Entry upon adjoining lands, 6, 594
 For mesne profits, 26, 616
 Laches of owner, 6, 595
 Lawful entry, 6, 594
 Obstruction of easement, 6, 594
 When action lies, 6, 594
 Where company has commenced proceedings, 6, 594
 Where condemnation proceedings are recommended, 6, 595
 Statutory remedy, 6, 595
 True parties, 6, 199
 Trusts and trustees, 27, 154
 Upon award fixing title to real property, 1, 714
 Vendor and purchaser, 28, 154
When Action May Be Maintained, 6, 201, 226
 In Alabama, 6, 201
 In Arkansas, 6, 201
 In California, 6, 201
 In Colorado, 6, 201
 In Connecticut, 6, 201
 In Delaware, 6, 201
 In Illinois, 6, 201
 In Indiana, 6, 201
 In Iowa, 6, 201
 In Louisiana, 6, 201
 In Maine, 6, 202
 In Maryland, 6, 202
 In Massachusetts, 6, 202
 In Michigan, 6, 202
 In Minnesota, 6, 202
 In Missouri, 6, 202
 In Nebraska, 6, 202
 In New Hampshire, 6, 202
 In New York, 6, 202
 In Pennsylvania, 6, 202
 In South Carolina, 6, 202
 In Tennessee, 6, 202
 In Texas, 6, 202
 In Virginia, 6, 202
 In West Virginia, 6, 202
 When proper remedy, 2, 305
When Right of Entry Accrues, 6, 205
 In Connecticut, 6, 205
 In Maine, 6, 205
 In South Carolina, 6, 205
 Whether prior possession will support, 26, 31
 Writ of error, 6, 245*dd*
 Writ of estrepement, 6, 215
Writ of Possession, 6, 221*cc*, 245
 In Alabama, 6, 222
 In Arkansas, 6, 222
 In Colorado, 6, 222
 In Georgia, 6, 222
 In Illinois, 6, 222
 In Indiana, 6, 222
 In Maine, 6, 222
 In Maryland, 6, 222
 In Michigan, 6, 222
 In Missouri, 6, 222
 In Ohio, 6, 222
 In Pennsylvania, 6, 222
 In Rhode Island, 6, 222
 In Tennessee, 6, 222
 In Texas, 6, 222
 In Vermont, 6, 222
 Writ of restitution, 6, 245*w*
EJIDOS, 6, 246
EJUSDEM GENERIS, *see* **NOSCITUR A SOCIIS**.
 Any, confined to things ejusdem generis, 1, 612
 Confined by, 1, 612
Construction, 17, 278
 Examples of the ejusdem generis interpretation, 17, 279-281
 Examples of the use of the word "other" embracing persons and things not ejusdem generis, 17, 281-283
 In general, 17, 278
 Other, 17, 278
 Effects, 6, 174, 175, 184
 In any office or capacity, 2, 722
 Other such carriage, 2, 737
 Otherwise, 17, 285-288
 Property, 19, 286
ELDER, 6, 246
ELDEST, 6, 246
ELDEST MALE LINEAL DESCENDANT, 6, 246
ELECT, 6, 246
ELECTION, 6, 247
 See **DOWER**; **EXECUTORS AND ADMINISTRATORS**; **INFANTS**.
 See generally, **WAIVER**.
 As to the acceptance of renunciation by executor or administrator, *see* **EXECUTORS AND ADMINISTRATORS**.
 Servants improperly discharged, *see* **MASTER AND SERVANT**.
 Constructive trust, 10, 78
 Criminal law, 4, 816; 6, 250; 9, 641
Election of Remedies
 Criminal Law
 Between different counts of indictment, 4, 816; 6, 250; 9, 641
 Counts charging different misdemeanors, 6, 251
 Different counts describing same felony, 6, 251
 Different felonies growing out of same transaction, 6, 251
 Different indictments, 6, 250
 Expression of court, 6, 250
 When it should be made, 6, 251
 Where different felonies are charged, 6, 250
 Election of Remedies, 6, 247
 Trover, *see* **TROVER**.
 Agreement to pay a certain sum in bank notes, 4, 467
 Between Action ex Contractu and Action ex Delicto, 1, 895; 6, 247, 248; 26, 73
 Breach of contract and duty imposed by law, 6, 248
 Fraudulent sale, 6, 247
 Fraudulent warranty, 6, 248

ELECTION—Cont'd**Election of Remedies—Cont'd****Between Action ex Contractu and Action ex Delicto—Cont'd**

Where one has wrongfully obtained money, 6, 247

Between assumpsit and tort, 1, 888; 28, 570

Between covenant and assumpsit, where specialty is assigned by indorsement under seal, 4, 467

Between covenant and case, 4, 466

Between covenant and debt, 4, 466

Between covenant and debt where damages are unliquidated, 4, 466

Between covenant and debt, where money to be paid in installments is secured under seal, 4, 466

Between ejectment and trespass, 6, 231

Considerations Governing Choice, 6, 248

Claim to exemption defeated, 6, 249

Counterclaim, 6, 249

Discharge in bankruptcy, 6, 249

Plea of infancy defeated by proper choice, 6, 248

Set-off, 6, 249

Set-off defeated, 6, 249

Statute of limitations defeated by proper choice, 6, 248

Wrongful sale of property, 6, 249

Detinue and replevin, 5, 656

Detinue and trover, 5, 656

Effect of, 6, 250

Pursuing inconsistent remedy, 6, 250

Where full recovery was not had in the first action, 6, 250

Where made without knowledge of circumstances, 6, 250

When covenant the only action, 4, 466

Equitable Conversion, 6, 673

Co-owners, life-tenants, remaindermen and reversioners, 6, 973

Infants, 6, 673

Married women, 6, 673

Who may elect and to what extent, 6, 673

Estoppel, 7, 32

Guardian and Ward, 9, 150

Ratification, 9, 151

Resignation of benefit of contract, 9, 151

Right of election of majority, 9, 159

Unauthorized transaction, 9, 150

What amounts to a ratification, 9, 151

Joinder, 11, 1015²⁴, 1015²⁹

In Louisiana, 11, 1015²⁹

Under the code, 11, 1015²⁴

Judges

Liability, 19, 487, 489

Mittimus, 15, 692

"Offer," 17, 38

Two actions pending at the same time, 6, 249

Under contracts, 6, 251

Under Instruments of Donation, 6, 251

Appointment under power, 6, 251

Attempt to dispose of property of others, 6, 251

Binding on party electing, 6, 254

Compensation to party injured by election, 6, 255

Dower, 6, 252

Effects of election, 6, 254

Express election, 6, 254

Generally, 6, 251

Implied election, 6, 254

Infants, 6, 253

In satisfaction of a claim, 6, 252

Intention of donor, 6, 252

Knowledge of circumstances, 6, 254

Knowledge of rights, 6, 254

Lunatics, 6, 253

Married women, 6, 253

Mode of election, 6, 254

Statutes, 6, 253

Time of election, 6, 254

Where donor has only partial interest in property, 6, 252

Who may elect, 6, 252

ELECTIONS, 6, 255

See CUMULATIVE VOTING.

See generally, DE FACTO OFFICERS.

See LOCAL OPTION; SECRET VOTING.

As to qualifications of office holders, see OFFICES; PUBLIC OFFICERS.

Australian ballot law, see SECRET VOTING.

Municipal Aid

As to consent of people to issue aid bonds, see MUNICIPAL AID.

Municipal Securities

As to consent of people to issue securities, see MUNICIPAL SECURITIES.

Public Place

Within the meaning of statutes requiring public notices to be posted in public places, see PUBLIC PLACE.

Abbreviations in ballots, 1, 15

Absence of presiding officer, 6, 329

Action for penalty, 6, 408

Adjournment, 6, 322

Discretion, 6, 326

Admission of votes without proper proof, 6, 329

"Any election," 6, 445

Appeal, 6, 413

Authority to Hold, 6, 293

Authority to elect delegates to congress, 6, 295

Delegation of authority to call election, 6, 295

Election of representatives under state laws, 6, 296

Law enforced when election was held, 6, 294

Must be called by proper authorities, 6, 295

Particular authorities, 6, 294

Senators of United States, 6, 297

Under United States laws, 6, 296

Whence derived, 6, 293

Ballots, 6, 342

Ambiguity, 6, 431

- Christian name wrong, 6, 346; 16, 127
 Counting rejected vote, 6, 348
 Definition, 6, 342
 Difference between ballots and returns, 6, 335
Distinguishing Marks, 6, 350
 Which have been held sufficient for rejection, 6, 350
 Double, 6, 348
 Form of, 6, 348
 Grounds for rejections, 6, 349
 Headings, 6, 351
 Illegality in, 6, 348
 Imperfections illustrating rule, 6, 346
 Imperfections in names of candidates, 6, 346
Informalities, 6, 343
 Elections for other purposes than choosing officers, 6, 344
 Held not fatal, 6, 344
 Intention of voter to prevail, 6, 343
 Meaning of term written, 6, 345
 More names on docket than officers to be elected, 6, 345
 Strip of paper pasted on ballot, 6, 345
 Testimony of a voter as to having cast a defective ballot, 6, 343
 Where there is more than one office to be filled, 6, 345
 Where there is no ambiguity, 6, 344
 Which have been held fatal, 6, 345
 Initials, 6, 312, 346
 Mandatory nature of provisions relating to it, 6, 348
Name, 16, 127
 Choice between written and printed name, 6, 345
 Errors in printing, 16, 127
 Errors in writing, 16, 127
 Examples, 16, 127, 128
 General rule as to effect of error, 16, 127
 Idem sonans, 6, 247; 16, 128
 Repetition of name of one candidate, 6, 345
 Wrong Christian name, 6, 346
 Numbering the ballots, 6, 347
 Provisions, 6, 347
 Questioning elector as to whom he meant to vote for, 6, 346
 Recount, 6, 424
 Secrecy implied, 6, 343
Ballot Boxes, 6, 327, 427
 Ballots placed in wrong box, 6, 331
Betting on Elections, 2, 186; 8, 1037
 After election, 8, 1037
 At common law, 8, 996
 Bet made after election, 8, 996
 Character of the election, 8, 996
 Election in another state, 6, 446; 8, 1037
Illegal Contracts
 Wagers, 6, 446
 Indictment, 8, 1059
 Nominee at primary election, 8, 996
 Parties not electors, 8, 996
 Presidential election, 8, 996
 Primaries, 8, 1037
 State or local election, 8, 996
 Statutes prohibiting, 8, 996
 Validity of note, 8, 996
Bribery, 2, 533; 6, 364
 After election, 6, 366
 Avoided election, 6, 368
 Bribe by a person not a candidate, 6, 368
 Charities, 6, 367
 Congressional cases, 6, 365
 Declaration of voters, 6, 369
 Effect of, by Agent, 6, 370
 Acts which prove agency, 6, 371
 How agency proven, 6, 370
 Where principal knows of bribery, 6, 370
 Without knowledge of principal, 6, 370
 Effect of reception of bribe upon a vote, 6, 368
 Effect of, upon election, 6, 365
 Employment, 6, 367
 English statutes, 2, 535; 6, 365
 Gift after election, 6, 366
 Gift of same sum to a large number of persons, 6, 366
 Hearsay evidence, 6, 368
 Loans, 6, 367
 Necessity that election be held, 2, 535
 Offer by candidate to take smaller salary, 2, 534; 6, 366
 Offer of rent free, 6, 367
 Offer to perform duties of office for less than official salary, 2, 534; 6, 366
 Of what bribery consists, 6, 366
 Payment for loss of time, 6, 366
 Payment of traveling expenses, 2, 534; 6, 366
 Promise to erect public buildings, 6, 366, 367
 Promise to pay for loss of time or traveling expenses, 2, 534; 6, 366
 Supplying refreshments to, 2, 534
 Treating, 6, 372
 Burden of proof, 6, 433
 Burden of proof where fraud is shown, 6, 326
 By two bodies, 6, 332
 By what law governed, 6, 329
Candidate
 Meaning of the term, 2, 720
Canvassing Boards, 6, 310
 Mandamus, see *infra*, MANDAMUS.
 Amendment of canvass, 6, 313
 Authority to correct errors, 6, 312
 Authority to hear extrinsic evidence, 6, 312
 Civil liability, 6, 314
 Conflicting certificates, 6, 375
 Correcting returns, 6, 340
 Correction of clerical errors, 6, 312
 Determining whether returns are genuine, 6, 311
 Difference in middle initial, 6, 312
 Enjoining votes, 6, 392

ELECTIONS—Cont'd**Canvassing Boards—Cont'd**

Initials, 6, 312

Judicial power, 6, 314

Ministerial or judicial officers, 6, 310

Place of canvassing, 6, 324

Prohibition, 6, 393

Recount, 6, 313

Rejection on account of failure to comply with some directory provision, 6, 312

Right to go behind returns, 6, 311

Right to reject returns because they believe vote to be irregular or fraudulent, 6, 311

Votes received after proper time, 6, 313

Certificate, see *infra*, MANDAMUS; PRIMA FACIE RIGHT.

Certiorari in case of contested, 3, 66

Citizenship, see *infra*, QUALIFICATIONS OF VOTERS.

Conduct of, 6, 325

Congressional, see *infra*, PRACTICE.

By vote of congressional election, 6, 334

Contesting Prima Facie Case, 6, 374

Form of certificate for representatives in congress, 6, 375

Election of representatives under state laws, 6, 296

Election of representatives elected under state laws, 6, 287

Failure of officers to be sworn, 6, 302

Failure to answer, 6, 404

Improper refusal to register voter at state elections, 6, 292

Mandamus, 6, 382, 383

Method of election, 6, 331

Notice, 6, 402

Notice demanding relief, 6, 404

Pleadings, 6, 402

Power of congress over, 6, 286

Power of congress to punish fraudulent registration, 6, 287

Power to change congressional districts, 6, 284

Practice, 6, 414

Recount, 6, 313

Regulations for election of senators and representatives, 6, 284

Senators of United States, 6, 297, 332

State law and construction followed, 6, 418

Time of holding elections, 6, 319

Time of senatorial elections, 6, 320

Variance, 6, 404

Violence and intimidation, 6, 358-364

Waiver of notice, 6, 403

Conspiracy to prevent citizens from voting, 4, 595

Constitutional Law, 6, 280**Power to Submit Questions to Popular Vote**, 6, 280

See MUNICIPAL AID; MUNICIPAL SECURITIES.

Taxation for local improvements, see TAXATION.

Acceptance of corporate powers, 6, 281

Challenging voters, 6, 285

Effect of unconstitutional registration act upon election, 6, 289

Legislature indirectly disfranchising voters, 6, 285

Power

Of congress over congressional elections, 6, 286

Of congress to compel elections by districts, 6, 287

Of congress to punish individual acts at state elections, 6, 286

Of legislature over qualifications of voters, 6, 283

To change congressional districts, 6, 284

To change voting precinct, 6, 284

To punish bribery, 6, 285

To Submit Questions to Popular Vote, 6, 280

General laws, 6, 282

Where there is no constitutional limitation, 6, 280

Registration, 6, 287

Registration act, 6, 292

Regulations for elections of senators and representatives, 6, 284

Soldiers' voting places, 6, 284

Contest, see MANDAMUS.See *infra*, PRACTICE; QUO WARRANTO; REMEDIES.**Before Legislative Bodies**, 6, 390

Failure to answer, 6, 404

Notice, 6, 402

Pleadings, 6, 402

Pleadings in congressional cases, 6, 402

Variance, 6, 404

Waiver of notice, 6, 403

Enjoining, 6, 392

Ground of, 6, 410

Illegality of votes, 6, 352

Person judging his own case, 6, 413

Right of trial by jury, 3, 721

Whether a suit, 24, 495

Contractor, 6, 249

Corrupting a voter, 4, 312

Criminal conspiracy, 4, 604

Criminal Law**Liability**

Of election officers, 6, 308

Criminal Pleading and Practice, 6, 441

Accepting illegal votes, 6, 443

Action for penalties, 6, 444

Against statute, 6, 442

Allegation of fraud, 6, 442

Verment

Of proper officers, 9, 442

Of purpose, 6, 442

Of time, 6, 442

Betting on election, 6, 443

Conspiracy, 6, 443

Joinder of defendants, 6, 443

Offenses against United States laws, 6, 443

Refusing legal votes, 6, 443

- Setting out disqualifications, 6, 441
- Taking false oath, 6, 443
- Default, 6, 407
- Definition**, 6, 247, 260, 718
- Of dwelling house, 6, 103
- Depositions, 6, 420
- Directory and Mandatory Provisions**, 6, 325; 23, 463
- See infra*, **REGISTRATION**.
- Absence of presiding officer, 6, 329
- Calling special elections, 6, 325
- Certificates, 6, 337
- Failure to use check lists, 6, 328
- Forwarding returns, 6, 341
- Improper ballot boxes, 6, 327
- Manner of voting, 6, 327
- Name not on registry list, 6, 330
- Notice, 6, 326
- Place of counting vote, 6, 328
- Preliminary proceedings, 6, 325
- Provisions against permitting votes not on registry list, 6, 330
- Provisions as to ballot, 6, 348
- Time and place of holding elections, 6, 318-325
- Time of counting vote, 6, 328
- Time of making returns, 6, 340
- What are, 6, 325
- Disfranchisement**
- See infra*, **QUALIFICATIONS OF VOTERS**.
- Constitutional provisions, 18, 769
- Duelling, 6, 54
- In general, 18, 769, 770
- Of Poor**, 18, 769
- Persons in poor house, 18, 770
- Distinguished from appointment, 19, 417
- Education and qualification, 6, 160
- Effect of**
- Bribery by agent, 6, 370
- Unqualified officers, 19, 400, 406, 415
- Election Boards**
- Holding secret sessions, 6, 314
- Election district**, 5, 712
- Election Officers**, 6, 302
- Act of election officer de facto, 6, 304
- Authority of United States supervisors, 6, 333
- Civil Liability of**, 6, 308
- Action for damages after rejecting vote, 6, 308
- Evidence to show malice, 6, 309
- Exemplary damages, 6, 309
- Honest mistake, 6, 309
- Liabilities under United States laws, 6, 310
- Nominal damages, 6, 309
- Officer's motive in rejecting vote, 6, 308
- Presumption in favor of officer, 6, 310
- Criminal liability of, 6, 308
- Discretion of, 6, 326
- Distinction between irregularly appointed officer and officer whose appointment is void, 6, 304
- Effect of mistake in counting vote, 6, 331
- Effect of ineligibility of officer, 6, 304
- Erroneous rule of action, 6, 328
- Failure to be sworn, 6, 302
- Improper persons acting, 6, 303
- Improper presiding officer, 6, 303
- Incompatible offices, 19, 562a
- Indictments, 6, 439
- Lack of legal qualifications, 6, 302
- Less than proper number acting, 6, 303
- Liability of returning officers for false returns, 6, 310
- Power of officer in receiving vote, 6, 305
- Power over vote after reception, 6, 307
- Power to determine conviction for crime, 6, 307
- Power to try question of forfeiture for crime, 6, 307
- Recounting votes, 6, 307
- Refusal to permit proper officers to be present, 6, 355
- Regularity of acts will be presumed, 6, 326
- When authority ceases, 6, 308
- Whether officer acts in a ministerial or judicial capacity, 6, 305, 306
- Who are officers, 6, 302
- Eligible, 6, 447
- Erroneous rule of actions, 6, 328
- Evidence**, 6, 421
- Ambiguous Ballots**, 6, 431
- Explainable, 6, 431
- Attorneys as witnesses, 6, 422
- Ballot boxes, 6, 427
- Best evidence required, 6, 432
- Burden of proof, 6, 433
- Circumstantial, 6, 430
- Compelling voter to show that his voting was illegal, 6, 422
- Compelling voter to testify for whom he voted, 5, 422
- Competency of witnesses, 6, 422
- Conclusiveness of return, 6, 423
- Correction of informal return, 6, 423
- Declaration after election, 6, 430
- Declaration**
- Of voter as to incapacity, 6, 429
- To prove unlawful combination, 6, 436
- Defective returns, 6, 423
- Effect of**
- Certificate, 6, 422
- Illegal promise, 6, 436
- Recount of ballot, 6, 424
- Return, 6, 422
- General principles, 6, 421
- Hearsay evidence, 6, 427, 433
- How returns may be impeached, 6, 423
- Impeaching poll books, 6, 427
- Impeachment of returns by unofficial documents, 6, 424
- In action for refusing vote, 6, 434
- In Criminal Cases**, 6, 436
- Illegal voting, 6, 436

ELECTIONS—Cont'd**Evidence—Cont'd****In Criminal Cases—Cont'd**

- Making false certificate, 6, 438
- Refusing a vote, 6, 438
- Secondary evidence of contents of ballot, 6, 437
- Statement of defendant, 6, 436
- Sufficiency of proof, 6, 437
- In election contests, 6, 421, 430
- In England, 6, 422
- Intention of person in removing, 6, 434
- In trial for violation of election laws, 4, 852
- Latitude allowed, 6, 422
- Matters of opinion, 6, 434
- Mistake in depositing or counting ballots, 6, 434
- Of malice, 6, 434
- Parol Evidence**, 4, 851; 6, 430, 433
 - To identify ballot box, 6, 427
- Poll book contradicted by parol, 6, 430
- Presumption of legality of vote, 6, 428
- Proof**
 - In action for betting on elections, 6, 437
 - Of how voter voted, 6, 430, 431
 - Of mistake, 6, 432
 - Of naturalization, 6, 435
 - Of rejected votes, 6, 433
 - Of who voted, 6, 427
 - That vote was cast by non-resident, 6, 429
 - Where returns are destroyed, 6, 436
 - Where returns are illegal, 6, 435
- Public documents, 6, 435
- Reception of illegal votes, 6, 426
- Returns as prima facie evidence, 6, 423
- Returns impeached by fraud, 6, 424
- Returns made from improper data, 6, 426
- Returns not sworn to, 6, 423
- Secondary evidence of contents of returns, 6, 423
- Statement of voter, 6, 430
- Suspicious circumstances to rebut presumption of legality, 6, 428
- Testimony of voters, 6, 426
- Testimony showing that officers disregarded their duty, 6, 426
- That fraud was attempted, 6, 426
- To show whether there are persons of same name in district, 6, 431
- To show who are candidates nominated, 6, 431
- Truth that votes cast were not returned, 6, 426
- Voter testifying as to whom he meant to vote for, 6, 430, 431
- Voter waiving his privilege, 6, 422
- When court takes judicial notice, 6, 432
- When official certificate admissible, 6, 435
- Where poll books are lost, 6, 427

False Personation of Voters, 7, 697

- Inducing another to personate a voter, 7, 698
- Personating voter at municipal election, 7, 697
- Personating voter who is dead, 7, 698
- Whether offense at common law, 7, 697
- Fifteenth amendment, 6, 285, 286
- Fraud**, 6, 353, 425
 - Burden of proof to prove votes cast for a candidate, 6, 357
 - Circumstances tending to show, 6, 424
 - Effect of laches, 6, 357
- Facts Held to Indicate**, 6, 355
 - Excess of votes, 6, 355
 - Failure to return votes cast, 6, 355
 - Illegal reception of large number of votes, 6, 355
 - Refusal to permit proper officers to be present, 6, 355
- Fraud and illegal voting contrasted, 6, 353
- Indictable at common law, 6, 357
- Libel and slander, 13, 303
- May be by proved circumstances, 6, 354
- Not presumed, 6, 354
- Of officers and third persons, 6, 354
- On voters, 6, 356
- Presumption where fraud is proved, 6, 356
- Purging or rejecting poll, 6, 356
- Remedy for**
 - Contests, 6, 357
 - Injunction, 6, 357
 - Quo warranto, 6, 357
 - Statutory contests, 6, 357
- True vote may be proved, 6, 357
- General, 8, 1292
- Illegal Contract**, 6, 445; 9, 916
 - Vote of stock*, see STOCKHOLDERS.
 - Wagers*, see *infra*, BETTING.
- Agreement to pair off, 9, 916
- Contract to pair off, 6, 445
- Contract to use money unlawfully, 6, 445
- Disguised wagers, 6, 446
- Examples, 9, 917
- Sale of personal influence, 9, 916
- Illegal Voting**, 6, 351
 - Drawing from ballot box, 6, 353
- Effect of Reception of Illegal Votes**, 6, 352
 - Where enough illegal votes are cast to claim majority, 6, 352
 - Where illegal votes do not effect general results, 6, 352
- Fraud and illegal voting contrasted, 6, 353
- Illegality of votes inquired into in contests, 6, 352
- Illegal reception of votes, 6, 355
- Presumption that vote is legal, 6, 353
- Purging the polls, 6, 353
- What makes vote illegal, 6, 351

- What Makes Voting Illegal**
 Requisite preliminaries, 6, 352
 Vote cast in improper manner, 6, 352
- Improper ballot boxes**, 6, 327
- "Inhabitants,"** 6, 445; 10, 771
- Injunction**, see *infra*, REMEDIES IN ELECTION CASES.
- Intoxicating Liquors**, 11, 591, 689
 Entire day of any election, 11, 689
 Examples of sales, 11, 689, 690
 Municipal election, 11, 689
 What constitutes offense, 11, 689
- Irregularities**, 6, 325, 334
 See *infra*, RETURNS; DIRECTORY AND MANDATORY PROVISIONS.
 General principles, 6, 334
 Great, 6, 334
 Honest mistake, 6, 334
 In directory matters, 6, 334
- Judicial Notice**, 12, 154, 179
 Contested elections, 12, 154
 Election of sheriff, 12, 180
 Question of public affairs, 12, 154
 Result of voting, 12, 154
 Selection of officers, 12, 179
 Time of holding general elections, 12, 179
- Liability of election officers**, 12, 38
- Libel and slander**, 13, 337
- List of voters**, 13, 913
- Local Option**, 13, 994
 Declaration of result, 13, 995
 What constitutes a majority, 13, 994
- "Loyal voters,"** 6, 445
- Majority**
 Of qualified voters, 6, 445
 Of voters, 6, 445
 Of voters voting, 6, 445
 What constitutes, 13, 994
- Mandamus**, 6, 378, 379
 Against board of canvassers, 6, 383
 Against clerks, 6, 383
 At what time awarded, 6, 380
 Belief that officers have no authority to act, 6, 382
 Canvassing returns, 6, 380; 14, 198
 Canvass of votes at illegal elections, 6, 382
 Certificate, 6, 379; 14, 133, 146, 198
 Definition of term, 6, 378
 Discretion of public officers, 14, 201
 Distinguished from quo warranto, 6, 379
 Effect of adjournment of board, 6, 381
 Elections not authorized by law, 6, 385
 For what office canvass may be compelled, 6, 382
 Judicial errors, 14, 201
 Mistake of law as to jurisdiction, 6, 382
- Municipal Officers**, 14, 197
 Authority to exclude votes, 14, 199
 Counting votes as for separate persons, 14, 199
 Examples, 14, 198
 Generally, 14, 196
- Issue of certificates of election, 14, 198
 To city counsel, 14, 197
 To compel holding of elections, 14, 196
 Validity of election, 14, 197
- Pleadings**, 6, 394
 Allegations, 6, 395
 Also by way of confession and avoidance, 6, 396
 Joinder of improper parties, 6, 394
 Parties defendant, 6, 394
 Presumption in favor of officer, 6, 395
 Refusal of officer, 6, 395
 Return or answer, 6, 395
 Statement of alternative writ or petition, 6, 395
 Subsequent pleadings, 6, 397
 Suit upon relation of private party, 6, 395
 Traverse of facts and not legal conclusion, 6, 395
 What defenses are sufficient, 6, 396
 Who may be relator, 6, 394
- Returns**, 6, 380, 383
 Returns made in obedience to, 6, 339
 Testing prima facie right, 6, 384
- To Compel**
 Administration of oath, 6, 385
 Approval of a bond, 6, 385
 A recount, 6, 381, 382
 Call of election, 6, 379
 Complete canvass, 6, 380; 14, 198
 Forwarding of returns, 6, 383
 Issue of commission, 6, 379
 Recognition, 6, 385
 Registration of qualified voters, 6, 379
 Rejection of illegal returns, 6, 380
 Restoration to office, 6, 385
 Surrender of public buildings, 6, 384
- To enforce duties growing out of elections**, 6, 384
 To governor, 14, 145
 To try title to office, 6, 383
 To whom the writ may issue, 6, 383
 Where prior certificate has been issued, 6, 381
 Where relator is not eligible, 6, 385, 386
 Where result has been declared, 6, 381
 Where there is a special method to obtain books of the office, 6, 384
 Where title is clearly void, 6, 384
- Mandatory or directory provisions**, see *infra*, DIRECTORY OR MANDATORY.
- Manner of taking testimony**, 6, 420
- Marks, figures or devices**, 6, 348
- Meaning of phrases**, 6, 445
- Method of**, 6, 331
- Mittimus**, 15, 692
- Naturalization**, see *infra*, QUALIFICATIONS OF VOTERS.
 Proof of, 6, 435
- Notice**, 6, 297
 By whom must be given, 6, 300

ELECTIONS—Cont'd**Notice—Cont'd**

- Effect of failure to give, 6, 298
- Election to fill vacancies, 6, 298
- Failure of, 6, 298
- Impossibility of giving statutory, 6, 302
- Kind of, 6, 301
- Objection, 6, 300**
 - Posting, 6, 301
 - Sufficiency, 6, 301
- Of Contests, 6, 415**
 - Amended notice, 6, 416
 - Character of notice, 6, 417
 - Defective notice, 6, 418
 - Extension of time of notice, 6, 416
 - Premature notice, 6, 416
 - Proof of service, 6, 417
 - Service of notice, 6, 417
 - Time of giving, 6, 415
- Posting, 6, 301

Sufficiency

- Of notice as to time, 6, 300
- Of statement, 6, 300
- Time of filing, 6, 410
- Waiver of irregularity, 6, 414
- When required, 6, 297
- Where time and place are fixed by statute, 6, 297

Offenses Against Election Laws, 6, 438

See infra, BRIBERY; FALSE PERSONATION; CRIMINAL PLEADING AND PRACTICE.

- Act of voting must be complete, 6, 439
- At common law, 6, 438
- Defense to action for illegal voting, 6, 439
- Election must be legal, 6, 438
- First vote illegal, 6, 439
- Fraud indictable at common law, 6, 357

In Alabama, 6, 440

In Illinois, 6, 440

In Indiana, 6, 440

In Kentucky, 6, 439

In Massachusetts, 6, 439

In Pennsylvania, 6, 439

Under Acts of Congress, 6, 440

Violation of state statutes, 6, 441

Official bonds, 2, 466*l*

Parol Evidence, 4, 851; 6, 427, 433

Poll book contradicted by parol, 6, 430

To show elections to office, 4, 851; 6, 433

Place, 6, 323

Custom, 6, 323

Effect of holding at wrong place, 6, 323

Fixed by proper authority, 6, 324

Necessary change of, 6, 323

Of abode, 18, 464

Of canvassing returns, 6, 324

Of counting vote, 6, 328

Of Holding

Vote cast at wrong place, 6, 351

Voting places too few in number, 6, 324

Pleadings, see *infra*, CONTEST BEFORE LEGISLATIVE BODIES; CRIMINAL PLEADING AND PRACTICE; MANDAMUS; QUO WARRANTO.

Before legislative bodies, 6, 402

Default, 6, 407

In civil actions, 6, 408

In Statutory Contests, 6, 405

Amendment nunc pro tunc, 6, 407

Amendment to petition or notice, 6, 406

Certainty in statement, 6, 406

Contestant's right to make contest, 6, 405

Default, 6, 407

Degree of certainty in petition, 6, 405

Grounds of contest, 6, 406

Misjoinder of causes of action, 6, 407

Misjoinder of parties, 6, 407

Names of alleged illegal voters; 6, 405

New matter by way of amendment, 6, 407

Number of illegal votes cast, 6, 405

Statements required, 6, 405

Power of congress in counting electoral votes, 6, 314

Practice, 6, 408

See infra, CRIMINAL PLEADING AND PRACTICE.

In Courts and Before Statutory Tribunals, 6, 408

Affidavit, 6, 411

Appellate jurisdiction, 6, 413

Authority of appellate courts, 6, 414

Certiorari, 6, 413

Civil jurisdiction of courts of the United States, 6, 408

Computation of time, 6, 410

Computation of time, Sunday, 6, 410

Courts adopting rules of practice, 6, 412

Discontinuance, 6, 413

How objection to time of filing complaint is taken, 6, 411

How sufficiency of affidavit tested, 6, 412

In Arkansas, 6, 409

In California, 6, 409

In Florida, 6, 409

In Illinois, 6, 409

In Indiana, 6, 409

In Maryland, 6, 409

In Missouri, 6, 409

In Nebraska, 6, 409

In New Hampshire, 6, 409

In New Jersey, 6, 409

In South Carolina, 6, 410

In Tennessee, 6, 410

In Texas, 6, 410

In West Virginia, 6, 410

New trial, 6, 413

Rehearing, 6, 413

Rights to trial by jury, 6, 413

Statutory provisions as to verification, 6, 410

- Technical objections on appeal, 6, 414
- Tie vote, 6, 412
- Time of filing complaint, 6, 410
- Time of filing notice of complaint, 6, 410
- Time of trial, 6, 412
- Tribunal having original jurisdiction in states, 6, 408
- Tribunal having original jurisdiction in states and Louisiana, 6, 408
- What courts may decide, 6, 412
- What statutes may be appellate, 6, 413
- In Congress and Legislative Bodies, 6, 414**
 - Abatement, 6, 417
 - Abatement by death of contestant, 6, 417
 - Abatement by death of successful member, 6, 417
 - Abatement by resignation, 6, 417
 - Amended notice, 6, 416
 - Before who testimony may be taken, 6, 420
 - Character of notice, 6, 417
 - Declaring a seat vacant, 6, 421
 - Depositions, 6, 420
 - Dismissal for want of prosecution, 6, 421
 - Extension of time after decision in prima facie case, 6, 417
 - Extension of time for notice, 6, 416
 - How defense in pleading or service reached, 6, 418
 - Last day, 6, 410
 - Manner of taking testimony, 6, 420
 - Notice of taking testimony, 6, 420
 - Prematurity of notice, 6, 416
 - Proof of service, 6, 417
 - Service of notice, 6, 417
 - State law and construction followed, 6, 418
 - Statutory provisions for congressional contest, 6, 415
 - Testimony taken after expiration of statutory time, 6, 419
 - Testimony taken ex parte, 6, 420
 - Time of giving notice of contest, 6, 415
 - Time of taking testimony, 6, 420
 - When time of giving notice begins to run, 6, 415
 - Who may vote in contests, 6, 414
- Presidential, 19, 32**
 - By whom vote to be counted, 19, 33
 - Elector, 19, 33
 - Power of congress, 19, 32
 - Under the constitution of the United States, 19, 32
- Presumption**
 - Against fraud, 6, 354
 - In favor of election, 6, 290, 431, 432
- Of Legality**
 - Destroyed by fraud, 6, 353
 - Of the canvass, 6, 432
 - Of the vote, 6, 428
- Of Official Character**
 - From acts, 6, 337
- Of Regularity, 6, 326**
 - Discretion of officers, 6, 326
 - That all men know the law, 6, 431
 - That officers perform their duties, 6, 432
- That Votes Cast Are Legal**
 - Rebuttal, 6, 426
 - Where fraud is proved, 6, 356
- Prima Facie Right to Office, 6, 373**
 - Certificate gives prima facie right, 6, 373
 - Certificate vitiated by its own statements, 6, 377
 - Conditional certificates, 6, 377
 - Conflicting returns, 6, 377
 - Contesting prima facie case, 6, 374
 - Double returns, 6, 377
 - Effect of certificate in contest, 6, 377
 - Effect of conflicting certificates, 6, 375
 - Effect of irregularity in certificate, 6, 375
 - Form of certificate for representative in congress, 6, 375
 - Fraud in obtaining certificate, 6, 377
 - In parliamentary cases, 6, 374
 - Question of eligibility, 6, 377
 - Regular certificate, 6, 373
 - Revocation of certificate, 6, 376
 - Showing that certificate was incorrectly given, 6, 374
 - Statement of officer who made canvass, 6, 373
 - What constitutes a prima facie right in absence of certificate, 6, 376
- Primary elections, 19, 83**
- Prohibition**
 - Commissioners, 19, 279
 - Purging the polls, 6, 353, 356
- Qualifications of Voters, 6, 260**
 - Alienage, 1, 464
 - Adoption of the fifteenth amendment, 6, 260
 - Color, 6, 272
 - Chinese, 6, 272
 - Citizenship, 6, 263**
 - See generally, CITIZENSHIP.*
 - Children of aliens merely visiting or passing through country, 6, 264, 265
 - Children of American parents born abroad, 6, 264
 - Effect of slavery of parents, 6, 666
 - Fourteenth amendment, 6, 264
 - Fourteenth amendment only declaratory, 6, 266
 - Persons of color, 6, 266
 - Place of birth, 6, 264
 - Presumption of citizenship from residence, 6, 266
 - What constitutes, 6, 264
- Constitutional Qualifications Exclusive, 6, 263**
 - Application to registry law, 6, 263
 - Power of legislature to extend suffrage to persons not possessing constitutional qualifications, 6, 263

ELECTIONS—Cont'd**Qualifications of Voters—Cont'd**

Controlled by the states, 6, 260
Deaf and dumb persons, 6, 270
Degree of intelligence required, 6, 269, 270

Disfranchisement

For Crime, 6, 272
Bribery, 6, 273
Infamous offense, 6, 273
Necessity of conviction, 6, 273
Pardon, 6, 274
Power of congress, 6, 273
Indirect disfranchisement by legislature, 6, 285
Power of election officers to determine, 6, 307

Effect of constitutional amendments, 6, 261

Fourteenth amendment, 6, 262

Fifteenth amendment, 6, 260, 262

Household, 6, 272

How franchise is extended or restricted, 6, 260

Infancy, 6, 272

Inhabitants, 6, 271

Lunatics, 6, 269

Mental qualifications, 6, 269

Naturalization, 6, 266

See generally, NATURALIZATION.

By acquisition of territory, 6, 268

Certificate governing prima facie right to vote, 6, 268

Certificate void on its face, 6, 268

Certificate when void, 6, 268

Children of naturalized persons, 6, 267

Collateral impeachment of certificate, 6, 268

Declaration of intention, 6, 267

Power of state, 6, 267

Proof of residence, 6, 267

Service in army and navy, 6, 267

State courts, 6, 267

What courts may naturalize, 6, 267

When naturalized citizens may vote, 6, 269

Pauperage, 6, 276

Payment of Taxes, 6, 271

Illegal taxation, 6, 271

In general, 6, 271

Regular assessment, 6, 271

What payment is sufficient, 6, 271

Power of congress over, 6, 285

Power of legislature over, 6, 283

Property Qualification, 6, 270

Equitable free-hold, 6, 270

Freeholders, 6, 270

In Rhode Island, 6, 271

Pauperage, 6, 270

Payment of taxes, 6, 271

Quo warranto, 6, 389

Residence, 6, 274

Right of suffrage, 3, 709

Right to vote for member of congress, 6, 261

Sex, 6, 272

Suffrage not a natural right, 6, 260

Quo Warranto, 6, 386

Appeal, 6, 413

After term has expired, 6, 388

Attempt

To exercise an office, 6, 388

Authority

Of appointing body, 6, 389

Before commencement of term, 6, 388

Character of office, 6, 387

City councils, 6, 388

Common-law remedy, 6, 386

Conclusiveness of statutory contest, 6, 389

Definition of office, 6, 387

Effect of statutory contest, 6, 389

Eligibility to hold office, 6, 389

Executive office, 6, 387

Going behind returns, 6, 390, 423

Grounds for jurisdiction, 6, 388

Judicial office, 6, 387

Legality of appointment, 6, 389

Legality of election tested, 6, 390

Lies to all public offices, 6, 386

Magnitude of office, 6, 387

Military office, 6, 387

Officer's returns, 19, 673

Offices filled by appointment, 6, 387

Offices of a legislative character, 6, 387

Pleading, 6, 397

Allegations in information, 6, 399, 401

Argumentative, 6, 400

At common law, 6, 397

Conclusion of plea, 6, 401

Defenses, 6, 400, 401

Disclaim in part and justify in part, 6, 400

Disclaim or justify, 6, 400

Double, 6, 400

Effect of code of civil procedure, 6, 401

Form and sufficiency of information, 6, 399

Information where relator claims office, 6, 399

Interest of relator, 6, 398

Parties defendant, 6, 399

Parties plaintiff, 6, 398

Relator and voter, 6, 398

Replication, 6, 401

Sufficiency of, 6, 400

Where claim of relator may be determined, 6, 399

Where relator is not a resident or tax payer, 6, 398

Whether action must be in name of state, 6, 398

Presidential electors, 6, 387

Qualifications for an office, 6, 389

Qualifications of voters, 6, 389

Real right tried, 6, 390

Right of trial by jury, 6, 413

Statutory remedy, 6, 389

Taking oath of office, 6, 388

To test right to office, 6, 386

What may be tested, 6, 389

- When brought, 6, 388
 Where term will expire before suit can be determined, 6, 388
- Recount**, 6, 424
 Burden of proof as to tampering, 6, 425
 Difference between ballots and returns, 6, 335
 Effect of, 6, 424
 Proof that boxes have not been tampered with, 6, 425
 Statutes requiring ballots to be kept, 6, 425
 When it may be had, 6, 424
- Remedies in Election Cases**, 6, 378
See infra, MANDAMUS.
As to quo warranto, *see infra*, QUO WARRANTO.
Contests before legislative bodies, *see infra*, CONTESTS.
 Abatement, 6, 417
 Equitable Remedies, 6, 391
- Enjoining**
 Acts based upon fraudulent elections, 6, 392
 Canvass of votes, 6, 392
 Contest, 6, 392
 Use of certificate, 6, 392
- Injunction**, 6, 391
 To obtain possession of office, 6, 391
 To prevent collection of fees, 6, 391
 To prevent holding of an election, 6, 392
 To prevent issue of commission, 6, 392
 To prevent officer acting, 6, 392
 Trying contest, 6, 391
 Where there is no provision by statute, 6, 391
- Fraud, 8, 651
 Habeas corpus, 6, 393
 Mandamus to try title to office, 6, 383
 Necessity of direct proceedings, 6, 378
 Prohibition, 6, 393
- Statutory Remedies**, 6, 390
 Effect upon quo warranto, 6, 389
 Judicial powers of special tribunal, 6, 390
- Removal of Causes**
 Against United States election officers, 20, 1025-1027
 Res judicata, 21, 237
- Returns**
 Accompanied by informal documents, 6, 338
 Burden of proof, 6, 335
- Correction**, 6, 340
 After returns have left returning officer, 6, 340
 Before returns have left the returning officers, 6, 340
 By tribunal trying contest, 6, 340
 Canvassing board, 6, 340
 Error in footings, 6, 340
 Difference between ballots and, 6, 335
 Double returns, 6, 377
- Effect of irregularities or frauds, 6, 334
 Election certificate, 6, 337
 Failure to return votes cast, 6, 355
 Failure to send required documents, 6, 339
 Going back of, 6, 423
 Impeached by fraud, 6, 424
 Informalities corrected, 6, 340, 423
 Informality of certificate, 6, 337, 338
 Lack of signature, 6, 337
 Made from improper data, 6, 339
 Made in obedience to writ of mandamus, 6, 339
- Mandamus**, 6, 339
 To compel forwarding, 6, 383
 To compel rejection, 6, 380
 Not signed by proper officers, 6, 336
 Part of precincts not counted, 6, 339
 Presumption of official character from acts, 6, 337
- Prima Facie Evidence**, 6, 422
 Of number of votes cast, 6, 335
 Secondary evidence of contents, 6, 423
 Signature by mark, 6, 337
 Signed by majority of board, 6, 336
 Surplusage, 6, 335
 Surplus signatures, 6, 337
- Time of**, 6, 322
 Making returns directory, 6, 340
 Uncertainty in, 6, 338
 What will impeach returns, 6, 424
 What will not impeach, 6, 423
- Registration**, 6, 287
 Conclusiveness of register, 6, 291
 Constitutionality, 6, 292
 Constitutional provisions, 6, 287
- Effect of**
 Fraud, 6, 293
 Irregularities, 6, 291
 Unconstitutionality of law upon election, 6, 289
 Erroneous spelling of names, 6, 293
- Failure to Make Register**, 6, 245, 290
 Effect on election, 6, 290
 General power to enact registry laws, 6, 263
 Improper refusal to register voter for congressional election, 6, 292
 Intimidation of registers, 6, 291
 Mandamus to compel, 6, 379
 Power of congress to punish fraudulent registration, 6, 287
 Power of legislature to enact, 6, 287
 Presumption in favor of election, 6, 290, 431, 432
 Provisions as to voting where elector's name does not appear upon the register, 6, 292
 Reasonable regulations, 6, 263, 288
 Registering officers quasi judicial officers, 6, 293
 What constitutes, 6, 291
 Where it was impossible to make, 6, 290
- Right to trial by jury, 6, 413

ELECTIONS—Cont'd**Schools**

- Trustees, 21, 832
- Ballot, 21, 832
- General provisions, 21, 832
- Majority necessary to election, 21, 832
- Manner of voting, 21, 832
- Qualification of voter, 21, 832
- Term of office, 21, 832
- Vacancy, 21, 832
 - Failure to maintain school, 21, 832
 - How filled, 21, 832
 - How vacancy must occur, 21, 832
 - Removal from district, 21, 832
 - Term of officer elected to fill, 21, 832
 - Where new district is created, 21, 832

Soldier's Right to Vote, 6, 276; 15, 429, 430

- Limitation of right to vote, 15, 429
- Statutory regulations of right of absent soldiers, 15, 430

Soldiers

- Voting places, 6, 284
- Specific performance or damages, 6, 249

Statutes

- Constitutional provisions requiring that subject shall be expressed in the title, 23, 242
- Constitutional provisions that statutes shall contain no more than one subject, 23, 273

Students, 6, 278**Suffrage**

- Effect of the fourteenth and fifteenth amendments upon, 3, 729
- Not a natural right, 6, 260
- Right of, 3, 709

Suit

- Whether contest is a suit, 24, 495
- Supervisor of elections, 24, 598
- Tie vote, 6, 412
- Tilden-Hayes contested election, 6, 314
- Time of changing precincts, 6, 320
- Time of counting the vote, 6, 328

Time of Holding, 6, 318

- Change of time by majority of electors, 6, 318
- Closing polls too soon, 6, 321
- Consent of all voters to change of time, 6, 318, 319
- Effect of holding election at time unauthorized by law, 6, 318
- Holding open too long, 6, 321
- Necessity of fixing time in advance, 6, 319
- Opening at proper time, 6, 320
- Polls can be open to permit legal voters to vote, 6, 322
- Power to adjourn, 6, 322
- Time of return, 6, 322
- Time must be fixed by proper authority, 6, 320
- Time under certain statutes, 6, 319

Votes cast after proper time illegal, 6, 321

Where proper time is doubtful, 6, 318

Where votes cast after proper time can be identified, 6, 322

Time of return, 6, 322

Treating, 6, 372

Undue Influence, 6, 372

To secure nomination, 6, 372

Whether election avoided by, 6, 372

Vacancies

Notice, 6, 298

Violence and Intimidation, 6, 358

By whom intimidated, 6, 361

Counting votes of intimidated voters, 6, 364

Degree of intimidation or violence, 6, 359

Degree when instigated by candidates, 6, 360

Degree when not instigated by candidates, 6, 360

Evidence of, 6, 363

Military

Interference in England, 6, 358

Interference in the United States, 6, 359

Occupation, 6, 361

Obstructing voters at congressional elections, 6, 364

Persons not connected with candidate, 6, 361

Police interruption, 6, 361

Religious, 6, 362

Social, 6, 362

Threats of loss of occupation, 6, 362

Unsuccessful attempts at, 6, 363

Vote, 28, 499

"Voter's," 6, 445; 28, 501

Voter's privilege from arrest, 1, 727; 10, 234

Voting Precinct

Power of legislature to change, 6, 284

Wagers, see *infra*, BETTING.

Waiver, 7, 732

Waiver of irregularity in notice, 6, 414

Woman's suffrage, see WOMEN.

ELECTORS, 6, 447; 15, 1280

Majority of electors, 15, 1280

ELECTRIC LIGHT COMPANIES**Taxation**

Exempt as manufacturing corporation, 25, 175

ELECTRIC LIGHTS

As to interference of other electric appliances with the telephone, see TELEGRAPHS AND TELEPHONES.

ELECTRIC RAILWAYS, see STREET RAILWAYS.**ELEGIT**

Estates by, 6, 895

ELEMENTS, 6, 447**ELEVATED RAILROADS**, 23, 1035

See generally, STREET RAILWAYS.

Abutting owners, see *infra*, RECOVERY OF DAMAGES BY OWNERS OF ABUTTING PROPERTY.

- Acquiescence, 23, 1083
Actions, see *infra*, RECOVERY OF DAMAGES BY OWNERS OF ABUTTING PROPERTY.
 Adverse possession, 23, 1083
 Arrest, 23, 1088
Benefits derived from existence of road, see *infra*, RECOVERY OF DAMAGES BY OWNERS OF ABUTTING PROPERTY.
 Cinders, 23, 1074
Commissioners
 Evidence before, 23, 1068
 Rapid-transit commission, 23, 1037
 Supreme court commissioners, 23, 1040
Common-law action, see *infra*, RECOVERY OF DAMAGES BY OWNERS OF ABUTTING PROPERTY.
 Consent of local authorities, 23, 1039
 Consent of property owners, 23, 1039
 Constitutionality of rapid-transit act, 23, 1037
Constitutional Law
 Right to Trial by Jury
 Injunction proceedings, 23, 1085
 Construction, 23, 1042
Corporations
 Recovery of damages for injury to property, 23, 1062
Damages, see *infra*, RECOVERY OF DAMAGES BY OWNERS OF ABUTTING PROPERTY.
Deduction on account of benefits derived from existence of road, see *infra*, RECOVERY OF DAMAGES BY OWNERS OF ABUTTING PROPERTY.
 Dust, 23, 1074
Eminent Domain, 23, 1046
 By whom instituted, 23, 1046
 Decreased value, 23, 1047
 Difference between market value and property, 23, 1048
 Examples, 23, 1046-1048
 Measure of damages, 23, 1047
 Nature of the proceedings, 23, 1046
 Object of the proceedings, 23, 1046
 Right of owners to recover damages, 23, 1042
 Right to institute condemnation proceedings, 23, 1048
 Value at time of institution of condemnation proceedings, 23, 1047
Evidence, 23, 1065
 As to rental value, 23, 1066
 Benefits derived from road, 23, 1080, 1081
 Contingent damages, 23, 1066
 Effect of road on adjacent property, 23, 1066
 Harmless errors, 23, 1068
 Hearsay evidence, 23, 1069
 Increase in value of other lots, 23, 1080
 In proceedings before commissioners of appraisal, 23, 1068
 Of diminution of value of adjacent building not on railroad, 23, 1067
 Offer to purchase property, 23, 1067
 Of speculative damages, 23, 1065
Opinion of Witnesses, 23, 1062
 As to fair value of property, 23, 1062
 Examples, 23, 1062-1065
 Experts, 23, 1064
 How objection taken, 23, 1065
 Opinions as to causes of decrease in value, 23, 1062
 Ordinary witnesses, 23, 1062
 Real estate agent, 23, 1064
 When admission of improper evidence may be disregarded, 23, 1064
 Where such evidence was admitted on behalf of both parties, 23, 1062, 1063
 Proof of benefits derived from road, 23, 1081
Executors and Administrators
 Recovery of damages for injury to property, 23, 1056
Exemplary Damages, 23, 1081, 1088
 Malicious act of servant, 23, 1089
Expert and opinion evidence, see *infra*, EVIDENCE.
 Expulsion of passengers, 23, 1088
 Falling sparks, 23, 1087
 False imprisonment, 23, 1088
 Guard rails, 23, 1091
 Hearsay evidence, 23, 1069
 Implied acquiescence, 23, 1083
 In Illinois, 23, 1035
 In Kentucky, 23, 1036
 In Maryland, 23, 1035
Injunction, 23, 1052
 Additional tracks, 23, 1053
 Against construction of another road, 23, 1039
 Alternative damages, 23, 1053
 A single proceeding, 23, 1054, 1055
 Damages for noise, 23, 1055
 Effect of injunction proceeding, 23, 1053
 For what compensation awarded, 23, 1055
 In general, 23, 1052
 In Kentucky, 23, 1055
 Jury trial, 23, 1055
 Light, air, and access, 23, 1055
 Limitation of actions, 23, 1083
Measure of Damages, 23, 1070
 Contemplated building of road, 23, 1072
 Examples, 23, 1070, 1074
 Excessive damages, 23, 1072
 In general, 23, 1070
 Insufficient damages, 23, 1072
 Measure of damages to fee value, 23, 1071
 Past damages, 23, 1070
 Prospective damages, 23, 1071
 Proximity of stations, 23, 1072
 Nature of the proceedings, 23, 1052
 Right of owner who has leased property, 23, 1060
 Right to trial by jury, 23, 1085
 Suspension of the injunction, 23, 1053
 To compel company to make compensation, 23, 1052

ELEVATED RAILROADS—Cont'd

Kane v. Elevated R. Co., 23, 1044

Landlord and Tenant, 23, 1058

Continuous injury, 23, 1058

General rule, 23, 1058

Injunction by owner of fee, 23, 1060

Injury to the inheritance, 23, 1058

Lease executed after construction of road, 23, 1058

Lease executed before construction of road, 23, 1059

Measure of damages in action by lessor, 23, 1059

Trespass of a temporary character, 23, 1058

Liability for Personal Injuries and Other Torts, 23, 1086

Exemplary damages, 23, 1088

Expulsion of passengers, 23, 1088

Falling of heavy substances, 23, 1089

False arrest, 23, 1088

From falling sparks, 23, 1087

Guard rails, 23, 1091

In general, 23, 1086

Injury at station platform, 23, 1090

Injury of one passenger by another, 23, 1092

Open space, 23, 1090

Space between cars and platform, 23, 1090

Stairways, 23, 1091

Sudden starting or stoppage of train, 23, 1090

Want of due care, 23, 1087

Want of ordinary care, 23, 1088

Willful and malicious acts of servants, 23, 1089

Light, Air, and Access

Damages for, 23, 1055

Measure of damages, 23, 1075

Limitation of Actions

Common-law action for damages, 23, 1049

Recovery of Damages by Owners of Abutting Property, 23, 1083

Delay in bringing suit, 23, 1085

Examples, 23, 1083, 1085

Implied acquiescence, 23, 1083, 1085

In common-law action, 23, 1083

In general, 23, 1083

Proceedings by injunction, 23, 1083

Right to acquire title to easements by adverse possession, 23, 1084

Location, 23, 1042

Measure of damages, see *infra*, INJUNCTION; RECOVERY OF DAMAGES BY OWNERS OF ABUTTING PROPERTY.**Noise, 23, 1075**

Damages for, 23, 1055

Owners, see *infra*, RECOVERY OF DAMAGES BY OWNERS OF ABUTTING PROPERTY.**Passengers, see *infra*, LIABILITY FOR PERSONAL INJURIES AND OTHER TORTS.****Personal injuries, see *infra*, LIABILITY FOR PERSONAL INJURIES AND OTHER TORTS.****Purchasers, see *infra*, RECOVERY OF DAMAGES BY OWNERS OF ABUTTING PROPERTY.****Questions of Law and Fact**

Causes for decrease in value of property, 23, 1069, 1070

Injunction proceedings, 23, 1069, 1070

Whether benefits have accrued to property, 23, 1081

Rapid-Transit Acts, 23, 1036

Act of 1875, 23, 1036

Consent of Property Owners and Local

Authorities, 23, 1039

Conditional consent, 23, 1039

Consent irrevocable, 23, 1039

In general, 23, 1039

Injunction against construction of another road, 23, 1039

Constitutionality, 23, 1037

Private or local bill, 23, 1037

Rapid-Transit Commission, 23, 1037

Duty, 23, 1037

Fixed time within which roads shall be completed, 23, 1037

In general, 23, 1037

Plan upon which railroad shall be constructed, 23, 1037

Under-ground, elevated or surface road, 23, 1038

Right to Acquire Real Estate, 23

1041

Construction, 23, 1042

Location, 23, 1042

Supplement of 1891, 23, 1036

Supreme Court Commissioners, 23,

1040

Act of 1875, 23, 1040

Duty of commissioners, 23, 1040

Hearing, 23, 1040

In general, 23, 1040

Notice of application, 23, 1040

Notice of meeting, 23, 1040

Report, 23, 1041

Under general law of New York, 23, 1036

Recovery of Damages by Owners of Abutting Property, 23, 1042, 1062See *infra*, EVIDENCE.**Deduction on account of benefits derived from existence of road, see *infra*, MEASURE OF DAMAGES.****Common-Law Doctrine, 23, 1048**

Damage to the fee, 23, 1050

Exception in New York cases, 23, 1051

Generally, 23, 1048

In Kentucky, 23, 1051

In Pennsylvania, 23, 1051

Limitation of actions, 23, 1083

Measure of damages, 23, 1049, 1069

Permanent injuries, 23, 1050

Recovery of damages for permanent injury, 23, 1051

- Right where ordinary railroads enter street on elevated structure, 23, 1051
- Statute of limitations, 23, 1049
- Temporary injuries, 23, 1050
- What injuries may be considered, 23, 1050
- Eminent Domain Proceedings, 23, 1046**
 - By whom instituted, 23, 1046
 - Decreased value, 23, 1047
 - Difference between market value and property, 23, 1048
 - Examples, 23, 1046, 1048
 - In general, 23, 1046
 - Measure of damages, 23, 1047
 - Nature of the proceedings, 23, 1046
 - Object of the proceedings, 23, 1046
 - Right of owners to recover damages, 23, 1042
 - Right to institute condemnation proceedings, 23, 1048
 - Value at the time of institution of condemnation proceedings, 23, 1047
 - Form of action, 23, 1046
- Limitation of Actions, 23, 1083**
 - Delay in bringing suit, 23, 1085
 - Examples, 23, 1083, 1085
 - Implied acquiescence, 23, 1083, 1085
 - In common-law action, 23, 1083
 - In general, 23, 1083
 - Proceedings by injunction, 23, 1083
 - Right to acquire title to easements by adverse possession, 23, 1084
- Measure of Damages, 23, 1055, 1061, 1069**
 - Cinders, 23, 1074
 - Consequential damages, 23, 1075
 - Contemplated building of road, 23, 1072
 - Contingent damages, 23, 1074
 - Damages to fee value, 23, 1073
- Deduction on Account of Benefits Derived from Existence of Road, 23, 1078**
 - Damage to easement in street, 23, 1079
 - Damage to remaining land, 23, 1078
 - Easement in street, 23, 1079
 - Evidence, 23, 1080, 1082
 - Evidence as to increased value in other streets, 23, 1082
 - Evidence of increased value of other land, 23, 1081
 - Examples, 23, 1078-1082
 - Fee value greater than ever before, 23, 1079
 - General railroad law, 23, 1078
 - General rise in value of property in vicinity, 23, 1081
 - Increase not due to road, 23, 1082
 - In general, 23, 1078
 - Land actually taken, 23, 1078
 - Owner of several lots, 23, 1080
 - Proximity of station, 23, 1081
- Rapid-transit act, 23, 1078
- Right to injunction, 23, 1079, 1080
- Where other abutting owners receive greater benefit, 23, 1081
- Where result is beneficial, 23, 1078
- Depreciation of rental value of property, 23, 1070
- Difference in values, 23, 1073
- Dust, 23, 1074
- Easements of light and air, 23, 1069
- Excessive or insufficient damages, 23, 1072
- Exemplary damages, 23, 1078
- Generally, 23, 1069
- In a common-law action, 23, 1070
- In an action by lessor, 23, 1059
- In eminent domain proceedings, 23, 1047
- In Injunction Proceedings, 23, 1053, 1055, 1070**
 - Contemplated building of road, 23, 1072
 - Examples, 23, 1070-1074
 - Excessive damages, 23, 1072
 - In general, 23, 1070
 - Insufficient damages, 23, 1072
 - Measure of damages to fee value, 23, 1071
 - Past damages, 23, 1070
 - Prospective damages, 23, 1071
 - Proximity of stations, 23, 1072
- Injury to personal property, 23, 1073
- In the common-law action, 23, 1048-1051
- Loss of privacy, 23, 1073
- Noise, 23, 1075
- Ownership of fee, 23, 1070
- Proximity of stations, 23, 1072
- Questions of law and fact, 23, 1070
- Recovery confined to actual damages, 23, 1074
- Smoke, 23, 1074
- Speculative damages, 23, 1074
- Vibration, 23, 1075
- When plaintiff's property fronts on two streets, 23, 1081
- Permanent or temporary damages, 23, 1046**
- Proceeding for an Injunction, 23, 1052**
 - Additional tracks, 23, 1053
 - Alternative damages, 23, 1053
 - A single proceeding, 23, 1054, 1055
 - Damages for noise, 23, 1055
 - Effect of injunction proceeding, 23, 1053
 - For what compensation awarded, 23, 1055
 - Generally, 23, 1052
 - In Kentucky, 23, 1055
 - Jury trial, 23, 1055
 - Light, air and access, 23, 1055
 - Limitation of actions, 23, 1083
- Measure of Damages, 23, 1070**
 - Contemplated building of road, 23, 1072
 - Examples, 23, 1070-1074

ELEVATED RAILROADS—Cont'd

Recovery of Damages by Owners of Abutting Property—*Cont'd*

Proceeding for an Injunction—*Cont'd*

Measure of Damages—*Cont'd*

Excessive damages, 23, 1072

In general, 23, 1070

Insufficient damages, 23, 1072

Past damages, 23, 1070

Prospective damages, 23, 1071

Proximity of stations, 23, 1072

To fee value, 23, 1071

Nature of the proceedings, 23, 1052

Right of owner who has leased property, 23, 1060

Right to trial by jury, 23, 1085

Suspension of the injunction, 23, 1053

To compel company to make compensation, 23, 1052

Right to Recover, 23, 1042

Discussion of the cases, 23, 1042-1046

Experimental section, 23, 1046

In general, 23, 1042

Kane v. Elevated R. Company, 23, 1044

The Lahr case, 23, 1044

The Story case, 23, 1043

Who May Recover, 23, 1056

Corporations, 23, 1062

In general, 23, 1060

Landlord and Tenant, 23, 1058

Continuous injury, 23, 1058

General rule, 23, 1058

Injunction by owner of fee, 23, 1060

Injury to the inheritance, 23, 1058

Lease executed after construction of road, 23, 1058

Lease executed before construction of road, 23, 1059

Measure of damages in an action by lessor, 23, 1059

Trespass of a temporary character, 23, 1058

Lessor's heirs, 23, 1056

Life tenant and remainderman, 23, 1061

Mortgagor and mortgagee, 23, 1061

Parties interested in abutting land, 23, 1060

Partners, 23, 1061

Personal representatives, 23, 1056

Subsequent Purchasers, 23, 1056

Damages for the retail value, 23, 1057

In general, 23, 1056

Proceeding by injunction, 23, 1058

Reservation of right to damages by grantor, 23, 1058

Trustees, 23, 1061

Recovery of damages for injury to abutting property, 23, 1061

Right to acquire real estate, 23, 1041

Right to trial by jury, in injunction proceedings, 23, 1085

Smoke, 23, 1074

Sparks, 23, 1091, 1092

Starting and stoppage of trains, 23, 1090

Subsequent purchasers, 23, 1056

The Lahr case, 23, 1044

The Story case, 23, 1043

Torts, see *infra*, LIABILITY FOR PERSONAL INJURIES AND OTHER TORTS.

Trusts

Recovery of damages for injury to property, 23, 1061

Under general railroad law, 23, 1035

Vibration, 23, 1075

ELEVATORS, 28, 668

See generally, WAREHOUSE AND WAREHOUSEMAN.

Confusion of Goods, 28, 668

Depositor owner of portion of mass, 28, 669

Examples, 28, 668-670

In general, 28, 668

Title to grain, 28, 668

Sales, 21, 492

Taxation

Elevators owned by railroad, 25, 172

Warehouse receipts, 28, 684

ELIGIBLE, 6, 447

ELOPEMENT, 6, 447

ELSE, 6, 448

ELSEWHERE, 6, 448

Or elsewhere, 17, 219

EMANCIPATION, 6, 448

See PARENT AND CHILD.

EMBARGO, 6, 449

See ADMIRALTY; INTERNATIONAL LAW.

Congress's power to lay, 3, 703

Performance of contract prevented by, 3, 899

EMBEZZLEMENT, 6, 450

See LARCENY; RECEIVING STOLEN PROPERTY.

As to indictment generally, see INDICTMENT.

Agents, 6, 454, 471, 472, 476

See *infra*, CLERKS AND SERVANTS

Casual employment, 6, 472

Collecting agents, 6, 474, 475

Express agents, 6, 476

Facts which must concur to constitute embezzlement, 6, 473

Intent, 6, 473

Possession of property, 6, 473

Railroad agents, 6, 476

Special services as agent, 6, 472

Stockholders, 6, 476

Termination of agency, 6, 472

What constitutes embezzlement by, 6, 473

Where the relation of master and servant does not exist, 6, 472

Who are agents, 6, 471

Working on commissions, 6, 474

Banks and Banking, 6, 483

By cashier, 6, 484

By clerk, 6, 484

By officers of banks generally, 6, 483

- Constitutionality of a provision that embezzlement by officers of a certain bank shall be felony, 4, 652
- Larceny at common law, 6, 484
- Managers, 6, 484
- National Banks**, 6, 485
- Averment necessary in indictment, 6, 498²
 - By cashier, 6, 486
 - By directors, 6, 486
 - By officers, 6, 485
 - By president, 6, 485
 - By teller, 6, 486
 - Construction of the word moneys, 6, 485
 - Generally, 6, 485
 - National banking act, 6, 485
 - Private bankers, 6, 484
 - What constitutes the offense, 6, 483
- Bill of particulars, 6, 498^r
- Burden of proof, 6, 498^s
- By assignee in bankruptcy, 6, 493
- By Attorneys**, 6, 481
- Instances, 6, 481
 - Using money received, 6, 481
- By Bailee**, 6, 480
- What bailees are within statute, 6, 481
- By common carrier, 6, 483
- By constable, 6, 493
- By directors of corporations, 6, 477
- By guardian, 6, 483
- By justices of the peace, 6, 493
- By members of corporations, 6, 477
- By officers of corporations, 6, 477
- By Partners**, 6, 479; 17, 943
- Servant or partner, 6, 480
- By private banks, 6, 483
- By public administrator, 6, 493
- By Public Officers**, 6, 487
- Acts of congress, 6, 487
 - By deputy-sheriff, 6, 490
 - City clerk, 6, 490
 - Clerks and servants of public officers, 6, 492
 - Comptroller, 6, 491
 - County auditor, 6, 489
 - County officers, 6, 489
 - County treasurer, 6, 489
 - Defacto officers, 6, 488
 - Failure to pay over, 6, 488
 - Municipal officers, 6, 490
 - Officers to whom the U. S. statutes apply, 6, 487
 - Persons aiding or abetting public officers in embezzlement, 6, 492
 - State and municipal officers, 6, 488
 - State treasurer, 6, 489
 - Tax collector, 6, 491
 - Township trustees, 6, 490
 - Town treasurer, 6, 490
 - United States officers, 6, 487
 - What constitutes the offense, 6, 488
- By servants of corporations, 6, 478
- By trustee, 6, 482
- Charge to jury, 6, 498^s
- Clerks and Servants**, 6, 454-461; 14, 790
- See infra*, AGENTS.
- Marked money, 6, 456
- Servant of a co-partnership, 6, 458
- Servant or partner, 6, 480
- What Constitutes by**, 6, 465
- Distinction between possession and custody, 6, 466
 - English statute, 6, 470
 - Failure to account for money, 6, 468
 - False entries, 6, 470
 - Generally, 6, 465
 - Massachusetts doctrine, 6, 466
 - Money sent from one place to another, 6, 466
 - New York doctrine, 6, 467
 - Particular sum taken, 6, 471
 - Possession by virtue of his employment, 6, 466
 - Possession necessary, 6, 467
 - Possession or custody of goods, 6, 466
 - Rendering true account but failure to pay, 6, 469
 - Secrecy and concealment, 6, 469
 - Several offenses, 6, 466
 - Special contracts to receive goods outside of usual employment, 6, 467
 - Theft by clerk from shop, 6, 467
 - Three elements, 6, 465
 - What constitutes several offenses, 6, 470
 - Where master has no right to money received, 6, 468
- Who Are**, 5, 461
- Definition of clerk, 6, 461
 - Definition of servant, 6, 461
 - Duty not compulsory, 6, 464
 - Employment by other masters, 6, 465
 - Generally, 6, 461
 - Instances, 6, 461
 - Laborers or persons hired by the day, 6, 461
 - Occasional employment, 6, 463
 - Payment on commission, 6, 464
 - Question for jury, 6, 462
- Common law, 6, 451, 452
- Confessions**
- What does not amount to, 6, 499
- Continuing offense, 6, 454
- Defenses**, 6, 498^g
- Defendant authorized to use the money, 6, 498^g
 - Estoppel, 6, 498^r
 - General rules, 6, 498^g
- Definition**, 6, 451
- In Illinois, 6, 452
 - In Indiana, 6, 452
 - In Kentucky, 6, 452
 - In Louisiana, 6, 452
 - In Texas, 6, 452
- Distinguished from false pretences, 7, 703
- Distinguished from Larceny**, 6, 455
- Embezzling proceeds of property, 6, 458
 - Goods received from master, 6, 456

EMBEZZLEMENT—*Cont'd***Distinguished from Larceny—*Cont'd***

Lack of element taking in embezzlement, 6, 456

Marked money, 6, 456

Obtaining money by false pretenses, 6, 457

Possession and embezzlement, 6, 457

Possession distinguished from mere custody, 6, 457

Power of legislature to include larceny, 6, 455

Property in the hands of bailee or servant, 6, 455

Property merely in custody, 6, 457

Servant of a co-partnership, 6, 458

Statutory offense, 6, 455

Distinguished from theft, 6, 451

Evidence, 6, 498s

Books of account, 6, 498t

Competency, 6, 503

Confessions, 6, 499

Conversion, 6, 502

Declarations of owners of property, 6, 500

Defendant's financial condition, 6, 503

Demand and refusal, 6, 502

Of custom, 6, 502

Of time, 6, 501

Of value, 6, 503

Of venue, 6, 498s

Parol evidence, 6, 499

Receipts, 6, 498t

Relevancy, 6, 503

Sufficiency, 6, 504

To prove relation of trust, 6, 500

To Show Intent, 6, 501

Similar acts, 6, 501

To show obtaining of money, 6, 502

Witnesses, 6, 505

Executors and administrators, 21, 375

"For or in the name, or on account of," 8, 81

From Mails, 6, 493, 498n; 18, 860

Generally, 6, 493

Individuals not connected with the service, 6, 495

Mail carriers and riders, 6, 495

Money order funds, 6, 494

Postal clerks, 6, 495

Taking letter from postoffice, 6, 494

U. S. statutes, 6, 494

Indictment, 6, 495; 12, 818

Allegation of conversion, 6, 497

Allegation of intent, 6, 498g

Allegation that defendant received property by reason of his employment, 6, 497

Averment as to demand, 6, 496

Averment as to Ownership, 6, 498d

Against collectors of rates, 6, 498e

Allegation from whom the money was received, 6, 498e

Misnomer, 6, 498d

Necessity of, 6, 498d

Rule in England, 6, 498d

Averment as to time, 6, 498h

Averment as to whose service, 6, 497

Averment, in case of several articles, 6, 497

Averment necessary, 6, 498k

Averment of intent, 6, 496

Bailments

Coin, 6, 498c

Charging theft and embezzlement, 6, 496

Counts, 6, 498i**Charging Offenses**

Joinder of embezzlement and larceny, 6, 498j

Joinder, 6, 498i

Description of Property, 6, 498e

Averment as to directions for application of proceeds, 6, 498h

Averment of value or amount, 6, 498h

Bonds of the United States, 6, 498f

Certainty, 6, 498f

Character of funds, 6, 498g

Coin or money, 6, 498g

Effect of omission, 6, 498f

Kind of money, 6, 498g

Necessity of description, 6, 398f

Necessity of stating exact amount, 6, 498h

Object for which money was received, 6, 498f

Of money embezzled, 6, 498f

Same particularity as in an indictment for larceny, 6, 498f

Strictness required, 6, 498e

What description sufficient, 6, 498e

What sufficient description, 6, 488g

Whether in coin or bank notes, 498g

Designating agent as servant, 6, 497

Embezzlement from Mails, 6, 498n

Charging several distinct acts, 6, 498n

Dead-letter clerk, 6, 498n

Dead-letters, 6, 498o

Description of bank notes or other articles, 6, 498n

Insufficient allegation, 6, 498n

Official character of accused, 6, 498o

Ownership of letter embezzled, 6, 498o

Particular description of letter, 6, 498n

Sufficient allegation, 6, 498n

Embezzlement from National Banks, 6, 498k

U. S. revised statutes showing facts relied upon, 6, 698k

In Cases of Bailment, 6, 498b

Setting forth charge in words of statute, 6; 498c

In case of officers of societies, 6, 498a

Language of the statute, 6, 496

Necessary averments, 6, 495

Negating exceptions, 6, 496

Proof of agency, 6, 498a

Public Officers, 6, 498k

Averment as to failure to account, 6, 498m

- Averment as to manner of acquisition of office, 6, 498*l*
 Averment as to official capacity, 6, 498*k*
 Averment as to ownership of money, 6, 498*l*
 Indictment against county treasurer, 6, 498*m*
 Where property belongs to several municipalities, 6, 498
 Secretary of society a servant, 6, 498*a*
 Setting forth the fiduciary relation, 6, 495
 Sufficiency in case of bailment, 6, 498*b*
Sufficiency of Indictment
 Generally, 6, 495
 How tested, 6, 498*c*
 Time when it must be found, 6, 498*i*
 Infamous crime, 6, 453; 10, 603, 609
 Instruction, examples of, 11, 269-272
Intent, 6, 473
 Averment of, 6, 496
Joinder, 6, 498*j*
 Defective indictment, 6, 498*j*
 Of embezzlement and larceny, 6, 498*j*
 With false pretenses, 7, 763
Jurisdiction, 6, 498*p*
 State jurisdiction, 6, 498*p*
 United States jurisdiction, 6, 498*q*
Larceny, 12, 767, 769
 See infra, DISTINGUISHED FROM LARCENY.
 Evidence of false pretenses, 12, 854
 Setting aside verdict, 12, 890
 Libel and slander, 13, 337, 387
 Marked money, 6, 456
Master and servant, *see infra*, CLERKS AND SERVANTS.
 Money paid by mistake, 6, 451
Partnership
 Of partnership funds, 6, 479; 17, 943
 Pension, 18, 293
 Possession, 6, 457, 466, 473
Postal Laws, 6, 493; 18, 860
 Decoy letters, 18, 862
 Evidence of intent unnecessary, 18, 860
 Indictment, 18, 861
 Intended to be sent by mail, 18, 860
 Revised statutes of the United States, 18, 860
 Who is an employee, 18, 860
 Practice, 6, 498*r*
 Punishment, 6, 507
 Receiving stolen property, 20, 443
 Setting aside verdict, 12, 890
 Several offenses, 6, 497
 Ships and shipping, 22, 726, 731
 Statute of limitations, 6, 498*i*
 Time of embezzlement, 6, 501
 Trusts and trustees, 27, 163
 Value, 6, 503
Value Immaterial, 6, 460
 In Alabama, 6, 460
 In California, 6, 460
 In Texas, 6, 460
Variance, 6, 506
Venue, 6, 498*o*
 Embezzlement in one county and demand in another, 6, 498*o*
 Evidence of, 6, 498*s*
 In what counties it may be laid, 6, 498*o*
 Traveling salesman, 6, 498*p*
Verdict, 6, 506
 Conviction under indictment for theft, 6, 506
 In general, 6, 506
What Constitutes, 6, 453-465
 Agent, clerk or servant, 6, 45
 Breach of trust, 6, 453
 Generally, 6, 453
 In Massachusetts, 6, 454
 In Vermont, 6, 454
 Intent, 6, 455
 Relations of trust, 6, 454
 Value immaterial, 6, 460
What May Be Embezzled, 6, 458
 Animals, 6, 459
 Bank bills, 6, 459
 Bonds, 6, 459
 Examples, 6, 459
 Exchequer bills, 6, 459
 In general, 6, 458
 Money, 6, 458
 Money derived from an unlawful source, 6, 460
 "Money or other property," 6, 459
 Money received for illegal or immoral purposes, 6, 460
 Money received in an illegal transaction, 6, 460
 Personal property, 6, 458
 Shares of stock, 6, 459
Witnesses, 6, 505
 Credibility, 6, 505
 Experts, 6, 505
EMBLEMENTS, 6, 883
See CROPS.
Manure, *see* LANDLORD AND TENANT.
Landlord and Tenants, 12, 708
 Certain termination, 12, 709
 Crops, 12, 708
Custom, 12, 710
 Conflict with stipulation of lease, 12, 711
 Contravention of contract, 12, 711
 Crop which defendant knows he cannot reap, 12, 710
 General usage of the country, 12, 711
 Presumption that contract is made in reference to, 12, 711
Death before seed is actually sown, 12, 710
Definition, 12, 708
Examples, 12, 712
 Lease of tenant for life, 12, 710
 Lease terminated by notice, 12, 709
 Lessee of tenant for life, 12, 709
 Mutual privilege founded on usage, 12, 713
 Natural product of soil, 12, 709
 Sale under mortgage, 12, 711
 Sublease, 12, 710

EMBLEMENTS—Cont'd**Landlord and Tenants—Cont'd**

- Tenancy terminated by some other act than tenant's, 12, 709
- Term of tenancy uncertain, 12, 709
- To what the right extends, 12, 709
- Way-going crops, 12, 710
- Wheat straw, 12, 713
- Mortgages, 15, 812**
 - Crops, 15, 813
 - Mortgagor's right, 15, 812
 - What included, 15, 813
- Partition, 17, 784
- Succession, 24, 352
- Tenancy at sufferance, 12, 669
- Tenancy at Will, 12, 673**
 - In case of death, 12, 673
 - Tenant terminating tenancy, 12, 673

EMBRACERY, 6, 507

- Attempt, 6, 508
- Definition, 2, 539; 6, 507
- Libel and slander, 13, 336
- Offenses at common law, 6, 507
- Solicitations by juror, 6, 507
- What constitutes the offense, 6, 508
- Who may be guilty of the offense, 6, 508

EMIGRANT, 6, 509

See EXPATRIATION.

EMIGRATION, 6, 509**EMINENT DOMAIN, 6, 509, 611; 8, 588**

See generally, FIRES CAUSED BY THE OPERATION OF RAILWAYS.

See PIPE LINES; VIEWERS AND COMMISSIONERS.

As to whether the exercise of the right of eminent domain is a breach of the real covenant of title, see REAL COVENANTS.

Fire

Destruction of building to prevent spread of fire, see FIRE DEPARTMENT; FIRES CAUSED BY THE OPERATION OF RAILROADS.

Mill acts, see DAMS.

Streets

As to railroads in streets, see RAILROADS.

Abandonment, 6, 598

See *infra*, PROCEDURE.

Abandonment of Public Use, 6, 603

- Alteration of plank road or canal into a railroad, 6, 604
- Change in line of railroad, 6, 604
- Diversion of property of railroad to manufacturing business, 6, 604
- Diversion of property to inconsistent use, 6, 603
- Failure to complete road, 6, 604
- Failure to operate, 6, 604
- Non-user, 6, 604
- Sale of right of way, 6, 604

Action at law, 6, 591

Action of debt for damages assessed, 5, 168

Appeal, 6, 627

- Certiorari, 6, 631
- Costs, 6, 632

Entry on Lands Pending an, 6, 629

- Injunction to restrain entry, 6, 629
- Payment, 6, 516, 632
- Security required, 6, 629
- When company may enter and construct road, 6, 629
- Where company pays amount assessed, 6, 629
- Withdrawal of deposit, 6, 630

Judgment on, 6, 623

- Amendment of error below, 6, 631
- Interest on damages, 6, 631
- Open and close, 6, 630
- Order appointing commissioners, 6, 628
- Order condemning land, 6, 628
- Order denying motion to vacate an award, 6, 628

Practice, 6, 630

- Purchase of lands after proceedings, 6, 628

Two appeals, 6, 630

What Considered on, 6, 630

- Conflicting evidence, 6, 631
- Objection in lower court, 6, 630
- Only such irregularities as appear on face of record, 6, 630
- Proceedings substantially correct, 6, 630
- Recovery back of possession, 6, 631
- Reversal on account of irregularities, 6, 630

When final order is made, 6, 628

When lies, 6, 627

Who May, 6, 628

- Joint parties, 6, 628
- Mortgagor and mortgagee, 6, 628
- One not a party, 6, 628
- One of several parties, 6, 628
- Owner of several parcels, 6, 628
- Railroad companies, 6, 628

Appraisements, 1, 625

Arbitration, 6, 634

As a franchise, 8, 595

Assessments experimental, 1, 5

Award, 6, 624

As to interest on award, see infra, DAMAGES.

Averaging the sum, 6, 624

Conclusiveness and effect of, 6, 626

Confirmation, 1, 4; 6, 625

Exceptions, 6, 625

Finding that taking is necessary, 6, 624

Form, 6, 624

In money, 6, 625

Majority of commissioners, 6, 624

Necessity of confirmation, 6, 625

Objections, 6, 626

Presumption in favor of, 6, 624

Requisites, 6, 624

Res adjudicata, 6, 626

Separate assessment, 6, 625

Stating advantages and disadvantages, 6, 625

Uncertainty, 6, 624

What damages embrace, 6, 625

When award may be set aside, 6, 625

- Boom companies, 2, 475; 8, 615
- Branch Railroads**, 6, 519, 524; 12, 947
 - Condemnation by another company, 12, 944
 - Sidings, 6, 525; 12, 947
- Bridges, 2, 562
- Burden of proof, 6, 622
- Canals**, 28, 1044
 - Examples, 28, 1043, 1044
 - Fee, 28, 1044
 - How compensation ascertained, 28, 1045
 - In general, 28, 1043
 - Right to enter, 28, 1044
- Certiorari**, 6, 631
- Charter conferring the right construed in favor of the public, 4, 214
- Commissioners' liability, 12, 39
- Conditions of Exercises**, 6, 615
 - Compensation**, 6, 516
 - Condition precedent, 6, 516
 - Necessity of property to public use, 6, 516
 - Public uses, 6, 515
- Conditions Precedent**, 6, 516, 521
 - Making and filing a survey, 6, 521
 - Offer of a reasonable price, 6, 522
 - That legislature shall approve of route, 6, 521
 - That party shall attempt to agree upon a price, 6, 522
- Consequential Damages**, 6, 545, 597; 10, 319.
 - See infra*, WHAT AMOUNTS TO A TAKING.
 - Scope of term, 6, 597
- Constitutional Law**
 - Constitution providing a method for assessment of damages, 6, 564
 - Legislature determining value of land, 6, 564
 - Necessity of provision for damages, 6, 563
 - Obligation of contracts, 3, 748; 6, 606; 8, 625
 - Reservation of power to alter or to repeal charter of corporation, 4, 212
 - Right to trial by jury, 6, 613
 - Statute authorizing taking more land than is necessary, 6, 541
 - Taking land without compensation, 6, 591
 - Taking public property for private use, 6, 517
- Construction of grant**, 6, 522
- Construction of statutes**, 23, 394
- Contractor exercising**, 14, 840
- Contracts**, 6, 512, 601
 - Agreement who shall act as commissioners for assessment of damages, 6, 601
 - Various agreements, 6, 602.
- Costs**, 6, 632
 - Abandonment of proceedings, 6, 632
 - Of appeal, 6, 632
 - Payment as prerequisite to entry, 6, 516, 585, 632
- Railroad changes its route, 19, 829
 - When recoverable, 6, 632
- Damages**, *see infra*, CONSEQUENTIAL DAMAGES; EXEMPLARY DAMAGES; LOCAL IMPROVEMENTS; MEASURE OF DAMAGES; PAYMENT OF DAMAGES. *As to what takings and injuries are within the inhibition against taking private property for public uses*, *see infra*, WHAT AMOUNTS TO A TAKING.
 - Action for, 6, 564
 - Agreement as to, 6, 601
 - Assessment of, by a commission, 6, 613
 - At time of assessment, 6, 564
 - At time of entry, 6, 564
 - Eminent domain, 6, 552
 - Fee in city, 6, 553
 - Fences as an element of damages, 7, 939
 - Improvements made before assessment, 6, 567
 - Interest on Award**, 6, 584
 - Deposit of money in court, 6, 585
 - From time of taking, 6, 584
 - On sum found upon appeal, 6, 584
 - Tender by corporation, 6, 585
 - Legislature determining value of land, 6, 564
 - Lien for, 6, 596
 - Necessity of compensation, 6, 516
 - Necessity of provision for, 6, 563
 - Payment as prerequisite to entry, 6, 516, 585, 632
 - Resulting from improper construction, 6, 552
 - Right to damages, 6, 552
 - Time of Computation**, 6, 564
 - Alabama doctrine, 6, 564
 - California rule, 6, 566
 - Date of filing petition for assessment, 6, 566
 - Minnesota doctrine, 6, 565
 - Nebraska rule, 6, 566
 - Rhode Island doctrine, 6, 565
 - Time of assessment, 6, 564
 - Time of entry, 6, 564
 - Wisconsin doctrine, 6, 564
 - Use of street, 6, 553
 - Waiver of, 6, 597
 - When damage recoverable, 6, 554
 - Where constitution provides a method for assessment, 6, 564
 - Where fee vested in public, 6, 553
 - Whether it constitutes an additional burden, 6, 652
 - Who liable for, 6, 590
- Delegation of Power**, 6, 517
 - By charter, 6, 521
 - By public act, 6, 621
- Conditions Precedent**, 6, 521
 - Making and filing a survey, 6, 521
 - Offer of a reasonable price, 6, 522
 - That legislature shall approve of route, 6, 521
 - That party shall attempt to agree upon a price, 6, 522

EMINENT DOMAIN—Cont'd**Delegation of Power—Cont'd**

- Construction of Grant, 6, 522; 23, 394
- Construed strictly against grantee, 6, 522
- Intention of legislature, 6, 522
- Strictly construed, 6, 522
- Corporation chartered under laws of another state, 6, 517
- Exercised by private corporations, 6, 511

Exercised through agent, 6, 517

Method of delegation, 6, 521

Municipal corporations, 6, 518

Private corporations, 6, 517, 520

To individuals, 6, 521

To railroad company's, 6, 518

When Delegated Power Exhausted, 6, 523

Exhaustion by single users, 6, 523

In case of railroads, 6, 523

Interference by individuals, 6, 523

Subsequent exercises, 6, 523

When not presumed, 6, 517

Description of land to be taken, 19, 833

Distinguished from Police Power, 18, 742

Appropriating private property for public improvement, 18, 743

In general, 18, 742

Municipal liability for destruction of private property to prevent spread of fire, 18, 744

Dower, 5, 920

Drains and Sewers

Public purpose, 5, 526; 6, 14

When power may be exercised, 6, 14

Due process of law, 3, 718

Ejectment, 6, 593

Granting time to company to pay damages, 6, 593

Streets of city, 6, 593

Unlawful entry, 6, 593

Waiver of right, 6, 594

When land is wrongfully taken, 6, 241

Elevated Railroads, 23, 1046

By whom instituted, 23, 1046

Decreased value, 23, 1047

Difference between market value and property, 23, 1048

Examples, 23, 1046-1048

In general, 23, 1046

Measure of damages, 23, 1047

Nature of the proceedings, 23, 1046

Object of the proceedings, 23, 1046

Right of owners to recover damages, 23, 1042

Right to institute condemnation proceedings, 23, 1048

Value at time of institution of condemnation proceedings, 23, 1047

Evidence, 6, 618

Amount of land taken, 6, 618

Assessor's valuation, 6, 622

As to danger of killing stock, 6, 618

Benefit to property, 6, 619

Charter, 6, 622

Competency, 6, 618

Danger of fires, 6, 618

Discretion of viewers as to reception of testimony, 6, 617

Documentary, 6, 622

General law of evidence, 6, 618

In general, 6, 618

Noise of passing trains, 6, 618

Offers made for land, 6, 619

Opinion, 6, 620, 621

As to injury to balance of lands, 6, 620

As to value, 6, 620

Based upon testimony of others, 6, 620

Cross-examination of witnesses, 6, 621

Evidence of insurance agents as to fire, 6, 621

Necessity that witnesses should be experts, 6, 620

Of owner, 6, 621

Value of reversion of land, 6, 622

Plans and estimates, 6, 622

Price given to the land, 6, 619

Profits, 6, 618

Purpose for which property was used, 6, 618

Sales of Other Lands, 6, 619

Admission of title, 6, 620

Declarations and admissions, 6, 620

Declarations as to value of land, 6, 620

Remoteness of sales, 6, 620

Similar in locality and character, 6, 620

Sum paid to owners of adjoining estates, 6, 620

Showing depreciation, 6, 618

Showing market value, 6, 618

Sworn valuation, 6, 622

Track blocking ingress, 6, 618

Value of land to the railroad company, 6, 618

Executors and Administrators

When damages for rent should go to heir, 7, 280

Exemplary damages, 6, 581

Exemptions, 6, 542

Dwelling house, 6, 542

English statute, 6, 542

Good faith, 6, 542

Final judgment, 12, 68

Foreign Corporations, 8, 335, 364; 19, 842

Consolidated company, 8, 364

Exercise as successor of domestic corporation, 8, 364

Necessity that the power be expressly conferred, 8, 364

Power of state to confer, 8, 364

Franchises, 6, 520, 535

Injury to exclusive franchises by granting rival franchise, 6, 545

General doctrine, 6, 513

Government taking lands of, 23, 366

Great Ponds—Massachusetts, 12, 639

Decision favoring condemnation without compensation, 12, 639

- Rulings reviewed, 12, 640
- Watuppa pond case, 12, 641
- Highways**, 6, 534
 - Highways a public use, 6, 524
 - Private roads, 6, 529
 - Use for gas works, 6, 557; 8, 615
- Ice privileges, 9, 862
- Inability to purchase on condition precedent or acquisition by eminent domain, 19, 844
- Injunction**, 6, 592; 10, 964
 - Abutting owner, 6, 592
 - After revocation of license, 6, 596
 - Entry without any valid condemnation proceedings, 6, 592
 - Failure to make payment, 6, 592
 - Individual whose property has not been taken, 6, 592
 - In general, 6, 592
- Railroads**, 10, 969
 - Actions for damages reversed, 10, 971
 - Enjoining condemnation of different route than that conveyed, 10, 972
 - Entry for surveys, 10, 972
 - Hesitation on part of courts, 10, 969
 - Illegally entering lands, 10, 969
 - Injunctions causing public inconvenience, 10, 971
 - Irregular condemnation proceedings, 10, 969
 - Property damaged but not taken, 10, 972
 - Railroad authorized by statute, 10, 972
 - Unconstitutional statute, 10, 972
 - Withholding injunction to give opportunity to pay damages, 10, 971
- Unlawful opening of a road, 10, 980
- Where land-owner has given consent, 6, 593
- Where lands are entered upon without authority, 6, 605
- Interest, 6, 627, 631; 10, 317
- Interest on award*, see *infra*, DAMAGES.
- In Whom Vested**
 - Exercise by state for federal purposes, 6, 515
 - Federal government, 6, 513; 16, 219
 - Legislature divesting state of the power, 6, 513
 - Several states of the union, 6, 512
 - State as against the United States, 6, 512
 - Territories, 6, 515
 - Territory formed into a state, 6, 515; 23, 43
 - United States as against state, 6, 514
- Joinder**, 11, 1007
 - Damages for other injuries, 11, 1008
 - In general, 11, 1007, 1008
 - Statutory provisions, 11, 1007
- Joint Tenants and Tenants in Common**
 - Joinder, 11, 1142
- Judgment**, 6, 627
 - Abandonment of proceedings, 6, 627
- Appropriating right of way to company's use, 6, 627
- Conclusiveness and effect, 6, 627
- Entry, 6, 627
- In personam, 6, 627
- Interest, 6, 627
- Proper, 6, 627
- Requisites, 6, 627
- Unconditional, 6, 627
- Jurisdiction**, 6, 606
 - Corporations of United States, 6, 606
 - Removal of causes, 6, 606
 - United States courts, 6, 606
 - Violation of contract, 6, 606
- Jury**, see *infra*, PROCEDURE.
 - Right to Jury Trial**, 3, 720; 6, 613
 - Assessment of damages by a commission, 6, 613
 - Jury of twelve men, 6, 613
 - Selections, 6, 614
 - Just or convenient, 12, 382
- Landlord and Tenant**, 12, 746
 - Eviction, 12, 758f
 - Termination of tenancy by appropriation, 12, 757z
- Legislature sole and exclusive judge, 6, 516, 517, 524, 599
- License**, 6, 596
 - Revocable, 6, 596
- Lien for Damages**
 - Lessee of company, 6, 596
 - Mortgagee of company, 6, 596
 - Vendee of company, 6, 596
- Limitations**, 6, 633
 - Power of legislature, 6, 633
 - Title by adverse possession, 6, 633
- Local Improvements**, 10, 272
 - Alterations without liability, 10, 313
 - Appraisal, 10, 315
 - Damages caused by improvements, 10, 313
 - Damages from grading, 10, 316
- Estimation of Damages**, 10, 314, 318
 - Consequential damages, 10, 319
 - Jurors, 10, 319
 - Recovery of payments in error, 10, 320
 - Suit of owners, 10, 319
- Examples, 10, 314, 315
- Exceptions made to statutory remedy, 10, 313
- Gravel taken for streets, 10, 316
- Incidents, 10, 315
- Injury by grading, 10, 314, 316
- Liability for Changing Street Grades**, 10, 316
 - Confirmation of award by city council, 10, 316
 - Illegal assessment, 10, 318
 - In absence of statutory provisions, 10, 316
 - Interest, 10, 317
 - When suit may be begun, 10, 317
 - Whether suit may be brought before work is completed, 10, 317
- Measure of damages, 10, 312
- Narrowing streets, 10, 278

EMINENT DOMAIN—Cont'd**Local Improvements—Cont'd**

- Proceedings in rem, 10, 316
- Remedy of property holder, 10, 313
- Removal of earth, 10, 216
- Special damages, 10, 312
- Statutory provisions, 10, 312
- Taking house, 10, 272
- Value of ground, 10, 273
- Value of property, 10, 272
- Where persons property is benefited, 10, 273

Mandamus, 6, 596

- Assessment of damages, 14, 210

Erection of Depots

- Railroad companies, 14, 163
- Payment of damages, 6, 596; 14, 210

Manner of exercises, 6, 511**Market value, 14, 468****Measure of Damages, 6, 567**

- Any purpose for which land is adapted, 6, 569
- Arkansas doctrine, 6, 569

Benefits

- Benefits going to the general public, 6, 582
- Canceling whole compensation, 6, 582
- General advance because of road, 6, 583
- Land which does not form part of the tract, 6, 582
- Reduction of damages for injuries, 6, 584
- Setting off against value of land taken, 6, 584
- Statutory prohibition of allowance, 6, 583

- What may be considered, 6, 581

Compensation for crossings, 6, 577**Compromise, 6, 569****Depreciation for specific purpose, 6, 573****Depreciation in Market Value, 6, 571**

- In Arkansas, 6, 572
- In Iowa, 6, 572
- In Nebraska, 6, 572
- In Ohio, 6, 573
- In Oregon, 6, 572

Diminution in value, 6, 579**Diminution in value of adjoining land, 6, 573****Division of farm, 6, 575****Easement, 6, 568****Farm considered as a unit, 6, 577****For Railroad Crossings, 6, 580**

- Cost of constructing and maintaining railroad crossing, 6, 581
- Cutting through another company's embankment, 6, 580
- Material obstruction of old road, 6, 580
- Railroad going through another company's embankment, 6, 580
- What may be considered, 6, 581

For Running Powers Over Another Railroad, 6, 579

- In California, 6, 579
- In Massachusetts, 6, 579
- Improvements, 6, 568
- Inconvenience in working minerals, 6, 577

Indispensability of the land, 6, 569**Injuries Affecting Whole Tract, 6, 574**

- In Alabama, 6, 574
- In Illinois, 6, 574
- In Iowa, 6, 575
- In Kansas, 6, 575
- In Massachusetts, 6, 576
- In Minnesota, 6, 570
- In Nebraska, 6, 576

Injuries direct in their nature, 6, 578**Injuries from surface waters, 6, 576****Injuries shared in common with rest of the public, 6, 578****Injuries which landowners shares in common with rest of the public, 6, 578****Land adapted to special business, 6, 569****Lessee of estate, 6, 581****Life tenants, 6, 581****Limited estates, 6, 581****Market value, 6, 567****Market value, meaning of the term, 6, 568****Property abutting on street, 6, 579****Property injuriously affected, 6, 578****Rental value, 6, 569, 579****Temporary use of land, 6, 569****To trade or business, 6, 573****Uses to which land is adapted, 6, 569****Value which owner places upon property, 6, 568****What Is Considered a Single Tract, 6, 577****In case of city property, 6, 577****In case of farm, 6, 577****Town blocks, 6, 578****Where cars are to be drawn by the other company, 6, 580****Where company constructing has exclusive rights to use tracts, 6, 580****Where entire tract is taken, 6, 567****Where land contains minerals, 6, 568****Where part of tract is taken, 6, 571****Mills, 6, 526, 527; 15, 484, 485****Minerals and lands condemned, 6, 532; 15, 531****Mines and Mining Claims, 6, 528, 532; 15, 585****In California, 15, 586****Mortgages, 15, 814****Mortgagee's right to possession, 15, 818****National government, 6, 513; 16, 219****National gas companies, 16, 222****Nature of the right, 6, 512****Navigable waters, 6, 538; 16, 262, 265, 266****New states, 6, 515; 23, 43****Notice, 6, 607****By mail, 6, 608**

- Constructive notice by publication, 6, 608
- Effect of insufficiency of notice, 6, 608
- Insufficiency, waiver of, 6, 608
- Mortgagee, 6, 607
- Necessity for, 6, 607
- Owner by name, 6, 608
- Quantity and location of land, 6, 608
- Requisites and sufficiency, 6, 608
- To agent, 6, 608
- To sheriff, 6, 608
- Who entitled to, 6, 607
- Who judges sufficiency, 6, 608
- Open and Close**, 6, 612; 17, 204
 - Appeal, 6, 630
 - Right of landowner, 6, 613
 - Right of party taking the initiative, 6, 613
- Owner, 6, 608; 17, 302, 304
- Parks and Public Squares**, 6, 524; 9, 323; 17, 412
 - Assessments, 17, 412, 413
 - Authority of legislature, 17, 412
 - Authority of state, 17, 413
 - Compensation, 17, 412
 - Compliance with statute, 17, 413
 - Demolition of structure on land taken for parks, 17, 412
 - Ornamental purposes, 17, 413
 - Owner's right to compensation, 17, 413
 - Purchase of fee, 17, 413
 - Purchase of land outside of boundaries of city, 17, 412
- Payment**, 6, 585
- Protection and Enforcement of Right**
 - Ejectment*, see *infra*, EJECTMENT.
 - Injunction*, see *infra*, INJUNCTION.
 - Trespass*, see *infra*, TRESPASS.
- As a Prerequisite to Entry**, 6, 515, 585, 632
 - Actual payment, 6, 585
 - Condemnation by state or municipality, 6, 586
 - Consequential injuries, 6, 586
 - General rules, 6, 585
 - Judgment, 6, 587
 - Security for payment, 6, 586
 - Security for payment on appeal, 6, 586
 - Sufficiency of money deposited in court, 6, 585
 - Surveys, 6, 586
 - Waiver of prepayment, 6, 587
 - Where land owner has sufficient remedy, 6, 586
- Compensation in other lands, 6, 591
- Effect of payment, 6, 591
- Estopping owner from further claims, 6, 591
- How made, 6, 591
- Necessity of award in money, 6, 591
- Protection and Enforcement of Right**, 6, 591
 - By action at law, 6, 591
 - Mandamus, 6, 596; 14, 216
- To Whom Payable**, 6, 587
 - Heir or administrator, 6, 590
- Married women for right of dower, 6, 589
- Mortgagee**, 6, 589
 - In Massachusetts, 6, 589
 - In Pennsylvania, 6, 589
 - Right of company to redeem, 6, 589
- Owner in fee, 6, 587
- Partners and tenants in common, 6, 589
- Payment into court, 6, 590
- Person in actual possession, 6, 587
- Tenants and lessees, 6, 590
- Tenants for life and remaindermen, 6, 590
- Vendor and Vendee**, 6, 588
 - Before vendee acquires title, 6, 588
 - Permanent depreciation in value, 6, 588
 - Purchase after survey but before location, 6, 588
 - When one claims ownership, 6, 587
 - Who liable for payment, 6, 590
- Pipe lines, 6, 526, 557; 8, 615
- Pleading**, 6, 609
- Petition or Complaint**, 6, 609
 - Averment that taking is necessary for public use, 6, 609
 - Complaint in writing, 6, 610
 - Damages for previous trespasses, 6, 611
 - Description of premises, 6, 610
 - Inability to acquire by purchase, 6, 610
 - Joinder of claims, 6, 611
 - Necessary averment, 6, 609
 - Right to exercise power, 6, 610
 - Streets, 6, 610
 - Verification, 6, 610
- Power of legislature to divest state of right, 6, 513; 8, 595
- Power of state to divest itself of right, 6, 513; 8, 595
- Presumption as to jurisdiction, 12, 279
- Procedure**, 6, 604, 612
 - See *infra*, EVIDENCE; NOTICE; PLEADING.
- Abandonment** 6, 598, 634
 - How right to, is lost, 6, 634
 - Right of company, 6, 634
- Amendment, 6, 612
- Answers, 6, 611
- Commencement of proceedings, 6, 607
- Cross-petition, 6, 611
- How Far Statutory Remedy Exclusive**, 6, 604
 - Mere trespass, 6, 605
 - Where company alone can take initiative, 6, 605
 - Where lands are entered upon without authority, 6, 605
- Jury**, 6, 613
 - Bias of jurors, 6, 615
 - Challenges, 6, 615
 - Discretion of court as to view, 6, 615
 - Drawing, 6, 614
 - Freeholders, 6, 614

EMINENT DOMAIN—Cont'd**Procedure—Cont'd****Jury—Cont'd**

- Impanelling, 6, 614
- Interest of officer, 6, 615
- Massachusetts statutes, 6, 614
- Province of view, 6, 616
- Qualifications, 6, 614
- Right to trial by jury, 3, 720; 6, 613
- Statutory provisions, 6, 615
- Stockholder of railroad corporation, 6, 615
- Swearing, 6, 614
- View**, 6, 615; 12, 370
 - In Iowa, 6, 616
 - In Kentucky, 6, 616
 - In Louisiana, 6, 616
 - In Massachusetts, 6, 616
 - In Michigan, 6, 616
 - In Wisconsin, 6, 616
- Waiver of objections, 6, 615

Parties, 6, 608

- Guardian of minor children, 6, 609
- Heirs and devisees, 6, 609
- Landlord and tenant, 6, 609
- Mortgagee and mortgagor, 6, 609
- Owners having separate interest, 6, 608
- Partners, 6, 609
- Tenants in common, 6, 609
- Trustees, 6, 609
- Who within the term "owners," 6, 608

Practice, 6, 604, 612

- Different parties, 6, 612
- Limiting number of witnesses, 6, 612
- Necessity of the taking, 6, 612
- Open and close, 6, 612
- Statutory provisions strictly followed, 6, 607
- Who may commence proceedings, 6, 607

"Property"

- What is property within the statutes, 19, 288

Public Drains, 6, 14**Laws**

- Constitutionality of, 6, 6

Public Uses, 6, 524*See infra*, **ABANDONMENT**.

- Benefiting the people of the whole state, 6, 524
- Branch railroads, 6, 524; 12, 947
- Cemeteries, 6, 528
- Change of use, 6, 533
- Declared public by the legislature, 6, 524
- Drains and sewers, 5, 526; 6, 14
- Exercise by state for federal purposes, 6, 515
- Ferries, 6, 526
- Gas works, 6, 526
- Highways, 6, 524
- Ignorance, 6, 525
- In Alabama, 6, 527
- In Georgia, 6, 527

- In Kansas, 6, 527
- In Michigan, 6, 527
- In Minnesota, 6, 527
- In New York, 6, 527
- In Tennessee, 6, 527
- In Vermont, 6, 527
- Irrigation, 6, 527
- Legislature authorizing change of use, 6, 530
- Legislature sole judge, 6, 516, 517, 524, 599
- Legislature sole judge of necessity, 6, 516, 517
- Logging booms, 6, 527
- Mills, 15, 484, 485
- Mills in Indiana, 6, 527
- Mills in Maine, 6, 527
- Mills in Massachusetts, 6, 527
- Mills in New Hampshire, 6, 527
- Mining, 6, 528, 532; 15, 585
- Natural gas transportation, 6, 526, 557; 8, 615
- Necessity of public use, 6, 515
- No more than a public cemetery, 6, 528
- Parks, 6, 524; 9, 323; 17, 412
- Private cemeteries, 6, 528
- Private roads, 6, 529
- Question for the courts, 6, 524
- Railroads*, *see infra*, **RAILROADS**.
- Right to change use, 6, 529
- Side-tracks leading to private manufactories, 6, 525
- Stations, 6, 524; 23, 138
- Telegraph and telephone lines, 6, 525; 25, 747, 760
- Warehouse, 6, 526
- Water works, 6, 526; 29, 4
- Wharves, 6, 525
- "Public use or benefit," 2, 181
- Railroads**, 6, 518, 523; 9, 365
 - Additional tracks, 6, 519
 - A public use, 6, 524
 - Branches, 6, 519, 524, 525; 12, 944, 947
 - Cattle yards, 6, 518
 - Changing route, 19, 829
 - Commissioners, 19, 690
 - Conditions precedent, 6, 521
 - Consolidation, 6, 520
 - Crossing, 6, 537
 - Crossing another, 6, 555
 - Delegation of power, 6, 518
 - Dumping place, 6, 519
 - Dwellings for workmen, 6, 519
 - Engine houses, 6, 518
 - Exercise by trustees, 6, 520
 - For purposes of a railroad, 6, 531
 - Gravel, 6, 519
 - Lands for speculation, 6, 519
 - Lands of railroad, 6, 519
 - Legitimate requirements of the company, 6, 519
 - Lessee, 19, 899
- Measure of Damages**
 - For flowing land, 6, 576
 - One running over another, 6, 579

- Mills, 6, 526
- One appropriating the property of another, 6, 537
- One company using tracks of another, 6, 555
- Reversion of land to owner when no longer necessary for railroad purposes, 19, 809
- Right after completion of road, 19, 830
- Right of railroad to acquire land for speculation or sale, 4, 231
- Right to property acquired, 19, 810
- Sale of railway, 6, 520
- Shops, 6, 518, 525
- Side tracks leading to private manufacturing, 6, 525
- Stations*, see *infra*, STATIONS.
- Taking right of way, 6, 537
- Telegraph wire, 6, 519
- Temporary right of way, 6, 519
- Turn outs and side tracks, 6, 519
- Using tracks of another, 6, 555
- Warehouses, 6, 518
- Water tanks, 6, 519
- Wharfs, 6, 519
- When power exhausted, 6, 523
- Who may question the right, 6, 520
- Real Covenants**
 - Covenant of warranty, 19, 987
 - Removal of causes, 20, 984
- Rent, 12, 746
 - Apportionment, 12, 753
 - Liability for rent, 12, 746
 - Part of premises, 12, 746
- Restraining Exercises**
 - Individuals, 6, 523
 - Showing private interest, 6, 522
- Right to trial by jury, 3, 720; 6, 613
- Schools**, 21, 817
 - Examples, 21, 817, 818
 - Necessity of refusal on part of owner to sell, 21, 818
 - Notice of intention of parties, 21, 818
 - Waiver of irregularities, 21, 818
 - Whether site may be taken by eminent domain, 21, 817
- Sidings, 12, 947
- Sidings*, see *infra*, BRANCH RAILROADS.
- State granting its lands without compensation, 6, 533
- Stations (Railroad)**, 6, 518, 524; 23, 138
 - Power of company, 23, 138
 - Right of company to take land, 23, 138
 - Station grounds taken for highway purposes, 23, 139
- Statute of Frauds**
 - Agreement to release claim for damages, 8, 703
- Statutes, 23, 366
- Statutory Remedy**
 - How Far Exclusive, 6, 604
 - Trespass, 6, 605
 - Where lands are entered upon without authority, 6, 605
 - Where the company alone can take the initiative, 6, 605
- Street Railways**, 23, 943
 - Right of abutters to compensation*, see STREET RAILWAYS.
- Streets and Highways**, 6, 524, 534
 - Right of the legislature to authorize, 6, 534
- Streets and Sidewalks**
 - Consequential damages, 24, 85
 - Taking, 24, 85
- Suit**
 - Whether proceedings are a suit, 24, 494
- Surveys, 6, 586
- Taking**, 24, 85
 - See *infra*, WHAT AMOUNTS TO A TAKING.
- Taking charter of corporation under, 3, 141
- Taxation**
 - Constitutional law, 25, 20
- Taxation Distinguished from**, 25, 18
 - Constitutional requirements, 25, 20
 - Examples, 25, 18-20
 - In general, 25, 18
 - Part of public burden, 25, 19
 - Special compensation, 25, 19
- Telegraphs and Telephones**, 6, 525; 8, 610; 25, 747, 760
 - Conclusiveness of judgment, 25, 761
 - Fee in soil, 25, 761
 - Statute requiring an effort to contract with landowner, 25, 760
- Title and Rights Acquired**
 - Estate Acquired, 6, 599
 - Easements, 6, 599
 - Fee by implication, 6, 600
 - Fee simple, 6, 600
 - Generally, 6, 599
 - Power of legislature, 6, 599
 - Presumption, 6, 600
 - Temporary interruption, 6, 600
 - Rights When Easement Acquired**, 6, 600
 - Duration of easement, 6, 601
 - Paramount right of corporation, 6, 600
 - Purposes not connected with public use, 6, 601
 - Title to material necessary to construction, 6, 601
 - Rights when fee acquired, 6, 600
 - When title acquired, 6, 591
- Title and Rights Retained**, 6, 598
 - Cesser of public use, 6, 599
 - Fee, 6, 598
 - General rights over right of way, 6, 598
 - Grass on right of way, 6, 598
 - Minerals, and right to work same, 6, 599
 - Reversion, 6, 598
 - Timber cut, 6, 598
- To perfect imperfect titles, 19, 845
- Towns and townships, 26, 164
- Transfer of Franchise**, 6, 603
 - When transfer may be had, 6, 603

EMINENT DOMAIN—*Cont'd***Transfer of the Right, 8, 634^f**

Necessity of legislative authorities, 8, 634^f

Power to lease does not confer power of eminent domain, 8, 634^f

Purchasers at a judicial sale, 8, 634^g

Right to have damages in a particular way, 8, 634^g

Treaties, 26, 542

Trespass, 6, 605

Turnpikes, 27, 325

Underground Waters

Injury to well or spring by railroad excavation, 27, 429

Presumption where land is taken for public use, 27, 429

Statute providing compensation for consequential damages, 27, 430

Usufruct in the land, 27, 430

Union depots, 27, 519

Value, 28, 47

Verdict, 6, 622

Assessment of damages, 6, 623

Excessive award, 6, 624

Interest, 6, 623

Irregularities, 6, 623

Misconduct of jury, 6, 624

Requisites, 6, 622

Setting aside, 6, 623

Technical irregularities, 6, 623

Validity, 6, 622

Verdict for specified sum, 6, 623

Verdict that land taken is necessary for public use, 6, 622

View, 6, 615; 12, 370

In general, 12, 370

In Iowa, 6, 616

In Kentucky, 6, 616

In Louisiana, 6, 616; 12, 370

In Massachusetts, 6, 616

In Michigan, 6, 616; 12, 370

In Wisconsin, 6, 616

Without permission of court, 12, 376

Viewers and Commissioners, 6, 616; 12, 370

See infra, AWARD.

Appointment and qualification, 6, 616

Commissioners as quasi jurors, 6, 617

Damages to adjoining lands, 6, 618

Disabilities, 6, 617

Discretion, 6, 617

Exception and rejection of testimony, 6, 617

Interest, 6, 617

Notice of appointment, 6, 616

Oath, 6, 617

Powers and duties, 6, 617

Right to use tracks of other companies, 6, 617

When appointment may be made, 6, 616

Water Works and Water Companies, 6, 526; 9, 322; 29, 415

Municipal Corporations, 29, 4

Compensation to riparian owners, 29, 5

Dam in navigable river, 29, 5

In general, 29, 4

Measure of damages, 29, 4

More water obtained than needed, 29, 6

Power to condemn private property, 29, 4

Taking water from public streams, 29, 5

Water and water rights, 29, 5

Private Companies, 29, 15

Examples, 29, 15, 16

In general, 29, 15

Owners of mining claim, 29, 15

Public use, 29, 15

Use of Street, 29, 16

Examples, 29, 16, 17

Subject to city's right to repair, etc., 29, 16

Whether an additional servitude, 29, 16

What Amounts to Taking, 6, 542

As to construction of railroads in streets, see RAILROADS.

As to construction of street railways, see STREET RAILWAYS.

As to the diversion of surface waters, see SURFACE WATERS.

As to the diversion of water course, see WATER AND WATER COURSES.

As to the erection of telegraph poles, see TELEGRAPH AND TELEPHONE COMPANIES.

Additional expense placed upon property, 6, 542

Business connected with the land, 6, 546

Change of grade, 6, 548

Consequential damages, 6, 545

Damnum absque injuria, 6, 545

Danger from Fire, 6, 550

Company responsible for negligence, 6, 550

Exposure of property during construction, 6, 551

Increased publicity, 6, 551

Increase of cost of insurance, 6, 551

In general, 6, 550

Real and imminent, 6, 551

Destruction from public necessity, 6, 563

Destruction of wells and springs, 6, 562

Dividing farm into two parts, 6, 548

Entry for permanent occupation, 6, 543

Exercise of police power, 6, 563

Imposition of additional burdens, 6, 552

Incidental-injuries, 6, 544

In general, 6, 542

Injuries from cuts, 6, 548

Injuries shared in common, 6, 548

Injuries to business, 6, 546

Injuries to crops, 6, 550

Injuries to Fences

Injuries by acts of contractors, 6, 552

- Injuries from improper construction, 6, 552
- Removal of lateral support, 6, 552
- Where it becomes necessary to construct fences, 6, 551
- Where owner is not required to fence by law, 6, 552
- Where railroad is obliged to fence, 6, 552
- Injurious affecting property, 6, 544
- Injury by granting rival franchise, 6, 545
- Injury caused by the usual and necessary operation of the railroad, 6, 545
- Injury from blasting, 7, 522
- Injury from noise, 6, 547
- Injury not connected with real property, 6, 545
- Injury that would entitle to an action for damages, 6, 544
- Injury to access, 6, 550
- Injury to exclusive franchise, 6, 546
- Injury to residue of tract, 6, 547
- Interruption of use, 6, 544
- Invasion of property, 6, 542
- Local option statutes, 11, 621
- Necessity of disseizin, 6, 542
- Negligent change of grade, 6, 550
- Noise and vibration, 6, 547
- Obstruction from light, 6, 547
- Right of mere licensee, 6, 543
- Seizer for military purposes, 6, 544
- Smoke and dust, 6, 546
- Special injuries necessary to recovery, 6, 550
- Temporary user, 6, 562
- To aid construction, 6, 562
- Use of highway for gas works, 6, 557
- User of another's property, 6, 557
- Variation of turn pike road into public highway, 6, 557
- What injuries entitle owner to damages, 6, 544
- What May Be Appropriated**
 - Authority of legislature to authorize the taking of streets, 6, 534
 - Base and determinable fee, 6, 531
 - Change of use, 6, 533
 - Easements, 6, 530, 531
 - Extent of Appropriation**, 6, 540
 - Exemptions, 6, 542
 - Exemptions of dwelling house, 6, 542
 - Future development, 6, 541
 - Necessity, 6, 540
 - Part of contract, 6, 542
 - Statutory limit, 6, 541
 - Statutory limit not sufficient, 6, 541
 - Who judge of, 6, 541
 - Federal government, 6, 538
 - Fee simples, 6, 531
 - Franchises, 6, 520
 - Franchises exclusively granted, 6, 536
 - Franchises of corporation, 6, 536; 8, 595
 - Highways, 6, 534
 - In general, 6, 517, 530
 - Intangibles, 6, 530
 - Land and appurtenances, 6, 531
 - Land between low and high water mark, 6, 538
 - Land devoted to public use, 6, 533
 - Lands not used for public purposes, 6, 533
 - Legislature pointing out the particular property, 6, 530
 - Materials for construction, 6, 531, 601
 - Mill dams and water power privileges, 6, 539
 - Minerals in lands condemned, 6, 532
 - Nature and quality of interest, 6, 530
 - Navigable waters, 6, 538; 16, 262, 265, 266
 - Non-navigable waters, 6, 538
 - Private property, 6, 531
 - Property of corporation, 6, 535
 - Public institutions, 6, 533
 - Public lands, 6, 532
 - Public property, 6, 532
 - Railroad company appropriating the property of another, 6, 537
 - Railroad crossing, 6, 537
 - Right of reversion, 6, 531
 - Right of way, 6, 531
 - Rights in waters and water courses, 6, 538
 - Right to remove timber, 6, 532
 - Riparian rights, 6, 538
 - Streets, 6, 534
 - Taking corporate property for dissimilar use, 6, 537
 - Taking right of way, 6, 537
 - Unimproved lands, 6, 531
 - Use for which corporate property may be taken, 5, 537
 - Wharves, 6, 540
 - When franchises may be taken, 6, 536
 - Where corporation is already in possession of property, 6, 530
 - When Power Exhausted**, 6, 523
 - Exhaustion by single users, 6, 523
 - In case of railroads, 6, 523
 - When Power Exhausted in Case of Railroads**
 - Interference by individuals, 6, 523
 - Subsequent exercises, 6, 523
 - Whether heir or administrator entitled to damages, 6, 590
- EMISSARY**
 - Extortion, 7, 591
- EMOLUMENT**, 6, 635
- EMPANEL**, 6, 635
- EMPLOY**, 6, 635
 - Hiring and employing distinguished, 9, 415
- EMPLOYEE**, 6, 637
 - Statutes**
 - Constitutional provisions requiring that subject shall be expressed in the title, 23, 242

- EMPLOYER**, 6, 637
EMPLOYER'S LIABILITY ACT, 29, 31,
 32
EMPLOYMENT, 6, 637; 16, 493
 Agent
 False pretences, 7, 745
 Permanent employment, 18, 334
 Professional, 6, 637; 19, 257
EMPOWER, 6, 638
"EMPTY," 3, 148; 6, 638
ENACTMENT OF STATUTES, see
 STATUTES.
ENAGENACION, 6, 638
ENCLOSED
 Enclosed or cultivated land, 4, 953
ENCLOSED LANDS, 6, 638
ENCLOSURE, 6, 638
ENCOURAGE, 6, 639
END, 6, 639
 End on, 6, 639
 End on defined, 16, 296
ENDOW, 6, 639
ENEMY, 6, 640; 14, 378
 Bailments, 6, 640
 Law against treason, 6, 640
 Marine insurance, 6, 641
 Seizure, 6, 640
ENFEOFF, 6, 641
ENFORCE, 6, 641
ENGAGE, 6, 642
 Actually, 6, 642
 In an unlawful act, 6, 642
 To engage in business, 6, 642
 To engage in shooting, 6, 642
ENGAGEMENT, 6, 643
ENGINE, 6, 643
 See FIRES CAUSED BY OPERATION OF
 RAILWAYS.
 Fixed, 6, 644
 To kill game, 6, 644
ENGINEERING PURPOSES, 6, 645
ENGINEERS, see RAILROADS.
ENGLISH, 6, 645
 Bill, 6, 645
 Education, 6, 645
 Information, 6, 645
 Language, 6, 645
 Marriage, 6, 645
 Mile, 15, 389
ENGRAVING, 6, 645
ENHANCED, 6, 645
ENJOIN, 6, 646
 Precatory words, 6, 646
ENJOYMENT, 6, 646
 Beneficial, 6, 647
 Of an office, 6, 647
ENLARGE, 6, 647
ENLIST, 6, 648
ENLISTMENT, see MILITARY LAW.
ENTER, 6, 648
 Entering short, 6, 649
ENTERED, 12, 410
ENTERING
 Entering distinguished from rendering,
 12, 474; 20, 1032
 "Entering" Judgments
 Justice of the peace, 12, 459
 Entering judgment a ministerial act,
 12, 474
ENTERTAINMENT, 6, 650
 Place of public entertainment, 25, 1022
ENTICE, 6, 650
ENTICING
 Enticing wife, see HUSBAND AND
 WIFE.
 Enticing away, 21, 1053
 Enticing away apprentice, 1, 639*d*
 Harboring and Enticing Away Child, 17,
 388
 Burden of proof, 17, 389
 Criminal process, 17, 389
 Examples, 17, 388-390
 In general, 17, 388
 Intention, 17, 388
ENTICING AWAY, see KIDNAPPING;
 PARENT AND CHILD.
Servant, see MASTER AND SERVANT.
 Excessive damages in civil action, 5, 60
ENTIRE, 6, 651
ENTIRETY, see HUSBAND AND WIFE.
As to tenancy by entireties, see HUS-
 BAND AND WIFE.
ENTITLE, 6, 651
ENTRANCE FEES, see GAMBLING CON-
 TRACTS.
ENTRY, see ADVERSE POSSESSION;
 FORCIBLE ENTRY AND DETAINER;
 PUBLIC LANDS.
ENTRY, WRIT OF, 6, 651; 22, 668
 See generally, EJECTMENT.
 Recaption, see FORCIBLE ENTRY AND
 DETAINDER.
 Real Property, see ENTRY, WRIT OF.
 Amendment, 6, 653
 By tenant at will against stranger, 26,
 30
 By tort-feasor against stranger, 26, 30
 Claim of easement, 6, 653
 Damages, 6, 654
 Defenses, 6, 654
 Definition, 6, 651
 Degrees, 6, 651
 Description of premises, 6, 653
 Equitable title, 6, 653
 Estate, 6, 654
 Foreclosure of Mortgages
 Conditional judgment, 8, 188
 Legal consequences, 8, 188
 States in which it exists, 8, 188
 General issue, 6, 653
 General principles, 6, 652
 Improvements, 6, 655
 Joint tenants and tenants in common and
 coparceners, 6, 654
 Mesne profits, 6, 654
 Modified form in New England, 6, 653
 Nature of action, 6, 653
 Necessity of entry, 6, 654
 Ouster, 6, 654
 Perpetuities, 18, 343-355
 Pleading, 6, 653
 Plea of disseisin, 6, 653
 Possession
 Under claim of title, 6, 653

Recaption, 19, 1107
 Breach of the peace, 19, 1108
 Examples, 19, 1107, 1109
 Force admissible, 19, 1108, 1109
 In general, 19, 1107
 Peaceful entry, 19, 1108
 Trespass quare clausum fregit, 19, 1109
 When right of entry exists, 19, 1108
Res Judicata
 Partition, 21, 242
 Short, 6, 649
 Statement of title, 6, 653
 Statutes, 6, 652
 Strength of demandant's title, 6, 653
 Title, 6, 653
 Under mortgages, 6, 654
 What defendant may show, 6, 653, 654
 Writ of possession in third party, 6, 654
ENUMERATE, 6, 655
ENVOY, see generally, **CONSULS AND AMBASSADORS**.
EQUAL, 6, 655
EQUALITY, see **GAMING**.
EQUITABLE ASSETS, see **ASSETS**.
EQUITABLE ASSIGNMENTS, 6, 656
 See **ASSIGNMENTS**.
 A debt not in existence, 6, 659
 After arising equities, 6, 662
 Appropriation, 6, 657
 Claims against the United States, 6, 660
 Chose in action, 6, 656, 662
 Collateral transactions, 6, 663
 Commission of an officer, 6, 659, 660
 Debtor misleading assignee, 6, 663
 Definition, 6, 656
 Demands that would survive, 6, 658
 Diligence in perfecting title, 6, 662
 Draft not accepted, 6, 657
 Draft on designated funds, 6, 657, 658
 Effect of notice upon debtor, 6, 662
 Equities of assignee, 6, 662
 Expectancies and future interests, 6, 658
 Form, 6, 656
 Implied, 6, 657
 Instances of invalid, 6, 658
 Instances of valid, 6, 657
 License to shoot or fish, 6, 660
Liens, 13, 610
 In general, 13, 610
 Of vendor after purchase-money, 6, 660
 Validity, 13, 610
 Validity of assignment, 13, 610
 What constitutes a valid assignment, 13, 610
 Necessity of writing, 6, 657
Notice by Assignee, 6, 661
 As against assignor, 6, 661
 As against bona fide purchasers, 6, 661
 As against debtor, 6, 661
 Formal notice, 6, 661
 Necessity of, 6, 661
 Express notice, 6, 661
 Oral or written declaration, 6, 657
 Parol assignment of debt, 6, 657

Pledge of Non-Negotiable Securities, 18, 640
 In general, 18, 640
 Mere promise to pay out of a certain fund, 18, 640
 Part of choses in action, 18, 641
 Subsequent assignees, 18, 640
 Whether court of law will interfere, 18, 641
 Possession of personal chattel, 6, 662
 Power of attorney to collect debt, 6, 657
 Remedy of assignee, 6, 663
 Right of action for tort, 6, 660
 Right of entry, 6, 660
 Rights of assignee, 6, 663
 Rights under executory contracts, 6, 659
 Salary, 6, 660
 Secret agreement, 6, 662
 Secret trusts, 6, 663
 Subject to equities existing between original parties, 6, 662
 Symbolical delivery, 6, 657
 Test, 6, 657
 Things held assignable in equity, 6, 658, 659
 Things held not assignable, 6, 659
 Wages, 6, 659
 What constitutes, 6, 656
 What is assignable in equity, 6, 658
 Whether for part of a fraud, 6, 660
EQUITABLE CONVERSION, 6, 664
 As to what does not amount to a direction to convert, 7, 276
 Death of intended beneficiary before change, 7, 276
 Definition, 6, 664, 718
Directions
 Requiring a sale, 6, 666
 That land shall be sold and proceeds converted into lands, 7, 276
 Which have been held to work on equitable conversions, 6, 667, 688
Effect of, 6, 670
 Alien taking proceeds of converted land, 6, 671
 Converted personal property goes to heir, 6, 671
 Generally, 6, 670, 671
 Land converted does not pass under general devise, 6, 670
 Land converted passes under general gift or bequest of personality, 6, 670
 Personal representative takes land, 6, 670
Effect of Failure of Purposes of Conversion, 6, 671
 Exceptions, 6, 672
 Failure of conversion of land into money, 6, 672
 Where purpose fails only partially, 6, 671
 Where purpose fails totally, 6, 671
Election, 6, 673
 Co-owners, life-tenants, remaindermen and reversioners, 6, 673
 Infants, 6, 673
 Married women, 6, 673

EQUITABLE CONVERSION—Cont'd

Election—Cont'd

Who may elect and to what extent, 6, 673

Equity regards that as done which ought to have been done, 6, 705

From express direction, 6, 665

From implication, 6, 665

How it may arise, 6, 665

Joint executors and administrators, 11, 1018

Land directed to be sold and turned into money, 7, 276

Land purchased with trust funds, 7, 277

Lapsed and void legacies, 13, 43

Length of time equitable conversion is to continue, 7, 277

Money directed to be employed in the purchase of land, 7, 276

Partnership, 17, 952

Adjustment of partnership accounts, 17, 953

Agreement must be clear and explicit, 17, 954

American doctrine, 17, 952

By agreement, 17, 954

Descent and distribution, 17, 952, 954

Descent of legal title, 17, 956

Dower right, 17, 954

Dower right to legal title, 17, 955

How far regarded as personal property, 17, 952

In Canada, 17, 953

In England, 17, 952

In Pennsylvania, 17, 953

Incidents of personal property, 17, 954

Incumbrance by one partner, 17, 955

Knowledge of partnership character, 17, 955

No necessity for sale, 17, 957

Partner's lien, 17, 954

Payment of debts, 17, 953

Real estate considered as personal, 17, 952

Sale by one partner, 17, 955

Surviving Partner, 17, 956

Collusion, 17, 957

Compelling heirs to convey legal title, 17, 956

Sale not for purpose of winding up, 17, 957

Where there are no debts, 17, 957

Use and occupation, 17, 957

What Sufficient Notice of Partnership Character, 17, 957

Declarations of partners, 17, 958

Purchase of one partner where legal title is in another, 17, 958

Questions of law and fact, 17, 958

Use and occupation, 17, 957

Who is a bona fide purchaser, 17, 958

Proceeds of land directed to be converted for objects of sale, 13, 44

Proceeds of partition sale, 17, 806

Reconversion, 6, 672

By operation of law, 6, 674

Manner of making, 6, 674

Parol agreement, 6, 674

Sale of discretion, 6, 666

Time at Which Conversion Takes Place, 6, 668

After expiration of a life estate, 6, 670

Death of testator, 6, 668

In case of deeds, 6, 668

Time of delivery of deed, 6, 669

Time of execution, 6, 669

Time specified, 6, 669

Upon happening of a contingency, 6, 670

Under a will, 6, 665

Under instruments inter vivos, 6, 665

What is necessary to constitute, 6, 665

Where donee of power of sale is not mentioned, 6, 666

EQUITABLE ESTOPPEL, see ESTOPPEL.

EQUITABLE LEVY, 13, 271

EQUITABLE MORTGAGES, 6, 675; 13, 611; 15, 731, 804

See RAILROAD SECURITIES.

Absolute Conveyance Intended as Mortgage, 8, 738; 15, 779, 796

Accident, 6, 677; 17, 454

Agreement for payment of debt, 15, 781

Bona fide purchasers, 17, 465

Burden of proof, 17, 467

Character at inception of transaction, 15, 782

Circumstances attending the transaction, 17, 466

Circumstances tending to show relation of parties, 6, 679

Conclusiveness of pre-existing debt, 6, 679

Conduct and declaration of parties, 6, 678

Conveyance to defraud creditors, 6, 676; 17, 465

Covenant to repay money, 15, 781

Creditors, 6, 676; 17, 465

Debt, 15, 781

Defeasance by Separate Instruments, 15, 788

Cancellation of Defeasance, 15, 793

Bond of defeasance surrendered and destroyed, 15, 793

Effect of cancellation, 15, 793

Lien in favor of mortgagee, 15, 793

New defeasance given, 15, 793

Whether title vests in mortgagee, 15, 793

Delivery not at same time, 15, 790

Effect of subsequent agreement upon equity of redemption, 15, 792

Evidence of existing debt, 15, 790

Instrument not executed at the same time, 15, 789

Instruments not between same parties, 15, 790

Legal effect of the two instruments, 15, 789

Nature of instrument of defeasance, 15, 790

- Parol evidence, 15, 788, 789, 791
 Payment on the day subsequent to day of payment, 15, 792
Recording of Separate Defeasance, 15, 793; 20, 558
 Actual notice, 15, 795
 Examples, 15, 794
 Express statute requiring, 15, 794
 Instruments appearing independent to each other, 15, 794
 Necessity as against subsequent purchasers, 15, 794
 Necessity as between the parties, 15, 793
 Notice, 15, 795, 796
 Possession of mortgage as notice, 15, 796
 Purchaser chargeable with notice, 15, 794
 Where conveyance appears upon its face not to be absolute, 15, 794
 Seal to instrument of defeasance, 15, 790
 When parol evidence admissible, 15, 791; 17, 453
 When parol evidence inadmissible, 15, 791
 Whether equity of redemption can be barred by agreement, 15, 791
 Whether the two instruments must bear the same date, 15, 789
 Degree of proof required, 6, 679
 Equitable distinction, 15, 791
 Equity and court of law, 6, 675
 Evidence, 6, 677; 15, 796
 Evidence held insufficient, 15, 796
 Evidence sufficient to establish mortgage, 15, 796
 Existence of a debt, 6, 678
 Fraud, 6, 677
 Grantor remaining in possession as owner, 15, 781
 Grounds of evidence, 6, 677
 Inadequacy of consideration, 17, 466, 781
 Inadequacy of price, 6, 678
 In general, 15, 779
 Intention of parties, 15, 780
 Intent of the parties, 15, 791
 Judgment creditor of grantor, 6, 676
 Long delay in asserting mortgage, 6, 679
 Loose declarations, 17, 466
 Mistake, 6, 677
 Mortgagor's right at time of transfer, 17, 464
 Negotiations pending for a loan, 15, 781
 New Hampshire statute, 6, 676
 No conclusive test, 15, 780
 Notice, 15, 795, 796
 Obligations of the parties, 17, 464
Parol Evidence, 15, 791; 17, 453
 Accident or fraud, 17, 454
 Admissibility at law, 17, 461
 Admissibility in equity, 17, 454
 Admissibility of parol evidence, 17, 454
 Admissibility under the codes, 17, 461
 Does not violate rules of evidence, 6, 678
 English decisions, 17, 454
 Fraud, 17, 455
 General principles, 17, 454
 Grounds upon which the doctrine rests, 17, 454
 In Alabama, 17, 459
 In Arkansas, 17, 455
 In California, 17, 456
 In Colorado, 17, 460
 In Connecticut, 17, 459
 In Florida, 17, 456
 In Georgia, 17, 460
 In Illinois, 17, 456, 462
 In Indiana, 17, 457
 In Iowa, 17, 460
 In Kansas, 17, 457
 In Kentucky, 17, 460
 In Main, 17, 457
 In Maryland, 17, 460
 In Massachusetts, 17, 455
 In Michigan, 17, 457
 In Minnesota, 17, 457
 In Mississippi, 17, 457
 In Missouri, 17, 460
 In Nebraska, 17, 458
 In Nevada, 17, 458
 In New Hampshire, 17, 460
 In New Jersey, 17, 458
 In New York, 17, 458, 462
 In North Carolina, 17, 460
 In Ohio, 17, 461
 In Oregon, 17, 459
 In Pennsylvania, 17, 459
 In Rhode Island, 17, 460
 In South Carolina, 17, 460
 In Tennessee, 17, 459
 In Texas, 17, 461
 In United States courts, 17, 455
 In Vermont, 17, 460
 In Virginia, 17, 459
 In West Virginia, 17, 459
 In Wisconsin, 17, 460, 462
 Objections to admissibility answered, 17, 462
Parties, 17, 463
 Bona fide purchasers, 17, 465
 Burden of proof, 17, 467
 By whom conveyance should have been made, 17, 463
 Circumstances attending the transaction, 17, 466
 Mortgagor's right when transfer was made, 17, 464
 Obligation of the parties, 17, 464, 465
 Sufficiency of evidence, 17, 465
 Whether grantee must be creditor, 17, 464
 Who may be parties, 17, 463
 Statute of frauds, 6, 678; 17, 462

EQUITABLE MORTGAGES—*Cont'd***Absolute Conveyance Intended as Mortgage****—*Cont'd*****Parol Evidence—*Cont'd***

To establish separate defeasance, 15, 791

Upon what grounds admissible, 6, 677

Whether its admission violates statute of frauds, 6, 678; 17, 462

Parties, 17, 463

Payment of interest, 6, 679

Possession by grantor, 6, 679

Possession of mortgage as notice, 15, 796

Proving verbal agreement of parties, 6, 678

Questions of law and fact, 19, 650

Recording acts, 15, 793; 20, 558

Conflict of authority, 20, 558, 559

Entitled to be recorded according to its true character, 20, 560

In general, 20, 558, 559

Recorded according to its real character, 20, 559

Recording the seal, 20, 560

Resorting to index, 20, 560

Whether in books for deed or in book for mortgages, 20, 558

Recording as a mortgage, 15, 782

Redemption by Grantor, 6, 680

Payment of amount due, 6, 680

Right to, 6, 680

Waiver or release, 6, 680

Relationship of debtor and creditor not recognized, 15, 781

Rights must be reciprocal, 15, 782

Rights of creditor to show, 6, 676

Rights of grantee as to third parties, 6, 676

Rights of purchaser, 6, 680

Rights of third parties, 17, 465

Security merely in equity, 6, 676

Separate defeasance, 15, 791

Showing nature of conveyance by parol evidence, 6, 675

Slight or indefinite evidence, 6, 680

Sufficiency of evidence, 17, 465

Terms upon which interest will be paid, 15, 781

Undertaking for the payment of money, 15, 781

What considered, 6, 678

When Conveyance with Right to Repurchase Is a Conditional Sale, 15, 785

Agreement that grantee may buy the property absolutely, 15, 786

Examples where transaction was held a conditional sale, 15, 786

Express provision in contract, 15, 785

Illustrative cases, 15, 787, 788

Where conveyance extinguishes the debt, 15, 785

When Conveyance with Right to Repurchase Reserved Is a Mortgage, 15, 783

Illustrative cases, 15, 783, 784

Where intention is doubtful, 15, 783

Whether debt was discharged by conveyance, 15, 781

Whether grantee necessarily creditor, 17, 464

Whether grantor continues debtor of grantee, 15, 780

Who may be parties, 17, 463

Agreement to give certain security, 13, 612

Conditional sales, 15, 779

Covenants to insure, 13, 612

Definition, 6, 675

Deposit of Title Deeds, 6, 638; 13, 611; 15, 580, 804

Intention, 5, 580

Nature of the transaction, 5, 580

Under the American system, 15, 805

Under the English system, 15, 804

Where the doctrine is recognized, 5, 580

General rule, 13, 611

Informal, 6, 680**Assignment of**

Certificate of purchase of public land, 6, 682

Contract for purchase of land, 6, 682

Lease, 6, 681

Rents and profits, 6, 682

Definition, 6, 680

Instruments construed as mortgages, 6, 681

Omission of

Name of grantee, 6, 681

Seal, 6, 681

Reservation of a lien for purchase-money, 6, 682

To whom defeasance must be, 6, 682

Want of acknowledgment, 6, 681

Want of witnesses, 6, 681

What considered in construing, 6, 683

Mortgages by Deposit of Title Deeds, 13, 611; 15, 580

Adoption in United States, 6, 683

Conflict of registration laws, 6, 683

In England, 6, 683

What is, 6, 683

Payment of incumbrances, 13, 612

Priority, 10, 381

Corporation giving mortgage in name of stockholders, 10, 381

Land omitted from mortgage by mistake, 10, 383

Statutory liens, 10, 838

Stockholder's consent filed in wrong county, 10, 382

Railroad Securities, 19, 697

Agreement that bond shall establish a lien, 19, 697

Examples, 19, 697, 698

In general, 19, 697

Inoperative deed, 19, 697

Priority, 19, 698

Setting apart specific fund, 19, 698

Subsequent mortgage, 19, 697

What constitutes, 19, 697

Statute of frauds, 8, 672

Welsh mortgages, 15, 729

EQUITABLE SEPARATE PROPERTY,
see SEPARATE PROPERTY OF MARRIED WOMEN.**EQUITY, 6, 683**

See ACCOUNT; ASSETS; BILL IN EQUITY; BILL OF DISCOVERY; BILL OF REVIEW; BOUNDARIES; CATCHING BARGAIN; CHARITIES; CONTRIBUTION; CREDITORS' BILLS; DECREE; DISCOVERY; DOWER; ELECTION; EQUITABLE ASSIGNMENT; EQUITABLE CONVERSION; EQUITABLE MORTGAGES; ESTOPPEL; EQUITY PLEADINGS; EXECUTORS AND ADMINISTRATORS; EXONERATION; FRAUD; FRAUDULENT CONVEYANCES; IGNORANCE; INFANTS; INJUNCTION; INSANITY; INTERPLEADER; JOINT TENANTS AND TENANTS IN COMMON; LACHES; LIENS; LOST PAPERS; MARSHALING ASSETS; MASTER IN CHANCERY; MISTAKE; MORTGAGES; NE EXEAT; NOTICE; PARTNERSHIP; PETITION; RECEIVERS; REFORMATION OF INSTRUMENTS; RELATION; RENT; RESCISSION; SCANDAL AND IMPERTINENCE; SEQUESTRATION; SET-OFF; SPECIFIC PERFORMANCE; SUBROGATION; SURPRISE; TRUSTS.

As to equitable separate property of married women, see SEPARATE PROPERTY OF MARRIED WOMEN.

Bills quia timet, see BILLS QUIA TIMET.

Counterclaim, see SET-OFF.

Equitable titles, see CONSTRUCTIVE TRUSTS.

Equitable assignments, see EQUITABLE ASSIGNMENTS.

Express trusts, see TRUSTS.

Implied trusts, see IMPLIED TRUSTS.

Mortgages, see MORTGAGES.

Resulting trusts, see IMPLIED TRUSTS.

Trusts for married women, see SEPARATE PROPERTY OF MARRIED WOMEN.

For judgment by default in equity, see DEFAULT.

For limitation of actions, see LACHES.

For trusts for charitable uses, see CHARITIES.

Joinder of actions in law and equity under codes, see JOINER.

Limitation of actions, see LACHES; LIMITATION OF ACTIONS.

Multifariousness, see EQUITY PLEADINGS.

Partition

As to equitable relief incidental to partition, see PARTITION.

As to partition, see PARTITION.

Subpœna in equity, see SUBPœNA.

Abatement in, 1, 13; 5, 133

Accident in, 1, 85

Alimony, inherent power to grant, 1, 469

Amount in controversy, 12, 287

Cases reported for a court of law, 21, 3

Champerly and Maintenance

Equitable doctrine as to the sale of pretended titles, 3, 83

Concurrent Jurisdiction at Law, 12, 293

Action against receivers, see RECEIVERS.

Restraining proceeding at law, see INJUNCTION.

In general, 12, 293

Corporations

Jurisdiction of, to enforce forfeiture of franchise, 4, 304

Costs in, 4, 322

Death of either party to a suit in, 1, 13; 5, 133

Definition, 6, 684

In its broadest sense, 6, 684

Its ancient meaning, 6, 685

Modern meaning of equity as a system of jurisprudence, 6, 686

Distinction Between Law and Equity

Under the code, 18, 492

Equitable relief against heir or executor of a deceased joint obligor, 2, 465

Equitable Remedies, 6, 719

Account in Equity, 6, 720

See ACCOUNT.

Restraining action at law, 6, 721

When grounds for equity jurisdiction, 6, 720

When lies, 6, 720

Injunction, see INJUNCTION.

Reformation of instruments, see REFORMATION OF INSTRUMENTS.

Rescission, see RESCISSION.

Specific performance, see SPECIFIC PERFORMANCE.

Equitable Rights, 6, 716

Accident, see ACCIDENT.

Garnishment, 8, 1102, 1103

Jurisdiction, 6, 692

Adequate remedy at law, 6, 692

Auxiliary, 6, 714

Boundaries, 6, 693

Cases in which equity will not take jurisdiction, 6, 693

Circuit courts of United States, 6, 696

Common-law courts administering equitable relief under equitable forms, 6, 698

Concurrent, 6, 714

Court maintaining until full relief is given, 6, 764

Crime, 6, 693

Damages, 6, 693

Demurrer to, 6, 784

District courts of United States, 6, 695

Division, 6, 714

Exclusive, 6, 714

Federal courts, 6, 695

Generally, 6, 692

In Alabama, 6, 697

In Arizona, 6, 702

In Arkansas, 6, 697, 699

In California, 6, 701

EQUITY—Cont'd**Jurisdiction—Cont'd**

In Colorado, 6, 701
 In Connecticut, 6, 699
 In Dakota, 6, 702
 In Delaware, 6, 697
 In England, 6, 695
 In Florida, 6, 699
 In Georgia, 6, 699
 In Idaho, 6, 702
 In Illinois, 6, 699
 In Indiana, 6, 701
 In Iowa, 6, 699
 In Kansas, 6, 701
 In Kentucky, 6, 697
 In Louisiana, 6, 702
 In Maine, 6, 698
 In Maryland, 6, 699
 In Massachusetts, 6, 698
 In Michigan, 6, 699
 In Mississippi, 6, 697
 In Missouri, 6, 701
 In Montana, 6, 702
 In Nebraska, 6, 701
 In Nevada, 6, 701
 In New Hampshire, 6, 698
 In New Jersey, 6, 697
 In New Mexico, 6, 699
 In New York, 6, 700
 In North Carolina, 6, 701
 In Ohio, 6, 701
 In Oregon, 6, 699
 In Pennsylvania, 6, 699
 In Rhode Island, 6, 698
 In South Carolina, 6, 701
 In Tennessee, 6, 697
 In Texas, 6, 699
 In Utah, 6, 702
 In Vermont, 6, 697
 In Virginia, 6, 697-699
 In Washington, 6, 702
 In West Virginia, 6, 699
 In Wisconsin, 6, 701
 In Wyoming, 6, 702
 Interference after judgment at law,
 694
 Of courts of the several states, 6, 697
 Once attached retained, 6, 693
 Plea to, 6, 792, 795
 States in which separate chancery
 courts exist, 6, 697
 States in which there is no distinction
 between actions at law and suits in
 equity, 6, 702
 Supreme courts of United States, 6, 696
 Torts, 6, 693
 Trespass, 6, 693
 What facts must appear to give court
 jurisdiction, 6, 762
Justice of the Peace
 Jurisdiction, 12, 499
Maxims in, 6, 704
Between Equal Equities Time Shall Pre-
vail, 6, 709, 710
 Equities embraced in maxim, 6, 709
Between Equal Equities Law Must Prevail
 Illustrations, 6, 710

Purchaser obtaining equitable right
 in legal title, 6, 710
Equality is Equity, 6, 707
 Doctrines derived from, 6, 707
 Illustrations, 6, 707
 Scope of maxim, 6, 707
Equity Acts in Personam, Not in Rem,
 6, 712
 Land outside the jurisdiction of
 court, 6, 713
 Operation of equity upon the con-
 science, 6, 713
 Equity acts specifically, 6, 713
Equity Aids the Vigilant, Not Those Who
Sleep on Their Rights, 6, 710
 Equity acts by analogy to statute of
 limitations, 6, 711
 Laches, 6, 710
 Statute of limitations, 6, 711
 When courts refuse to follow stat-
 utes, 6, 711
 Where there is no statute of limita-
 tions, 6, 711
Equity Follows the Law
 Illustrations, 6, 705
 Scope, 6, 705
 Trust estates, 6, 705
 Equity imputes an intention to fulfil an
 obligation, 6, 712
Equity Looks to Intent Rather than
Form, 6, 706
 Doctrines derived from, 6, 706
Equity Regards That as Done Which
Ought to Have Been Done
 Doctrines derive from, 6, 706
 Scope, 6, 706
 Equity will not suffer a right to be with-
 out a remedy, 6, 712
He Who Comes Into Equity Must Do so
with Clean Hands, 6, 708
 Illustrations, 6, 708
 Scope, 6, 709
He Who Seeks Equity Must Do Equity, 6,
 707
 Applications, 6, 707
 Illustrations, 6, 708
 Must arise from the same matter, 6,
 707
 Vigilantius non dormientilius acquitas
 subvenit, 6, 711
Relief Against Forfeiture, 8, 449
 See LIQUIDATED DAMAGES.
As to bonds, see BONDS.
As to mortgages, see MORTGAGES.
 Condition that if interest is not paid,
 whole amount shall become payable,
 8, 450
 When equity will grant, 8, 449
 Where forfeiture is liquidated damages,
 8, 450
 Relief to contract entered into while
 drunk, 11, 778
 Right of trial by jury, 3, 720
 Rise of high court of chancery in Eng-
 land, 6, 688
EQUITY OF REDEMPTION, see RE-
DEMPTION.

EQUITY PLEADINGS, 6, 724

See ANSWER; BILL IN EQUITY; BILL OF PEACE; BILL OF REVIVOR; BILL QUIA TIMET; BILL TO PERPETUATE TESTIMONY; BILL TO REMOVE CLOUDS; BILL TO TAKE TESTIMONY DE BENE ESSE; DEMURRER.

See generally, INTERROGATORIES; PLEADINGS.

See JOINDER OF ACTIONS; MARSHALLING ASSETS; MASTER IN CHANCERY; SEQUESTRATION; SPECIFIC PERFORMANCE.

As to pleading statute of frauds, *see* FRAUDS, STATUTE OF.

As to suits to set aside fraudulent conveyances, *see* FRAUDULENT CONVEYANCES.

Subpœna in equity, *see* SUBPœNA.

Abbreviations in, 1, 15

Amendments, 6, 806

For bringing in proper parties, 6, 807

Liberality of court, 6, 806

Relation, 6, 807

When the amendment may be had, 6, 807

Cross-bill, 2, 201

Definition, 6, 716

Disclaimer, 6, 804

Distinction between legal and equitable, 6, 726

Exceptions, 6, 805; 7, 114

Definition, 6, 805

In general, 6, 805

Insufficiency of answer, 6, 805

Foreign corporations, 8, 376

Fraud

Bills to impeach decree on the ground of, 6, 773

Multifariousness, 6, 734, 758; 15, 947

Demurrer for, 6, 787

General rule, 6, 658

What Constitutes, 6, 758

Alleging two distinct and separate causes of relief, 6, 759

Parties having common interest, 6, 760

Plaintiffs claiming by virtue of one general right, 6, 760

Nature and modes of defense, 6, 780

Parties

To a bill to redeem, *see* REDEMPTION OF MORTGAGES.

To a bill to foreclose, *see* FORECLOSURE OF MORTGAGES.

Action of account, 6, 753

Alien, 6, 742

Alien enemy, 6, 742

Alien friend, 6, 742

Assignee, of a strictly legal right, 6, 753

Assignee pendente lite, 6, 753

Assignor and Assignee

Partners, 6, 753

Attorney general, 6, 742

Bill for counting against surviving partners, 6, 752

Creditor, 6, 750

Debtors, 6, 750

Defendant

Corporations, 6, 746

Foreign corporations, 6, 747

Generally, 6, 744

Government or foreign government, 6, 744

Idiots and lunatics, 6, 745

Infants, 6, 745

Interest in subject-matter, 6, 745

Joinder of defendant, 6, 747

Married women, 6, 745

Necessity that their interest should be consistent, 6, 746

Devises, 6, 752

Distributees, 6, 752

Exceptions to the rules as trustees and cestui que trust, 6, 750

Heirs, 6, 752

Joinder of Defendants

General rule, 6, 747

Partners, 6, 747

Suit on joint obligation, 6, 747

Joinder of Plaintiffs, 6, 742

Creditors, 6, 743

Husband and wife, 6, 745

Government, 6, 744

Legatees, 6, 743

Parties defendant, 6, 744

Parties defendant jointly, 6, 744

Person with joint or common interest, 6, 742

Who should be joined, 6, 742

Married Women, 6, 740

Joinder of husband, 6, 740

Next friend, 6, 740

Suing as feme sole, 6, 740

Persons reduced by age or infirmity, 6, 740

Sesqui que trust, 6, 750

Suits to enforce specific performance, 6, 752

Suits to enforce trusts of a will, 6, 752

Trustee fully representing beneficiary, 6, 751

Trustees, 6, 750

Vendor, 6, 753

Voluntary associations, 6, 741

Perjury, 18, 304

Plea overruled by answer, 1, 607

Pleas, 6, 791

Admission of facts contained in plea, 6, 792

Alienage, 6, 793

Another suit pending, 6, 794

As to matters of record, 6, 794

As to pleas in pais, 6, 794

Award, 6, 795

Citizenship, 6, 791

Demurrers, pleas and answers, 6, 803

Different pleas in bar, 6, 794

Distinguished from demurrer, 6, 791

Duplicity, 6, 791

For want of parties, 6, 795

In bar, 6, 793

In general, 6, 791

EQUITY PLEADINGS—Cont'd**Pleas—Cont'd**

- Of incapacity of plaintiff, 6, 792
- Part covered by answer, 6, 792
- Plea defined, 6, 791
- Purchaser for valuable consideration, 6, 794
- Reducing cause to single point, 6, 791
- Release, 6, 795
- So affirmed as to put an end to cause, 6, 791
- Statement, 6, 791
- Statute of frauds, 6, 793
- Statute of limitations, 6, 793, 795
- To Bills of Discovery**, 6, 795
 - Jurisdiction, 6, 795
- To bills of revivor, 6, 796
- To bill to carry decree into execution, 6, 797
- To bills to impeach a decree, 6, 797
- To bills to perpetuate testimony, 6, 796
- To cross-bills, 6, 796
- To jurisdiction, 6, 792
- To person, 6, 792, 795
- To supplemental bills, 6, 796

Replications, 6, 804

- Effect of, 6, 792, 804
- Special, 6, 804
- Where, is filed, 6, 804

Usury, 27, 1044

- Amendment, 27, 1045
- Examples, 27, 1044, 1045
- In general, 27, 1044
- What must appear in bill, 27, 1044

EQUIVALENT, 6, 808**ERASURE**, see ALTERATION OF INSTRUMENTS; WILLS.**ERECT**, 6, 808

- Erection of building, 6, 808
- Scaffold as an erection, 6, 809

EROSION, 6, 809**ERRONEOUS**, 6, 810**ERROR**, 6, 810

- Defendant in, 5, 516
- Errors of fact, 7, 658

ERROR, WRIT OF, 4, 324; 6, 810; 9, 211

- See generally, APPEAL; BILL OF EXCEPTIONS; CERTIORARI; JUDGMENT.
- See SCIRE FACIAS.

As to vacation of judgments, see JUDGMENTS.

Abatement, 6, 825; 7, 418**Amendment**, 6, 829**Assignment of cross errors**, 6, 825**Assignment of Errors**, 6, 825

- Sufficient and insufficient assignments, 6, 825-827

Assignment of special defects in record, 6, 826**Certiorari accompanying**, 6, 831**Coran Nobis**

- At what time it may be applied for, 6, 812
- Definition, 6, 810
- Error and judgment of court, 6, 811
- Infants, 6, 812
- Instances, 6, 811

Obsolete, 6, 811**Review**, 6, 812**When it lies**, 6, 810**Where returnable**, 6, 811**Criminal procedure**, 4, 882**Death of party after judgment**, 5, 134**Definition**, 6, 810, 812**Diminution**, 6, 825**Certiorari**, 6, 831**Dismissal**, 6, 829**Grounds for**, 6, 831**When may be had**, 6, 829**Distinguished from appeal**, 1, 616**Ejectment**, 6, 245dd**Error at law**, 6, 813**Final Judgment**, 6, 813*See* FINAL JUDGMENT.**Alias summons**, 6, 816**Contempt**, 6, 814**Criminal contempt**, 6, 814**Decree to carry into effect a judgment**, 6, 813**Disposition of whole matter at issue**, 6, 813**General rule**, 6, 813**Instances**, 6, 813-817**Judgment of reversal**, 6, 814**Nothing remains but to execute it**, 6, 814**Order overruling motion to quash**, 12, 65**What is**, 6, 813, 843**Where future orders of court may become necessary**, 6, 814**Former suit pending**, 8, 555**Habeas Corpus****Statutory provisions**, 9, 237**Whether it lies from a judgment in statutory provisions**, 9, 237**In Criminal Cases**, 6, 823, 836**For state**, 6, 837**Matters of record**, 6, 836**On behalf of people**, 6, 836**When it will lie**, 6, 836**Insanity, inquisition of**, 11, 117**In what name writ should be issued out**, 6, 818**Joinder in error**, 6, 826, 828**Judgment for defendant in error**, 6, 832**Lis pendens**, 13, 886**Mandamus**, 14, 118, 216**From the Supreme Court of the United States****Where writ is dismissed in lower court**, 7, 974**Manifest error**, 14, 250**Object of writ**, 6, 812**Parties**, 6, 817**Against Whom Brought**, 6, 819**In case of death of defendant in error**, 6, 819**Parties to suit**, 6, 819**In case of infancy**, 6, 818**Married women**, 6, 818**Prejudice by judgment**, 6, 817**Privy**, 6, 817**Several privies**, 6, 818

- Tax proceedings, 6, 818
 - Waiver of infancy, 6, 818
 - Who may bring writ, 6, 817
 - Payment or satisfaction of judgment as a bar to, 6, 825
 - Plaintiffs**
 - Several plaintiffs or defendants, 6, 817
 - Pleading special, 6, 828
 - Pleas of Error**, 6, 828
 - Release, 6, 828
 - Power of Appellate Court Over Judgment**, 6, 831
 - Restitution*, see **RESTITUTION**.
 - Final judgment by, 6, 832
 - Remittitur, 6, 832
 - Power of court in vacation, 6, 826
 - Prohibition performing functions of, 19, 265
 - Receivers, 20, 106
 - Record**, 6, 820
 - Imparting absolute verity, 6, 812
 - Release of errors, 6, 828
 - Remittitur, 6, 832, 835
 - Removal of causes, 20, 1019
 - Reversal**, 6, 833
 - Entering judgment, 6, 833
 - Right of third parties under erroneous judgment, 6, 833
 - Revival, 6, 825
 - Right of Trial by Jury**
 - In the U. S. courts, 6, 837
 - Scire facias, 6, 819
 - Settled case on appeal, 22, 467, 468
 - Special judge, 12, 26
 - Statutory regulations of writ of error, 6, 835
 - Suit, whether, 24, 496
 - Supersedeas**, 6, 819; 24, 583, 585; 27, 611
 - Action for debt on judgment, 24, 585
 - Common law, 24, 585
 - In general, 24, 585
 - Supersedeas as substitute for, 24, 585
 - Whether writ of error is supersedeas, 24, 585
 - Time Within Which Writ of Error May Be Issued**
 - Statute limiting time to certain period after "rendition" or "rendering" of judgment, 20, 1033
 - To judgment in account render, 1, 133
 - United States Courts**, 27, 608
 - As a matter of course, 27, 609
 - Bond, 27, 610
 - Errors considered, 27, 612
 - Final judgment, 27, 613
 - Form, 27, 609
 - From supreme court to highest court of state, 27, 641
 - From what court issued, 27, 608
 - Issuance, 27, 608
 - Return, 27, 609, 612
 - Reversal of judgment, 27, 612
 - Service, 27, 610
 - Signature, 27, 609
 - Subsequent steps, 27, 612
 - Supersedeas**, 27, 611
 - Bond, 27, 611
 - Definition, 27, 611
 - Examples, 27, 610, 611
 - Failure to observe provisions, 27, 611
 - How obtained, 27, 611
 - Necessity of taking bond, 27, 612
 - Security insufficient, 27, 612
 - Teste, 27, 609
 - Transcript of record, 27, 609
 - What are final judgments, 27, 613
 - Writ of the appellate court, 27, 609
 - What confessed by plea, 6, 828
 - When it lies, 6, 813
 - Where certiorari has been brought, 6, 831
- ESCAPE**, 6, 844
- See generally, **OBSTRUCTING JUSTICE; PRISONS**.
 - Bond for prison bounds*, see **PRISONS**.
 - Warrants*, see **WARRANTS**.
 - What constitutes an arrest*, see **ARREST**.
 - Absolute liability of jailer, 6, 848
 - Actual, 6, 844
 - Aiding, 6, 851
 - Arrest on mesne process, 6, 849
 - Attempt to**, 4, 663
 - Evidence, 4, 860
 - Will not justify homicide, 1, 746
 - Breaking Doors**
 - To arrest criminal, 1, 749
 - Bribing officer to permit, 2, 533
 - Civil Liability of Custodian**, 6, 853^h
 - Action against sureties, 6, 853ⁱ
 - Insolvency of debtor, 6, 853^h
 - Measure of damages, 6, 853^h
 - Sheriff in place of original defendant, 6, 853ⁱ
 - Sheriff's action against jailer, 6, 853ⁱ
 - Voluntary surrender to sheriff, 6, 853ⁱ
 - Waiver of escape, 6, 853ⁱ
 - Condition against Escape of Animals**
 - In bill of lading, 2, 237
 - Constructive escape, 6, 846
 - Definition, 6, 844
 - Deputy Sheriff**
 - Liability of, 6, 853^b
 - Dismissal of appeal after, 6, 853^j
 - Distinguished from prison breach, 6, 844
 - Distinguished from rescue, 6, 844
 - Effect on appeal, 12, 306
 - Evidence, 6, 853^g
 - From Necessity**
 - Disease, 6, 846
 - In criminal cases, 6, 848
 - Indictment**, 6, 853^e
 - Aiding escape, 6, 853^f
 - Attempt to escape, 6, 853^e
 - Showing lawful detention, 6, 853^e
 - Suffering escape, 6, 853^f
 - Invalid discharge, 6, 850
 - Justification**, 6, 852
 - Consent of creditor, 6, 853^j
 - Illegality of arrest or commitment, 6, 852
 - Irregularity of arrest, 6, 852
 - Order of discharge, 6, 853

ESCAPE—Cont'd

Killing to prevent escape after felony, 4, 706

Lawful arrest, 6, 845

Married women, 14, 649

Marshals, 22, 565

Mitigation of damages, 15, 690

Negligence implied to jailer, 6, 850

Negligent, 6, 848

Absolute liability of jailer, 6, 848

Arrest on mesne process, 6, 849

Care to be exercised by officer, 6, 849

Commitment on final process, 6, 849

Definition, 6, 848

Pending preliminary examination, 6, 845

Presumption of guilt arising from, 6, 853*j*

Prisoner guilty of misdemeanor, 6, 853

Protection of prisoner under warrant, 6, 847

Punishment, 6, 853*g*

Recapture, 6, 853*d*

After voluntary escape, 6, 853*d*

Escape of prisoner under civil process, 6, 853*d*

Necessity for new authority, 6, 853*d*

Necessity of new warrant, 6, 853*d*

Necessity of warrant, 6, 853*d*

Negligent escape, 6, 853*e*

Officer never losing sight of his prisoner, 6, 853*d*

Voluntary return of prisoner, 6, 853*e*

Relaxation of confinement, 6, 846

Responsibility for, 6, 853

Actual custodian, 6, 853*a*

Custodian, 6, 853*a*

Of officer for deputies, 6, 853*b*

Of private individuals, 6, 853*c*

Prisoner, 6, 853

Sheriff who has received prisoner arrested by United States marshal, 6, 853*b*

Watchman, special deputy, 6, 853*c*

Serving whole time after recapture, 6, 853*g*

Sheriffs, 22, 535

Bail, 22, 535

Due care in keeping prisoner, 22, 536

Escape caused by act of plaintiff, 22, 536

Examples, 22, 535, 536

Extent of sheriff's liability, 22, 535

Insolvency of debtor, 22, 535

Jail out of repair, 22, 536

Liability of sheriff where defendant escapes, 22, 535

Liability of surety, 22, 556

Negligent or involuntary escape, 22, 536

No jail, 22, 536

Process void, 22, 536

Sheriff's liability for debt, 22, 536

Voluntary escape, 22, 536

Subsequent acquittal, 6, 846

Suit by sheriff against debtor, 6, 853*j*

Temporary freedom, 6, 847

Undue liberty before actual confinement, 6, 847

Unlawful imprisonment, 6, 846

Voluntary, 6, 850; 22, 536

Definition, 6, 850

Instances, 6, 851

What amounts to, 6, 844

ESCHEAT, 6, 854

See generally, SUCCESSION; FORFEITURE.

Alien, 1, 458, 460

Alienage, 6, 854

Alien's lands, 1, 458

Conveyance before office found, 6, 856

Conveyance of escheated lands, 6, 856

Corporations, 6, 856

Definition, 6, 854

Dispossession of parties in possession, 6, 856-857

Distinction from forfeiture, 6, 854

Entry, 6, 856

How enforced, 6, 856

In North Carolina, 6, 855

Inquest of office, 6, 856

Intestacy, 6, 854

Lands, 6, 855

Office Found, 6, 856

Necessity of, 6, 856

Of Personal Property

Executor's right, 7, 317

Railroads, 19, 809

Released by, 6, 856

School fund, 6, 855

State Lands, 23, 46

Examples, 23, 46, 47

How escheat rights conveyed, 23, 47

Owner dying intestate, 23, 46

State's right, 23, 46

To whom goes, 6, 855

Trust estates, 6, 855

Upon death of alien intestate and without heirs, 1, 460

Waiver, 6, 856

What, 6, 855

When land, 6, 855

When title vests, 6, 856

ESCROW, 6, 857

As to the capacity of grantor and grantee to execute, see GRANTOR AND GRANTEE.

And Deeds Presently, 6, 863

Distinction, 6, 858, 863

Materiality of distinction, 6, 864

Question for jury, 6, 865

Bill or note delivered in, 2, 343

Condition to be performed, 6, 863

Death or disability of one of parties, 6, 871

Definition, 5, 450; 6, 857

Delivery of a bond perfect on its face, 2, 459

Delivery of bond as an, 2, 459

Distinction between escrows and conditional delivery to third party, 5, 450

Distinguished from deeds, 6, 858, 863

How created, 6, 866

Instrument to be delivered, 6, 858

Married women, 6, 871

Parol evidence, 17, 438

Parol evidence to show that bond is, 2, 459

- Party to Whom Delivery Is Made**, 6, 858
 Co-obligor, 6, 859
 Grantee, 6, 858
 Grantee's agent, 6, 861
 Officer of corporation, 6, 862
 One of several co-obligees, 6, 859
 Surety, 6, 859
 Questions of law and fact, 19, 639
 Relation, 5, 451; 6, 870; 20, 734
 Release, 20, 745
 Rights of innocent purchaser, 6, 869
 Second delivery, 5, 450; 6, 867
 Separate defeasance delivered as an escrow, 15, 793
 Statute of frauds, 6, 871
Stockholders
 Subscription delivered in, 23, 790
 Subscriptions, 23, 790
 Suretyship, 24, 738
 Time when title passes under, 5, 450; 6, 863, 870
 What instruments may be placed in, 6, 858
When Title Passes, 5, 450; 6, 863, 870
 Performance of conditions, 6, 867
 When handed to grantee to keep as an escrow, 6, 859
 Whether bond is question for jury, 2, 460
 Whether conditional delivery of escrow depends on intention of grantor, 5, 450
 Whether performance of conditions is inferred, 6, 869
- ESPECIAL**
 Especial care, 2, 732
ESPECIAL PRIVILEGES, 6, 872
ESPLEES, 6, 872
ESQUIRE, 6, 872
ESSENTIAL, 6, 873
ESTABLISH, 6, 873
 "And regulate markets," 6, 874
 Highway, 6, 874
 Permanently, 6, 875
ESTABLISHMENT, 6, 873
 Distinguished from incorporation, 6, 873
 Manufacturing, 6, 874; 14, 264
ESTATES, 6, 875; 12, 656; 23, 632; 29, 347
See generally, REAL PROPERTY.
See JOINT TENANTS AND TENANTS IN COMMON; SHELLEY'S CASE, RULE IN; MERGER; PARCENARY; VENDOR AND PURCHASER.
As to estates by entirety, see HUSBAND AND WIFE.
As to what estates dower attaches, see DOWER.
 Coparcenary, see PARCENARY.
 Estates at will, see LANDLORD AND TENANT.
 Estate for life, see CURTESY; DOWER.
 Emblements, see CROPS.
 Estovers, see ESTOVERS.
 Taxes, see TAXATION.
 Estates for years, see LANDLORD AND TENANT.
 Estates from year to year, see LANDLORD AND TENANT.
- Estates in remainders*, see REMAINDERS, REVERSIONS AND EXECUTORY INTERESTS.
Estate on condition, see DEEDS; MORTGAGES.
Conditions in restraint of marriage, see ILLEGAL CONTRACTS.
Probate and letters of administration, see PROBATE AND LETTERS OF ADMINISTRATION.
Reversion, see REVERSION.
Waste, see WASTE.
At Will
 As chattels real, 3, 164
 Base, or determinable fee, 6, 878; 19, 1055
 Classification, 6, 875
 Conventional, 4, 103
 De donis, 19, 1054
 Defeasance, 5, 510
 Definition, 6, 875; 19, 1030
 Determinable fees, 5, 649; 19, 1055
 Discontinuance, 5, 678
 Estate and effects, 6, 193
Estates Tail, 6, 879
 Becomes fee simple under American statutes, 22, 503
 Fee, 7, 819
 Fee simple conditional, 19, 1054
 Forfeiture of, 8, 446
For Life, 6, 880; 12, 679, 680
See CURTESY; DOWER.
 Action for injured possession, 12, 680
 Apportionment of incumbrances, 6, 882
 Cutting timber for new buildings, 12, 680
 Deed, 12, 680
 Definition, 12, 679
Eminent Domain
 Measure of damages, 6, 581
 Firewood, 12, 680
Holder's Rights and Liabilities, 12, 680
 Action for injured possession, 12, 680
 Cutting timber for new buildings, 12, 680
 Firewood, 12, 680
 Homestead, 12, 680
 Interest on incumbrances, 12, 680
 Lease, 12, 680
 Mortgage, 12, 680
 Open mines, 12, 680
 Operating mines, 12, 680
 Repairs, 12, 680
 Timber, 12, 680
 Transfer, 12, 680
 Use of premises, 12, 680
 Waste, 12, 680
 Homestead, 12, 680
 How constituted, 12, 680
 How created, 12, 680
 Intention of lessor governs, 12, 680
 Interest on encumbrances, 12, 680
 Lease, 12, 680
 Life estate in personalty, 6, 883
 Mortgage, 12, 680
 Necessity of words of limitation, 6, 881

ESTATES—Cont'd**For Life—Cont'd**

- Operating mines, 12, 680
- Operation of law, 12, 679
- Rent, 12, 680
- Repairs, 12, 680
- Reversion, 12, 680
- Termination, 12, 681
- Timber, 12, 680
- Transfer, 12, 680
- Use of premises, 12, 680
- Waste, 12, 680
- Will, 12, 680

For Years

See LANDLORD AND TENANT.

As chattels real, 3, 164

Freehold, 8, 898

In expectancy, 6, 896

In fee, 6, 876; 12, 681

Ground rents, 12, 681

Rents, 12, 681

In possession, 6, 896

In severalty, 6, 895

My estate, 16, 110

Of Decedents

Disqualification of Judge, 12, 51

Appointment of auditors, 12, 52

Interest as debtor, 12, 52

Interest as distributee, 12, 52

Judge put down in accounts as creditor, 12, 51

Relationship to creditor, 12, 51

Surrogate having acted as counsel, 12, 51

Of elegit, 6, 895

Of freehold, 6, 895

Of inheritance, 6, 895; 10, 776

On Condition, 6, 900

See DEEDS; MORTGAGES.

Definition, 6, 900

Distinguished from trusts, 6, 905

Enforcement of forfeiture, 6, 904

Examples of, 6, 900-905

Interference by equity, 6, 904

Intoxicating liquors, 6, 903

Necessity of express words, 6, 901

Performance, 6, 903

Becomes impossible, 6, 902

Precedent, 6, 901

Reservation to grantor, 6, 904

Reservation to stranger, 6, 904

Right of entry chose in action, 6, 903

Right of entry for breach, 6, 903

Subsequent, 6, 901

Time for performance, 6, 903

Void, 6, 902

Waiver of performance, 6, 904

Whether right of entry is in estate, 6, 903

Property equivalent to, 19, 286

Pur Autre Vie, 6, 880

Adverse possession, 6, 881

Definition, 6, 880

Executory interests, 20, 962, 965

Necessity of words of limitation, 6, 881

Power of alienation, 6, 881

Term of years, 25, 951

Vested estates, 28, 442

Whether term will pass a fee, 1, 488

Wills

What Passes by a Devise of Estate, 29, 406

Coupled with other words, 29, 407

Ejusdem generis, 29, 408

Examples, 29, 406-408

In general, 29, 406

Real and personal property, 29, 406

ESTIMATE, 7, 1

Estimated cash value, 3, 34

ESTOPPEL, 7, 1

See ACCOUNT STATED; RECEIPTS.

As applied to insurance, *see* INSURANCE;
Disclaimer, *see* LANDLORD AND TENANT.

Election, *see* ELECTION.

For release of dower by wife, *see* DOWER.

Use and occupation, *see* RENT.

Account stated, effect of, 1, 111

Acknowledgment

Parties obtaining cannot deny validity, 1, 146

Privy examination of married women, 1, 166

Agency, 1, 353; 7, 30

When principal is estopped, 1, 353

Agreed case, 24, 156

Award, in matters concerning real estate as, 1, 713

Bailees, 7, 100

Barring dower, 6, 920

Bills and Notes, 7, 30

Acceptance, 7, 30, 100

For owner, 7, 30

Alteration, 7, 30

Capacity of drawer, 7, 30

Capacity of payee, 7, 30

Capacity of prior parties, 7, 31

Claiming *fijuria* after lapse of time, 7, 41

Genuineness of signature, 7, 30, 31

Indorsement, 7, 30

Negligence, 7, 31

Bills lading, 7, 31, 101

Building and Loan Associations

Company denying membership, 2, 618

Denying membership in, 2, 618

Pleading *ultra vires*, 2, 625

By assuming to act in particular capacity, 7, 29

By Conduct, 7, 12; 9, 339

Landlord and tenant, 7, 99

By Deed, 3, 828; 7, 3

See infra, RECITALS.

After-acquired title, 9, 46

Assertion of an estoppel, 7, 5

Collateral matters, 7, 5

Definition of privy, 7, 4

Dower

Dower, *see* DOWER.

Whether widow is estopped by joining with husband in conveyance, 7, 6

- Grantee denying grantor's title, 7, 5, 6
- Grantee in deed-poll, 7, 4
- Infants, 7, 4
- Invalid, 7, 5
- Married Women*, see *infra*, MARRIED WOMEN.
- Of disseisee, 9, 37
- Parties and privies, 7, 4
- Recitals, 3, 828; 7, 7; 20, 458
- See *infra*, RECITALS.
- Assertion**
 - In replevin bond that property replevined was that of defendant, 7, 8
 - Of existence of street which is bounded by land, 7, 7
 - That a mortgage is a lien, 7, 7
 - Consideration, 7, 8
 - Date of instrument, 7, 7; 20, 461
 - Founded on mistake, 7, 8
 - General, 7, 8
 - Instances of particular estoppel, 7, 7; 20, 458
 - Regularity of organizations and subsequent action of corporations, 7, 8
 - Sureties on bonds of administrators, etc., estopped to deny appointment of their principal, 7, 8
 - What is a particular, 7, 7
 - What works an estoppel, 7, 7
- Strangers, 7, 4
- To whom it applies, 7, 3
- Whole instrument to be considered, 7, 5
- By Record**, 7, 2
- See RES ADJUDICATA.
- Judgment*, see JUDGMENT.
- Conclusiveness of**
 - Collateral proceedings, 7, 2
 - Direct proceedings, 7, 2
 - Effect upon parties and privies, 7, 2
 - Effect upon strangers, 7, 2
 - Independent action, 7, 3
 - Material allegation or admission, 7, 2
 - Of court, 7, 2
 - Of legislature, 7, 2
 - Pleadings, 7, 2
 - Subsequent action between same parties, 7, 3
 - Verdict, 7, 3
 - What is, 7, 2
- Collateral, 3, 310
- Computation of time, 26, 3
- Corporations**, 24, 748
 - Depending on ground of defects in its organization, 4, 200; 7, 29
 - Estopped from denying its existence, 4, 200; 24, 748
 - Ultra Vires**, 7, 29; 27, 405
 - Act unauthorized by law, 7, 29
 - Contracts prohibited by law, 7, 29
 - Corporation setting up defects in its organization, 4, 200; 7, 29
 - Corporation unauthorized by law, 7, 29
 - General rule, 7, 29
 - Irregularities in act subsequent to incorporation, 7, 29
 - Legal existence of corporation, 7, 29
 - One holding himself out as stockholder, 7, 30
 - Party contracting with corporation, 7, 29
 - When persons dealing with corporation are estopped to deny its valid incorporation, 4, 199
 - Where corporation has formed an unauthorized partnership, 4, 248
- Dedication to public at common-law operates by way of estoppel in pais**, 5, 396
- Deeds**, 7, 3
 - Recitals in, 3, 828; 7, 7; 20, 457
 - Showing that consideration was greater or less than that named, 3, 828
- Definition**, 7, 1
- Dower**
 - Estoppel of Third Party to Deny Seizin**
 - Defenses which establish that husband's seizin is not sufficient, 5, 889
 - Setting up better title in himself, 5, 889
 - Where party has accepted conveyance from husband, 5, 889
- Ejectment, 6, 245k
- Embezzlement, 6, 498r
- Equitable**, 6, 718; 7, 12
 - Allegation of, 6, 756
- Executors and Administrators**
 - Denying legality of executor's appointment, 7, 12, 229
- False Representations**, 7, 12
 - Married women*, see *infra*, MARRIED WOMEN.
- Fire insurance, 7, 1054
- Foreign Corporations**, 8, 354
 - Plea to jurisdiction, 8, 382
- Forfeiture, 8, 451
- Forthcoming bond, 8, 567
- Fraudulent Sales**, 8, 837
 - Apparent ownership of original buyer, 8, 837
 - Exceptions to rule as to taking only title transferred, 8, 838
 - Good faith of purchaser, 8, 838
 - Incorporation of idea of voidable or defeasible title, 8, 839
 - In New York, 8, 837
 - Nature of estoppel raised, 8, 838
 - One of two innocent persons, 8, 838
 - Placing vendee in possession to deceive, 8, 837, 838
 - Statement of the doctrine, 8, 837
 - Superior equity of honest purchaser, 8, 838
- From Possessions Under Another**, 7, 25
 - See LANDLORD AND TENANT.
- Assignees and licensees of patents, 7, 28
- Bailees, 7, 28
- Depositories, 7, 28
- Devisee for life, 7, 28
- Executor or administrator, 7, 28
- Mortgagor, 7, 28

ESTOPPEL—Cont'd**From Possessions Under Another—Cont'd**

Possession under executory contract of sale, 7, 27

Receiptor of goods, 7, 28

Vendee of land, 7, 27

Garnishment

Pledges, 8, 1187

Gas companies, 8, 1282

Guardian and Ward

Guardian estopped to deny appointment, 9, 95

Sureties, 9, 140

Denying fact of guardianship, 9, 140

Denying that appointment is valid, 9, 140

Denying that bond is valid, 9, 140

Final settlements, 9, 140

Private settlement between guardian and ward, 9, 140

Showing that signature was obtained by fraud, 9, 140

Sureties not parties to accounting, 9, 140

Homologation, 9, 757

Husband and Wife

See *infra*, MARRIED WOMEN.

Wife standing by while husband claims property, 9, 805

Implied warranty, 10, 115

Infants, 7, 24

Equitable estoppel, 10, 672

Representation as to age, 10, 671; 14, 642

In Pais, 7, 12**Accepting Benefits**

Of a judgment, 7, 22

Of legal proceedings, 7, 22

Under a statute, 7, 22

Acquiescence, 7, 15, 18

Acting upon promise within statute of frauds, 7, 14

Action must be prompt, 7, 17

Admissions of fact in open court, 7, 22

Application of doctrine, 7, 18

Availability in law, 7, 19

By act of agent, 7, 23

By conduct, 7, 12; 9, 339

Certainty of representations, 7, 14

Compromises, 7, 21

Concealment, 7, 12

Conduct in regard to real estate, 7, 19

Dedication to public, 7, 16

Destruction of deed by grantee, 7, 20

Easements, 7, 21

Equitable estoppel, 6, 718; 7, 12

Essential elements of estoppel by conduct, 7, 12

Estoppel against estoppel, 7, 26

Estoppel to claim title, 7, 19

Extent of, 7, 24

Facts that party is bound to know, 7, 15

False representation, 7, 12

General rule, 7, 19

Ignorance of party relying on representations, 7, 15

Ignorance resulting from negligence, 7, 15

Illustrations, 7, 21

Improvements on land, 7, 13

Inconsistent positions, 7, 22

Infants in cases of tort, 7, 25

Inference of intent, 7, 16

Inquiries, 7, 16

Intent that representation should be acted upon, 7, 16

Involuntary representations, 7, 17

Knowledge of facts, 7, 14

Landlord and tenant, see *infra*, LANDLORD AND TENANT.

Married women, see *infra*, MARRIED WOMEN.

Material facts, 7, 12

Mistake, 7, 14

In settlement of boundaries, 7, 15

Necessity that representations be acted upon, 7, 17

Negligence amounting to breach of duty, 7, 17

Opinion, 7, 14

Parties, 7, 23

Patents, 7, 22

Possession, 7, 14

Prejudice of party claiming estoppel, 7, 18

Privies, 7, 23

Public improvements, 7, 20

Ratification of invalid sale, 7, 19

Receiving money for another, 7, 22

Recital in simple contract, 7, 16

Record notice, 7, 16

Representations after change in position, 7, 17

Representations as to future, 7, 14

Representations as to law, 7, 14

Return not acted upon, 7, 17

Showing act to be void by statute, 7, 20

Silence when it is party's duty to speak, 7, 12

Silence when there is no duty to speak, 7, 13

Trustee setting up invalidity of debt, 7, 22

Validity of a debt, 7, 20

Void contract, 7, 15

When cestui que trust bound by trustee's sale, 7, 19

Whether infants are bound, 7, 24; 10, 671

Whether married women are bound, see *infra*, MARRIED WOMEN.

Who are bound by estoppel, 7, 23

Who may claim estoppel, 7, 17

Who may take advantage of estoppel, 7, 23

Witnessing conveyance of one's property, 7, 19

Wrongful sale, 7, 18

Instruction, examples of, 11, 267-271

Irrigation, 11, 861

Judgment

Agent or attorney, 12, 84

By Default

As an estoppel, 5, 467

- Binding alike on plaintiff and defendant, 5, 469
- On other actions and proceedings, 5, 469
- Married Women**, 14, 638
 - Antenuptial contracts, 14, 639
 - Default, 14, 638
 - Examples, 14, 638
 - Judgment fairly obtained, 14, 638
 - Void judgment, 14, 638
 - Warrant of attorney, 14, 638
 - When not estopped, 14, 638
 - Must be mutual, 12, 84
- Judicial sales, 12, 237
- Landlord and Tenant**, 6, 245*ff*; 7, 25, 100; 12, 701
 - See* ADVERSE POSSESSION.
 - Acknowledgment of tenancy through mistake or fraud, 7, 27
 - Action by tenant, 12, 738
 - Admission of statements against landlord, 12, 704
 - Adverse possession after disclaimer, 7, 27
 - After death of landlord, 12, 705
 - After expiration of lease, 7, 26
 - After surrender of possession, 7, 25
 - Agent's authority, 12, 704
 - Application of the rule, 12, 702
 - As against a stranger, 12, 703
 - Beneficial owner, 12, 704
 - Conditions essential to existence of estoppel, 7, 25
 - Conflicting claims, 12, 707
 - Contract to attorn to another, 12, 704
 - Duress, 12, 705
 - Effect where tenant disclaims, 12, 758*f*
 - Eviction, 12, 707
 - Examples, 12, 702
 - Forfeiture, 12, 758*a*
 - General rule, 7, 25, 27; 12, 701
 - Landlord's assignee, 12, 703
 - Landlord's fraud in obtaining execution of lease, 12, 704
 - Landlord's mortgagee, 12, 703
 - Landlord's title expired, 12, 706
 - Landlord's title extinguished, 12, 706
 - Landlord's vendee, 12, 703
 - License, 7, 25
 - Misrepresentation of landlord, 12, 705
 - Mistake and fraud, 12, 705
 - Necessity of possession, 7, 25
 - Parol lease, 7, 25
 - Parties not sui juris, 7, 27
 - Privies, 7, 27
 - Purchase of adverse title, 12, 704
 - Purchase of landlord's title by tenant, 7, 26
 - Reason of the rule, 12, 702
 - Relation created by law, 12, 706
 - Sealed lease, 7, 25
 - Showing expiration of landlord's title, 7, 26
 - Subtenant, 12, 703
 - Surrender of possession, 12, 703
 - Tax sales, 12, 704
 - Tenancy in common, 12, 703
 - Tenancy under a deed showing landlord has no title, 7, 26
 - Tenant by operation of law, 7, 27
 - Tenant disputing landlord's title, 12, 701
 - Tenant ignorant of his right, 12, 705
 - Tenant in possession when he acknowledged tenancy, 7, 26
 - Tenant showing eviction, 7, 26
 - Title given before possession taken, 12, 705
 - To whom estoppel extends, 7, 27
 - Void lease, 12, 703
 - Waiver by lessor, 12, 707
 - What is meant by disputing landlord's title, 12, 703
 - Where term has expired, 12, 707
 - Who may rule, 12, 703
 - License in connection with, 13, 548
- Limitation of Actions**, 13, 719
 - Agreement to waive statute, 13, 718
 - Defendant misleading plaintiff, 13, 719
- Lis pendens, 13, 891
- Local Assessments**, 25, 576
 - Failure to make objections, 25, 576
 - In general, 25, 576
 - Petition, 25, 576
 - Petition of property owners, 25, 535
 - Proceedings entirely void, 25, 576
- Married Women**, 7, 24; 14, 622, 623
 - Records*, see *infra*, JUDGMENT.
 - By Deed*, 7, 4; 14, 637, 639
 - Acknowledgment, 14, 639
 - After-acquired title, 14, 640
 - Denying having read deed, 14, 639
 - Denying signature, 14, 639
 - Dower, 14, 640
 - Estoppel of purchase-money, 14, 639
 - Examples, 14, 639, 640
 - Infancy, 14, 639
 - Invalid deed, 14, 639
 - Ratification, 14, 639
 - Restoration of consideration, 14, 639
 - Seal, 14, 639
 - Where purchase-money becomes separate estate, 14, 638
- Contracts, 14, 637
- Covenants, 14, 622
- Dower, 14, 640
- False Representations**, 14, 641
 - As to being unmarried, 14, 642, 644
 - As to coverture, 14, 644
 - Examples, 14, 644
 - Representing property as her husband's, 14, 644
 - Torts unconnected with contract, 14, 644
- General rules, 14, 637
- In Pais**, 7, 24; 14, 640
 - Acts of Husband**, 9, 805; 14, 644
 - Agency, 14, 645
 - Bona fide purchaser, 14, 646
 - Consideration, 14, 644
 - Creditors, 14, 646
 - Examples, 14, 645
 - Fraud, 14, 645

ESTOPPEL—Cont'd**Married Women—Cont'd****In Fais—Cont'd****Acts of Husband—Cont'd**

- In general, 14, 644
- Separate property, 14, 645
- Title to realty in husband's name, 14, 646

Acts While Sole, 14, 646

- After dissolution of marriage, 14, 646

Examples, 14, 646, 647

Contract, 14, 640

- Allowing property to be improved, 14, 641
- As if unmarried, 14, 641
- Capacity to contract, 14, 640
- Dower, 14, 641
- Equitable separate property, 14, 641

Examples of, 14, 640

Husband as agent, 14, 641

Implied assent, 14, 640

Permitting money to be paid to husband, 14, 640

Property sold under void judicial proceedings, 14, 641

False Representations, 14, 641

Absence of fraudulent intent, 14, 641

Conduct, 14, 642

Disability of infancy, 14, 642

Examples, 14, 641, 642

Guilty knowledge, 14, 641, 642

In general, 14, 641

Mere promise, 14, 641

Representation as to separate property, 14, 642

Representations relating to capacity, 14, 642

Representing that she is unmarried, 14, 642, 644

Want of capacity to contract, 14, 642

In general, 14, 640

Relying upon representations, 14, 640

Silence, 14, 643

Claim of right by party not her husband, 14, 643

Contract as feme sole, 14, 643

Effect, 14, 643

Examples, 14, 643

Husband asserting rights inconsistent with wife's, 14, 643

In general, 14, 643

Torts, 7, 25; 14, 638, 644

Connected with contracts, 14, 644

Examples, 14, 644

In general, 14, 644

Liability, 14, 644

Unconnected with contracts, 14, 644

Judgment, 14, 637, 638, 662

Antenuptial contracts, 14, 639

Default, 14, 638

Examples, 14, 638

Fairly obtained, 14, 638

Void, 14, 638

Warrant of attorney, 14, 638

When not estopped, 14, 638

Recitals, 20, 464

Release, 14, 624

Torts, 7, 25; 14, 638, 644

Separate property of married women, 14, 594; 22, 43

Mechanics' Liens, 15, 189

Owners by, 15, 65

Waiver of lien, 15, 108

Mines and mining claims, 15, 549

Mortgages, 15, 864

Absence of covenant for title, 15, 864

After-acquired property, 15, 749

In whose favor estoppel operates, 15, 864

Mortgagor certainly had no right to mortgage property, 15, 863

Mortgagor denying his title, 15, 863

Purchaser of land subject to mortgage, 15, 835, 836

Representations of mortgagor, 15, 864

Usury, 15, 771

When mortgagor is estopped, 15, 864

Municipal Corporations

Act of officer, 19, 513

Limitations of Municipal Indebtedness, 15, 1137

Acquiescence of inhabitants, 15, 1137

Recitals, 15, 1137, 1295

To claim title, 15, 1059

Municipal Securities, 15, 1292

Assent of taxpayers, 15, 1301

Authority of commissioners to pass upon fact implied, 15, 1299

Before the issue of bonds, 15, 1292

Bonds issued in violation of constitutional provisions, 15, 1302

Bonds issued in violation of express statute, 15, 1302

Course of dealing, 15, 1293

Excessive Issues, 15, 1304

Bona fide purchaser, 15, 1304

Constitutional limitation, 15, 1306

Examples, 15, 1304-1308

Grounds for the doctrine, 15, 1308

In Iowa, 15, 1305

Legislative limitation, 15, 1304, 1305

Validity, 15, 1304

Irregularities in election, 15, 1301

Laches, 15, 1295

Misconduct of officers, 15, 1295

Municipality without power to issue bonds, 15, 1300

New York decisions, 15, 1303

Payment of interest, 15, 1293

Prima facie case for plaintiff, 15, 1299

Railway aid bonds, 15, 1295

Recitals, 15, 1137, 1295

Assent of taxpayers, 15, 1301

Authority of commissioners to pass upon fact implied, 15, 1299

Bonds issued in violation of constitutional provisions, 15, 1302

- Bonds issued in violation of express statutes, 15, 1302
- By unauthorized officials, 15, 1292
- Excessive Issue**, 15, 1304
 - Bona fide purchaser, 15, 1304
 - Constitutional limitation, 15, 1306
 - Examples, 15, 1304, 1308
 - Grounds for the doctrine, 15, 1305
 - In Iowa, 15, 1305
 - Legislative limitation, 15, 1304, 1305
 - Validity, 15, 1304
- In bond, 15, 1227
- In compliance with statute, 15, 1298
- Irregularities in election, 15, 1301
- Municipality without power to issue bonds, 15, 1300
- New York decisions, 15, 1303
- Of conditions inconsistent with statute, 15, 1302
- Of facts not within authority of officers issuing bonds, 15, 1300
- Prima facie case for plaintiff, 15, 1299
- Railway aid bonds, 15, 1295
- Rules governing municipal bonds, 15, 1308
- Statute declaring bonds void unless conditions are complied with, 15, 1302
- Substantial compliance with law, 15, 1299
- That bonds are issued in accordance with law, 15, 1299
- That bonds have been issued in conformity with law, 15, 1300
- That conditions have been performed, 15, 1295
- Validity of consolidation, 15, 1296
- "Were issued in pursuance of subscription," 15, 1302
- Records of county court, 15, 1293
- Refunding, 15, 1293
- Retention of consideration, 15, 1293
- Rules governing municipal bonds, 15, 1308
- Statute declaring bonds void unless conditions are complied with, 15, 1302
- Substantial compliance with law, 15, 1299
- To deny authority of officers, 15, 1292
- Validity of consolidation, 15, 1296
- Waiver of condition, 15, 1273
- "Were issued in pursuance of subscription," 15, 1302
- Mutual insurance, 16, 54, 64
- Name**
 - Corporations, 16, 140
- National Banks**, 16, 147
- Stockholders, 16, 200
- Novation, 16, 905
- Of agent, 7, 100
- Of insurance company, 8, 447
- Of licensee, 7, 100
- Partition, 17, 818
- Partnership**
 - Holding one's self out as partner, 7, 30
 - To deny existence of firm, 17, 1314
- Patent**, 18, 84
 - Assignment, 18, 135
 - Assignor to deny title, 18, 95
 - Assignor to deny validity of patent, 18, 95
 - Contract, 18, 137
 - Defenses to action for infringement, 18, 91
 - Estoppel of Licensee to Deny**, 13, 570; 18, 96
 - Admission as to validity, 13, 570
 - Admissions in pais, 13, 570
 - Federal courts, 13, 570
 - General rule, 13, 570
 - License contract, 13, 570
 - Patent legally void, 13, 571
 - State courts, 13, 570
 - Termination of license, 13, 571
 - Infringement cases, 18, 95
 - Joint inventors, 18, 129
 - Licensee, 13, 570; 18, 96
 - Licensors**, 13, 559
 - Allowing use, 13, 559
 - Employee and employer, 13, 559
 - Inducing party to use invention, 13, 559
 - Introduction into mill without consent, 13, 560
- Reissue**, 18, 46
 - Abandonment, 18, 46
 - Acquiescence in rejection by patent office, 18, 46
 - Limitations to the doctrine, 18, 46
 - Matter disclaimed in original application, 18, 46
 - To set up certain defense, 18, 95
- Pleading**, 7, 33
 - Necessity of pleading estoppel, 7, 33
- Pledge**
 - Title of Pledges to Non-Negotiable Securities**, 18, 641
 - Bona fide pledgee, 18, 641
 - In general, 18, 641
 - Notice to Debtor**, 18, 642
 - Payment to pledgor, 18, 642
 - Potential interest in funds, 18, 643
 - Whether necessary, 18, 642
 - Owner trusting indicia of title to another, 18, 641
 - Party claiming through person liable, 18, 641
 - Pledgee having notice of outstanding equities, 18, 642
 - Presumption of valuable consideration, 18, 642
 - Presumption that pledgee is bona fide, 18, 642
 - When person liable has declared he has no defense, 18, 641
- Private Ways**
 - Grantor denying existence of way, 19, 103

ESTOPPEL—Cont'd**Private Ways—Cont'd**

When grantor is estopped from denying existence of way, 19, 103

Proof of handwriting, 9, 272

Public Officers

Officer estopped from denying his appointment, 19, 437

To Deny Appointment, 19, 506

Criminal law, 19, 506

To deny authority of officer, 19, 512

Railroads

To deny corporate existence, 19, 799

Ratification of Forgery

Acting as, 1, 431

Real Covenants

See *infra*, TITLE BY.

Operation of Real Covenants by Way of Estoppel, 19, 1020

Actual eviction, 29, 1025

After-acquired estate, 19, 1020

After-acquired title has been assigned, 19, 1026

After-acquired title held to inure to grantee, 19, 1021

Bankrupts, 19, 1026

Confirmation of grant, 19, 1027

Covenants for title, 19, 1020

Deed or mortgage, 19, 1021

Further assurance, 19, 1023

Generally, 19, 1020

General warranty, 19, 1022

Good title afterwards acquired, 19, 1020

Implied covenants, 19, 1024

In England, 19, 1021

In United States, 19, 1021

Intention of instrument, 19, 1021

Married women, 19, 1026

Non-claim, 19, 1024

Notice of prior conveyance, 19, 1024

Operation of the law, 19, 1022

Quiet enjoyment, 19, 1023

Release, 19, 1021

Right to convey, 19, 1023

Seizin, 19, 1023

Special warranty, 19, 1023

Statute of limitations, 19, 1026

Statutory estoppel, 19, 1022

When covenantee may be estopped from proceeding on his covenants, 19, 1025

When there is no estoppel, 19, 1021

Where covenantee has never been given possession, 19, 1025

Where no right of action exists, 19, 1025

Whether covenantee forced to take property, 19, 1025

Recitals, 3, 828; 7, 7

See *infra*, BY DEED.

Recitals in letters-patents, see PATENT LAW.

Actions in which deed is directly involved, 20, 458

Actions in which deed is not directly involved, 20, 459

Date of deed, 7, 7; 20, 461

Discrepancy, 20, 457

Examples, 20, 458

Feme covert, 20, 464

Forthcoming bond, 20, 462

General in form but really specific, 20, 459, 560

General recitals, 20, 459

Government grants, 20, 466

Ground of the rule, 20, 463

Immaterial recitals, 20, 460

In bonds, 2, 464

In general, 20, 457

In simple contract, 7, 16

Intent to be statement of rule of property, 20, 463

Lacking the element of certainty, 20, 460

Mexican grants, 20, 467

Of consideration in deed, 5, 436

Particular recitals, 7, 7; 20, 458

Parties, 20, 461

Privies, 20, 461

Recital as a covenant, 20, 468

Recital in heirship, 20, 458

Replevin bond, 20, 462

Strangers, 20, 464

Creditors, 20, 465

Examples, 20, 464, 465

General rule, 20, 464

Tenants in common, 20, 465

Whether stranger bound, 20, 464

Whether stranger can take advantage of recitals, 20, 465

Title to land, 20, 467

Release by, 20, 752

Examples, 20, 752

In general, 20, 752

Sheriff's Sales

Appraisal, 22, 581

To deny notice, 22, 583

To deny purchaser's title, 22, 663

States, 23, 80

Subrogation, 24, 322

Suretyship

Estoppel of Surety, 24, 745

Bond given by corporation, 24, 748

Collateral facts, 24, 747

Denying corporate authority to make bonds, 4, 200; 24, 748

Denying existence of corporation, 24, 748

Denying jurisdiction of court, 24, 746

Due appointment of principal, 24, 747

Examples, 24, 746

In general, 24, 745

On judicial bond, 24, 746

Person signing as principal, 24, 745

Recitals in obligation, 24, 746

Waiver of Right, 24, 322

Acceptance of indemnity from a stranger, 24, 321

Payment by surety without compulsion, 24, 321

Renewal of note, 24, 321
 Where surety adds word "principal" to name, 24, 725

Taxation
 Listing, 25, 209
 State estopped to deny party's title, 25, 193
 To deny authority to collect taxes, 25, 344
 Time, computation of, 26, 3

Title by, 7, 9
See infra, **REAL COVENANTS**.
 Adverse possession, 7, 9
 Application to personal property, 7, 12
 Bankruptcy, 7, 10
 General principles, 7, 12
 General rule, 7, 9
 Heirs, 7, 12
 Innocent purchaser from grantor, 7, 11
 In partition, 7, 10
 Judicial sale, 7, 10
 Land, 20, 467
 Limitations, 7, 9
Married Women, 7, 9
 Covenants of her own land, 7, 9
 Joining with husband to bar dower, 7, 9
 Mortgages, 7, 10
 Registry acts, 7, 11
 Release or quit claim, 7, 10
 Sealed lease, 7, 11
 Statutes, 7, 10
 Statutory homestead, 7, 9
 Tax title, 7, 10
 Title in trust, 7, 10
What Covenants Create This Estoppel, 7, 9
 Covenants for further assurance, 7, 9
 Covenants for quiet enjoyment, 7, 9
 Covenants of general warranty, 7, 9
 General warranty in quit-claim deed, 7, 10
 Statutory covenants, 7, 9
 Where deed contains no warranty, 7, 11
 To deny constitutionality of a statute, 3, 676
 Town by taxation, 26, 107
Trusts and Trustees, 27, 269
 Cestui que trust sleeping on his rights, 27, 269
 Examples, 27, 269-271
 General principles of estoppel, 27, 270
 Misconduct of trustee, 27, 269
 Ratification, 27, 269
 Trustee purchaser at his own sale, 27, 270
Ultra Vires, 27, 405
See infra, **CORPORATIONS**.
Usury, 27, 957
 Accommodation paper, 27, 958
 Agreement that debtor will not take advantage of usury statutes, 27, 957
 As between original parties, 27, 957
 As to third parties, 27, 957

By conduct, 27, 958
 Certificate that paper is subject to no defenses, 27, 958
 Inducing innocent party to purchase usurious security, 27, 957
 Purging of usury, 27, 957
 Subsequent promise to pay the debt, 27, 957
 Vendee holding land under executory contract, 1, 229
 Vendor and purchaser, after-acquired title, 28, 151
Waiver, 28, 531
 Improvements, 7, 32
 Silence, 7, 33
 Terms of policies of insurance, 7, 32
Warehouse and Warehouseman, 28, 659
Warehouse Receipts, 28, 677
 Examples, 28, 677-680
 Goods not in store, 28, 679
 Guarantor of title, 28, 678
 In general, 28, 677
 Mistake, 28, 679
 Notice of defects, 28, 679
 Possession of property, 28, 677
 Variance in description, 28, 679
Warrant of Attorney
 To confess judgment, 28, 688
ESTOVERS, 6, 883; 7, 33
 Common of, 7, 34
 Partition, 17, 688
ESTRAY, 7, 34
See **IMPOUNDING; TREASURE TROVE**.
Actual Damage Feasance
 Enclosure, 6, 638
 Constitutionality of law, 7, 34
 Ordinance authorizing sale of stock running at large without notice to owner, 3, 718
 Whether they pass to personal representative, 7, 241
ESTREPEMENT, see WASTE.
ET AL, 7, 34
ET CETRA, 7, 35
EVENT
 Follow, 8, 75
EVERY, 7, 35
 Thing, 7, 36
EVICION, 7, 36; 12, 758b
See **LANDLORD AND TENANT; REAL COVENANTS; VENDOR AND PURCHASER**.
 Actual, 7, 37
 Apportionment of premises by eminent domain, 12, 758f
 Appropriation of premises by eminent domain, 12, 758f
 Classification, 7, 37
 Creating nuisance, 12, 758e
 Damages for eviction, 12, 758g
 Definition, 7, 36
 Destruction by fire, 12, 758c
 Distinguished from ouster, 7, 37
 Distinguished from trespass, 12, 758f
Effect of, 7, 41
 Action for damages, 7, 41
 Apportionment of rent, 7, 41

EVICTIOn—*Cont'd***Effect of**—*Cont'd*

Discharge from payment of rent, 7, 41
Of tenant, 7, 41

Of Vendee

See REAL COVENANTS.

Breach of covenant, 7, 42

Right of action, 7, 42

Rent due in installments, 7, 41

Upon rent, 12, 758c

Where tenant repossesses himself of premises, 7, 41

Entry under paramount title, 12, 758c

Examples of eviction, 12, 758d-758f

Failure to repair, 12, 758d

Landlord and tenant

Damages for eviction, 12, 758g

License (patent law), 12, 572

Lis pendens, 13, 899

New York rule, 12, 758c

Questions of law and fact, 19, 657

Rent, 12, 743

Effect of withholding possession, 12, 745

Eviction by stranger, 12, 743

Eviction of part of premises, 12, 743

Necessity of lessee's abandonment, 12, 743

Paramount title, 12, 743

Showing intention to evict, 12, 743

What acts will relieve tenant from payment, 12, 743

Taking possession of premises, 12, 758d

What Constitutes, 7, 37; 12, 758b

Acts of third person with consent of landlord, 7, 39

Constructive eviction, 7, 39

Correction of a nuisance, 7, 37

Defective repair, 7, 37

Disturbance of uninterrupted use of land, 7, 40

Entry, 7, 37

Entry of tenants under paramount title, 7, 40

Entry to foreclose, 7, 40

Eviction per minas, 7, 38

Intention of landlord, 7, 38

Involuntary loss of possession, 7, 40

Judgment for recovery, 7, 39

Mere trespass, 7, 38

Mortgage incumbrances, 7, 40

Necessity of permanent inference, 7, 38

Of tenant, 7, 37

Of vendee, 7, 40

Paramount title, 7, 40

Shutting off water, 7, 37

Where the tenant retains possession of premises, 7, 39

What is not, 12, 758c

EVIDENCE, 7, 111

See ADMISSIONS; ADVERSE POSSESSION; AFFIDAVIT; BILL OF EXCEPTIONS; BILL TO PERPETUATE TESTIMONY; BILL TO TAKE TESTIMONY; DE BENE ESSE; BLOOD STAINS;

BOOKS AS EVIDENCE; BURDEN BY PROOF; BURGLARY; CHARACTER (IN EVIDENCE); CIVIL DAMAGE ACT; CONFESSIONS; CONFLICT OF LAWS; CRIMINAL PROCEDURE; CROSSINGS; DECLARATIONS; DEMURRER TO EVIDENCE; DEPOSITIONS; DYING DECLARATIONS; ELEVATED RAILROADS; EMBEZZLEMENT; EXEMPLIFICATION; EXHIBITS; EXPERT AND OPINION EVIDENCE; EXTORTION; FALSE IMPRISONMENT; FRAUDULENT CONVEYANCES; GAMING; GAMING HOUSES; HABEAS CORPUS; HANDWRITING; HEARSAY EVIDENCE; IDENTITY; INCEST; INTERPRETER; JUDGMENT; JUDICIAL EVIDENCE; JUDICIAL NOTICE; JUSTICE OF THE PEACE; LARCENY; LETTERS; LEWD AND LASCIVIOUS COHABITATION AND CONDUCT; LIBEL AND SLANDER; LIMITED PARTNERSHIP; LOST PAPERS; MALICIOUS PROSECUTION; MALPRACTICE; MARRIAGE; MASTER AND SERVANT; MECHANICS' LIENS; MEMORANDUM; NAVIGATION; NEGLIGENCE; NEWSPAPERS; NOTARY PUBLIC; NOTICE TO PRODUCE PAPERS; PAROL EVIDENCE; PATENT LAW; PEDIGREE; PERJURY; PHOTOGRAPH; POISON; PRESUMPTIONS; PRIVILEGED COMMUNICATIONS; PRODUCTION OF DOCUMENTS; QUESTIONS OF LAW AND FACT; REASONABLE DOUBT; RECEIPTS; REPLEVIN; SECONDARY EVIDENCE; TITLE; UNITED STATES COURTS; VIEW; WITNESSES.

As to evidence requisite for title in extradition proceedings, see EXTRADITION.

As to proof of gift, see GIFTS.

As to proof of insanity, see INSANITY.

As to res gestæ, see RES GESTÆ.

Evidence as to the affairs of state, see PRIVILEGED COMMUNICATIONS.

Evidence in forcible entry and detainer, see FORCIBLE ENTRY AND DETAINER.

For evidence in criminal conspiracy, see CRIMINAL CONSPIRACY.

For evidence in negligence arising at railroad crossings, see CROSSINGS.

For evidence of domicile, see DOMICILE.

Hearsay evidence, see HEARSAY EVIDENCE.

In actions against carriers of live stock, see CARRIERS OF LIVE STOCK.

In assault and battery, see ASSAULT.

In criminal cases, see CRIMINAL PROCEDURE.

In eminent domain cases, see EMINENT DOMAIN.

In former proceedings, see HEARSAY EVIDENCE.

In homicide cases, see HOMICIDE.

Inspection in court, see VIEW.

Inspection of person, see VIEW.

For evidence in support of the plea of jeopardy, see JEOPARDY.

New prosecutions for false pretences, see FALSE PRETENCES.

Obstructing justice, see OBSTRUCTING JUSTICE.

Of partnership, see PARTNERSHIP.

On questions of damages, see DAMAGES.

Presumption as to alterations, see ALTERATION OF INSTRUMENTS.

Presumptions as to date, see DATE.

Presumption as to evidence thirty years old, see ANCIENT DOCUMENTS.

Presumptions as to sealing and delivery of deeds, see DEEDS.

Primary evidence, see SECONDARY EVIDENCE

Privileged communications, see PRIVILEGED COMMUNICATIONS

Rape, see RAPE.

Seduction, see SEDUCTION.

Suppression of evidence, see SUPPRESSION OF EVIDENCE.

To establish a resulting trust, see RESULTING TRUST.

Trusts and trustees, see TRUSTS AND TRUSTEES.

Admission of, in arbitration proceedings, 1, 679

Affidavits

Competency of, 1, 314

Ancient Documents

Admissibility of, 1, 565

As affecting damages, 7, 82

Auditors, 1, 1012

Bastardy proceedings, 2, 144

Bill of particulars as, 2, 252

Bill to remove clouds, 2, 311

Damage, 7, 690

Declarations of third parties, 9, 723

Definition, 5, 725; 7, 45, 576

Conclusive proof, 7, 46

Document, 7, 45

Evidence, 7, 45

Fact, 7, 45

Facts in issue, 7, 46

Judge, 7, 45

Judgment, 7, 76

Presumption, 7, 46

Presumption of facts, 7, 46

Presumption of law, 7, 46

Relevation, 7, 47

Transaction, 7, 48

Effect of auditor's report as, 1, 1016

Estoppel, 7, 21

Expert and Opinion Evidence

Grounds of opinion, 7, 82

Explanatory statements, 7, 50

Habit or system, 7, 63

In abortion, 1, 31

In admiralty, 1, 203

In audita querela, 1, 1004

Incest, 10, 344

Acts of indecency with others, 10, 345

Confessions, 10, 347

Of defendant as to relationship, 10, 346

Evidence impeaching witness, 10, 349

Expert testimony, 10, 346

General rules applicable, 10, 344

Prior acts of indecency, 10, 344

Proof of corpus delicti, 10, 346

Reputation, virtue and chastity, 10, 349

Statements as to relationship of defendant, 19, 346

Sufficiency question for jury, 10, 346

Testimony of accomplice, 10, 347, 348

Judge's notes, 12, 32

Judgments

Foreign judgments, see FOREIGN JUDGMENTS.

As between strangers, 7, 77

Between parties and privies, 7, 77

Conclusive in favor of judge, 7, 79

Conclusive proof of their legal effect, 7, 76

Not pleaded as an estoppel, 7, 78

Proving collusion, 7, 79

Proving fraud, 7, 79

Proving want of jurisdiction, 7, 79

Lex fori

Determining the admissibility of evidence, 2, 332

Mandate, 14, 249

Motive, 7, 50

Mutual Insurance

Receiver, 16, 104

Negligence

Custom to prove, 7, 64

Obscenity

Conviction, 17, 12

Decoy letters, 17, 12,

Proof of handwriting, 17, 12

What must be shown, 17, 12

What warrants conviction, 17, 12

Of adultery, 1, 214

Of bigamy, 2, 198

Of facts admitted, 7, 84

Of value, 7, 60

Oral Evidence, 7, 84

Must be direct, 7, 84

Preliminary Questions

Touching the Admissibility of Evidence, 19, 625

Admissibility of writings, 19, 629

Conclusiveness of judge's decision, 19, 628

Deficiency in understanding, 19, 628

Examples, 19, 625-632

Experts, 19, 628

Illustrations, 19, 628

Leading questions, 19, 632

Lost papers, 19, 629

Necessity of competent proof, 19, 627

Privileged communications, 19, 629

Proof of agency, 19, 629

Province of judge, 19, 625

Qualifications of witness, 19, 628

Religious belief, 19, 628

Secondary evidence, 19, 629

Submission to jury, 19, 626

Weight of testimony, 19, 627

What to be determined by judge, 19, 625

EVIDENCE—Cont'd**Preliminary Questions—Cont'd****Touching the Admissibility of Evidence—Cont'd**

Where preliminary question would decide main issue, 19, 627

Whether a document has come from the proper custody, 19, 629

Whether Confession Is Voluntary, 19, 629

Examples, 19, 630, 632

Inducement to confess, 19, 630

In general, 19, 629

Massachusetts cases, 19, 630

Review in appellate court, 19, 632

Whether confession a question of law, 19, 632

Preparation, 7, 50

Presumptions as to stamp of document, 7, 89

Probability

Distinguished from proof, 19, 162

Proof of execution of document required by law to be attested, 7, 85

Recent possession, 2, 694

Record, 20, 487

Judicial record in evidence, see COURT.

Presumptions in aid of record, 20, 495

Referees, 20, 691**Admission of Evidence, 20, 691**

After party has rested his case, 20, 692

After summing up, 20, 692

Asking for specific ruling, 20, 695

At what time evidence may be received, 20, 692

Discretion of referee, 20, 692

Examples, 20, 692, 696

Exceptions, 20, 693

In general, 20, 691

Private view, 20, 696

Rejecting evidence after parties are no longer before referee, 20, 695

Reserving question of admissibility, 20, 692

Striking out improper evidence, 20, 695

View, 20, 696

Waiver of right to object, 20, 692

When objection should be passed upon, 20, 692

Credibility of evidence, 20, 696

Duties of witnesses, 20, 691

Securing attendance of witnesses, 20, 691

Swearing witnesses, 20, 691

Relevancy, 7, 45; 20, 768

Acts of conspirators, see CRIMINAL CONSPIRACY.

Facts forming a part of the same transaction, see also RES GESTÆ.

Facts Forming a Part of the Same

Transaction, 7, 48

Illustrations, 7, 48

Facts in issue, 7, 47

Facts necessary to explain or introduce relevant facts, 7, 55

Facts relevant to issue, 7, 47

General rule, 7, 58

Instances of testimony excluded for remoteness, 7, 47

Power of judge to exclude for remoteness, 7, 47

Similar but Unconnected Facts, 7, 58

Acts showing good faith, 7, 61

Acts showing intention, 7, 61

Acts showing knowledge, 7, 61

At a short distance from scene of accident, 7, 60

Evidence that other horses were frightened at the same obstacle, 7, 60

Exceptions

Illustrations, 7, 61

Existence of course of business, 7, 63

Facts showing system, 7, 62

Fact that other persons fell upon same highway, 7, 60

Illustrations, 7, 58

Injuries on highways, 7, 60

Limitations of rule, 7, 59

Proving value of property by proof of value of similar property, 7, 60

Question of agency, 7, 64

Question whether person holds a particular public office, 7, 63

What is admissible or necessary to explain or introduce relevant facts, 7, 56

What is not admissible to explain or introduce relevant facts, 7, 57

Rescission, 21, 95, 96

Scienter, 21, 850

Stenographer's notes, 23, 563

Subscriptions, 24, 341

Subsequent conduct, 7, 50

Transcripts from public offices, 6, 498f

Weight of

Distinguished from burden of proof, 2, 655

Nonsuit, 16, 743

Witnesses, 29, 819**Evidence of Good Character Where Witness Has Been Impeached**

Contradictory statements, 29, 823

Examples, 29, 819-823

In general, 29, 819

Negative evidence as to character, 29, 825

Proof that witness has been convicted of crime, 29, 821

Requisite knowledge of sustaining witnesses, 29, 824

Where there has been no attack on general reputation, 29, 821

EVIDENT, 7, 112**EXAMINATION IN CRIMINAL LAW, see PRELIMINARY EXAMINATIONS.**

Last examination, 12, 906

EXAMINE, 7, 112**EXAMPLES**

Pari delicto, 17, 406

EXCEED, 7, 113**EXCEPT**, 7, 113**EXCEPTIONS**, 7, 113*See* BILL OF EXCEPTIONS; DEEDS; INSTRUCTIONS; MASTER IN CHANCERY.

Distinguished from proviso, 7, 113; 19, 299

Distinguished from reservation, 5, 455; 7, 113

In equity practice, 7, 114

Referees, 20, 693

Scire facias, 21, 871

EXCESSIVE, 7, 114

Bail, 7, 114

Fine, 7, 114

Weight, 7, 114

EXCESSIVELY

Burdened, 7, 114

EXCHANGE, 3, 90; 7, 115*See* BANKS AND BANKING; BILLS AND NOTES; RE-EXCHANGE.*Bills of*, *see* BILLS AND NOTES.

Implied Covenant, 9, 965

Warranty and condition of re-entry, 9, 965

Infants

Void or voidable, 10, 632

Par of exchange, 17, 311

Sales distinguished from, 7, 115; 21, 464

Specific Performance

Parol contracts, 22, 983

Vendor's lien, 28, 166

EXCHANGEABLE

Value, 7, 116

EXCISE LAWS, *see* INTOXICATING LIQUORS; LICENSES; REVENUE LAWS.**EXCLUDE**, 7, 116**EXCLUSIVE**, 7, 116**EXCURSION TICKET**, *see* TICKETS AND FARES.**EXCUSABLE HOMICIDE**, *see* HOMICIDE.**EXCUSE**, 7, 117**EXECUTE**, 7, 117**EXECUTED CONTRACTS**, *see* CONTRACTS.**EXECUTIONS**, 7, 117*See* ARREST (CIV. CAS.); AUDITA QUE-RELA; CREDITORS' BILLS; FORTHCOMING BOND; GARNISHMENT; INTERPLEADER; JUDICIAL SALES.*See generally*, SERVICE OF PROCESS.*See* SHERIFFS; SHERIFF'S SALES; SUPPLEMENTARY PROCEEDINGS.*As to the rights and liabilities of the officer executing*, *see* SHERIFFS.*Disposition of proceeds on sales as between rival executions*, *see* SHERIFF'S SALES.*For stay of execution*, *see* STAY OF PROCEEDINGS.*Receptors*, *see* RECEIPTORS.**Set-Off***As to the set-off of judgment where execution has been issued*, *see* SET-OFF.*Sheriff's fees*, *see* SHERIFFS.*Sheriff's powers, duties, and liabilities*, *see* SHERIFFS.*Subrogation*, *see* SUBROGATION.**Abatement**, 5, 283; 7, 122, 414

Death after execution is issued, 7, 414

Death before execution is issued, 7, 414

Account render, 1, 133

Addressed to another county, 7, 121

Against counties, 4, 372

Against decedent, 7, 232

Against decedent's estate, 7, 120

Against Executors and Administrators, 7, 391

Action of debt, 7, 392

Scire fieri inquiry, 7, 392

Upon de bonis propriis, 7, 391

Upon return of devastavit, 7, 391

Upon return of fieri facias de bonis decedentis, 7, 391

Upon return of nulla bona generally, 7, 391

Alias and Pluries Writs, 7, 122, 123

Definition, 7, 123

Destroying lien of original, 7, 144

Judgment already satisfied, 7, 123

Original execution lost, 7, 123

Protects rights obtained under original, 7, 123

Return of original before return day, 7, 123

Return of original writ, 7, 123

Right of issuance not affected by subsequent legislation, 7, 123

Where sufficient property has been levied upon, 7, 123

Who may take advantage of last execution issued before return of original writ, 7, 123

Alimony

Enforcing decree of, 1, 483

Amendments, 7, 120, 126, 156

After sale, 7, 126

As matter of course, 7, 126

Clerical mistakes and formal defects, 7, 126

Cure, 7, 126

Execution absolutely void, 7, 127

Execution prematurely issued, 7, 120

Injurious affecting rights of third parties, 7, 127

Appraisements, 1, 635

Arrest on final process, 1, 720

Breaking doors, *see infra*, LEVY,

By what law governed, 13, 286

Capias ad Satisfaciendum, 2, 725

Definition, 2, 725; 7, 118

Clerical errors, 7, 123, 125

Collateral attack upon void and voidable executions, 7, 125

Conditional Sales

Against vendee, 3, 437

Copyright, 4, 161; 7, 129

Coroner, 7, 122

Corporations

General liability of property to, 4, 289

Liability of franchise, 4, 288; 8, 634

Property essential to performance of public duties of a corporation, 4, 288

EXECUTIONS—Cont'd

Corresponding with Judgment, 7, 123

- Amendments, 7, 126
- As to amount, 7, 124
- As to date, 7, 124
- As to parties, 7, 123
- Material variance, 7, 124
- Names of parties, 7, 124
- Not indicating judgment, 7, 127
- Strictness required, 7, 124

Costs

- Motions, 15, 931
- Crops, 4, 891, 892, 898; 7, 128, 151

Death, 7, 121, 152-154, 414

- Of defendant after execution issued but before levy of sale, 5, 283
- Of defendant where execution is not tested, 7, 122
- Of judgment creditor, 7, 122
- Of one of several defendants, 7, 122

Definition, 7, 118

Distribution of the proceeds, 7, 158-160

Docket, 20, 494

Dormant judgment, 7, 122

Effect of irregularity upon liability of officer, 7, 126

Equity of redemption, 15, 815

Exemption, 7, 130; 20, 131

See infra, PROPERTY SUBJECT.

See HOMESTEADS.

As to what constitutes the family in exemption laws, see FAMILY.

Actions ex contractu, 7, 133

Actions ex delicto, 7, 133

Based upon consideration of public policy, 7, 130

Business must be lawful, 7, 136

Cattle and stock, 7, 138

Cemeteries, 3, 58

Claim by schedule, 7, 142

Condition precedent to validity of exemption, 7, 143

Constitutional provisions, 7, 131

Contract to waive, 7, 141

Corn kept for family use, 7, 137

Costs, 7, 133

Debtor showing himself to be within statute, 7, 142

Food, 8, 76

For numerous instances of exemptions, 1, 853

Head of Family, 7, 131

Bachelor with servants, 7, 132

Examples, 7, 132, 133

Man and wife, 7, 132

Married woman abandoned by her husband, 7, 132

Unmarried person, 7, 132

Widow, 7, 132

Widower with dependent children, 7, 132

Horses, 9, 760

Householder, 7, 132

Examples, 7, 132

Unmarried man, 7, 132

Widower, 7, 132

"Householders," 7, 131

"Household furniture," 7, 137

"Housekeepers," 7, 131

Illustrations as to when the right exists, 7, 134

Laws Impairing Obligation of Contracts, 3, 756

Appraisal laws, 3, 756

Liberal construction, 7, 130, 137

Mechanics, 7, 135

Nature and extent of the right, 7, 130

"Necessary," 16, 369

Necessary provisions for family, 7, 137

Necessity of claiming, 7, 141

Occupation as notice of claim, 7, 143

On a certain amount of property, 7, 135

On certain articles, 7, 135

Partner claiming exemption on partnership property, 7, 133

Partnership, 17, 981

Pension Money, 7, 141; 18, 294

How long exemption extends, 18, 294

Object of statute, 18, 294

Pension money received and invested, 18, 295

Property purchased with, 7, 141

Statutory provision, 18, 294, 295

Personal privilege, 7, 133

Printing presses and type, 7, 136, 137

Property exempt cannot be reached on creditors' bills, 4, 578

Property exempt from execution not susceptible of fraudulent alienation, 7, 135

Replevin, 20, 1068

Declaration, 20, 1092

Resident householder, 7, 133

Strict construction, 23, 399

Teams, 7, 138; 25, 741-743

Temporary suspension of the trade, 7, 136

Tools, 7, 135; 26, 69

Complicated machinery, 26, 70

Dentist's tools, 26, 71

Examples, 26, 71

Exemption laws, 25, 69

Farming implements, 7, 137

Gin and grist mill, 26, 70

Hunter's gun, 26, 71

In a policy of insurance, 26, 69

Instruments used in husbandry, 26, 70

Lawyers, 26, 71

Musical instruments, 7, 137; 26, 70

"Of debtor's trade," 7, 135

Patterns used in manufacturing, 26, 69

Physician's instruments, 26, 71

Physician's wagon and harness, 7, 137

Plows, shovels, and harrows, 7, 137

Saw mill, 26, 70

Suspension of operation, 26, 71

Threshing machine, 26, 70

- Tools where the trade has been abandoned, 26, 71
 Watches, 26, 70
 Whether confined to manual implements, 26, 69
 Whether tools must be absolutely necessary, 26, 69
 Working tools, 26, 70
 Wagon, 7, 138; 28, 521-523
Waiver, 7, 141; 28, 575
 By acts, 28, 578
 By alienation of property, 28, 577
 By failure to act, 28, 578
 Examples, 28, 575-580
 In general, 28, 575
 In mortgage, 28, 578
 Prospective waiver, 28, 575
 Selection, 28, 580
 Waiver as to one creditor waiver as to all, 28, 576
 Wearing apparel, 29, 38-42
 What articles are within meaning of term tools, 7, 136; 26, 69
 What is meant by trade, 7, 135
 What may be claimed, 7, 135
 When claim must be made, 7, 142
 Whether debtor must claim, 22, 540
 Whether exemption can be claimed by debtor's wife, 7, 133
 Whether sheriff must take notice, 22, 540
 Who deemed a householder, 7, 132
 Who deemed head of family, 7, 132
 Who may claim, 7, 131
 "Yoke of oxen," 7, 138
Fieri Facias
 Definition, 7, 118
Fixtures, 7, 128; 8, 45
 Erected by owner of freehold, 8, 46
 General rule, 8, 46
 Manure, 8, 46
 Nursery trees, 8, 47
 Purchaser at sale, 8, 46
 Steam engine, 8, 46
 Forcible entry and detainer, 8, 177
Form and Contents, 7, 123
 By what law governed, 3, 579
 General rule, 7, 125
Franchises, 4, 288; 8, 634*i*
 Authority derived from statute, 8, 634*k*
 Corporations which owe no public duty, 8, 634*j*
 In Arkansas, 8, 634*k*
 In Illinois, 8, 634*k*
 In Missouri, 8, 634*k*
 In Nebraska, 8, 634*k*
 In Texas, 8, 634*k*
 In West Virginia, 8, 634*k*
 Preventing corporation from fulfilling its public duties, 8, 634*i*
 Property not essential for corporate purposes, 8, 634*j*
 Property of canal company, 8, 634*i*
 Real estate acquired by eminent domain, 8, 634*j*
 Road of a railroad, 8, 634*i*
 Rolling stock, 8, 634*k*
 Whether subject to it at common law, 8, 634*i*
 Fraudulent conveyances, 7, 129; 8, 758
 Fraudulent sales, 8, 853
 Good will, 17, 1185
Habere Facias Possessionem
 How it is executed, 7, 151
 Removal of defendant, 7, 151
 Holding up, 22, 645
 In admiralty, 1, 204
Injunction, 10, 892
 Exempt property, 10, 892
 Illegal, 10, 894
 Of grounds available as defense to judgment, 10, 997
 Owner not party, 10, 894
 Insane person's estate, 11, 127
Issuance and Delivery, 7, 118
 Against decedent's estate, 7, 120
 Alias writs, 7, 123
 Amendment, 7, 120, 126
 Authority of assignee to issue, 7, 118
 Authority of attorney of judgment creditor, 7, 119
 Authority to issue, 7, 118
 A year and a day, 7, 119
 Coroner, 7, 122
 Direction and delivery, 7, 122
 Execution against several defendants after the death of one of them, 7, 122
 Execution in another county, 7, 121
 Execution issued after death of defendant, 7, 122
 Execution issued after death of judgment creditor, 7, 121
 Execution prematurely issued, 7, 120
 Execution upon dormant judgment, 7, 122
 Filing transcript of justices' judgment in court of record, 7, 121
 Follows as matter of course from judgment, 7, 119
 From court rendering judgment, 7, 121
 In Louisiana, 7, 120
 Issuance ministerial act, 6, 119
 Issuance upon entry or rendition of judgment, 7, 119
 Issued before day allowed by law but not acted upon, 7, 120
 Right of attorney under his lien, 7, 119
 Standing order of court directing issuance, 7, 118
 Statutes regulating time within which it may be issued, 7, 119
 To whom execution issues, 7, 122
 What court may issue, 7, 121
 When and where issued, 7, 119
 When it must be issued at common law, 7, 119
 Where sheriff is party to action, 7, 122
 Whether executions run throughout state, 7, 121

EXECUTIONS—Cont'd

- Joint Tenant and Tenant in Common**, 11, 1142
 - Execution against all co-tenants, 11, 1142
 - Execution against one co-tenant, 11, 1142
 - Sale of interest of one tenant, 11, 1142
 - Undivided interests of tenants in common, 9, 36
- Judgment already satisfied, 7, 123
- Jurisdiction**
 - Limitation as to execution, 11, 353
- Justice of the Peace**, 12, 477
 - Delay, 12, 477
 - Duty of judge, 12, 477
 - Entering return, 12, 479
 - How directed, 12, 477
 - Justice's duty, 12, 478
 - Proceedings, 12, 478
 - Property liable to execution, 12, 478
 - Recall, 12, 478
 - Receipt of money, 12, 479
 - Requisites, 12, 477
 - Return, 12, 478
 - Trial of the right of property before, 12, 498
 - Void judgments, 12, 478
- Kinds**, 7, 118
- Levy**, 7, 148; 13, 269
 - Breaking Doors**, 7, 150; 26, 591
 - Dwelling, 7, 150
 - Other building than dwelling, 7, 150
 - Breaking open trunks and wardrobes, 7, 150
 - Definition, 7, 148; 13, 269
 - Delivery of bond obviating necessity of, 7, 150
 - Description of real property levied upon, 7, 150
 - Effect of**, 7, 151
 - Property in custodia legis, 7, 151, 152
 - Seizure under other writs, 7, 152
 - Whether levy on real estate divests devisee of title, 7, 152
 - Equitable levy, 13, 271
 - Growing crop, 7, 151
 - Habere Facias Possessionem**, 7, 151
 - How executed, 7, 151
 - Removal of defendant, 7, 151
 - How made, 7, 150
 - Illustrative cases of what constitutes, 7, 149
 - Levy and sell, 13, 271
 - Levying property of debtor, 7, 149
 - Manner of, upon real property, 7, 150
 - May force inner doors, 7, 150
 - Necessity of manual seizure, 7, 149
 - Necessity of peaceful entry, 7, 150
 - Officer asserting his right and dominion, 7, 149
 - Priority of liens, 7, 152
 - Property subject to control of officer, 7, 148, 149
 - Test, 7, 149
 - Unlawful or fraudulent means, 7, 150

- Waiver of seizure by execution of defendant, 7, 149
- What Constitutes**, 7, 148
 - On personal property, 7, 148

Lien

- Effect of forthcoming bond, 8, 568
- Growing crops, 8, 989
- Property acquired while execution is in force, 8, 989
- Lien and Priority**, 7, 143, 145
 - Execution first issued and levied, 7, 145
 - Expiration of lien, 7, 144
 - From what time a lien, 7, 143
 - Instructions not to sell, 7, 144
 - Issuance of alias writ, 7, 144
 - Levied in order in which officer received them, 7, 145
 - Loss of lien, 7, 144
 - Maxim of qui prior est tempore potior est jure, 7, 145
 - Maxims of vigilantibus et non dormientibus jura subserviunt, 7, 145
 - Neglect to force a levy and sale, 7, 144
 - Postponement of lien, 7, 144
 - Preserving or continuing lien, 7, 144
 - Priorities of liens, 7, 145, 152
 - Priority between execution of United States court and state court, 3, 527
- Limitations of actions**, 13, 724
- Lost**, 7, 123
- Married Women**, 14, 662
 - Against husband and wife, 14, 662
 - Against property of, 14, 662
 - Against property of both husband and wife, 14, 662
- Mechanics' liens**, 15, 199
- Misdemeanor**, 12, 412
 - Commitment to county jail, 12, 412
 - Execution against goods and chattels of defendant, 12, 412
 - Expiration of time without imprisonment, 12, 412
- Mortgages**
 - Equity of redemption, 15, 815
- Motions**
 - Costs, 15, 931
- Municipal Corporations**
 - Execution against property of individuals, 15, 1315
- Mutual insurance**, 16, 91
- Officer's defense** that he acted at plaintiff's instructions, 2, 467c
- Partnership**, 17, 1335
 - Action between partners, 17, 1329
 - Action in the firm name, 17, 1252
 - Against survivor for deceased's debts, 17, 1168
 - Against the firm, 17, 1335
 - Exemption, 17, 1335
 - Interest of One Partner**, 17, 1336
 - Creditor's interest in property levied upon, 17, 1338
 - Levy upon less than the whole, 17, 1338
 - Levy upon whole of partnership property, 17, 1337
 - Partnership creditor, 17, 1338

- Sheriff's duty, 17, 1337
 Where there are dormant partners, 17, 1337
 Whether subject to, 17, 1336
 Upon separate property, 17, 1335
 Patent right, 7, 129; 18, 144
 Payment, 18, 160
 Pendency of action of judgment, 12, 149½
 Pending writ of error, 12, 149½
 Pews, 18, 423
Pledge, 2, 49; 18, 653
 After pledgee has surrendered possession, 18, 654
 At common law, 18, 653
 Garnishment, 18, 654
 Pledgor's interest, 18, 653
 Statute providing that pledgor's interest may be attached, 18, 655
 Waiver of lien, 18, 727
Priority, see *infra*, LIENS AND PRIORITY.
Prohibition
 Issuance of writ after execution, 19, 272
 To prevent execution of judgment appealed from, 19, 272
 To prevent issuance of writ, 19, 275
 To prevent officer from enforcing writ, 19, 275
Property Subject to, 7, 127; 12, 478
 See *infra*, EXEMPTIONS.
 A church, 7, 130
 Chattels, 7, 127
 Copyrights, 4, 161; 7, 129
 Dower, 5, 906
 Equitable interests in real estate, 7, 128
 General rule, 7, 127
 Grass, 7, 128
 Growing crops, 4, 891, 892, 898; 7, 128, 151
 Incorporeal rights, 7, 129
 Judgments, 7, 129
 Land, 7, 127
 At common law, 7, 127
 Leases for a term of years, 6, 885; 7, 127
 Money, 7, 129
 Mortgaged chattels, 7, 129
 Notes, accounts, and choses in action, 7, 129
 Patents, 7, 129; 18, 144
 Primary liability of personal property, 7, 127
 Property essential to exercise of a railroad, 7, 130
 Property fraudulently conveyed, 7, 129; 8, 758
 Property in custodia legis, 7, 129
 Property which debtor cannot dispose of, 7, 130
 Seat in stock exchange, 7, 130; 23, 755
 Such property as debtor might sell, 7, 127
 Things held not, 7, 130
 Trade-fixtures, 7, 128; 8, 45
 Trees, 7, 128
 Unpublished manuscript, 7, 129
 Wearing-apparel, 7, 127, 130
Receivers
 Property exempt from execution, 20, 131
 Property in hands of, 20, 139
 Recording acts, 20, 543, 579
Relation in New England States, 20, 735
 Examples, 20, 735, 736
 In general, 20, 735
 Legal title, 20, 735
Rent
 Liability of purchaser of lease, 12, 736
 Where reversion is sold, 12, 683
Replevin, 20, 1065
 Whether Property in Custodia Legis Could Be Retaken in Replevin, 20, 1065
 At common law, 20, 1065
 Attachment debtor, 20, 1070
 Contempt, 20, 1065
 Defendant, 20, 1067
 Examples, 20, 1065-1071
 From vendee at execution sale, 20, 1067
 Generally, 20, 1065-1071
 In Arkansas, 20, 1067
 In Connecticut, 20, 1066
 In Mississippi, 20, 1068
 In Nebraska, 20, 1067
 In New Hampshire, 20, 1067
 In Pennsylvania, 20, 1068
 In Wisconsin, 20, 1068
 Official character, 20, 1068
 Person other than defendant, 20, 1065
 Plaintiff in attachment, 20, 1070
 Privilege confined to residents, 20, 1069
 Property alleged to have been stolen, 20, 1070
 Property exempt, 20, 1068
 Unconstitutional process, 20, 1065
 Valid process, 20, 1065
 Void judgment, 20, 1065
Resistance of Process Against Property, 17, 18
 Attaching goods of third person, 17, 18
 Destroying officer's notice, 17, 20
 Examples, 17, 18, 19
 Interfering with goods, 17, 19
 Obstructing coroners, 17, 20
 Passive resistance, 17, 19
 Receiving possession, 17, 19
 Revenue officers, 17, 20
Return, 7, 155
 See generally, AS TO THE REQUISITES OF RETURN, SERVICE OF PROCESS.
 Alias writ, 7, 123
Amendment, 7, 156
 After expiration of officer's term, 7, 156
 Before expiration of officer's term, 7, 156
 By leave of court, 7, 156
 Conclusive as against officer, 7, 156

EXECUTIONS—Cont'd

Return—Cont'd

Amendment—Cont'd

Conclusive as between parties, 7, 155, 156

Notice of application, 7, 156

Prima facie evidence when, 7, 156, 157

Satisfaction and discharge, 7, 157

While under control of officer, 7, 156

Definition, 7, 155

Filing, 7, 155, 156

Indorsed on execution, 7, 155

Instructions in favor, 7, 155

Setting forth acts of officer, 7, 155

Showing that requirements of law have been complied with, 7, 155

Signature, 7, 155

Where served by deputy, 7, 155

Where land has been levied upon, 7, 156

Right of officers to maintain action for goods levied upon, 7, 151

Sales, see JUDICIAL SALES; SHERIFF'S SALES.

Control by court, 20, 149

Injunction, 10, 892

Recording Acts, 5, 43

Protection of Purchaser, 20, 579

Where judgment creditor is purchaser, 20, 579

Where judgment creditors are protected, 20, 579

Whether protected, 20, 579

Whether within the term purchaser, 20, 579

Satisfaction or Discharge

Discharge where officer wastes property levied on, 7, 157

Holding body of debtor, 7, 157

Levy upon land, 7, 157

Payment by debtor, 7, 157

Prima facie satisfaction, 7, 157

Property taken from creditor by legal process, 7, 157

Rebutting presumption of satisfaction, 7, 157

Restoration of personal property to debtor at his request, 7, 157

Surrender under a forthcoming or delivery bond, 7, 158

Schools

Taking private property to satisfy judgment against district, 21, 808

Seal of court, 7, 124

Setting Aside and Quashing Writ, 7, 146

Effect of, 7, 148

Execution defective in form, 7, 148

Motion for complaint quashed, 7, 148

Notice of motion, 7, 148

Sheriff's Duty Where There Are Several Writs, 22, 533

Bringing money into court, 22, 534

Conflicting claims to the fund, 22, 534

Detention of property after one execution is satisfied, 22, 534

Duty to levy on first execution, 22, 533

In the absence of any lien, 22, 533

Oldest lien, 22, 533

Where the judgment is a lien, 22, 533

Stock, 23, 593

See **STOCK.**

Stock Exchange

Seats, 7, 130; 23, 755

Sunday, 24, 575

Suretyship, 24, 780

Surplus Money, 24, 962

Court's control over, 24, 964

Defendant in execution, 24, 962

Officer's right of set-off, 24, 963

Parties holding liens, 24, 962

Rival claimant, 24, 964

Senior executions remaining unsatisfied, 24, 964

Who entitled to surplus, 24, 962

Taxation

Actions in rem, 25, 327

Money in hands of collector, 25, 343

Tenancy in common of joint creditors, 11, 1066

To enforce decree in equity, 5, 390

Trespass, 26, 589, 590, 603

Authority, 26, 604

Breaking inner doors, 7, 150; 26, 591

By sheriff, 26, 590

Consent of wife, 26, 603

Exempt goods, 26, 603

Forcible entry of private house, 26, 590

House occupied by two families, 26, 591

In general, 26, 603

Parties directing, 26, 604

Possession obtained by fraud, 26, 604

Removing goods to another house, 26, 590

What amounts to a breaking, 26, 591

Withdrawal of consent to levy, 26, 603

Trust Deeds and Power of Sale Mortgages

Grantor's interest, 26, 874

Trusts and Trustees

Against cestui que trusts, 27, 127

United States Courts

Statutory provisions, 27, 627, 629

Upon judgment for costs, 4, 329

Void, 7, 125

Voidable and irregular, 7, 125

What Subject to

Dower which has not been assigned, 5, 906

Whether order quashing or refusing to quash is a final judgment, 7, 974

Whether Payment, 18, 160

Distinction between real and personal property, 18, 160

Examples, 18, 160

In general, 18, 160

Part payment to officer, 18, 160

EXECUTORS AND ADMINISTRATORS,

7, 165; 29, 345

See **ABATEMENT; DEBTS OF DECEDENTS; EQUITABLE CONVERSION; FOREIGN EXECUTORS AND ADMINISTRATORS.**

See generally, LEGACIES AND DEVISES; PROBATE AND LETTERS OF ADMINISTRATION; SUCCESSION; TRUSTS AND TRUSTEES.

See JOINT EXECUTORS AND ADMINISTRATORS; JUDICIAL SALES; SURROGATE AND PROBATE COURTS.

Administrator's or executor's sale of real estate to satisfy debts of decedents, see DEBTS OF DECEDENTS; JUDICIAL SALES.

Assent of executor to passing a legacy, see LEGACIES AND DEVISES.

As to grant of letters testamentary, see PROBATE AND LETTERS OF ADMINISTRATION.

As to promises to answer for the debt of another, see FRAUDS, STATUTE OF.

As to who is entitled to administer, see PROBATE AND LETTERS OF ADMINISTRATION.

Collateral inheritance tax, see COLLATERAL INHERITANCE TAX.

Intermeddling with estate, see EXECUTOR DE SON TORT.

As a cause for removal, see infra, REVOCATION OF AUTHORITY.

Resulting Trusts

As to purchase by executor or administrator, see IMPLIED TRUSTS.

Right of husband's representative in wife's chattels, see HUSBAND AND WIFE.

Absence, 21, 369

Acceptance and Renunciation, 7, 197

As to resignation and removal, see infra, REVOCATION.

Accepting vacancy as renunciation, 7, 201

Act inconsistent with trust, 7, 200

Assignment of office, 7, 197

Assisting co-executor after renunciation, 7, 202

Binding promise made to testator, 7, 197

Citations to persons named, 7, 197

Compelling person to elect, 7, 198

Constructive acceptance and renunciation of co-executor, 7, 200

Constructive acceptance or renunciation, 7, 198

Effect of death of executor, 7, 200

Execution of a power by executor renouncing, 7, 201

Forfeiture of legacy by renunciation, 7, 197

Form of renunciation, 7, 198

How acceptance is made, 7, 197

How executor may be discharged who is partially accepted, 7, 202

How far executor is estopped from denying his office after a constructive acceptance, 7, 199

How renunciation is made, 7, 197, 198

Implied renunciation, 7, 200

In North Carolina, 7, 199

Intermingling of goods, 7, 199

Liability for money coming into his hands, 7, 201

Liability of executor, 7, 201

Necessity of formal retraction, 7, 203

One of several executors who is not proved, 7, 199

Refusal or neglect to give bond, 7, 193, 194

Refusal to qualify, 7, 194, 195

Renunciation after probate, 7, 199

Renunciation after qualifying, 7, 199

Renunciation of one of several co-executors, 7, 200

Renunciation or Non-Appearance of Persons Entitled to Administer, 7, 203

Citation, 7, 203

Citation where preference rests in discretion of court, 7, 203

Renunciation should appear of record, 7, 204

Retraction of renunciation, 7, 204

Service of citation, 7, 203

What necessary to dispense with citation, 7, 203

Where next of kin is of unsound mind, 7, 203

Where party entitled to administer has no interest in estate, 7, 203

Retraction after appointment of administrator, 7, 202

Retraction after renunciation, 7, 202

Retraction before appointment of administrator, 7, 202

Retraction of renunciation by co-executor, 7, 201

Retraction upon vacancy, 7, 202, 203

Retraction where one of several renounce, 7, 202, 203

Right to accept or renounce, 7, 197

Right to renounce after act of administration, 7, 198

Unreasonable delay in proving a will, 7, 200

What amounts to an election of acceptance, 7, 198

Where nominated as executor and trustee, and qualifies and acts in latter capacity only, 7, 200

Accounts, 7, 421

Accounts of co-executors and co-administrators, see JOINT EXECUTORS AND ADMINISTRATORS.

Executory devise, see LEGACIES AND DEVISES.

Executory estates, see REVERSIONS, REMAINDERS, AND EXECUTORY INTERESTS.

Executory trusts, see TRUSTS.

Actual Payment by Representative

More counsel than were needed, 7, 436

Allowances, 7, 431

For personal trouble, 7, 437

To widows and children, 7, 432

Appeals, 6, 7, 446

Application of any one interested, 7, 421

EXECUTORS AND ADMINISTRATORS

—*Cont'd*

Accounts—*Cont'd*

Appreciation in estates, 7, 425
 Assets not credited, 7, 425
 Assets not included in account, 7, 445
 Assets not inventoried, 7, 425
 As to what is conclusive, 7, 442
 Bill of review, 7, 445
 Bills for account, 7, 400
 Burden of proving debt, 7, 431
 Buying debts at discount, 7, 426
 Charges and allowances, 7, 425
 Citation and appearance, 7, 447
 Citation by newspaper, 7, 423
 Citation by probate court, 7, 421
 Citation to person interested, 7, 423
 Commissions, 7, 436
 Commissions generally, 7, 437
 Commissions in Kentucky, 7, 437
 Commissions upon gross amount of property, 7, 437
 Compensation, 7, 436
 Compensation in New York, 7, 438
 Conclusiveness of account as to legatees and distributees, 7, 443
 Conclusiveness of annual accounts, 7, 443
 Conclusiveness of decree as to payment, 7, 447
 Conclusiveness of ex parte settlement, 7, 443
 Conclusiveness of settlement, 7, 442
 Construction of statutes fixing rate of commission, 7, 437
 Contingent fees, 7, 436
 Cost and expenses when chargeable upon a particular fund, 7, 436
 Costs of appeal, 7, 435
 Costs of litigation, 7, 434
 Counsel fees, 7, 434
 Decree discharging representative from liability, 7, 448
 Decree of distribution, 7, 447
 Decree protecting representatives, 7, 447
 Deductions upon decree, 7, 447
 Depreciation in estates, 7, 425
 Discretion of court as to compensation, 7, 437
 Disbursements, 7, 431
 Dishonest payments, 7, 431
 Distinction between partial and final accounting, 7, 442
 Duty of accounting, 7, 421
 Effect of death, resignation, or removal, 7, 422
 Effect of lapse of time, 7, 423
 Employment of agent, 7, 434
 Employment of bailiff, 7, 434
 Employment of receiver, 7, 434
 English practice, 7, 421
 Estates which become worthless, 7, 424
 Exceptions, 7, 446
 Executor's own claim against estate, 7, 433
 Executory contracts, 7, 448

Exoneration of executor, 7, 427
 Expense of probate, 7, 435
 Expenses incurred for benefit of estate, 7, 431
 Expenses incurred in maintaining or resisting a will, 7, 436
 Expenses incurred through negligence of representative, 7, 432
 Expenses of administration, 7, 489
 Failure to file as cause for removal, 21, 373
 Fines, 7, 422
 Fraud and mistake, 7, 443
 Funeral expenses, 7, 433
 Illegal allowance to representative as ground for setting aside, 7, 444
 Improper payments, 7, 431
 Indictment, 7, 422
 Interest, 7, 426
 After settlement, 7, 443
 Annual balances, 7, 429
 Calling money in without reason, 7, 428
 Compound Interest, 7, 429
 Computing, 7, 430
 For detaining commissions, 7, 430
 For disobedience in obeying instructions, 7, 430
 In favor of representative, 7, 434
 Examination under oath, 7, 428
 For undue delay in paying over legacy, 7, 427
 How often rests shall be taken, 7, 431
 In absence of willful default, 7, 427, 428
 In England, 7, 431
 In Pennsylvania, 7, 431
 Keeping money dead in representative's hands, 7, 428
 Manner of calculating interest, 7, 429
 Neglect or refusal to account, 7, 428
 Neglecting to invest, 7, 428
 On costs paid by executor, 7, 433
 Pendency of account in court, 7, 428
 Rate of interest, 7, 429
 Rests, 7, 429
 When allowed to executor, 7, 432
 Where executor becomes guardian or trustee, 7, 428
 Where executor deals with assets for his own benefit, 7, 427
 Where executor is directed to invest, 7, 430
 Where executor mingled funds with his own, 7, 427
 Where executor redeems land, 7, 433
 Interrogatories, 7, 424
 Issue for jury, 7, 424
 Laches, 12, 589, 594
 Accounts settled by executor, 12, 590
 Delay of 20 years, 12, 589
 Delay of 30 years, 12, 590

- Executors holding property in trust.
 12, 589
 Fraud, 12, 591
 Loss of evidence, 12, 589
 No one authorized to sue, 12, 590
 Presumption of satisfaction, 12, 589
 Suit by administrator de bonis non,
 12, 590
 Legal expenses, 7, 434
 Liability of representative after dis-
 charge, 7, 442
 Litigation caused by representative's
 misconduct, 7, 435
 Maintenance and education of minors,
 7, 432
 Mode of presenting accounts, 7, 423
 Necessaries furnished distributees, 7,
 432
 Necessity of citation, 7, 421
 Oath, 7, 423
 Objections, 7, 446
 Objections by parties in interest, 7, 423
 Opening, 7, 443
 Opening partial accounts, 7, 446
Partial
 In Massachusetts, 7, 446
 In Pennsylvania, 7, 446
 Payment for necessities, 7, 431
 Payment of claim of doubtful legality,
 7, 431
 Periodical returns, 7, 424
 Perpetuating evidence of distribution,
 7, 442
 Power of probate court to correct
 errors, 7, 444
 Procuring final discharge, 7, 442
 Profits, 7, 426
 Promise not to charge for his services,
 7, 438
 Real estate, 7, 425
 Removal, 7, 422
 Render between, 1, 130
 Representative as witness, 7, 424
 Residuary legatee, 7, 422
 Resisting claims, 7, 435
 Revising, 7, 443
 Services of auctioneers, 7, 434
 Services of brokers, 7, 434
 Setting aside, 7, 443
 Setting aside final account, 7, 444
 Setting aside for irregularity, 7, 444
 Setting aside in equity, 7, 444
 Settlement affected with fraud, 7, 445
 Settlement out of court, 7, 422
 Statutes fixing rate of commissions, 7,
 437
 Surcharging and falsifying, 7, 443, 445
 Taxes, 7, 433
 To whom account was presented, 7,
 423
 Traveling expenses, 7, 433
 Upon whom account is conclusive, 7,
 443
 Void proceedings, 7, 444
 Vouchers, 7, 424
 What courts can open and settle ac-
 counts, 7, 444
 What parties seeking to set aside must
 show, 7, 444
 What should be included in, 7, 424
 Where no property had been received,
 7, 422
 Who may maintain an application to
 reopen, 7, 445
 Acting as executors, 7, 282
 Acting for their own benefit, 10, 74; 19,
 514
Actions, see *infra*, COSTS; REMEDIES
 IN EQUITY.
 As to what actions and right of actions
 abate, see ABATEMENT.
 For damages in causing death, see
 DEATH.
 For death of decedent, see DEATH.
 For suits on representative's bonds, see
 infra, BONDS.
 Substitution of personal representative
 in actions by and against decedent,
 see PARTIES TO ACTIONS.
Action Against, 7, 391
 Statute of non-claim, see DEBTS OF
 DECEDENTS.
Executor de Son Tort, 7, 186
 Action by creditor, 7, 186
 Action by rightful executor or ad-
 ministrator, 7, 189
 Effect of pleading *ne unques executor*
 alone, 7, 187
 Judgment for debts and costs, 7, 187
 Mitigation of damages, 7, 189
 Named as executor generally, 7, 187
 Payment such as rightful owner
 would have been bound to make,
 7, 189
 Pleadings, 7, 190
 Pleading *ne unques executor and*
 plene administravit, 7, 187
 Retainer for his own debt, 7, 188
 Retainer obtaining administration
 pendente lite, 7, 188
 Showing delivery of assets to right-
 ful executor, 7, 188
 Showing proper payments to other
 creditors, 7, 188
 When chargeable only with assets
 which came to his hands, 7, 188
Judgment, 7, 388
 See infra, JUDGMENTS.
 Amendments, 7, 389
 Directing debt to be paid in course
 of administration, 7, 389
Judgments Quando, 7, 389
 What it covers, 7, 390
 Whether interlocutory or final, 7,
 390
 Upon plea *plene administravit*, 7,
 390
 Plea of release, 7, 389
 Upon plea admitting representative
 character, 7, 388
 Upon plea of *ne unques executor*, 7,
 389
 Upon plea of *plene administravit*, 7,
 389

EXECUTORS AND ADMINISTRATORS

—*Cont'd*

Action Against—*Cont'd*

Pleas, 7, 380

Admitting assets, 7, 382, 383

Assets come to hand since suing out writ, 7, 386

Averments when plene administravit is completed, 7, 382

Averment that judgment was a just debt, 7, 384

Avoiding one of several judgments, 7, 385

Confessions, 7, 383

Conversion of property of third persons, 7, 380

Devastavit, 7, 386

Duplicity, 7, 385

Exhausted assets in discharge of higher debts, 7, 386

Joint executors, 7, 380

Judgment by default, 7, 383

Judgment kept on foot to defraud creditors, 7, 384

Judgment obtained by fraud, 7, 384

Ne Unques Executor and Administrator, 7, 187, 380

Administrator whose letters have been revoked, 7, 381

Burden of proof, 7, 381

Executor who proves will, 7, 381

Joint executors, 7, 381

Necessity of, 7, 381

Plea in bar, 7, 381

Proof of appointment and acceptance, 7, 381

Whether it denies cause of action, 7, 381

Of debt of higher rank, 7, 383

Of retainer, 7, 387

Of set-off, 7, 388

Of statute of limitations, 7, 387

Omission of works, 7, 382

Omission to plead debt of higher rank, 7, 383

Payment of debts after commencement of suit, 7, 387

Plea of bankruptcy, 7, 380

Plea of tender, 7, 380

Plene administravit, 7, 382

Proof of assets in hand, or assets come to hand, 7, 385

Riens ultra, 7, 382

Stating value of assets, 7, 382

Superior debts outstanding, 7, 386

Traversing fraud, 7, 384

Actions Between, 11, 1034

Creditor of testator, 11, 1034

In equity, 11, 1035

Representative of deceased co-executor, 11, 1036

Right to sue at law, 11, 1034

When equity will interfere, 11, 1035

Actions By

Statutes of non-claim, see **DEBTS OF DECEDENTS**.

Admissions, 7, 374

Co-executors and co-administrators, 7, 374

Of representative character by plea of non-assumpsit, 7, 370

Admitting title, 7, 369

Against, 7, 376

Authority, 7, 369

Averment of official character, 7, 366

Before qualifying, 7, 191

Co-executors, 11, 1033

Costs, 7, 374

See infra, **COSTS**.

In general, 7, 375

Interlocutory motions, 7, 376

Judgments of non pros, 7, 376

Security for costs, 7, 376

Where suit is vexatious, 7, 375

Declarations, 7, 377

Description, 17, 495

Designating representative character, 7, 377

Detinet and debet, 7, 366

Detinue, 7, 266

Survival, 7, 333

Ejectment, 6, 243; 7, 271

Survival, 7, 334, 335

Evidence of title, 7, 368

Execution, 7, 391

Action of debt, 7, 392

Scire fieri inquiry, 7, 392

Upon de bonis propriis, 7, 391

Upon return of devastavit, 7, 391

Upon return of fieri facias de bonis decedentis, 7, 391

Upon return of nulla bona generally, 7, 391

For injury to estate after death of decedent, 7, 269

For rent, 7, 365

Heirs as parties, 7, 361

In tort, 7, 364

Joinder, see *infra*, **JOINDER**.

Joint executors and administrators, 7, 365

Judgments quando, 7, 393

Letters testamentary as evidence for authority, 7, 369

Mispayments, 7, 365

Money loaned by executor, 7, 364

Necessity of proof of testator's death, 7, 370

Novation, 7, 366

On contract with decedent, 7, 364

On contract with representative, 7, 363

Parties, 7, 360, 377

Personal liability though suit is against representative, 7, 378

Plea of general issue, 7, 369

Plea of Set-Off, 7, 372

See infra, **SET-OFF**.

Action in representative character, 7, 372

Cause arising after death of testator, 7, 372

Debts due after death of testator, 7, 372

- Debts due by deceased in his lifetime, 7, 373
- Debts must be mutual, 7, 372
- Equitable, 7, 374
- What allowed, 7, 372
- Where estate is insolvent, 7, 373
- Where plaintiff declares as executor, 7, 372
- Plea of Statute of Limitations**, 7, 370
 - Acknowledgment by representative, 7, 371
 - Actions abated by death, 7, 371
 - Causes of action during lifetime of testator, 7, 370
 - New action by executor, 7, 371
 - Statutory provisions, 7, 371
 - What sufficient to acknowledgment of executors and administrators, 7, 371
 - When statute begins to run, 7, 371
- Pleas No Unques Executor**, 7, 369
 - General issue, 7, 368
- Probate after suit has commenced but before its production became necessary, 7, 192
- Probate granted to one of several executors, 7, 369
- Probate only evidence of executor's and administrator's title, 7, 192
- Process, 7, 377
- Profert, 7, 368
- Proving probate, 7, 368
- Replevin**, 7, 266
 - Before probate, 7, 192
 - Survival, 7, 333
- Sale of assets, 7, 364
- Suing in forma pauperis, 7, 361
- Suit in executor's own name, 7, 362
- Suit in representative character, 7, 362
- Suits on bond*, see *infra*, BONDS.
- Suit to obtain possession of land, 7, 361
- Surplusage, 7, 366, 368, 378
- To recover personal assets, 7, 360
- To set aside fraudulent conveyance by deceased, 7, 245
- Trespass**, 7, 265, 269, 271, 363; 26, 612
 - Before probate, 7, 192
- For Mesne Profits**
 - Survival, 7, 334
- Trover**, 7, 247, 265, 269, 363; 18, 528; 26, 752
 - Before probate, 192
 - Survival, 7, 334
- Upon contracts made with personal representative himself, 7, 270
- Upon contracts which do not mature until death of decedent, 7, 269
- Upon notes and bills of exchange, 7, 365
- Venue, 7, 377
- Waiver of tort, 7, 334
- Waste**
 - Survival, 7, 334
- When proof of representative character not necessary, 7, 370
- Where cause of action accrues after death of decedent, 7, 362
- Where cause of action accrues in lifetime of decedent, 7, 362
- Where there are several executors, 7, 360
- Whether action should be in his own name or in his representative character, 7, 362
- Whether general issue demands plaintiff's title, 7, 370
- Action of covenant against, 4, 518
- Action of covenant by, 4, 510
- Action of Debt**, 7, 392
 - Of administrator upon action obtained against another administrator of the same intestate, 5, 171
 - To recover legacy, 5, 167
- Additional security, 2, 466w; 7, 286
- Administration**
 - Definition of, 1, 193
- Administration Suits**
 - In equity, 6, 723
- Administrator de Bonis Non**
 - Receiving balances from former administrator, 7, 228
 - Suing predecessor for delinquencies, 7, 228
 - Suit by, 7, 227
- Administrators, expenses of, 1, 193
- Admissions, 7, 374; 9, 341, 343
- Alien may serve as, 1, 463; 7, 172, 175
- Amendment of title, 7, 251
- Appointment**, 12, 269
 - See PROBATE AND LETTERS OF ADMINISTRATION.
 - As to acts done without appointment, see *infra*, OFFICIATING WITHOUT APPOINTMENT.
- Debtor as creditor's executor, 5, 203
- Debtor as executor discharging debt, 3, 928
- Executors**, 7, 177
 - By codicil, 7, 177
 - By implication, 7, 177
 - Conditional, 7, 180
 - Delegation of power to name an executor, 7, 180
 - Distinction between appointment of coadjutor and executor, 7, 178
 - Distinction between appointment of overseer and executor, 7, 178
 - Distinction between executor according to tenor and testamentary trustee, 7, 179
 - Examples of appointment according to tenor, 7, 178
 - Executor according to tenor, 7, 178
 - Identity of person, 7, 177
- Limitation as to**
 - Place where office is to be exercised, 7, 180
 - Subject-matter, 7, 181
 - Time, 7, 180
- Limited, 7, 180
- Parol evidence to identify person appointed, 7, 177
- Primarily by will, 7, 177

EXECUTORS AND ADMINISTRATORS

—*Cont'd*

Appointment—*Cont'd*

Executors—*Cont'd*

Qualified, 7, 180

Substitutional, 7, 180

Testamentary trustees, 7, 178

Universal legatee, 7, 179

Where word "executor" is not used in will, 7, 178

Probate, 19, 178

Appraisalment, 7, 305

Appraisalment of estate, 1, 634

Arbitration

See DEBTS OF DECEDENTS.

Submission to, by executor and administrator, 1, 653

Assets of Administrators and Executors

Quantity of estate, 7, 238

Assignment of office, 7, 197

Attachment, 7, 393

Award, effect of, upon, 1, 714

Bill for Legacies

Superseded by proceedings in court of probate, 7, 420

Bill of Discovery

Superseded by proceedings in court of probate, 7, 420

Bill of revivor by, 2, 272

Bill quia timet against, 2, 260

Bills and Notes

Entitled to Bills and Notes

Of decedent, 2, 359

Bills and notes by, 2, 334, 358

Bills and notes payable to, 2, 358

Bill to remove clouds by, 2, 308

Bonds, 7, 207

Bond, inability to furnish, as ground for removal, see infra, REVOCATION OF AUTHORITY.

Administrators must give bond, 2, 466*v*

Administrator with will annexed, 2, 466*v*; 7, 210, 211

Bond to pay debts, 2, 466*v*

Breaches, 7, 221

Devastavit, see infra, DEVASTAVIT.

Account in Massachusetts, 7, 221

Condition to well and fully administer, 7, 221

Construction of statutory provisions, 7, 223

Conversion by executor, 7, 222

Failure to make account, 7, 221

Failure to pay over, 7, 216

Failure to make inventory, 7, 221

Failure to settle account, 7, 221

Instances of, 7, 223

Inventory in, 7, 221, 303

Necessity of citation to deliver inventory or account, 7, 221

Necessity of decree of distribution, 7, 222

Neglect to make distribution, 7, 222

Non-payment of debts, 7, 222

Waiver, 7, 230

Condition in Pennsylvania, 7, 210

Discharge of Sureties

Citation upon petition to be discharged, 7, 220

Petition to be discharged, 7, 220

Release, a judicial act, 7, 220

Effect of bond of residuary legatee who is also executor, 7, 209

Effect of insufficiency in executors, 7, 212

Effect of refusal to give, 7, 193, 194

Execution of joint bond by two or more, 2, 466

Executor's liability, 2, 466*v*

Form of bond in United States, 7, 210

For trustees of realty, 7, 211

In Massachusetts, 7, 211

Liability of Sureties, 2, 466*u*

See *infra*, SURETYSHIP.

Administrator de bonis non, 7, 219

Administrator's appointment improper, 7, 213

Alteration in contract, 7, 220

Citation upon petition to be discharged, 7, 220

Condition extending only to interest of creditors, 7, 217

Condition to well and truly administer according to law, 7, 217

Damage to real estate, 7, 220

Death of the representative, 7, 220

Debt due by insolvent executor or administrator, 7, 218

Debt of principals, 7, 218

Default after death of surety, 7, 220

Discretion of court upon petition to be discharged, 7, 220

"Due administration of the estate," 7, 217

Erasure of names of surety, 7, 221

Extension by implication, 7, 217

For executors in debt to estate, 7, 258

Ground for petition to be discharged, 7, 220

Limited by terms of covenant, 7, 217

On joint bond of co-administrators, 7, 217

Only for breach of condition of instrument signed, 7, 213

Petition to be discharged, 7, 220

Proceeds of Realty

In California, 7, 219

In Kentucky, 7, 219

In Massachusetts, 7, 219

In Missouri, 7, 219

Proceeds of sale of real estate, 7, 219

Property received before execution, 7, 218

Property received by principal in some other capacity, 7, 218

Property which comes into his principal's hands, 7, 217, 218

Release of judicial act, 7, 220

Rents received after death of decedent, 7, 219

Responsible for general functions of representative, 7, 220

- Retrospective effect of bond, 7, 218
- Time during which application exists, 7, 219
- Of Administrators**
 - Approval of court, 7, 212
 - Burden of proof as to insufficiency, 7, 214
 - Condition, 7, 210
 - Conditional signature of surety, 7, 213
 - Deviation from statutory requirements, 7, 212
 - Discretion of court as to new bonds, 7, 215
 - Early English statutes, 7, 210
 - Effect of death of executor or administrator who is party to a joint probate bond, 7, 217
 - Effect of failure to give bond, 7, 212
 - Effect of non-compliance with requirement as to sureties, 7, 214
 - Improper sureties, 7, 212
 - In whose favor counter securities operate, 7, 215
 - Joint and separate bonds, 7, 216
 - Joint bonds of co-executors and co-administrators, 7, 216
 - Justifying securities, 7, 214
 - Legal effect of new bond, 7, 216
 - Liability of sureties, 7, 217
 - Liability upon substitute bond, 7, 216
 - New or additional bonds, 7, 215
 - Non-resident sureties, 7, 214
 - Omission of bond, 7, 213
 - Omission of proper number of sureties, 7, 212
 - Petition of sureties for counter security, 7, 215
 - Private arrangement between principals and parties, 7, 213
 - Proof of sureties' sufficiency, 7, 212
 - Relation of a new and additional bond, 7, 215
 - Requiring additional bond of court's own motion, 7, 215
 - Resident sureties, 7, 214
 - Substitute bond, 7, 215
 - Void probate bond good as common-law bond, 7, 213
- Prerequisite to grant of administration, 7, 212
- Provisions for payment of legacies, 7, 211
- Public administrators, 7, 211
- Refunding bonds, 7, 320
- Statute of limitations, 2, 466v; 7, 229
- Suits**
 - Action by creditor, 7, 226
 - Action by distributee, 7, 226
 - Action by legatee, 7, 226
 - Action by next of kin, 7, 227
 - Against non-resident executor and sureties, 7, 225
 - Bond of deceased administrator, 7, 229
 - By administrator de bonis non, 7, 227
 - Defenses, 7, 229
 - Estoppel to deny legality of administrator's appointment, 7, 229
 - Fixing devastavit, 7, 224
 - In equity, 7, 225
 - In equity in New York, 7, 225
 - Insolvency of executor, 7, 224
 - In whose name suit should be brought, 7, 230
 - Joinder of several breaches, 7, 227
 - Leave of probate court to sue upon bond, 7, 226
 - Liability barred by statute of limitation, 2, 466v; 7, 229
 - Measure of damages, 7, 230
 - Necessity that leave of court be in writing, 7, 226
 - Recourse to principal, 7, 224
 - Relief in equity, 7, 227
 - Requisites to action, 7, 229
 - Showing that administrator was not bound to pay the debt, 7, 229
 - Waiver of breach in not rendering account, 7, 230
 - When it is not necessary to establish executor's liability by judgment, 7, 225
 - Who may bring action, 7, 226
 - Who may sue upon bond, 7, 228
- Temporal, special, and limited administrations, 7, 211
- Title in trust estate before bond is given, 7, 194
- To whom runs, 7, 212
- When additional bond may be required, 2, 466u; 7, 286
- When Executor Required to Give, 2, 466u; 7, 207**
 - Admission of sufficient assets by residuary legatee's bond, 7, 209
 - Bond of residuary legatee who is also executor, 7, 209
 - Discretion of court, 7, 208
 - English equity rule, 7, 208
 - In New York, 7, 208
 - In Pennsylvania, 7, 208
 - Non-resident executors, 7, 209
 - Persons interested certifying their consent that executor be exempt from giving bond, 7, 207
 - Power to act as executor suspended until bond is given, 7, 207
 - Prerequisites to letters testamentary, 7, 207
 - Residuary legatee who is also executor, 7, 209
 - Statutes requiring in the United States, 7, 207
 - Testator requesting that executor be exempt from giving surety, 2, 466u; 7, 207
 - Under English practice, 7, 207
 - When circumstances of executor are precarious, 7, 208
 - When necessary, 2, 466u; 7, 207
 - When suit may be maintained, 7, 224, 226

EXECUTORS AND ADMINISTRATORS—*Cont'd***Bonds—Cont'd**

Where testator provides that no bonds shall be required, 2, 466*u*; 7, 207

Building and loan associations, 2, 617

Burden of Proof

As to insufficiency of bond, 7, 214

Burial of dead, see *infra*, DUTIES.

See DEAD BODY.

Carrying on Testator's Trade, 7, 342

Authority to carry on, 7, 344.

Carrying on trade distinguished from winding up business, 7, 344

Conduct and management, 7, 344

In conjunction with partner, 7, 342

Joint stock companies, 7, 342

Liability of assets not embarked in, 7, 343

Personal liability, 7, 342

Right of trade creditors to resort to heir, 7, 343

Trading without authority, 7, 343

Where directed to do so by will, 7, 342

Claim against estate of decedent, 5, 228

Coadjutors, 7, 178

Commissions, 3, 379; 7, 436, 438

Co-executors and co-administrators, see JOINT EXECUTORS AND ADMINISTRATORS.

Compensation for professional services, 7, 440

Compound interest, 7, 440

Double commissions, 7, 438

Effect of

Gift of legacy, 7, 439

Misconduct, 7, 439

Failure to file annual accounts, 7, 440

Lien for compensation, 7, 441

Mode of deducting, 7, 440

On debts due executrix, 7, 439

On reinvestments, 7, 438

On sales of real estate, 7, 439

On set-off, 7, 439

On specific legacy, 7, 439

Provisions in will, 7, 439

Time of deducting, 7, 440

Unfaithful administration, 7, 440

Where no account has been rendered, 7, 440

Where trust is annexed to office, 7, 438

Compensation, 7, 436

Contribution, 7, 328

Costs, 4, 316; 7, 374, 390, 408, 434-436

Bill filed by legatee, 7, 410

Bills for construction, 7, 410

Controversy between distributees, 7, 409

Creditors, 7, 410

Creditor's suit, 7, 410

For trusts of settlement, 7, 411

Fraud in executor, 7, 409

In equity, 7, 408

In general, 7, 390

Interest, 7, 433

Liability

Of real estate, 7, 411

Of specific legacies, 7, 411

Where suit is improper and vexatious, 4, 316

Neglect of duty by executor, 7, 409

Next of kin, 7, 410

Of injunctions, 7, 395

On judgment quando, 7, 391

Out of defendant's own goods, 7, 390

Plaintiff's, 7, 409

Reimbursement of representative, 7, 435

Representative's, 7, 409

Representative's liability where he is sued, 4, 316

Retainer in, 7, 410

Solicitor and client, 7, 410

Suit for administration of assets, 7, 409

Trustees, 7, 411

When a plea of non-assumpsit, 7, 391

When a plea of plene administravit, 7, 391

When assets insufficient, 7, 409

When chargeable upon a particular fund, 7, 436

When costs payable out of particular fund, 7, 411

When executor must pay costs on his own goods, 7, 390

When to be paid out of estate, 7, 408

Where action is based upon a transaction to which he himself is a party, 4, 316

Where representative's conduct has been blameless, 7, 409

Where representative sues in autre droit, 4, 316

Where there are no assets applicable, 7, 411

Whether representative is entitled to reimbursement from the estate where he pays costs, 4, 316

Counterclaim, 22, 411

See *infra*, SET-OFF.

Action brought by plaintiff in individual capacity, 22, 412

Claim due to and from the plaintiff in the same capacity, 22, 411

Claim not due and payable in decedent's lifetime, 22, 413

Demand due to the estate, 22, 412

In general, 22, 411

Creditor's bills, 7, 401

Crops, 4, 891, 892

Dealing in Estate for Own Benefit, 19, 514

See *infra*, SALE.

Constructive trusts, 10, 74

Death, see *infra*, EFFECT OF DEATH.

Default, judgment by, 5, 462

Definition of administrators, 7, 170

Definition of executors, 7, 170

Delegation of power, 7, 180, 300

Demands, 7, 285

Detinue, 5, 654; 7, 266; 18, 526

Survival, 7, 333

Devastavit, 7, 346, 365, 391

Accounting for sales, 7, 347

- Allowing assets to remain outstanding, 7, 349
 Care to be exercised, 7, 347
 Collection of dividends, 7, 350
 Collection of interest, 7, 350
 Definition, 5, 658; 7, 346
 Delay in bringing suit, 7, 349
 Failure to collect bad or doubtful claims, 7, 348
 Failure to collect note, 7, 347
 Failure to have fraudulent transfer set aside, 7, 349
 Failure to pursue principal debtor, 7, 349
 Fixing, 7, 222, 224
 Insolvency of debtor before collection, 7, 348
 Investigating conduct of predecessor, 7, 349
 Maladministration, 7, 346
 Payment of assessments on stock, 7, 347
Payment of a Debt
 Barred by statute of limitations, 7, 282
 Out of legal order, 7, 346
 Payment of executor's individual debt, 7, 293
 Payment of taxes, 7, 347
 Permitting debt to be barred by statute of limitations, 7, 348
 Permitting interest-bearing debts to run, 7, 349
 Purchaser participating in, 7, 292
 Redeeming pledges, 7, 347
 Release of debt, 7, 284
 Release of right of action for tort, 7, 284
 Remedies in equity, 7, 412
 Representative acting in good faith, 7, 347
 Resisting unnecessary payments, 7, 349
 Selling assets, 7, 349
 Survival of action for, 7, 333
 Traversing, 7, 392
 When chargeable with debt and interest, 7, 349
 Discovery of will after grant of administration, 21, 366, 378
 Disposition of body of deceased, 5, 115
 Distress, 7, 393; 12, 7579
 Drunkenness, 21, 367
Duties
 Accounts, see *infra*, ACCOUNTS.
 As to the inventory, see *infra*, INVENTORY.
 Payment of legacies, see LEGACIES.
 Proving will and taking out letters, see PROBATE AND LETTERS OF ADMINISTRATION.
 Retainer, see EXECUTORS AND ADMINISTRATORS.
 Annuities, 7, 318
 Bequest for life, 7, 318
Burial of the Dead, 7, 301
 See generally, DEAD BODY.
 As to what are proper expenses, 7, 302
 Direction in will, 7, 302
 Expenses as against creditors, 7, 301
 Expenses as against legatees or distributees, 7, 301
 Mourning apparel for widow, 7, 302
 Priority over death, 7, 302
 Station in life of decedent, 7, 301
 Suitable burial, 7, 301
Collecting Assets, 7, 307
 Diligence, 7, 307
 Private agreements with debtor, 7, 307
 What may be taken in payment, 7, 307
 Discretion of executor as to paying legacy within the year, 7, 318
 Distribution of residue, 7, 316
 Executor's right to undisposed residue, 7, 317
 Interest of distributee when due, 7, 317
 Legacies given for valuable consideration, 7, 315
 Legacies subjected to divesting contingencies, 7, 318
 Mode of payment, 7, 313, 315
 Nature of residuary legatee's interest, 7, 316
Payment of Debts, 7, 308
 See DEBTS OF DECEDENTS.
 Admission of assets to pay both debts, 7, 308
 Advancements out of representative's own funds, 7, 314
 Attorney's lien, 7, 309
 Before legacies, 7, 308
 Duty of observing legal priorities, 7, 308
 Effect of direction in will, 7, 308
 Failure to plead debt of higher nature, 7, 308
 Foreign assets, 7, 308
 Honest mistake, 7, 308
 Interest, 7, 313
 Mode of payment, 7, 313, 315
Order of Payment
 Law regulating, 7, 308
 Payment in legal tender, 7, 313
 Payment upon discount, 7, 313
 Personal liability for debts, 7, 314
 Personal liability of representative, 7, 313
 Recovering over-payment, 7, 313
 Representing estate as insolvent, 7, 308
Right to Prefer
 Confession of judgment, 7, 310
 Creditors of equal degree, 7, 309
 Effect of filing bill, 7, 310
 Notice of action at law, 7, 310
 Where one of several creditors obtains judgment, 7, 309
 Subrogation of personal representative, 7, 314
 Payments to residuary legatee, 7, 316
 Property for payment of debts, 7, 315
 Statute governing disposition of revenue, 7, 317

EXECUTORS AND ADMINISTRATORS

—*Cont'd*

Duties—*Cont'd*

Statutes as to distribution, 7, 317

Testator directing payment within the year, 7, 318

Where payment is postponed for more than statutory year, 7, 318

Effect of Death, 6, 204

Administrator during minority, 6, 206

Administrator of an administrator, 7, 206

A married woman being executrix, 7, 205

At common law, 7, 204

Effect of executor's death before probate, 7, 191

On the death of one or more joint executors, 7, 204

Party to a joint bond, 7, 217

Power of executor over an executor, 7, 205

Sole executor, 7, 200

Statutes in the United States, 7, 205

Upon liability of sureties, 7, 220

Where executor dies intestate, 7, 204

Where first executor dies before proving will, 7, 204

Whether executor of executor can execute a power, 7, 205

Effect on surety of judgment against representative, 12, 98

Ejectment, 6, 243, 244; 7, 271

Election, 7, 235, 301

See ACCEPTANCE OF RENUNCIATION.

Elevated Railroads

Recovery of damages for injury to property, 23, 1056

Embezzlement, 21, 375

By public administrator, 6, 493

Eminent Domain

Whether heir or administrator entitled to damages, 6, 590

Entry upon land of deceased person to take personal property, 19, 1102

Escheat, 7, 317

Estate of executor or administrator, 7, 230

Estoppel, 7, 28, 29

Allowance to infants for maintenance, 7, 324

Sureties denying legality of administrator's appointment, 7, 229

Evidence of unsuitableness, 21, 369

Executions, 7, 391

Action of debt, 7, 392

Upon de bonis propriis, 7, 391

Upon return of devastavit, 7, 391

Upon return of fieri facias de bonis decedentis, 7, 391

Upon return of nulla bona generally, 7, 391

Executor According to Tenor, 7, 178

How nominated, 7, 178

Jointly with executor expressly appointed, 7, 180

Universal legatee, 7, 179

What words are sufficient to nominate, 7, 178

Executor Also Trustee, 13, 160

Act showing right of executor to hold as trustee, 13, 160

General legacy payable in stock, 13, 162

When executor holds as trustee, 13, 162

Where bond is required, 13, 163

Executor de Son Tort, 7, 196

Accounting with rightful representative only, 7, 190

Acts evincing legal control over a subject, 7, 182

Acts of kindness and charity, 7, 184

Administering under void letters, 7, 186

Agent of rightful executor, 7, 185

Appropriating property as donee or legatee, 7, 184

Definition, 7, 182

Directing funerals, 7, 184

Executor unduly delaying to take out probate, 7, 186

Foreign, 7, 185

Intermeddling by third person after grant of letters, 7, 196

Intermeddling with lands, 7, 185

Intermeddling with property of estate, 7, 182

Lawful acts binding estate, 7, 189

Liability, 7, 186

Liability of agents of, 7, 183

Liability to creditor or legatee, 7, 186

Liability without privileges of rightful executor, 7, 186

Limited to statutory liabilities, 7, 190

Modern legislation, 7, 190

Not recognized in some states, 7, 190

Paying debts of deceased, 7, 182

Paying probate charges, 7, 183

Purchase in good faith from, 7, 184

Receiving gift in fraud of creditors, 7, 184

Relation as affected, 7, 195

Retainer, 7, 196

Retaining possession of decedent's goods as bailee, 7, 184, 185

Sale by surety, 7, 185

Sale of goods by, 7, 189

Suing or pleading as executor, 7, 183

What acts will constitute, 7, 182

When creditors are aggrieved, 7, 190

When legatees are aggrieved, 7, 191

Whether a suitable person who has intermeddled can be compelled to take out letters, 7, 196

Whether payments will exempt debtor from payment to rightful executor, 7, 189

Executors purchasing property of trustee, 1, 375

Executor's right to undisposed residue, 7, 236, 317

Exemplary Damages, 7, 477

Action for death, 7, 479

Actio personalis moritur cum persona, 7, 477

- At common law, 7, 477
- Civil damage acts, 7, 479
- Generally, 7, 477
- Injury to estate, 7, 478
- Statutory modifications, 7, 479
- What is meant by personal action, 7, 477
- Failure of banker, 7, 351
- Fixtures**, 7, 248
 - Annexation necessary, 7, 250
 - As Between Executor and Remainderman**, 7, 250; 8, 54
 - Hangings, pictures, tapestries, etc., 8, 54
 - Ornamental fixtures, 8, 54
 - As Between Heir and Executors**, 7, 248; 8, 47
 - Examples, 8, 47, 48
 - Furnaces, etc., 8, 48
 - General rule, 8, 47
 - Machinery, 8, 47
 - Of tenant in fee, 7, 249
 - Where the same rule applies as between mortgagor and mortgagee, 8, 53
 - As between personal representative and heir of devisee of tenant in fee, 7, 248
 - As between personal representative of tenant for life and remainderman or reversioner, 7, 248
 - As to the character of annexation, 7, 249
 - Chandeliers, 7, 251
 - Definition of term, 7, 248
 - Force of decisions between landlord and tenant, 7, 251
 - Machinery in mill, 7, 250
 - Manure, 7, 250
 - Ornamental fixtures, 7, 250
 - Stills, 7, 251
- Forcible entry and detainer by, 8, 136
- Foreclosure of Mortgages**
 - Parties defendant, 8, 215
 - When representative may foreclose, 8, 210
 - When representative of deceased lienor necessary party, 8, 220
 - When representatives should be made parties, 8, 227
- Foreign attachment, 8, 314
- Forma pauperis, 8, 546
- Fraud**
 - Statute of**
 - Promise to pay the debt of the estate, 7, 338; 8, 690
- Fraudulent Conveyances**, 7, 244; 7, 281
 - Action by personal representative to set aside, 7, 245
 - Fraudulent marriage settlement, 7, 245
 - Impeachment by representative, 8, 774
 - Inventory, 7, 306
 - Inventory of land fraudulently assigned, 7, 245
 - Knowledge that conveyance was fraudulent, 7, 245
 - Liability of executor for not having set aside, 7, 349
- Property recovered as assets, 7, 244
- Representative's liability to creditors, 7, 245
- Void transfers, 7, 245
- Whether decedent must have been insolvent at time of transfer, 7, 244
- Fraudulent sale by*, see *infra*, SALE.
- Funeral expenses, 7, 433
- Garnishment**, 8, 1138, 1162
 - Effect of statutes, 8, 1140
 - Liability in general, 8, 1138
 - Revival of, 8, 1140
 - Shares of distributees, 8, 1139
 - Shares of legatees, 8, 1139
 - Statutes rendering representatives liable, 8, 1140
 - Where estate has been fully administered, 8, 1140
 - Where intestate could not be charged if living, 8, 1141
 - Where probate court has ordered payment of creditor's claim, 8, 1140
 - Where trust is created by will, 8, 1141, 1142
- Gift of property by decedent in his lifetime, 8, 1340
- Gifts Mortis Causa**, 7, 252
 - Assets not sufficient to pay debts, 8, 1352
 - Rights of executor, 8, 1352
- Giving note for debt due by decedent, 2, 362
- Ground rents, 9, 64
- Guardian and Executor or Administrator**, 9, 94, 122
 - Presumption as to holding as guardian, 9, 123
 - When liability as guardian begins, 9, 122
- Health, 21, 367
- Heir at law, 21, 370
- Heirlooms, 7, 251; 9, 357
- Husband and Wife**, 9, 800; 14, 682
 - See *infra*, MARRIED WOMEN.
 - Husband's liability, 9, 823; 14, 684
- Indorsement**
 - Of bill or note by, 2, 380
- Infamous crimes, 21, 369
- Infamy**
 - Right to sue, 17, 487
- Infants**, 10, 615; 21, 369
 - Allowance to infants for maintenance, 7, 324
 - Appointment of guardian, 10, 616
 - Estoppel where allowance is made to, 7, 324
 - Liability for money received, 10, 616
 - Payment of legacy to, 7, 323
 - Payment to guardian, 7, 324
 - Privilege to avoid contract, 10, 638
 - Where infant may be, 10, 615
 - Where there are several executors, 10, 616
- Insanity, 21, 369
- Insolvency, 21, 372
- Instituted executors, 7, 181
- Insurable interests, 11, 315

EXECUTORS AND ADMINISTRATORS—*Cont'd***Interest**, 11, 391*See infra*, ACCOUNTS.

On funds improperly retained, 11, 398

Intermeddling by third persons after grant of letters, 7, 196

Interpleader, 11, 498

Inventory, 7, 303

Administrator pendente lite, 7, 305

Appraisement, 7, 305

Appraisement in New York, 7, 305

As evidence, 7, 307

Assets in another state, 7, 305

Certification, 7, 307

Conclusiveness, 7, 307

Debts due from personal representative, 7, 306

Doubtful debts, 7, 306

Exempt property, 7, 306

Failure to file as breach of bond, 7, 303

In United States, 7, 303

Land fraudulently conveyed, 7, 245

Notes and accounts, 7, 305

Property claimed by third person, 7, 305

Property fraudulently conveyed, 7, 306

Provision in will as to inventory, 7, 304

Real Estate, 7, 306

Statutes requiring, 7, 306

Separate debts, 7, 306

Special and limited administrators, 7, 304

Specification, 7, 306

Statutes, 7, 303

Supplementary, 7, 304

What inventory should contain, 7, 305

When inventory can be dispensed with, 7, 304

When personal property of deceased has been disposed of, 7, 304

Whether more than one inventory is necessary, 7, 303

Who may be compelled to exhibit an inventory, 7, 304

Investments, 7, 353*As to investments generally*, see INVESTMENTS.

Bank stock, 7, 354

Calling in money on personal security, 7, 355

Confederate money and bonds, 7, 353

Delay in effecting sale, 7, 357

Depreciated currency, 7, 355

Depreciation of securities, 7, 353

Difference of opinion between two executors, 7, 356

Direction in will, 7, 356

Direction to invest in particular stock, 7, 357

Discretion of executors, 7, 356

Duty to invest, 7, 354

Effect of decree to account, 7, 355

First-class mortgages, 7, 353

Good faith and due diligence, 7, 355

Government securities, 7, 354

In real estate, 7, 355

Interest, 7, 354

Legal tender currency, 7, 355

Loan to co-executor, 7, 357

Money left outstanding on decedent's investment, 7, 356

Money loaned on bonds, 7, 353

Money loaned on promissory note, 7, 354

Municipal bonds, 7, 354

Order of court, 7, 353

Personal securities, 7, 354

Property given for life, 7, 354

Real estate security, 7, 353

Security for purchase-money at judicial sale, 7, 355

Where discretion is given, 7, 358

Joinder, 7, 388; 11, 1015^mAccount stated, 11, 1015^oActions against executors and administrators, 11, 1015^pActions by executors and administrators, 7, 361, 367, 379; 11, 1015ⁿCauses accruing in individual and representative capacity, 7, 379; 11, 1015^oCharging executor personally, 11, 1015^gCount for funeral expenses with count on promises by decedent, 11, 1015^gDefendant executor for two estates, 11, 1015^sExamples, 11, 1015^p, 1015^gGeneral rule, 11, 1015^m, 1015ⁿGeneral rule against executors and administrators, 11, 1015^pHistory of the rule, 11, 1015^m, 1015ⁿJudgment de bonis decedentis, 11, 1015^p

Of parties, 17, 580, 581

Promises by testator and promises by executor, 11, 1015^gPromises to executor, 11, 1015^oPromises to testator and decedent, 11, 1015^oSeveral and joint promises, 11, 1015^rSeveral bonds given by representative, 11, 1015^lTrespass quare clausum fregit, 11, 1015^oWhen counts may be joined, 11, 1015^mWhere sum recovered would be assets, 11, 1015^m**Joinder of Parties**, 11, 1021

Actions against co-executors, 11, 1033

At common law, 11, 1033

In equity, 11, 1033

Joint liability of husband and wife, 14, 682**Judgments**, 7, 388

Administrators de bonis non, 12, 91

Creditors and legatees, 12, 91

Effect as to other executor, 12, 91

Equitable relief against, 12, 146

Executor or administrator who has qualified in another state, 12, 91

Heirs or devisees, 12, 91

Lien

Judgment against representative, 12, 110

Quando, 7, 389

Whether judgment against deceased is binding, 12, 91

Laches

Breach of Duty by Executor, 12, 593

Acquiescence by party in interest, 12, 593

Wrongful purchase of property of the estate by executor, 12, 593

Suits by creditors against executors, 12, 594

Lease, 12, 998

Administrators, 12, 998

Executors, 12, 998

Power to collect rent, 12, 998

When empowered by will, 12, 998

"Legal representative," 13, 221; 21, 18

Liability

See infra, EXECUTOR DE SON TORT.

Of executor to execute specific legacies, see LEGACIES AND DEVISES.

Acting on advice of attorney, 7, 352

Advances to necessitous trust legatee, 7, 320

Advantages made out of trust, 7, 295

Breach of trust, 7, 346

Compelling legatees to refund, 7, 321

Compromising claims, 7, 286

Contracts made in his representative capacity, 7, 299

For acts of agents, 7, 341

For debt of which he has no knowledge, 7, 318

For legacies, 7, 316

For representative after discharge, 7, 442

For Tortious Acts, 7, 344

Acts authorized by parties in interest, 7, 359

Acts directed by court, 7, 359

Effect of advice of court, 7, 359

Effect of advice of parties, 7, 359

Liable for rents wrongfully collected, 7, 345

Liability as to creditors, 7, 360

Liability as to legatees, 7, 360

Liability to estate, 7, 346

Loss from following directions of will, 7, 360

Personal liability to third persons, 7, 344

Receiving money by mistake, 7, 345

To third persons, 7, 344

When control is taken out of representative's hands, 7, 360

When liable in representative capacity, 7, 345

Where no pecuniary advantage results to estate, 7, 345

From embezzlement of agent, 7, 351

From embezzlement of attorney, 7, 351

Impounding or retaining assets, 7, 319

Indorsement of note, 7, 299

Of wife's administrators, 7, 335

Payment to wrong person, 7, 323

Payment under order of court, 7, 320

Personal Liability

Tortious acts, see infra, TORTIOUS ACTS.

Carrying on Testator's Trade, 7, 342

Authority to carry on trade, 7, 344

Carrying on trade distinguished from winding up business, 7, 344

Conduct and management, 7, 344

In conjunction with partner, 7, 342

Joint stock companies, 7, 342

Liability of assets not embarked in trade, 7, 343

Right of trade creditors to resort to heir, 7, 343

Trading without authority, 7, 343

Where directed to do so by will, 7, 343

Cases not within the statute of frauds, 7, 338

Consideration, 7, 337

Covenant for repairs, 7, 332

Exceptions to, on submission to arbitration, 7, 341

Funeral expenses, 7, 340

Funeral expenses where there are no assets, 7, 341

In general, 7, 337

Of executor of tenant from year to year, 7, 332

Promise in consideration of assets, 7, 338

Promise to pay debt of estate, 7, 337

Renting, 7, 330

Signing in representative capacity, 7, 338

Statute of frauds, 7, 338

Submission to arbitration, 7, 341

Under his own contracts, 7, 337

What is a valid consideration, 7, 338

What is sufficient writing within statute of frauds, 7, 339

Where third persons order funeral, 7, 340

Promissory note given in representative capacity, 7, 299

Release of debt, 7, 285

Renouncing after partly administering, 7, 202

Sale for inadequate price, 7, 289

Security from legatees, 7, 319

Statutes as to compromise in arbitration, 7, 286

Submission to arbitration, 7, 285

To complete gifts, 7, 335

To sell on credit, 7, 289

Under His Own Contracts, 7, 335

Action against representative, 7, 338

Cases not within the statute of fraud, 7, 339

Completion of executory contract, 7, 338

Consideration for promise to pay debt of estate, 7, 337

Estate legally independent of executor's promise, 7, 336

EXECUTORS AND ADMINISTRATORS—*Cont'd***Liability**—*Cont'd***Under His Own Contracts**—*Cont'd*

- Forbearance, consideration, 7, 338
- Joint power to bind estate, 7, 336
- Necessity of averment of assets, 7, 336
- Personal liability, 7, 337
- Personally where he signed in representative capacity, 7, 338
- Promise in consideration of assets, 7, 338
- Promise made in order to discharge existing liability, 7, 336
- Promise to pay a debt of estate, 7, 337
- Statute of frauds, 7, 338
- To the extent of the contracts, 7, 335
- What is a valid consideration, 7, 338
- What is sufficient reduction to writing, 7, 338

Warranty, 7, 296

When no refunding bond is given, 7, 320

Work and labor with a view to legacy, see DEBTS OF DECEASED.**Liability for Acts of Deceased,** 7, 325*Contract of agency,* see AGENCY.

Action for devastavit, 7, 333

As to apprentices, 7, 326

At common law, 7, 332

Breach after death of decedent, 7, 326

Claims founded upon contract, 7, 325

Claims founded upon tort, 7, 332

Contribution, 7, 328

Covenants implied by law, 7, 328

Cutting trees on another's land, 7, 334

Debts, 7, 325, 334

Detinue, 7, 333

Discharge of estate of deceased partner, 7, 328

Executor of deceased partner, 7, 328

Executory contracts, 7, 325

Joint contract, 7, 327

Libel, 7, 333

Personal contracts, 7, 326

Personal covenants, 7, 329

Personal money of real estate, 7, 329

Promise that executor should pay, 7, 327

Real covenants, 7, 328

Relief in Equity

Where contract is joint, 7, 327

Rent, 7, 330

Accrued since death of lessee, 7, 330

Avoiding individual liability, 7, 331

Where executor does not enter, 7, 330

Where executor enters, 7, 330

Where lease has been assigned, 7, 330

Replevin, 7, 333

Rescinding executory contract, 7, 327

Several or joint contract, 7, 327

Statutes, 7, 333

Trover, 7, 334

Waiver of Tort

In action of assumpsit, 7, 334

Wastes, 7, 334

Where estate derived an advantage, 7, 333

Where personal representative is not named in terms, 7, 326

Liability for devastavit, see *infra*, DEVASTAVIT.**Limitations of Actions,** 5, 229; 7, 399; 405; 13, 686, 710

Debt charged upon land, 7, 405

Delay of executor in taking probate, 7, 186

Distributive share, 7, 406

Effect of death upon the statute, 7, 405

Executor's Debt

Waiver, 13, 709

Fraud or mistake, 7, 405

In equity, 7, 399, 405

Laches, 7, 405

Legacy, 7, 406

New promise, 13, 762

Plea of, by executors and administrators, 7, 383

Qualification of personal representatives, 13, 737

Suits in equity by executor, 7, 399

Waiver, 5, 239; 7, 282; 13, 707, 709, 762

What stops running of the statute, 7, 405

Loss by Casualty, 7, 350

Confederate money, 7, 351

Embezzlement or misconduct of agent, 7, 351

Embezzlement or misconduct of attorney, 7, 351

Failure of banker, 7, 351

Following advice of counsel, 7, 350

Insurance, 7, 351

Theft, robbery, or accidental fire, 7, 350

Through necessary employee, 7, 351

What is necessary employment, 7, 351

Manure, 7, 250**Marriage of executrix or administratrix,** 21, 369**Married Women,** 9, 800; 14, 681; 21, 369

As to the estate or principal, 14, 684

As to personal rights and obligations of wife, 14, 683

As to third parties, 14, 684

As to wife's coverture, 14, 683

Effect of coverture, 14, 683

Examples, 14, 682

Husband's Consent, 14, 682, 683

At common law, 14, 683

Examples, 14, 683

Necessity, 14, 683

Husband's liability, 9, 823; 14, 684

Husband's rights and obligations, 14, 684

Married woman as administratrix, 14, 682

Married woman as executrix, 14, 681

Personal liability, 14, 684

Mechanics' Liens, 15, 60
 Enforcement, 15, 118
Memorandum, 15, 277
Merger, 15, 351
Mingling Trust and Individual Funds, 7,
 234, 235, 358
 Actual loss, 7, 359
 Failure of bank, 7, 352, 358
 Good faith of executor, 7, 358
 Liability of executor, 7, 358
 Separation after mingling, 7, 359
Mismanagement, see *infra*, **REVOCA-
 TION**.
Mistakes, 15, 676
Mitigation, 15, 689
Mortgages, 7, 289
 Assignments, 15, 849
 Mortgagee's interest, 15, 739
 Right to mortgage, 15, 741
 Subrogation, 15, 867
Mutual Insurance, 16, 65
 Parties to action, 16, 98
Ne unques executor, 16, 489
New trial, 16, 614
Non-residence, 21, 368
Novation, 7, 366
Of Estate of Executors or Administrators
 Nature of title, 7, 232
 Quality and nature, 7, 232
Officiating Without Appointment, see *in-
 fra*, **EXECUTOR DE SON TORT**.
 Acts done by executor before qualify-
 ing, 7, 191
 Acts in prudent interest of estate, 7, 195
 Acts which require him to establish
 his title affirmatively, 7, 191
 Authority to act before giving bond,
 7, 193
 Beginning suit and obtaining probate
 afterwards, 7, 192
 Demise by executor before proving
 will, 7, 231
 Distinction between law of this coun-
 try and England, 7, 196
 Effect of executor's death before pro-
 bate, 7, 191
 In Massachusetts, 7, 194
 In Missouri, 7, 194
 Maintaining assumpsit, 7, 192
 Maintaining trespass, trover, or replev-
 in, 7, 192
 Necessity of letters of administration
 at common law, 7, 193
 Necessity of probate to establish as-
 signee's title, 7, 192
 Probate only evidence of title, 7, 192
 Relation back of subsequent letters
 testamentary, 7, 193
 Suits, 7, 191
 Trespass, 7, 195
 Trover, 7, 195
Origin of office, 7, 170
Overseers, 7, 178
Paraphernalia, 7, 254
**Parol evidence to show identity of per-
 son appointed**, 7, 177, 178
Parties to a bill in equity, 6, 734

Parties to Actions
 Whether necessary or proper, 17, 650
Partition
 Whether necessary parties, 17, 723
Partnership, 17, 870
*As to provisions for continuance after
 death*, see **PARTNERSHIP**.
Accounting, 17, 1154, 1161
 Accounting for separate estate, 17,
 1278
 Action for accounting by represent-
 atives, 17, 1277
 Executor also surviving partner, 17,
 1278
 Fraud or collusion by surviving
 partner, 17, 1278
 Representative of deceased partner,
 17, 1280
 Carrying on trade, 7, 342
 Consent to representative's admission
 into firm, 17, 872
**Death of All the Partners Before Settle-
 ment**, 17, 1158
 Administrator of last survivor, 17,
 1158
 Who collects accounts, 17, 1158
 Who enforces indebtedness, 17, 1158
 Executor's accountability where busi-
 ness is continued, 17, 1137
 Executor's right to investigate state of
 partnership, 17, 908
 Good will of professional partner, 17,
 1193
 In the office, 17, 894
 Liability of executor, 17, 908
 Liability of executor of deceased part-
 ner, 7, 328
**Rights as Between Representatives and
 Surviving Partners**, 17, 1154, 1161
 Accounting, 17, 1155, 1167
 Action by surviving partner against
 administrator, 17, 1161
Administrator's Rights, 17, 1164
 Accounting, 17, 1165
 Action at law, 17, 1164
 Application of assets to debts, 17,
 1164
 Continuation of business, 17, 1165
 In general, 17, 1164
 Bad faith, 17, 1167
 Commingling of assets, 17, 1166
 Compelling debtor to pay over again,
 17, 1162
 Compelling representative to pay
 over money collected, 17, 1161
 Conclusiveness of judgment against
 surviving partner, 17, 1163
 Continuance of business, 17, 1165,
 1166
 Estate of deceased partner indebted
 to firm, 17, 1162
 Examination of books, 17, 1156
 In general, 17, 1155
 Injunction, 17, 1166, 1167
 Insolvent estate, 17, 1163
 Management and control of the estate,
 17, 1155

EXECUTORS AND ADMINISTRATORS

—*Cont'd*

Partnership—*Cont'd*

Rights as Between Representatives and Surviving Partners—*Cont'd*

Misapplication of partnership funds, 17, 1165

Misconduct, 17, 1167

Neglect or omission by surviving partner, 17, 1165

Personal action against administrator, 17, 1162

Purchase by the Survivor of Decedent's Interest, 17, 1169

Appraised valuation, 17, 1169

Conclusiveness of settlement with representatives, 17, 1169

In the absence of an agreement, 17, 1169

In the absence of statute, 17, 1169

Sale by administrator, 17, 1169

Settlement between representatives and survivors, 17, 1169

Statutory provisions, 17, 1169

Surviving partner also executor, 17, 1169, 1170

Recovery of possession of property appropriated by representative, 17, 1161

Survivor proving claim against estate, 17, 1136

Survivor's lien upon assets, 17, 1164

Tenancy in common in property, 17, 1155

Where balance is ascertained in favor of survivor, 17, 1163

Winding up, 17, 1156

Statutory Partnership Administrator, 17, 1180

Administrator of deceased partner, 17, 1180

Appointment and qualification, 17, 1180

Capacity in which administrator of deceased acts, 17, 1181

Effect of final settlement, 17, 1181

Excluding a claim, 17, 1182

Failure to qualify, 17, 1180

Final settlement as a judgment, 17, 1181

In what character surviving partner winds up, 17, 1180

Liability of surviving partner on bond, 17, 1182

Possession, 17, 1182

Precedence of surviving partner, 17, 1180

Preferences, 17, 1182

Presentation of claims to probate court for allowance, 17, 1182

Probate courts, 17, 1181

Suits, 17, 1182

The statutes, 17, 1180

Surviving Partner as Executor of Deceased Partner, 17, 1170, 1178

Account of the estate, 17, 1179

Appointment as executor, 17, 1179

Commissions, 17, 1180

Liability under his bond as representative, 17, 1179

Probate court, 17, 1179

Propriety of appointing an administrator, 17, 1178

Purchase by survivor of decedent's interest, 17, 1170

Rights of co-executors, 17, 1179

Rights of co-survivor, 17, 1179

Whether contracts as surviving partner bind the estate, 17, 1179

Surviving Partner, Whether Joined with Personal Representative, 17, 1172

Action in favor of partnership, 17, 1172

Actions upon contract, 17, 1172

Amendment, 17, 1174

Co-defendant, 17, 1176

In an action against the representatives, 17, 1178

Remedy of firm creditors, 17, 1176

What will discharge executor of deceased partner, 7, 328

Whether liability of surviving partners is joint or several, 17, 1065

Whether Representative Is a Partner, 17, 870

As to third persons, 17, 870

Beneficiaries of partners, 17, 871

Delay or failure to compel dissolution, 17, 870

Executor engaging personally in the business, 17, 871

Formal rule, 17, 870

Leaving assets as a permanent investment, 17, 870, 871

Right of representative to withdraw, 17, 870

Where executors are not personally engaged in business, 17, 870

Where representative leaves assets in business, 17, 870

Whether executors personally liable, 17, 870

Patent Law

Action by, 18, 73

Assignment, 18, 133

Paying debts out of his own funds, 7, 235

Payment

By note, 18, 184

To Whom Made, 7, 323

Absent legatee or distributee, 7, 323

Allowance to infant, 7, 324

Bequest to separate use of married women, 7, 324

Compelling husband to make settlement, 7, 324

Deceased legatee or distributee, 7, 323

Foreign guardian of infant, 7, 324

Infants, 7, 323

Insane person, 7, 325

Married women, 7, 323

Payment to husband of adultress, 7, 324

Testamentary trustee, 7, 325

Personal representative considered as trustee, 7, 295

"Personal representatives," 18, 407

Pledge of Stock by, 18, 626

One of several executors, 18, 626

Pledgee's right, 18, 626

Presumption as to executor's power, 18, 626

Representative's right to pledge, 18, 626

Stock misappropriated with knowledge of pledgee, 18, 627

Subsequent pledgee for value, 18, 627

Whether power of sale passes to, 18, 672

Powers

Power to sue, see *infra*, ACTIONS.

Acting executor, 7, 282

Admissions by, 7, 285

Assignment of mortgage, 7, 289

Chattels specifically bequeathed, 7, 289

Commission to referees, 7, 285

Compromise claims, 7, 285

Devise of land to executor to sell, 18, 890

Devise that executor shall sell, 18, 890

Disposition inconsistent with will, 7, 297

Disposition of leases, 7, 297

Execution by Executor, 18, 952

Examples, 18, 952-956

Fee in executor, 18, 952

In Alabama, 18, 954

In Illinois, 18, 954

In Indiana, 18, 955

In Iowa, 18, 954

In Kentucky, 18, 954, 955

In Maine, 18, 954

In New Jersey, 18, 955

In North Carolina, 18, 953

In Oregon, 18, 954

In Pennsylvania, 18, 955

In Utah, 18, 954

Power to sell by implication, 18, 952

Proceeds to pay debts and legacies, 18, 953

Testator directing land to be sold without designating person to sell, 18, 952

Execution by Personal Representative of Donee, 18, 963

Administrator de bonis non, 18, 964

Discretionary directions to sell, 18, 964

Examples, 18, 963-968

Express language, 18, 963

Heir of donee, 18, 963

Implied power, 18, 963

In Alabama, 18, 966

In Delaware, 18, 966

In Illinois, 18, 967

In Indiana, 18, 966

In Kentucky, 18, 966

In Massachusetts, 18, 967

In Missouri, 18, 966

In New Jersey, 18, 967

In New York, 18, 966

Mandatory directions to sell, 18, 964

Where executor has refused to qualify, 18, 966

Execution by Survivor, 18, 960

General rules, 18, 962

In general, 18, 960

Power to sell by implication, 18, 963

When no trust is created, 18, 961

Where the will does not expressly require joint exercise, 18, 963

Executor as Donee, 18, 918

Examples, 18, 919

In general, 18, 918

Executor purchasing real estate, 7, 294

Exercise of power of sale through attorney, 7, 300

Indorsement of Bills and Notes, 7, 298

General power to indorse, 7, 298

Guarantee of representative personally, 7, 299

Improper transfer, 7, 298

Necessity of indorsement for proper delivery, 7, 298

Transfer in payment of executor's individual debt, 7, 298

Leasehold specifically bequeathed, 7, 297

Notes due decedent, 7, 289

Of sale, 6, 666

Personal legatees, 7, 294

Promissory note given by administrator, 7, 299

Purchase of Assets by Executor

Through an agent, 7, 294

Whether void or voidable, 7, 294

Purchasing any part of the assets, 7, 294

Release of right of action, 7, 284

Sale under, 7, 291

Sale under judicial order, 7, 289

Submission by representatives of claims of arbitration, 7, 285

To act by attorney, 7, 300

To bind real estate by contract, 7, 299

To complete contract made by decedent, 7, 299

To dispose of the assets, 7, 288

To distrain for rent in arrear, 7, 287

To enter condition broken, 7, 287

To force locks, 7, 287

To insure, 7, 300

To mortgage, 5, 277

To mortgage assets, 7, 289

To purchase, 7, 300

To release debts, 7, 284

To rent, 5, 277

To sell assets, 7, 289

To sell real estate, 5, 268

To submit to arbitration, 7, 285

To Waive Statute of Limitations, 5, 239;

7, 282; 13, 707, 762

Authority to sell lands barred by statute of limitations, 5, 274

When bound by condition not to alien a lease, 7, 297

EXECUTORS AND ADMINISTRATORS

—*Cont'd*

Power to Submit Claims to Arbitration

For statutory submission to arbitration, see DEBTS OF DECEDENTS.

Priority of expenses of administration, 5, 251

Privileged Communications

Secondary evidence, 19, 141, 144, 146

Waiver by, 19, 150, 151

Probate, *see* PROBATE.

Duty of Executor or Custodian of the Will to Produce It for Probate, 19, 178

Compelling production, 19, 178

Contempt, 19, 178

Examples, 19, 178

In general, 19, 178

Suppression, 19, 178

Who may propound it for probate, 19, 178

Of paper binding executors, 19, 178

Of paper binding guardian, 19, 178

Production of documents, 19, 242

Proof of handwriting, 9, 274

Property held under power of appointment, 7, 248

Public Administrators

Bonds, 7, 211

Purchase by executor or administrator

at his own sale, 5; 281

Purchase of lands of the estate by executor, 1, 376

Quarantine, see infra, WIDOW'S ALLOWANCE.

Real Covenants

Liability upon, 19, 1012

Real Property, 28, 89

Ejectment, see infra, ACTIONS.

Real estate fraudulently conveyed, see infra, FRAUDULENT CONVEYANCES.

Trespass, see infra, ACTIONS.

Action against heir when estate is insolvent, 7, 272

As to working plantations, 7, 273

Confirmation of conveyance by heirs, 7, 273

Contract for the sale of land, 7, 281

Damages assessed for taking land for public purposes, 7, 280

Effect of conveyance by, 7, 271

Effect of insolvency of estate, 7, 272

Equitable Conversion, 7, 275

As to what does or does not amount to a conversion, 7, 276

As to what does or does not amount to a direction to convert, 7, 276

Directions that land shall be sold and proceeds invested in other lands, 7, 276

General rule, 7, 276

Lands purchased with trust funds, 7, 277

Where beneficiary dies before change, 7, 276

Ex officio invested with power of disposing with, 7, 271

General rule that representative takes under interest in, 7, 270

Improvements by representative, 7, 270

In Arizona, 7, 273

In Arkansas, 7, 272

In California, 7, 272

In Florida, 7, 273

In Maine, 7, 273

In Michigan, 7, 273

In Minnesota, 7, 273

In Nevada, 7, 273

In New Hampshire, 7, 273

In Vermont, 7, 273

Insurance money, 7, 281

Inventory, 7, 306

Lands foreclosed on mortgage, 7, 273

Lands purchased with trust funds, 7, 277

Lands set off on execution, 7, 273

Mortgage by executors and administrators, 7, 271

Powers to assign leasehold, 7, 297

Power to distrain for rent in arrear, 7, 287

Power to enter condition broken, 7, 287

Power to make leases, 7, 271

Power to mortgage, 7, 274

Power to Sell, 7, 274

Charging real estate with debts, 7, 275

Devise of land to executors to sell, 7, 275

Devise that executor shall sell lands, 7, 275

Implied, 7, 275

Title in heirs, 7, 275

Under order of court, 7, 272

Vests in executor by implication, 7, 275

When directed by will, 7, 272

Whether naked power or a fee simple in trust, 7, 274

Whether power to sell in the executor devolves upon the administrator with will annexed, 7, 274

Rent, 7, 329, 332, 365

Accruing after death of decedent, 7, 277

Action of debt, 7, 330

Apportionment, 7, 280

Effect of assignment of release, 7, 332

Entry of a joint executor, 7, 332

Executor's relation to, 7, 278

In arrears, 7, 279

Insolvent estate, 7, 278

Land mortgaged, 7, 278

Liability of executor for rent accrued in the lifetime of deceased, 7, 329

Liability of executor for rent accrued since death of lessee, 7, 330

Liability on covenant for repairs, 7, 332

Liability where representative wrongfully collects rents, 7, 345

Payment to administrator, 7, 278

- Personal liability of executor, 7, 330
- Power of probate court over, 7, 278
- Rent collected by personal representative, 7, 278
- Reserved to executor, 7, 279
- When due, 7, 279
- Where by term of lease, rent is to be collected by executor, 7, 278
- Where executor does not enter the leased property, 7, 331
- Where reversion is a chattel interest, 7, 278
- Without a lease, 7, 332
- Sale of real estate to pay legacies, 7, 272
- Seised of real property as trustee, 7, 271
- Statutes in various states, 7, 272
- Title to mortgage, 7, 273
- Unpaid purchase-money, 7, 281
- Recaption**
 - Entry on heir's land, 19, 1102
- Receivers**
 - Accounts of deceased receiver, 20, 195
 - Misconduct as a ground for appointment of receiver, 20, 47
 - Over Decedent's Estate, 20, 317**
 - Against executor, 20, 321
 - Bankruptcy of representative, 20, 319
 - Examples of misconduct, 20, 318
 - Foreign estates, 20, 319
 - In behalf of judgment creditors, 20, 321
 - In general, 20, 317
 - Insolvency of representative, 20, 319
 - Misconduct of executor or administrator, 20, 318
 - Pending probate proceedings, 20, 319
 - Poverty of representative, 20, 319
 - Removal of executor from the jurisdiction of the court, 20, 319
 - When receiver will be appointed, 20, 317
 - Where there is no person to protect the estate, 20, 321
 - When receiver will be appointed, 20, 51
- Recording acts, 20, 568
- Refunding bond, 13, 156
- Relation, 20, 736**
 - Act must have been for benefit of estate, 7, 195
 - Affecting status of executor de son tort, 7, 195
 - Of new and additional bond, 7, 215
 - Rendering valid acts before granting of probate by letters of administration, 7, 193, 194
- Release, 7, 258; 20, 749**
 - Examples, 20, 749, 750
 - General release of all demands, 20, 749
 - In general, 20, 749
 - Mortgage, 20, 750
 - Note made by two executors, 20, 750
 - One of two administrators, 20, 749
- Release or Forgiveness of Debt, 7, 258**
 - Appointment of Debtor**
 - In Massachusetts, 7, 258
 - In Pennsylvania, 7, 258
 - Change of the common law rule, 7, 258
 - Effect of appointment of debtor as executor or administrator, 7, 259
 - Including his own debt in inventory, 7, 258
 - In extinguishment of instrument rendering debt realized assets, 7, 259
 - Liability of sureties, 7, 258
 - Modern rule as to legacy, 7, 259
 - Showing intention of forgiveness, 7, 259
- Remedies in Courts of Probate, 7, 418**
 - Advantages of probate proceedings, 7, 419
 - Concurrent jurisdiction of equity, 7, 418
 - Equity's aid to courts of probate, 7, 419
 - Finality of decree, 7, 420
 - Generally, 7, 418
 - In England, 7, 418
 - In the United States, 7, 418
 - Petition and citation, 7, 420
 - Proceedings, 7, 420
 - Superseding bills for administration, 7, 419
 - Superseding bills for appointment of receiver, 7, 419
 - Superseding bills for distribution of shares, 7, 420
 - Superseding bills for legacies, 7, 420
 - Superseding bills in equity, 7, 419
 - Superseding bills of account, 7, 419
 - Superseding bills of discovery, 7, 419
- Remedies in Equity, 7, 394**
 - Administration suits, 7, 401
 - Affidavit in ne exeat, 7, 404
 - Allegation of character, 7, 399
 - Allegation of representative's character, 7, 404
 - Appointment of receiver, 7, 412
 - Attachment, 7, 404
 - Bill by creditor, 7, 401
 - Bill by distributee, 7, 401
 - Bill by legatee, 7, 401
 - Bill by single creditor, 7, 401
 - Bill by single legatee, 7, 401
 - Bill filed after probate or letters, 7, 398
 - Bill for Account, 7, 400**
 - Superseded by proceedings in court of probate, 7, 420
 - Bill for discovery of assets, 7, 394, 400
 - Bill for Instruction**
 - Abstract of opinion, 7, 397
 - Discretion of court, 7, 398
 - Parties, 7, 396
 - What advice will be given, 7, 397
 - Bill on behalf of complainant and all others in interest, 7, 401
 - Bill to recover property fraudulently obtained, 7, 394
 - Bill to restrain publication of letters, 7, 394
 - Creditor's bills, 7, 401

EXECUTORS AND ADMINISTRATORS

—*Cont'd*

Remedies in Equity—*Cont'd*

Decree, 7, 407

Effect of admission of assets to one claimant, 7, 408

Effect of admitting assets, 7, 407

Necessity of taking accounts, 7, 408

Of immediate payment, 7, 408

Retraction of admissions of assets, 7, 408

What amounts to an admission, 7, 408

Denying executor's character, 7, 399

For devastavit, 7, 412

Injunctions, 7, 395

Liability for equitable demands, 7, 399

Liability of trustees, 7, 399

Limitation of Actions, 7, 399, 405

Affecting lands of deceased, 7, 405

Debts charged upon land, 7, 405

Debts scheduled in insolvency, 7, 405

Distributive share, 7, 406

In case of fraud or mistake, 7, 405

Laches, 7, 405

Legacies, 7, 406

Notice in newspaper to creditors, 7, 405

Presumption of payment against legacy, 7, 406

What stops running of statute, 7, 405

Ne exeat against feme covert executrix, 7, 404

Ne exeat regno, 7, 404

Parties, 7, 398

Administrators de bonis non, 7, 403

Joinder of heirs, 7, 403

When personal representative is necessary party, 7, 402

Where there are several executors, 7, 398

Where there are several representatives, 7, 403

Who may be joined with executor, 7, 403

Payment of Money Into Court, 7, 406

Fund subject to demands, 7, 407

Knowledge upon which court acts, 7, 407

Necessity of abusing trust, 7, 407

Order by court, 7, 406

What relief will be granted for motion, 7, 407

What warrants the order, 7, 406

Pleas, 7, 399

Proceedings against real estate, 7, 400

Process, 7, 404

Production of papers, 7, 406

Relief in equity on judgment at law, 7, 394

Restraining execution against heir, 7, 396

Set-off, 7, 399

Staying proceedings, 7, 402

When personal representative is necessary party, 7, 402

Removal, see *infra*, REVOCATION OF AUTHORITY.

Removal of causes, 20, 987

Rent, 12, 998

Lease by trustee, 12, 998

Liability, 12, 737

Renunciation, 20, 1039

See *infra*, ACCEPTANCE AND RENUNCIATION.

Replevin, 20, 1052

Judgment, 20, 1118

Representative, 21, 17

Representative also guardian or testamentary trustee, 7, 236

Representative dealing with estate for his own benefit, 8, 648

Resignation and removal, see *infra*, ACCEPTANCE AND RENUNCIATION; REVOCATION OF AUTHORITY.

Res Judicata

Administrators and Heirs, 21, 142-154

Acquiescence of heirs, 21, 155

Adverse interest of administrator, 21, 155

In general, 21, 154

Judgment against heirs as defense to suit by administrator, 21, 155

Judgment as prima facie evidence of debt, 21, 155

Decedent and personal representative, 21, 157

Executor and residuary legatees, 21, 157

Privies, 21, 142

Defense by heirs at law, 21, 143

Examples, 21, 142, 144

Heirs or devisees, 21, 142

In general, 21, 142

Purchaser under license from probate court, 21, 144

With administrator de bonis non, 21, 143, 144

Successive Administrators, 21, 143, 156

Duty of administrator de bonis non, 21, 156

Executor and ancillary administrator, 21, 156

Principal and ancillary administrators, 21, 156

Sureties on official bonds, 21, 165

Title, 21, 199

Retainer, 5, 228; 7, 311; 21, 296

Abolition, 7, 313

Abolition by implication, 7, 313

Abolition by statute, 7, 313

Administrator improperly appointed, 7, 312

Against co-executor, 7, 312

By executor de son tort after obtaining administration pendente lite, 7, 188

Damages for tort, 7, 313

Debt barred by statute of limitations, 7, 312

Equitable assets, 7, 312

Executor de son tort, 7, 188, 196

Vol. I.

- From legacy to satisfy debt of legatee, 7, 316
- In costs, 7, 410
- Obligee executor, one of two joint obligors, 7, 311
- Payment into court upon creditor's suit, 7, 312
- Pleading retainer, 7, 313
- Plea of, 7, 387
- Preferences over debts of equal degrees, 7, 311
- Representative, a joint creditor, 7, 312
- Representative cestui que trust, 7, 312
- Statute requiring presentation and allowance of claims, 7, 313
- Surety personal representative of principal debtor, 7, 311
- Who may and may not retain, 7, 311
- Revocation of Authority, 21, 350**
 - Causes for Removal, 21, 362**
 - Absence, 21, 369
 - Conviction of infamous crime, 21, 368
 - Disobedience to order of court, 21, 374
 - Embezzlement, 21, 375
 - Evident unsuitableness, 21, 369
 - Executor or Administrator Becoming Disqualified, 21, 365**
 - Others having right to letters, 21, 365
 - Priority of right, 21, 365
 - Subsequent probate of will, 21, 366
 - Where one executor has priority of right, 21, 366
 - Failure to furnish annual account, 21, 373
 - Failure to inventory the estate, 21, 373
 - Fraud, 21, 364, 375
 - Habitually intemperate, 21, 367
 - Heir at law, 21, 370
 - Inability to Furnish Security, 21, 371**
 - Additional security, 21, 371
 - In general, 21, 371
 - New bond, 21, 371
 - Upon application of sureties, 21, 371
 - Indebted to the estate, 21, 370
 - Infant, 21, 369
 - In general, 21, 362
 - Insanity, 21, 367
 - Insolvency, 21, 372
 - Interest under the will, 21, 370
 - Letters Improperly Granted, 21, 363**
 - Conclusiveness of letters until revoked, 21, 363
 - Court acting without authority in the premises, 21, 363
 - Grant induced by fraud, 21, 364
 - In general, 21, 363
 - Irregularity in granting the authority, 21, 364
 - Misrepresentation, 21, 364
 - Mistake, 21, 364
 - Necessity of direct proceedings to revoke letters, 21, 363
 - Whether letters void or voidable, 21, 363
 - Marriage of administratrix or executrix, 21, 369
 - Mismanagement, 21, 374**
 - Disobeying order of court, 21, 374
 - Examples of mismanagement, 21, 374-376
 - Fraud and embezzlement, 21, 375
 - Waste, 21, 375
 - Misrepresentation, 21, 364
 - Mistake, 21, 364
 - Non-residence, 21, 368
 - Other causes than those in statute, 21, 362
 - Personal incompetence, 21, 367
 - Protracted ill health, 21, 367
 - Reasons which would have prevented appointment of representative, 21, 363
 - Refusal to do the duties of the office, 21, 373
 - Refusing to administer the estate, 21, 373
 - Violating terms of will, 21, 374
 - When unsuitableness must exist, 21, 371
- Definition, 21, 350**
- Effect of Removal, 21, 377**
 - Attachment for contempt or disobedience, 21, 377
 - Court enforcing payment, 21, 377
 - Duty to deliver over to his successor, 21, 377
 - In general, 21, 377
 - Liability after removal, 21, 378
 - Termination of his authority, 21, 377
 - Voidable grant, 21, 378
 - Will discovered subsequent to grant of administration, 21, 378
- Interest, 21, 355**
 - Mere allegation of interest alone, 21, 355
 - Mere intruders, 21, 357
 - Practice, 21, 356
 - Preliminary proof of interest, 21, 356
 - Proof of interest, 21, 356
- Jurisdiction to Remove and Revoke Letter of Administration, 21, 350**
 - Courts exercising appellate jurisdiction, 21, 350
 - Courts of equity, 21, 351
 - Examples, 21, 351
 - In general, 21, 350
 - Orphan's court, 21, 351
 - Probate court, 21, 350
- Proceedings for Removal, 21, 357**
 - By revocation of probate*, see **PROBATE**.
 - By Appeal, 21, 357**
 - Appeal for refusal to remove executor, 21, 358

EXECUTORS AND ADMINISTRATORS—*Cont'd***Revocation of Authority—Cont'd****Proceedings for Removal—Cont'd****By Appeal—Cont'd**

Appeal from refusal to revoke letters, 21, 358

At common law, 21, 357

Reversion of letters upon appeal, 21, 357

Right to administer pending appeal, 21, 359

Statutory regulations, 21, 358

Who may take appeal, 21, 357

By Proceedings in Probate Court, 21, 359

Application in writing, 21, 359

Burden of proof, 21, 361

Citation to appear, 21, 360

Conclusiveness of judgment court, 21, 362

Evidence to establish petitioner's case, 21, 361

Formal complaint, 21, 359

In general, 21, 359

Necessity of notice, 21, 360

Notice to executors and administrators, 21, 360

Office of petition, 21, 359

Proceedings in the alternative, 21, 362

Subsequent action upon judgment of court, 21, 362

Whether petition is regarded as evidence, 21, 359

Whether proceedings are original proceedings, 21, 359

Within what time petition must be filed, 21, 359

Defined by statute, 21, 357

In general, 21, 357

Notice to representative, 21, 360

Three methods, 21, 357

Removal**As "Evidently Unsuitable"**

Hostility to parties, 7, 176

Proof of person's unsuitableness, 7, 177

Statutes permitting, at discretion of court, 7, 200

Upon application of surety, 21, 353, 371

Revocation of probate and revocation of letters testamentary distinguished, 21, 379

Who May Apply for Removal, 21, 352

Application by heir, 21, 353

Creditor and debtors, 21, 353

Determined by statute, 21, 352

Devisee, 21, 353

Legatee, 21, 353

Person interested in estate, 21, 354

Persons entitled to administer, 21, 354

Suggestion of amicus curiæ, 21, 352

Surety, 21, 353, 371

Upon the court's own motion, 21, 352

Ward, 21, 353

Widow having right to administer, 21, 355

Sale, 7, 364*See infra*, INVESTMENTS; POWERS. *See* DEBTS OF DECEDENTS; JUDICIAL SALES.

As security for executor's own debt, 7, 293

At under value, 7, 350

Chose in action for less than its face value, 7, 298

Circumstances establishing collusion, 7, 293

Collusion between purchaser and executor, 7, 292

Collusive sale, 7, 350

Devastavit, 7, 350

Duty of purchaser to see that money is properly applied, 7, 291

Express warranty binding executor, 7, 296

Following assets into the hands of alienee, 7, 289

Following subject of collusive sale, 7, 293

Fraud, 7, 296

Implied warranty, 10, 111

Implied warranty of representative's capacity, 7, 296

Implied warranty of title, 7, 296

In payment of executor's own debt, 7, 932

Knowledge of representative's fraud, 7, 292

Notice, 12, 213

Of Real Estate by Personal Representative to Pay Debts, see DEBTS OF DECEDENTS.

Special judge, 12, 26

Purchase by Representative, 7, 294; 27, 209

Acquiescence, 7, 295

Avoidance by administrator de bonis non, 7, 295

Avoidance by personal representative himself, 7, 295

Avoidance by stranger, 7, 295

Bill in equity as remedy, 7, 295

General rule, 7, 294

Purchase from third party, 7, 294

Purchase of real property, 7, 294

Purchase through an agent, 7, 294

Whether void or voidable, 7, 294

Of Lands**Reserved as Homestead, 24, 268**

Purchaser's liability, 24, 268

Purchaser's right to subrogation, 24, 268

Statute making it a misdemeanor, 24, 268

Subrogation, 24, 268

Surrogate's courts, 24, 986

Statute of frauds, 8, 695

Under Judicial Order, 7, 289*See* JUDICIAL SALES.

Direction of court, 7, 289

Notice, 7, 290

- Statute requiring, 7, 289
- Subsequent approval of court, 7, 290
- Void judicial order, 7, 290
- Whether the statute is exclusive, 7, 290
- Under power, 7, 291
- Under-valuation as evidence of collusion, 7, 292
- Where executor had no right to sell, 7, 291
- Scire facias, 21, 858-860
- Set-Off**, 7, 372; 22, 312
 - See *infra*, COUNTERCLAIM.
 - Action against executors, 22, 312
 - Action by heir, 22, 315
 - Administrators, 22, 312
 - Claim against estate since death of testator, 22, 312
 - Claim must be due testator or intestate in his lifetime, 22, 314
- Counterclaim**, 22, 407
 - Pleading, 22, 425
 - Examples, 22, 312-315
 - Heirs and distributees, 22, 315
 - In actions against, 7, 388
 - In Arkansas, 22, 351
 - Insolvent estate, 22, 313
 - In suits by and against representatives, 22, 312
 - Judgments, 22, 452, 453
 - Mutuality in general, 22, 312-315
 - Personal debt set off against representative suing in his representative capacity, 22, 314
 - Recoupment in Arkansas, 22, 351
 - Suit in one capacity set off in another, 22, 314, 315
 - Suits by representative against heir, 22, 315
 - Suits in equity by executor, 7, 399
 - What claims defendant may set off against executor or administrator, 22, 312
 - What claims may be set off against representative, 22, 312
 - What claims representative may set off, 22, 312
 - Where suit is against representative personally, he cannot set off a debt due him in his representative capacity, 22, 314
 - Whether defendant must present his claim to representative, 22, 313
- Sheriff's Sales**, 22, 596
 - Deed to, 22, 690
- Specific Performance**, 22, 1064
 - Vendees, 22, 1064
 - Vendors, 22, 1064
- Statute of distribution, 7, 171
- Statute of Frauds, 7, 338; 8, 690
- Statute of Limitations**
 - Payment of debt barred by, 7, 282
- Statute of Westm. II, 7, 170, 171
- Statute 31 Edw. III, ch. 2, 7, 171
- Stock**, 23, 682
 - Distinguished from other trustees, 23, 682
- Examples, 23, 682, 683
- In general, 23, 682
- Purchasers from, 23, 682
- Streets and Sidewalks**
 - Dedication, 24, 8
 - Whether representative necessary party to proceedings to establish street, 24, 20
- Subrogation**, 24, 216, 218, 297
 - Advancement to creditors, 24, 297
 - Advancement to distributees, 24, 297
 - Advancement to legatees, 24, 297
 - Discharging liabilities for which others are chargeable, 24, 298
 - Discharging obligations out of general assets, 24, 298
 - Failure to assert rights, 24, 298
 - Lending money to administrator to pay debts of estate, 24, 295
 - Making good a fraud upon the estate, 24, 299
 - Paying debt out of order of priority, 24, 298
 - Representative paying debts out of his own means, 24, 297
 - Right to, 24, 297
 - Testimony to establish claim, 24, 298
- Substitution of personal representative in actions by and against decedent, see DEATH; PARTIES TO ACTIONS.*
- Succession Taxes**, see generally, SUCCESSION TAXES.
 - Penalties, 24, 483
- Personal Liability**, 24, 482
 - Costs, 24, 483
 - Generally, 24, 482
 - In absence of express provision, 24, 482
 - Penalty by reason of executor's neglect, 24, 483
 - Properly attested voucher, 24, 483
 - Right of executor to deduct tax before payment, 24, 483
 - Statutes making representative expressly liable, 24, 482
 - Tax on real estate, 24, 482
 - Until payment, 24, 483
 - Whether executor is subject to, 24, 468, 469
- Summons**, 24, 513
- Supersedes**, 24, 588
- Supplementary Proceedings**
 - Proceedings by, 24, 606
- Suretyship**, 24, 863
 - See *infra*, BONDS.
 - Acts not official, 24, 867
 - Collateral attack upon decree of probate court, 24, 864
 - Conclusiveness of settlement against principal, 24, 864
 - Death of representative, 24, 864
 - General liability of sureties of executors and administrators, 24, 867
 - Insolvency of representative, 24, 864
 - Liability co-extensive with that of principal, 24, 867

EXECUTORS AND ADMINISTRATORS—*Cont'd***Suretyship—Cont'd**

Liability of principal must be established by suit, 24, 863

Liability of sureties on joint bond of two or more executors, 24, 866

Misappropriation of funds, 24, 868

Personal debt of representative to estate, 24, 868

Profits made out of funds, 24, 868

Successive bonds, 24, 866

Where representative has left jurisdiction, 24, 864

Whether sureties liable for administrator's unofficial acts, 24, 867

Whether Surety Liable on Account of Real Estate, 24, 865

Conversion of realty into personalty, 24, 865, 866

Examples, 24, 865, 866

In general, 24, 865

Suspension of executor's right to sue on his own debt, 5, 196

Taxation, 25, 125

Assessment, 25, 214

Place of, 25, 154

Redemption, 25, 413

Testamentary Trustees

Distinguished from executors, 7, 179

Revocation of appointment as executors, 7, 236

Where no trustee is appointed by will, 7, 238

Time When Estate Vests, 7, 230

Before probate, 7, 231

Distinction between chattels real and personal, 7, 231

Lease by executor before probate, 7, 231

Necessity of administration, 7, 231

Title of administrator, 7, 230, 231

Title of executor, 7, 230

When statute of limitations begins to run against administrator, 7, 231

Title by Way of Trust, 7, 233

Appropriation, 7, 235

Effect of

Marriage of executrix, on property, 7, 234

Paying debts out of his own funds, 7, 235

Release of all representative's right of action, 7, 234

Transfer of all of executor's estate, 7, 234

Election, 7, 235

Estate such only as necessary to perform objects of trust, 7, 233

Execution for representative's debts, 7, 233

Executor's and administrator's hold by way of trust, 7, 233

Executor's legatee, 7, 236

Executor's right to undisposed residue, 7, 236

Funds of estate mingled with executor's, 7, 233

Merger of representative's estate with a trust estate, 7, 234

Mingling trust funds, 7, 232, 234

Purchase by executor at sheriff's sale, 7, 236

Whether property passes to representative's assignee in bankruptcy, 7, 233

Whether property passes to representative's representative, 7, 233, 234

Title of Representative Exclusive

As against creditors and legatees, 7, 232

Payment to any other than executor, 7, 232

Private arrangement between parties in interest as to settlement of estate, 7, 231

Seizure of assets under execution against decedent, 7, 232

Trespass, 7, 192, 265, 269, 271, 363; 26, 612

Trespass for Mesne Profits

Survival, 7, 334

Trover, 7, 247, 265, 269, 363; 18, 528; 26, 752

Election between assumpsit and trover, 26, 795

Survival, 7, 334

Trust Deeds and Power of Sale Mortgages**Whether They May Exercise the Power, 26, 892**

Foreclosures by advertisement, 26, 892

"Heirs and assigns," 26, 892

In general, 26, 892

"Legal representative," 26, 892

Trusts and Trustees, 27, 288

As trustees, 27, 17

Declaration of trusts, 27, 82

Of a former trustee as party to action, 27, 290

Of the beneficiary as party to action, 27, 288

Of trustee as party to action, 27, 288

Undertakings on appeal, 27, 446

Under What Execution May Be LeviedJudgment, 12, 149ⁿ**Undue Influence**

Rescission of contract, 21, 37

United States courts, 27, 588

Vendor and Purchaser, 28, 89

Examples, 28, 89, 90

In general, 28, 89

Source of power over real estate, 28, 89

Vendor's lien, 28, 168, 182

Verdict

Responsiveness of verdict to issue, 28, 293

Waste, 7, 334; 28, 902, 941

See *infra*, DEVASTAVIT.*What passes to executor and administrator, see infra*, WITH WHAT ASSETS REPRESENTATIVE IS CHARGEABLE, AND WHICH PASS TO HIM.

Vol. I.

What Property Goes to Administrators

Land directed to be converted into money, 6, 670

Whether an Executorship Passes to Executor's Representative, 7, 204

Administrator during minority, 7, 206

Administrator of an administrator, 7, 206

A married woman being executrix, 7, 205

At common law, 7, 204

On death of one or more joint executors, 7, 204

Power of an executor of an executor, 7, 205

Statutes in the United States, 7, 205

Where executor dies intestate, 7, 204

Where first executor dies before proving will, 7, 204

Whether executor of executor can execute a power, 7, 204

Whether a suitable person who has intermeddled can be compelled to take out letters, 7, 196

Who may be, 7, 171

Administrator, 7, 174

Alien administrator, 7, 175

Aliens, 1, 463; 7, 172

Cestui que trust appointed as administrator rather than trustee, 7, 174

Corporation aggregate, 7, 172

Corporation as administrator, 7, 176

Corporation sole, 7, 172

Court of equity compelling insolvent to give security, 7, 174

Death of feme covert executrix or administratrix, 7, 175

Drunkard, 7, 176

Effect of marriage of feme sole executrix, 7, 175

Equity appointing receiver where executors are insolvent, 7, 174

Executor, 7, 171

Hostile interest to estate, 7, 176

Husband compelling wife to accept trust, 7, 172

Husband's consent to married woman's being executrix, 7, 172

Illegitimates, 7, 176

Illiteracy and poverty, 7, 177

Immorality, 7, 173

Infants, 7, 173

As administrators, 7, 174

Insane persons, 7, 174, 176

Insolvency, 7, 173

Married women, 7, 172

Married woman administering as if she were feme sole, 7, 175

Married woman as administratrix, 7, 174

Non-resident administrator, 7, 175

Non-residents, 7, 172

Partnership, 7, 172

Persons "evidently unsuitable," 7, 176

Poverty, 7, 173

Probate judge or judge's son, 7, 177

Statute disqualifying infants, 7, 173

Statutory disqualifications, 7, 176

"Syndics," 7, 172

Wife acting without husband's privity estopped from pleading that she was not executrix, 7, 173

Widow's Allowance, 7, 254

General character, 7, 254

In Massachusetts, 7, 254

In New York, 7, 254

In Pennsylvania, 7, 254

In Tennessee, 7, 254

Wills

Executors as subscribing witnesses, 29, 236

With What Assets Representative Is Chargeable, and Which Pass to Him, 7, 238

See infra, REAL PROPERTY.

As to rights in action, see ABATEMENT.

Amendment of title, 7, 251

Animals, 7, 240

Animals feræ naturæ, 7, 240

Annuities, 7, 256

Ante-nuptial settlements, 7, 252

Bees, 7, 241

Bonds, 7, 257

Bushes, 7, 241

Chattel interest in incorporeal hereditaments, 7, 260

Chattels never vested in possession, 7, 239

Chattels real, 7, 260

Choses in Action, 7, 240, 257

Where action accrues after death of decedent, 7, 269

Contingent estates in chattels real, 7, 260

Contingent interests in personalty, 7, 258

Contract for the sale of land, 7, 281

Copyrights, 7, 257

Debts, 7, 240

Debts due from legatee, 7, 259

Debts due from personal representative, 7, 258

Debts due upon chattel security, 7, 244

Distinction between equitable assets and legal assets, 7, 240

Domestic animals, 7, 239

Emblements, 7, 241

As against dower of devisee, 7, 242

As against heir, 7, 242

As against reversioner or remainderman, 7, 242

Ingress and egress, 7, 244

Necessity that deceased should have sown crop, 7, 243

What the term includes, 7, 243

Estates pur autre vie, 7, 261

Estrays, 7, 241

Equitable assets, 7, 240

Executor of lessee for years, 7, 239

Executory interest in personalty, 7, 258

Fixtures, 7, 248; 8, 47

As between personal representative and heir, 7, 249, 250; 8, 47

EXECUTORS AND ADMINISTRATORS

—*Cont'd*

With What Assets Representative Is Chargeable, and Which Pass to Him

—*Cont'd*

Fixtures—*Cont'd*

As between personal representative and remainderman or reversioner, 7, 249; 8, 54

As between personal representative and tenant for life, 7, 249, 250

Gifts mortis causa, 7, 252

Good will, 7, 261

Good will of mercantile partnership, 7, 239

Government and municipal bonds, 7, 255

Growing clover and hay, 7, 243

Heirlooms, 7, 251

Land devised for payment of debts, 7, 261

Leases for years, 7, 260

Manure, 7, 250

Money received from government, 7, 239

Mortgages, 7, 257

Partnership property, 7, 245, 246

Patents, 7, 257

Pensions, 7, 256

Personal property, 7, 238

Personal property in hands of third person, 7, 247

Possibilities in chattels real, 7, 260

Post-nuptial settlements, 7, 252

Proceeds of life insurance policy, 7, 256

Profits of lease, 7, 261

Property

Held as bailee, 7, 247

Held as trustee, 7, 247

Held under a general power of appointment, 7, 248

In which deceased has joined estate, 7, 246

Pledged or mortgaged, 7, 244

Transferred during lifetime of decedent, 7, 245

Transferred in fraud of creditors, 7, 244

Rebutting presumptions as to emblements, 7, 242

Renewal of lease, 7, 261

Savings or accumulations of estate, 7, 239

Securities, 7, 255

Stock in private corporations, 7, 255

Stock in public funds, 7, 255

Tenancy from year to year, 7, 260

Timber-trees, 7, 242

Trees, 7, 241

And plants, 7, 243

Blown down, 7, 242

Where vendor dies before severance, 7, 241

Wrongfully severed, 7, 242

Unpaid purchase-money, 7, 281

Vested distributive shares, 7, 257

Vested legacies, 7, 256

What are assets come to hand, 7, 240

What Law Governs in Determining Assets, 7, 254

Assets in one place assets everywhere, 7, 254

Where domestic representative can collect and realize upon foreign assets, 7, 254

Where foreign letters and ancillary appointment are necessary, 7, 255

Wife's paraphernalia, 7, 253, 254

Wife's pin money, 7, 253

Wife's separate estate, 7, 252

Witnesses, see **WITNESSES**.

EXECUTORY INTEREST, see **REMAINDERS AND EXECUTORY INTERESTS**.

EXEMPLARY DAMAGES, 7, 448

Against a municipal corporation, 5, 23

Against corporations, 5, 23

Animals

Injuries by vicious, 1, 583

Attachment

Measure of damages, 14, 74

Bodily suffering, 7, 449

Carriers of Passengers

Carrying beyond destination, 25, 1117

Collision, 16, 356

Construction of statutes, 23, 378

Corporation ratifying the acts of its servants, 5, 24

Corporation retaining employee who was guilty of the act, 5, 24

Corporation's Liability, 4, 258

For libel, 4, 256

Criminal conversation, 9, 835; 21, 1055

Death by wrongful act, 5, 130; 7, 479; 19, 943, 944

Deceit, 5, 346

Decisions in state courts, 7, 462

Decisions of United States supreme court, 7, 460

Definition, 7, 448

Definition of damages generally, 7, 448

Determined loss, 7, 449

Discussion as to whether exemplary damages should have to be awarded, 7, 450-476

Division of damages, 7, 450

Election officer rejecting votes, 6, 309

Elevated Railroads, 23, 1081

Malicious act of servant, 23, 1089

Eminent domain, 6, 581

Executors and Administrators, 5, 23; 7, 477

Action for death, 5, 130; 7, 479; 19, 943, 944

Actio personalis moritur cum persona, 7, 477

At common law, 7, 477

Civil damage acts, 7, 479

Generally, 7, 477

Injury to estate, 7, 478

Statutory modifications, 7, 478

What is meant by personal action, 7, 477

False Imprisonment, 7, 688, 691
 Advice of counsel, 7, 692
 Bad faith, 7, 692
 In general, 7, 691
 Mitigation of damages, 7, 692
 For adulterating food, 1, 210
 For willful, reckless, or malicious torts, 5, 11
Georgia doctrine, 7, 464
Greenleaf's argument, 7, 452
Greenleaf-Sedgwick controversy, 7, 451
 In action for assault and battery, 1, 820
 In breach of promise of marriage, 2, 526
 In civil damage act, 3, 267
 In English courts, 7, 472
 In Illinois, 7, 469
 In Indiana, 7, 469
 In Iowa, 7, 465
 In Kansas, 7, 470
 In Massachusetts, 7, 470
 In New Hampshire, 7, 470
 In Virginia, 7, 475
 In West Virginia, 7, 475
 In Wisconsin, 7, 470
 Indeterminate loss, 7, 449
 Infringement of patent, 10, 754
 Instances in which exemplary damages have been allowed, 5, 22
 Instances in which exemplary damages were not allowed, 5, 21
 Instruction, examples of, 11, 268
 Kent's opinion, 7, 460
Libel and Slander, 13, 433, 434
 Corporations, 13, 448
 Logs and lumber, 13, 1048
Malicious Prosecution, 14, 72, 73
 Approval of unlawful arrest, 14, 74
 Where no actual damages have been sustained, 14, 74
 Whether allowable, 14, 73
Master and Servant, 14, 827, 917
 Examples, 14, 828
 Master's liability for acts of servant, 14, 827
 New York rule, 14, 828
 Mental suffering, 7, 449; 25, 960
 Negligence distinguished from willful tort, 16, 395
 Nuisances, 16, 987
 Parent and child, 17, 392
 Partnership, 17, 1069
 Practicability of limiting jury to compensatory damages, 7, 459
 Propriety of allowing, 7, 450
 Questions of law and fact, 5, 23
 Rejection of doctrine in some states, 5, 22
Replevin, 20, 1128
 Rarely allowed, 20, 1128
 To defendant, 20, 1128
 Vexatious and oppressive proceedings by plaintiff, 20, 1128
 Wrong or outrage, 20, 1128
 Review of authorities, 7, 460
 Second action for same offense, 5, 16
Sedgwick's argument, 7, 451
 Sedgwick's point as to giving defendant's wealth in evidence, 7, 457

Sedgwick's point as to non-interference of courts, 7, 456
 Sedgwick's point as to punishment of defendant in civil suit, 7, 458
 Sedgwick's reply, 7, 455
 Seduction, 21, 1034
Street Railways
 Expulsion of passengers, 23, 1018
 Strict construction, 23, 378
Telegraphs and Telephones, 25, 960
 Culpable negligence, 25, 865
 Examples, 25, 864-867
 Excessive damages, 25, 866
 In general, 25, 864
 Mental anguish, 25, 960
 Mere want of ordinary care, 25, 865
 Messages requesting attendance of physician, 25, 864
 When recoverable, 25, 865
 Wilful or malicious injury, 25, 865

Tickets and Fares

Carrying beyond destination, 25, 1117
 Trade-marks, 26, 517
 Trees, 26, 564
 Trespass, 26, 678
 Trover, 26, 850
 Wanton disregard for rights of others, 5, 22
 When exemplary damages may be awarded, 7, 450
 Where compensatory damages were but nominal, 5, 22
 Where tort is punishable as a crime, 5, 22
 Wilful and malicious torts, 5, 22; 16, 395

EXEMPLIFICATION, 7, 479

See AUTHENTICATION.

Act of congress as to full faith and credit of judgment of sister states, see CONFLICT OF LAWS.

As evidence, 7, 480
 As original record, 7, 480
 At common law, 7, 480
 Certification of officer, 7, 480, 481
 Conclusiveness, 7, 480
 Definition, 7, 479
 Embracing whole record, 7, 480
 Following statute strictly, 7, 482
 Foreign judgment, 12, 149f
 In United States, 7, 480
 Justice of the peace, 12, 504
 Legislative documents, 7, 481
 Letters patent, 7, 480
 Of common right, 7, 480
 Of deeds, 7, 482
 Of foreign records, 1, 1021
 Original record as evidence, 7, 481
 Pending legal proceedings, 7, 481
 Public documents, 7, 481
 Public registers, 7, 481
 Punishment of officer for refusing, 7, 480
 To prove private statutes, 7, 481
 To prove public statutes, 7, 481
 When it may be demanded, 7, 480
 Whether exclusive method of proving record, 7, 481

EXEMPT, 7, 482

EXEMPTION, 7, 482

See ATTACHMENT; EXECUTION; HOME-STEAD; INSOLVENCY; TAXATION.

From jury duty, see JURY AND JURY TRIAL.

Marshaling assets, 14, 690

Usury, 27, 945

Work horse, 29, 854

Working tools, 29, 853

EXERCISE, 7, 482

EXERCITOR, 7, 483

EXHIBITION, 7, 483

EXHIBITS, 7, 483

Affidavit, 7, 484

Ancient records, 7, 484

Bills and notes, 7, 484

Bonds, 7, 484

Copies of public records, 7, 484

Cross-examination, 7, 484

Deeds, 7, 484

Definition, 7, 483

Depositions, 5, 602

Identification, 7, 483

Letters, 7, 484

Order, 7, 484

Pleading, 7, 484

Proof at hearing, 7, 483

Receipts, 7, 484

Viva voce, 7, 484

EXISTING, 23, 327

EX OFFICIO, 7, 484

EX OFFICIO JUSTICE, see JUSTICE OF THE PEACE.

EXONERATION, 7, 485

See CONTRIBUTION; MARSHALING OF ASSETS; SUBROGATION.

Definition, 5, 205; 6, 719; 7, 485

Husband and Wife

Wife as surety for husband, 14, 587

Insolvency of principal debtor, 7, 486

Legal remedy, 7, 485

Partial payments, 7, 486

Payment of binding obligation, 7, 486

When right arises, 7, 486

Who entitled to, 5, 205

EX PARTE, 7, 487; 17, 467

EX PARTE MOTIONS, see MOTIONS.

EXPATRIATION, 3, 256; 7, 487, 517

See generally, ALIENS; CITIZENSHIP; NATURALIZATION.

At common law, 7, 487

Definition, 7, 487

Federal question, 7, 487

How effected, 7, 488

Nemo potest patriam exuere, 7, 487

Quasi expatriation, 7, 488

Re-expatriation, 7, 488

Result, 7, 488

Right of, 3, 513

Statutes, 7, 487

EXPECT, 7, 489

EXPECTANCY, 7, 489

See CATCHING BARGAINS; REMAINDERS, REVERSIONS AND EXECUTORY INTEREST.

As ground for a bill to perpetuate testimony, 2, 282

Assignments of, 1, 830; 3, 237

Estate in, 6, 896

Parent and Child

Validity of sale, 17, 336

Possibility, 18, 842

Possibility of reverter, 21, 347

Potential existence, 21, 475

Reasonable expectation, 19, 1077

Release, 20, 748, 750

Consideration, 20, 750

Validity, 20, 750

Sale

Potential existence, 21, 474

Of expectancies founded on right, 21, 475

Of mere expectancies, 21, 475

Specific performance, 22, 941

Undue influence, 27, 460

EXPENSES, 7, 489

Appertaining to goods in trade, 7, 490

Contingent, 3, 804

Incurred, 7, 490

Individual, 7, 490

Operating expenses, 17, 213

Ordinary expenses, 17, 273

EXPERT AND OPINION EVIDENCE, 7, 490

See HANDWRITING; INTERPRETER; TESTAMENTARY CAPACITY.

Disclosing confidential communications, see PRIVILEGED COMMUNICATIONS.

Abbreviations, 1, 17

Abortion, 7, 501

Blood and Blood Stains, 7, 502; 9, 721

Experts, 7, 502

Non-experts, 7, 502

Books as evidence, 7, 513

Books of witness, 7, 513

Chemist, 7, 503

Drainage, 7, 503

Effect of noxious gases, 7, 503

What chemist may be asked, 7, 503

Common understanding, 7, 493

Competency

Experts, 7, 514

Necessity of showing, 7, 514

Questions of law and fact, 7, 514

Compulsory inspection of person, 7, 507

Cross-examination of an expert, 7, 515

Definition of an expert, 7, 491

Definition of expert evidence, 7, 491

Definition of opinion evidence, 7, 490

Definition of words, 7, 513

Diseased animals, 7, 503

Disease in family of a person, 7, 502

Disposition of a person, 7, 507

Elevated Railroads, 23, 1062

As to fair value of property, 23, 1062

Examples, 23, 1062, 1065

Experts, 23, 1064

How objection taken, 23, 1065

In general, 23, 1062

Opinions as to causes of decrease in value, 23, 1062

Ordinary witnesses, 23, 1062

- Real estate agent, 23, 1064
- When admission of improper evidence may be disregarded, 23, 1064
- Where such evidence was admitted on behalf of both parties, 23, 1062, 1063
- Embezzlement, 6, 506
- Eminent Domain**, 6, 620, 621
 - Cross-examination of witnesses, 6, 621
 - Evidence of insurance agents as to fire, 6, 621
 - Value of reversion of land, 6, 622
- Experiment with guns, 7, 499
- Facts bearing upon opinion of expert, 7, 80
- Facts upon which opinion evidence can not be received, 7, 493
- Fence, 7, 509
- Fire department, 7, 510
- Fire Insurance**
 - Increase of risk, 28, 12
- Foreign law, 7, 80, 514; 8, 438
- Form of Question**, 7, 514
 - Hearing all the testimony, 7, 515
 - Hypothetical question, 7, 514
 - Where witness reads or hears the evidence, 7, 514
- General rule**, 7, 79, 492
- Health**
 - Non-expert, 7, 498
 - Of a person, 7, 496
 - Physician, 7, 497
- Highways, 7, 511
- Homicide**, 9, 718
 - Blood spots, 7, 502; 9, 721
 - Experiments, 9, 722
 - Hypothetical case, 7, 414; 9, 720
 - Insanity, 7, 503; 9, 720; 11, 163
 - Manner of homicide and means employed, 9, 718
 - Medical and scientific books and writings, 9, 722
 - Nature of the injury, 9, 718
 - Opinion formed from observation, 9, 720
 - Opinion of non-expert upon sanity, 9, 722
 - Photograph of deceased, 9, 721
 - Poisoning, 9, 719
 - Resemblances, 9, 721
 - Showing death by non-professional witness, 9, 720
 - Who are experts, 9, 718
- Hypothetical Question**, 7, 514; 9, 720
 - Malpractice, 14, 84
- Impotence, 14, 495
- Incest**, 7, 500; 10, 346
 - Physicians, 7, 500
- Infanticide**, 9, 719
- Insanity**, 7, 503; 9, 720; 11, 163
 - Admissibility of medical testimony, 7, 503
 - Catholic priest, 7, 504
 - Description of symptoms, 11, 165
 - Description of symptoms of physicians, 7, 504
 - General rule, 11, 163
 - Hypothetical case, 7, 503
- Hypothetical Questions**, 11, 163, 164
 - Conflicting facts incorporated in question, 11, 165
 - Examples of bad questions, 11, 165
 - Examples of questions held good, 11, 164
 - Form of the question, 11, 164
 - Reason for permitting, 11, 164
- Illustrations, 7, 504
- Insanity of other members of family, 11, 165
- Massachusetts rule, 7, 504
- Mental capacity, both before and after particular time, 11, 164
- New York rule, as to non-experts, 7, 507
- Non-professional witnesses, 7, 504
- Not a disclosure of confidential information, 11, 164
- Opinions of Non-Expert**
 - When received, 7, 504
 - When not received, 7, 507
- Ordinary physician, 7, 504
- Time of opinion, 7, 507
- Value of evidence, 11, 163, 165
- Weight of evidence, 11, 163
- Where witness was not attending physician, 11, 164
- Inspection of person, 7, 507
- Instructions**, 7, 516
 - Court pronouncing that expert testimony is entitled to less weight than non-professional evidence, 7, 516
 - Describing the expert testimony, 7, 516
- Intoxication, 7, 507
- Larceny, 12, 841
- Life tables, 7, 513
- Machinist, 7, 509
- Malpractice cases, 7, 500
- Matters upon which jury can form an intelligent opinion, 7, 493
- Mechanics**, 7, 510
- Medical Experts**, 7, 497; 15, 206
 - Anatomical evidence, 15, 210
 - Compensation of medical experts, 15, 210
 - Examples, 15, 206
 - In general, 15, 206
 - Qualifications, 15, 206
 - Skull and surgical instruments, 15, 210
- Medical Jurisprudence**
 - In general, 15, 206
- Nautical Experts**, 7, 508
 - Admissibility of opinion, 7, 508
 - Marine surveyor and inspector, 7, 508
 - Possibility of avoiding collision, 7, 508
 - Questions upon which opinion is admissible, 7, 508
 - Repairs, 7, 509
 - Seaworthiness, 7, 508
- Negligence, 16, 462
- Non-expert opinions which have been held admissible, 7, 496
- Non-experts, 7, 510; 9, 720
- Ordinary affairs of life, 7, 493
- Opinion as to culvert, 7, 496

EXPERT AND OPINION EVIDENCE—*Cont'd*

- Opinion as to repair of highway, 7, 496
- Opinion as to speed of train, 7, 496
- Opinion from necessity, 7, 492
- Opinions of Experts, 7, 494**
 - Opinion concerning matters specially within knowledge of witness, 7, 496
 - Opinions of non-experts, 7, 496
 - To prove age in criminal proceedings, 4, 685
 - When admissible, 7, 494
- Painters, 7, 510
- Parol evidence, 8, 438
- Patent Law, 18, 105**
 - Admissions by experts, 18, 106
 - Contradictory evidence, 18, 106
 - Court calling on its own motion, 18, 106
 - Credibility, 18, 106
 - Identity of mechanical structures, 18, 105
 - Irrelevancy, 18, 105
 - Matter of speculation, 18, 106
 - Meaning of the terms of the art, 18, 105
 - Principle, 18, 105
 - Question of fact, 18, 105
 - Question of law, 18, 105
 - Relevancy, 18, 105
 - Weight of expert evidence, 18, 105
 - What is a mechanical expert, 18, 106
 - Whether indispensable, 18, 106
- Pay of experts, 7, 516
- Photographers, 7, 510
- Physicians, 7, 497; 15, 206**
 - See infra*, INSANITY.
 - Abortion, 7, 501
 - Cause of death, 7, 499
 - Cause of disease and its remedy, 7, 502
 - Condition of human remains, 7, 501
 - Curability of disease, 7, 501
 - Direction of blow, 7, 499
 - Duration of disease, 7, 501
 - Effect of disease upon general health, 7, 501
 - Effect of gas, 7, 499
 - Health of person, 7, 497
 - Hypothetical question, 7, 498
 - Hypothetical questions stated in court, 7, 497
 - Incest, 7, 500
 - Instrument likely to produce death, 7, 498
- Malpractice Cases, 7, 500**
 - Example of questions that have been held admissible and inadmissible, 7, 500
 - General skill of defendant, 7, 500
 - Opinion as to proper treatment, 7, 500
 - Reputation of defendant, 7, 500
 - Nature and symptoms of disease, 7, 501
 - Opinion as to how a wound was inflicted, 7, 498
- Opinion as to what produces symptoms, 7, 497
- Opinions as to effects of wounds, 7, 498
- Paralysis, 7, 501
- Permanency of loss of vision, 7, 500
- Pregnancy, 7, 501
- Rape, 7, 500
- Sex of person, 7, 501
- Statement of patient, 7, 497
- Suffocation, 7, 501
- What he must take into consideration in forming his opinion, 7, 497
- Whether a wound endangered life, 7, 501
- Poison and poisoning, 7, 502; 18, 739
- Pregnancy, 7, 501
- Production of Documents**
 - Private documents, 19, 248
- Questions of Law and Fact, 19, 628**
 - Skill of expert, 7, 80
- Railroad experts, 7, 509
- Rape, 7, 500**
 - Actual penetration, 7, 500
 - Inflammation of the sexual organs, 7, 500
 - Physical condition of prosecutrix, 7, 500
- Science or art, 7, 80
- Speed of train, 7, 509
- Street railways, 16, 463
- Surveyors, 7, 510
- Technical words, 7, 513
- Trade-Marks, 26, 494**
 - Examples, 26, 494-497
 - In general, 26, 494
 - Whether experts may be called, 26, 494
- Usages and Customs, 27, 736**
 - Examples, 27, 736-738
 - In general, 27, 736
 - Whether opinion will constitute a usage, 27, 736, 737
 - Whether provable by opinion, 27, 736
- Value, 7, 512
- Veterinary surgeon, 7, 503
- Voluminous facts, 7, 494
- Wages, 14, 786
- Warranty, 28, 854
- Weight of evidence for jury, 7, 516
- What are opinions, 7, 492
- Whether binding upon jury, 7, 516
- Whether or not disease is contagious, 7, 502
- Witness drawing inferences, 7, 492
- Words, 7, 503
- Wounds and Injuries, 7, 498**
 - Non-expert, 7, 499
 - Physician, 7, 498
- EXPERTS, 7, 517**
 - See* EXPERT AND OPINION EVIDENCE; HANDWRITING.
- Fees**
 - When taxable as costs, 4, 328
- Refreshing memory, 7, 111**

EXPLOSIONS, 7, 517**Blasting, 7, 521**

Damages in constructing railroad, 7, 522

Failure to comply with city ordinances, 7, 522

Independent contractor, 7, 522

Injury to adjacent property, 7, 522

Liability, 7, 521

Master's liability to servant, 7, 519

Notice, 7, 522

Nuisances, 16, 957

Who may bring action for injury, 7, 522

Boiler, 7, 520

Carriers, 7, 518

Caused by fires, 7, 995

City ordinances, 7, 518

Firearms, 7, 523

Degree of care in handling, 7, 523

Discharge of gun from steamer, 7, 224

Liability for accidental discharge, 7, 524

Liability of officers commanding militia, 7, 524

Fire Insurance, 7, 995, 1041; 11, 289

Explosion caused by fire, 7, 1041

Explosion in distant building causing fire, 7, 1041

Explosion of steam boiler, 7, 1041

Fire caused by explosion, 7, 1041

Loss caused by explosion alone, 7, 1041

Loss partly by explosion and partly by fire, 7, 995

Provision for liability from explosion, 7, 1041

Fireworks, 7, 524; 8, 20

Contributory negligence, 7, 524

Liability, 7, 524

Gas, 8, 1268

Gas companies, 7, 520; 8, 1274, 1275

Gas Light, 7, 520; 8, 1274, 1275

Care to be exercised by company, 7, 520

Contributory negligence of party injured by gas, 7, 521

Liability for workman's negligence, 7, 521

Liability of gas company, 7, 520

Liability of municipality, 7, 521

General rules as to liability for, 7, 517

Gunpowder, 7, 523

Care required in transportation, 7, 523

Indictable as a nuisance, 7, 523

Kept as a nuisance, 7, 523

Nuisance, 16, 928

Sale to child, 7, 523

Master's liability to servant, 7, 519**Municipal Corporations**

Keeping gunpowder, 15, 1190

Nuisances, 16, 955

Police power, 18, 756

Sale of explosives, 7, 518

Steam Boilers, 7, 522

Liability of manufacturer, 7, 523

Liability of owner to adjacent proprietor, 7, 522

Negligence, 7, 523

Who are Officers, 7, 526

At common law, 7, 526

EXPORT, 7, 525**EXPORTER**

Merchant, 7, 525

EXPORTS, see TAXATION.

EXPOSE, 7, 532

Exposed places, 7, 533

Exposed to danger, 7, 533

Exposed to view, 7, 533

EX POST FACTO LAWS, 7, 525

Altering situation of defendant to his disadvantage, 7, 527

Change in manner of punishment, 7, 529

Change of procedure, 7, 531

Changes prescribed by statute, subsequent to commission of offense, 4, 725

Classes of, 7, 526

Classes of laws not ex post facto, 7, 529

Constitutionality, 3, 736; 4, 722; 7, 532

Constitutional provision forbidding, 3, 736; 7, 532

Crime barred by statute of limitations, 7, 528

Cumulative sentences, 7, 530

Definition, 3, 737; 7, 525, 604

Disqualification from office, 19, 570

Divorce for past offenses, 7, 529

Exceptional cases, 7, 528

Fixing punishment, 7, 531

Increasing punishment on account of past offenses, 7, 530

Intoxicating liquors, 11, 593

Law not declaring forbidden act criminal, 7, 529

Law prohibiting sale of intoxicating liquors, 7, 529

Laws altering rules of evidence, 7, 527

Laws imposing several penalties cannot be applied retrospectively, 4, 726

Laws inflicting greater punishment, 7, 527

Laws that aggravate a crime, 7, 527

Making an act punishable which before was innocent, 7, 526

Mitigation of punishment, 3, 737; 7, 530

New court, 7, 528

Power to enact, 7, 532

Prison discipline, 7, 530

Provisions of federal constitution, 3, 736; 7, 532

Punishment of second offenses, 3, 738

Right to have jury fix penalty, 3, 738

Saving clause, 7, 532

Slavery, 7, 528

Statute allowing amendment pending indictments, 7, 531

Statute giving state seven peremptory challenges of jurors, 7, 531

Statute reducing peremptory challenges allowed prisoner, 7, 531

Substitution of a different punishment, 3, 737

Test oaths, 3, 738; 7, 526

EX POST FACTO LAWS—*Cont'd*

To what criminal proceedings term relates, 3, 736

Treaties, 7, 604

What acts are ex post facto, 3, 737

What are, 4, 722

EXPOSURE, see VOLUNTARY EXPOSURE.**EXPOSURE OF PERSON, 7, 534**

See generally, OBSCENITY.

See LEWD AND LASCIVIOUS COHABITATION AND CONDUCT.

At common law, 7, 534

Definition, 7, 534

Exhibit, 7, 483

Exposure in public conveyances, 7, 535

Exposure in urinal, 7, 534

Exposure of limbs, 7, 536

Exposure to one person, 7, 536, 537

Exposure to the waist, 7, 536

Extent of exposure, 7, 536

How many must be present, 7, 535

Indictment, 7, 537

Allegation of criminal intent, 7, 537

Averments, 7, 537

Effect of statutory indictment good at common law, 7, 537

Language of statute, 7, 537

Intent, 7, 536

Libel and slander, 13, 339, 351

One person present, 7, 536, 537

Place of public resort, 7, 534

"Public indecency," 7, 534

Public place, 7, 534, 537

Statutory offense, 7, 537

What is a public place, 7, 534

EXPRESS, 7, 538

Business, 7, 539

Corporation, 7, 538

Expressed in title, 7, 539

Trust, 7, 538

Understanding, 7, 539

EXPRESS COMPANIES, 7, 539

See FORWARDING MERCHANTS.

See generally, CARRIERS OF GOODS.

See TRANSFER COMPANIES.

Action

For damages, 7, 574

In tort, 7, 574

On contract, 7, 574

Actions By and Against, 7, 573

In general, 7, 573

Party plaintiff, 7, 573

Agents and Messengers, 7, 552

As agent of consignee, 7, 552

Liability of agent, 7, 552

Railroad company, 7, 552

Whether a common carrier, 7, 552

Whether fellow servant is, on train, 7, 552

Animals, 7, 555

Answer, 7, 575

Are common carriers, 2, 782

Bill of Lading, 7, 557

See generally, BILL OF LADING.

As a contract, 7, 557

As evidence of transaction, 7, 557

As receipt, 7, 557

As title to goods, 7, 558

By parol, 7, 557

Definition, 7, 557

Notice of conditions therein, 7, 557

Transfer, 7, 558

Birds, 7, 555

Burden of Proof, 7, 577

Action for goods abstracted, 7, 577

Action for negligence, 7, 577

Deviation and loss of consignment, 7, 577

C. O. D., 7, 570

See C. O. D.

Definition, 7, 570

Evidence to explain, 7, 576

Judicial notice, 7, 571

When consignee refuses to take goods, 7, 571

Collections, 7, 571

Compensation, 7, 568

Connecting carriers, 7, 569

Duty to receive goods, 7, 568

Lien, 7, 569

Paid in advance, 7, 569

Paid on delivery, 7, 569

Rate of, 7, 569

What charges may be made, 7, 569

Connecting Lines

Accepting price for transportation for whole route, 7, 572

Compensation, 7, 569

Contract for entire route, 7, 572

Contract limiting liability, 7, 573

Delivering goods to connecting carrier, 7, 549

Evidence of contract over, 7, 576

How special contract is proved, 7, 572

Liability of first company, 7, 572

Liability of last company, 7, 572

Lien, 7, 570

Limiting liability, 7, 549

Refusal of connecting carrier to receive, 7, 549

Storing in warehouse, 7, 549

When partners, 7, 572

Consignee

Definition, 7, 555

Consignment, 7, 554

Definition, 7, 554

What may be consigned, 7, 554

Consignor, 7, 553

Definition, 7, 553

Directions of Consignor, 7, 556

As to route, 7, 556

General directions, 7, 556

Special directions, 7, 556

Duty to deal fairly, 7, 553

Conversion, 7, 574**Corporations, 7, 539**

Definition, 7, 541

Delivery, 7, 567

At what time should be made, 7, 568

Care to be exercised, 7, 567

Consignee refusing goods, 7, 545

Consignment taken from company by due process of law, 7, 545

Consignor not to be found, 7, 544

Delay caused by consignee, 7, 556
 Depositing goods for owner, 7, 544
 Duty to deliver, 7, 544
 Money packages, 7, 567
 Personal, 7, 555
 Place of, 7, 544, 567
 Stoppage as excuse for failure, 7, 545
 Time and place, 7, 555, 556
 To real owner, 7, 545
 What will excuse, 7, 545
 When consignee cannot be found, 7, 545
 When goods are addressed to two persons, 7, 567
 When to be made, 7, 544
 Where consignee cannot be found, 7, 556
 Where delivery should be made, 7, 568
 Wrong person, 7, 567
 Discrimination by railroad, 8, 604
Duties, 7, 543
Deliver, see infra, DELIVERY.
 Perishable property, 7, 543
 To carry goods, 7, 544
 To furnish adequate facilities, 7, 543
 To receive goods, 7, 543, 554
 Upon refusal by consignee to receive goods, 7, 569
 When consignee cannot be found, 7, 545
 When consignee refuses goods, 7, 545
 When goods are perishable, 7, 545
 When unforeseen delay or damage occurs, 7, 546
Evidence
 Failure to deliver, 7, 578
 Loss of money, 7, 577
 Of contract over connecting lines, 7, 576
 Receipt, 7, 577
 To explain meaning of letters C. O. D., 7, 576
 History, 7, 541
Injunctions
 Compelling railroad to furnish express facilities, 7, 574
 Discrimination by railroads, 7, 573
 Interstate commerce, 7, 580
 Intoxicating liquors, 7, 579
 Instructions, 7, 578
 Interstate commerce act, 11, 559
 Intoxicating liquors, 11, 741
Judgments, 7, 578
 Definition, 7, 578
 For coin lost, 7, 578
 Merchandise, 7, 578
Liability, 7, 546
See infra, DELIVERY.
 Act of God, 7, 547, 562
As Common Carrier
 Use of the word "forward," 8, 580
 As insurer, 7, 546
 As warehouseman, 7, 545
Connecting lines, see infra, CONNECTING LINES.
I.-D.—34

Contracts Limiting

Refusing to accept goods where consignor refuses to sign contract, 7, 544
 Goods left with company until further orders, 7, 547
 Implied agreement to transport in reasonable time, 7, 547
Limiting, 7, 548
See infra, LIMITING LIABILITY.
 Connecting lines, 7, 573
Statutes, 7, 579
 In England, 7, 579
 In Illinois, 7, 579
 In Iowa, 7, 579
 In Michigan, 7, 579
 In Mississippi, 7, 579
 In Texas, 7, 579
 Money packages, 7, 546
 Public enemies, 7, 547
 Reasonable time, 7, 547
 Safe and speedy transportation, 7, 547
 Sending goods in care of company, 7, 547
 Stolen property, 7, 580
 Unreasonable delay, 7, 547
 When begins, 7, 548
 When ends, 7, 548
 Where place of delivery is beyond the end of its route, 7, 546
License, 13, 523
 Constitutionality, 13, 523
Lien, 7, 570
 Connecting carrier, 7, 570
 Priority, 7, 570
 Sale of goods, 7, 570
 Stoppage in transitu, 7, 570
 Where goods are received from a tortious holder, 7, 570
 Whether delivery of part of goods is a waiver, 7, 570
Limiting Their Liability, 7, 548
See infra, LIABILITY.
 Assent of consignor, 7, 551
 By custom, 7, 551
 By express contract, 7, 548
 By fraud of consignor, 7, 551
 By notice, 7, 550
 By receipt, 7, 551
 English statute as to notice, 7, 550
 Evidence of assent, 7, 551
 For advertisement in newspaper, 7, 550
 General notice, 7, 550
 Necessity of writing, 7, 557
Negligence, 7, 549
 Generally, 7, 549
 In New York, 7, 548, 550
 In Pennsylvania, 7, 548
 In United States, 7, 550
 In West Virginia, 7, 550
 Notice printed upon bill of lading, 7, 551
 Notice printed upon receipts, 7, 551
 On connecting line, 7, 549
 Posting placards, 7, 551
 Rule in England, 7, 548

EXPRESS COMPANIES—Cont'd**Limiting Their Liability—Cont'd**

- Rule in federal courts, 7, 548
- Stoppage in transitu as excuse for non-delivery, 7, 558
- Taking receipt or bill of lading, 7, 551
- Value of goods fixed by bill of lading, 7, 549

Loss of Consignment, 7, 560

- Act of God, 7, 547, 562
- As insurer, 7, 560
- By Fire, 7, 560**
 - Presumption, 7, 576
- By legal process, 7, 563
- By negligence, 7, 560
- By public enemy, 7, 562
- Liability at warehouse, 7, 561
- Limitation as to value, 7, 560
- Negligence of railroad company, 7, 560
- Presumption of negligence, 7, 560, 576
- Riots or strikes, 7, 563
- Thieves or robbers, 7, 563
- Validity of limitation clause, 7, 560
- What is meant by act of God, 7, 562
- When transit begins, 7, 561
- When transit ends, 7, 561

Measure of Damages, 7, 564

- Difference in value, 7, 565
- Failure to deliver, 7, 565
- For damaged goods, 7, 566
- For delay in transit, 7, 565
- For failure to carry, 7, 564
- For goods decayed, 7, 565
- For punitive damages, 7, 566
- General rule for goods lost, 7, 566
- In general, 7, 564
- Market value of goods, 7, 564
- Misdelivery, 7, 564
- When goods are wholly lost, 7, 566

Municipal license, 7, 581**Pleadings, 7, 575**

- Forms, 7, 575
- Limitation of liability, 7, 575
- Necessary allegations, 7, 575
- Petition or complaint, 7, 575

Postal laws, 7, 579**Preference to perishable goods, 7, 545****Presumption, 7, 576**

- Consignee as owner, 7, 576
- Failure to deliver, 7, 578
- Fire, 7, 576
- Of negligence, 7, 576

Railroads, 7, 542; 8, 604; 19, 824

- Right to act as express company, 7, 542

Reasonable care, 7, 560**Relation to railroad companies, 7, 542; 8, 929****Replevin**

- By company for goods sent C. O. D., 7, 575

Right of railroad to charge for separate parcels when shipped in one large box, 7, 543**Right to do business upon railroads, 7, 542****Rights as to other carriers, 7, 543****Rights of, 7, 542****Statutes, 7, 579****Stolen property, 7, 580****Stoppage in Transitu, 7, 559***See STOPPAGE IN TRANSITU.***By whom it can be exercised, 7, 559****Duty of company when it is exercised, 7, 560****How exercised, 7, 559****When it ceases, 7, 560****When it may be exercised, 7, 559****Sunday laws, 7, 579****Taxation, 7, 582****Use of word "forward" by carriers, 8, 581****Value of Consignment, 7, 551, 553***See infra*, MEASURE OF DAMAGES.**Carrier's duty, 7, 553****Misleading company, 7, 551****Misstatement, 7, 553****Stating value, 7, 551****What amounts to misstatement, 7, 553****When They May Refuse to Receive Goods, 7, 544****Carriage full, 7, 544****Consent to contract limiting common law liability, 7, 544****Dangerous articles, 7, 544****Duty to receive goods in general, 7, 543****Perishable goods, 7, 544****Unusual pressure of business, 7, 544****EXPRESSIO UNUS EST EXCLUSIO ALTERIUS****Statutes, 23, 446****Cases mentioned by way of examples, 23, 447****Criminal statutes, 23, 447****Examples, 23, 446, 447****Exclusion of one subject or thing, 23, 447****Intention of legislature, 23, 447****Limitations, 23, 446****EXPRESSLY, 7, 582****Expressly provided, 7, 582****Expressly withheld, 7, 582****EXPULSION, see AMOTION.****EXPULSION OF PASSENGERS, see CARRIERS OF PASSENGERS.****EXPULSION OF PASSENGERS FROM STREET RAILWAYS, see STREET RAILWAYS.****EXTEND, 7, 583****EXTENSIONS****Exemptions****Innkeeper's lien, 11, 39****EXTENT, 7, 584****Account stated, opening for, 125****EXTERNAL****External parts, 7, 584****External to a company, 7, 584****EXTORTION****At common law, 7, 585****Color of office, 7, 558****Compensation for former trouble, 7, 596**

Construction of statutes, 7, 586
 Definition, 7, 585
 Effect of usage, 7, 596
Evidence, 7, 594
 Conclusiveness of return, 7, 594
 In general, 7, 594
 Sufficiency of proof, 7, 595
Indictment, 7, 593
Intent, 7, 589
 Common law offenses, 7, 589
 Error in computation, 7, 590
 Evidence of usage, 7, 590
 Presumed knowledge of law, 7, 590
 Question for jury, 7, 590
Justice of the peace, 12, 509, 513
Penalties, 7, 595
 By whom recoverable, 7, 595
 Compensation for former trouble, 7, 596
 Declaration, 7, 597
 Defenses, 7, 606
 Effect of usage, 7, 596
 Elections and declarations, 7, 597
 Fee collected as due to a predecessor in office, 7, 597
 Fees paid in representative capacity, 7, 595
Pensions, 7, 593; 18, 292
Punishment, 7, 595
 Deputation of officer, 7, 595
 Fine, 7, 595
 Imprisonment, 7, 595
Statutory offense, 7, 585
Suit to Recover Illegal Exaction, 7, 597
 Over-charge by deputy, 7, 597
 What is a voluntary payment, 7, 597
Threats, 25, 1065
 Debtor and creditor, 25, 1065
 Indictment at common law, 25, 1065
 In general, 25, 1065
 Pecuniary advantages, 25, 1065
 Robbery, 25, 1065
 Statutes, 25, 1066
 To accuse one of an offense, 25, 1065
 What constitutes the offense, 25, 1065
What Constitutes Offense, 7, 590
 At Common Law, 7, 590
 Charges for extra trouble, 7, 591
 Excess of statutory fee, 7, 590
 In England, 7, 590
 Examples of what has and has not been held extortion, 7, 592
 Under pension laws, 7, 593; 18, 292
 Under Statutes, 7, 590
 Necessity of performance of some service, 7, 592
 Service for which fee is provided by statute, 7, 592
 Whether crime can be committed by others than officers, 7, 585
 Whether statute supersedes common law, 7, 585
Who are Officers
 See generally, PUBLIC OFFICERS
 Attorneys, 7, 757
 Constable, 7, 587
 Federal officers, 7, 586

Insuring, 7, 587
 Jailer, 7, 587
 Judicial officers, 7, 586
 Municipal officers, 7, 586
 Officer de facto, 7, 587
 Persons receiving fees under statutes, 7, 587
 Register of land, 7, 586
 Sheriffs, 7, 586
EXTRADITION, 7, 598
See generally, INTERNATIONAL LAW; TREATIES.
 Constitutional provision as to fugitives from justice, 3, 707
Habeas corpus, *see infra*, INTERNATIONAL; INTERSTATE.
International, 7, 599
 Adjournment
 To procure testimony, 7, 627
 Applies to subjects as well as foreigners, 7, 616
 Arrest procured by fraud, 9, 249
 Arrest procured forcibly, 9, 249
Can be Tried Only for Offense Named in Extradition Proceedings, 7, 600, 617, 650
 English extradition act, authority, 7, 619
 Federal court decisions, 7, 618
 State court decisions, 7, 618
 United States supreme court decisions, 7, 618
 When exemption does not exist, 7, 619
 Certification of commissioners of a case to secretary of state, 7, 628
 Committed for a reasonable time, 7, 628
Complaint, 7, 623
 Amendment of complaint, 7, 624
 Authority to make complaint bearing upon its face, 7, 624
 By private individual, 7, 624
 By whom complaint should be made, 7, 624
 Necessity of, 7, 623
 Necessity of personal knowledge of facts alleged, 7, 624
 Substance of crime, 7, 624
 Sufficiency of, 7, 624
 Constitutionality of treaties, 7, 602
Constitutional Limitation
 Due process of law, 7, 603
 Searches and ousters, 7, 603
 Courts authorized to issue warrants of arrest, 7, 623
 Crime committed before treaty, 7, 616
 Defined, 7, 599
 Definition of treaties, 7, 600
 Delivery must be made within two calendar months, 7, 629
Demand, 7, 621
 Necessity of, 7, 621
 Upon the president, 7, 621
 Due process of law as applied to treaties, 7, 603

EXTRADITION—Cont'd**International—Cont'd****Evidence, 7, 625**

Accused not entitled to be confronted with witnesses, 7, 626

Accused testifying upon his own behalf, 7, 628

Authentication of documentary proof, 7, 626

Certificate, 7, 625

Deposition, 7, 625

For the accused, 7, 628

Hearing may be adjourned to procure testimony, 7, 627

Oral testimony, 7, 625

Probable cause, 7, 625

Proof sufficient to convict not required, 7, 625

What necessary to justify committal, 7, 625

Exemption of subjects from effective treaty, 7, 617

Extradition Papers, 9, 250

Authentication of documents, 9, 251

Sufficiency of complaint, 9, 250

Sufficiency of warrant, 9, 251

Habeas Corpus, 9, 249

Adjournment, 7, 627, 628

Arrest procured by fraud, 9, 249

Arrest procured by trick, 9, 249

Authentication, 9, 250

Concurrent jurisdiction of federal and state courts, 9, 252

Extradition for one crime; trial for another, 9, 249

Extradition papers, 9, 250

Illegal extradition, 9, 249

Jurisdiction of district court of United States, 9, 250

Jurisdiction of state and federal courts, 7, 620

Necessity of president's mandate, 9, 249

President's discretion, 9, 249

Prisoner forcibly brought within jurisdiction, 9, 249

Reviewing decisions of United States commissioners, 9, 250

Review of commissioner's proceedings, 7, 628

Review of president's action, 7, 628, 630

Sufficiency, 9, 250

Sufficiency of complaint, 9, 250

Sufficiency of warrant, 9, 251

What will be considered upon, 7, 629

Whether court will look behind president's warrant, 9, 249

In absence of treaty, stipulations, 7, 600

In Austria, 7, 608

In Bavaria, 7, 607

In Belgium, 7, 615

In Dominican Republic, 6, 609

In Ecuador, 7, 612

In France, 7, 605

In Great Britain, 7, 605

In Hanover, 7, 607

In Hawaiian Islands, 7, 606

In Hayti, 7, 609

In Italy, 7, 609

In Japan, 7, 615

In Mecklenburg-Schwerin, 7, 607

In Mecklenburg-Strelitz, 7, 607

In Mexico, 7, 608

In Netherlands, 7, 615

In Nicaragua, 7, 611

In Oldenburg, 7, 607

In Orange Free State, 7, 612

In Ottoman empire, 7, 613

In Peru, 7, 611

In Prussia, 7, 606

In Salvador, 7, 610

In Schaumburg-Lippe, 7, 607

In Spain, 7, 613

In Swiss Confederation, 7, 606

In Two Sicilies, 7, 607

In Venezuela, 7, 608

In Wurtemberg, 7, 608

Jurisdiction

Federal court, 7, 621

Of supreme court of United States, 9, 250

Of United States district and circuit courts, 9, 250

State court, 7, 620

Limited and defined by treaties, 7, 600

Limited to treaties, 7, 599

Necessity of president's mandate, 9, 249

Necessity of, to confer jurisdiction, 7, 622

Political Offenses, 7, 617

Special exemption by treaty, 7, 617

When fugitive is in custody for another offense, 7, 617

Where no special exemption is made, 7, 617

President's discretion, 9, 249

President's mandate, 7, 622

Review by Habeas Corpus, 7, 628, 9, 249

Review power limited to questions of law, 7, 628

Statutes by congress in aid of treaty, 7, 603

Surrender as a matter of comity, 7, 601

Treaties entered into by the United States, 7, 605

Treaty Power

Constitutional limitation upon, 7, 602

Vested in the president and senate, 7, 603

Warrants

Averment of authority, 7, 623

Courts authorized to grant, 7, 623

Executive discretion, 7, 629

Executive issues final warrant, 7, 629

Issuance of second warrant, 7, 627

Of extradition conclusive, 9, 249

Sheriff's authority appearing upon the face, 7, 623

- Sufficiency of, 9, 251
- When second warrant may be issued, 7, 627
- Where accused discharged for want of sufficient evidence, 7, 627
- What authority justifies the issue of the mandate, 7, 623
- When executive issues, 7, 622
- When exemption from trial for other offenses does not exist, 7, 619
- When offenses not enumerated by treaty, 7, 617
- When Tried Only for Offense Named in Extradition Proceedings**, 7, 619
 - Concurrent jurisdiction of federal and state courts, 7, 620
 - Jurisdiction of state courts where prisoner is held by United States tribunal, 7, 620
 - Supremacy of federal court, 7, 621
- Interstate**, 7, 630
 - Absence of court seal, 7, 638
 - Act of congress, 7, 631
 - Affidavits Charging Fugitives**, 7, 637
 - Allegation of flight, 7, 640
 - Course of court upon defective affidavit, 7, 640
 - Distinctly charge the offense, 7, 640
 - Sufficiency, 7, 640
 - Affidavits of attorneys, 7, 641
 - Affidavits, sufficiency of, 9, 254
 - Arrest by Private Person**, 7, 643
 - Criminal prosecution for making arrest, 7, 644
 - Liability for making arrest, 7, 644
 - When fugitive may be arrested, 7, 643
 - Authentication of indictment, 7, 637
 - Authority of courts in certain cases, 7, 651
- Bail**, 7, 643
 - Liability upon bond where a person out upon bail is surrendered to another state, 7, 643
- Certificate of authentication, 7, 638
- Cherokee nation, 7, 637
- Colonial compacts to deliver fugitives, 7, 630
- Complaint in writing, 7, 735
- Concurrent jurisdiction of federal and state courts, 7, 647
- Constitutionality of act of congress as applies to territories, 7, 633
- Constitutional provision, 7, 631
- Copy of information, 7, 637
- Costs and expenses to be paid by state making the demand, 7, 633
- "Crime," 7, 644
- Decoying fugitives, 7, 653
- Definition, 7, 631
- Delivery by the demanding state after trial to another state, 7, 642
- Demand**
 - Arrest before, 7, 635
 - By executive, 7, 631
 - Constitutionality of statutes providing for arrest before demand, 7, 635
 - Discretion of the executive, 7, 632
 - Necessity of, 7, 635
 - Statutes providing for arrest before demand, 7, 635
 - When executive authorized to make, 7, 632
- Discretion of executives, 7, 636
- Discretion of executives in causing arrest and delivery, 7, 636
- Executive discretion reviewable, 7, 655
- Extraditable Offenses**, 7, 644
 - Constitutional provisions, 7, 644
 - Meaning of the term crime, 7, 644
 - Misdemeanor, 7, 644
 - Statutory crime, 7, 644
 - "Treason, felony, or other crime," 7, 644
- Extradition for one crime, trial for another, 9, 252
- "Flee from justice," 8, 66
- Forcible abduction, 7, 651
- Governor of a territory bound to deliver fugitives, 7, 636
- Habeas Corpus**, 9, 252
 - Defense of accused, 7, 647
 - Due Process of Law**, 7, 654
 - Authority of the federal courts, 7, 654
 - Discharge after trial, 7, 655
 - Discharge before trial, 7, 655
 - Trial under unconstitutional law, 7, 655
 - What is due process of law, 7, 654
 - Where the proceedings have been regular, 7, 654
- Executive discretion reviewable, 7, 655
- Extradition for one crime, trial for another, 7, 648; 9, 252
- Extradition Papers**, 9, 254
 - Authentication, 9, 254
 - Charge of crime, 9, 256
 - Conclusiveness of governor's finding that one is a fugitive from justice, 9, 256
 - Miscellaneous matters, 9, 256
 - Sufficiency, 9, 254
 - Sufficiency of executive warrant, 9, 255
 - Sufficiency of indictments, 9, 255
 - Warrants, 9, 254
- Forcible abduction, 7, 651
- Fraudulent exposition under color of federal laws, 7, 651
- Fugitive from justice, 9, 252
- Guilt or innocence not inquired into, 7, 647
- Illegal extradition, 9, 252
- Inquiry into circumstances for which accused was brought into jurisdiction, 7, 649, 651
- Inquiry into guilt or innocence, 9, 254
- Inquiry into legality of arrest, 9, 253
- Judicial review of executive decisions, 9, 253

EXTRADITION—*Cont'd***Interstate**—*Cont'd***Habeas Corpus**—*Cont'd*

- Jurisdiction, 9, 252
- Jurisdiction of federal and state courts, 7, 647; 9, 252
- Jurisdiction of federal courts, 7, 653; 9, 252
- Miscellaneous questions of practice, 9, 256
- Necessity of warrant by local magistrate, 9, 253
- Question as to whether fugitive is charged with crime, 7, 639
- Revocation of executive warrant by governor, 7, 642
- Right of alleged fugitive to, 7, 656
- Showing commission of crime by parol evidence, 7, 648
- Validity of arrest, 9, 253
- Where jurisdiction of United States courts may be invoked, 7, 654

Identity, 9, 255**Indictment**, 9, 255

- Copy of Indictment**, 7, 637, 639
 - Authentication, 7, 637
 - Charging definite offense, 7, 640
 - Contradiction by parol, 7, 641
 - Necessity of, 7, 641
 - Sufficiency, 7, 639
 - Technical defects, 7, 639
 - Whether it need accompany the warrant, 7, 641
- Necessity of, 7, 637
- Sufficiency, 9, 255
- Whether copy must accompany warrant, 9, 256

In District of Columbia, 7, 634**Inquiry into circumstances for which accused was brought into jurisdiction**, 7, 649, 651**Postponement of surrender**, 7, 643**Receiving Agent**, 7, 633

- Agent of the demanding state, 7, 634
- Appointment, 7, 633
- Warrant issued to, 7, 634
- Regulation by congress, 7, 631

Release upon demand of executive, 7, 653**Remanding Prisoner**

- Effect of affidavit, 7, 640

Requisition, 7, 637

- Pre-requisite, 7, 637
- Sufficiency, 7, 637
- Rights of alleged fugitives, 7, 656
- Second arrest, 7, 642
- Showing commission of crime by parol evidence, 7, 648
- Statutory provision in aid of constitution, 7, 632
- Substantially charged in demanding state, 7, 638
- Territories, 7, 632, 633, 636

Warrants, 9, 254

- Authentication, 9, 254
- Conclusiveness of, 7, 641

Examination to see whether crime has been properly charged, 7, 642; 9, 256

Issue to receiving agent, 7, 634

Necessity of warrant from local magistrate, 9, 255

Requisites, 7, 640

Revocation, 7, 642

Sufficiency, 7, 640; 9, 255

What it should specify, 9, 256

Whether it must be accompanied by copy of indictment, 7, 641

What Persons May Be Extradited, 7, 645

Accused not in demanding state at time of crime, 7, 645

Constructive crime, 7, 646

Constructive presence in demanding state, see *infra*, **WHO ARE FUGITIVES FROM JUSTICE**.

When accused in custody of asylum state, 7, 643

Whether Fugitive Can Be Tried for Other Offenses than That for Which He Was Extradited, 7, 648; 9, 252.

Civil action, 7, 650

Conflict of authority, 7, 648

Rule in Extradition Under Treaty, 7, 650

See also infra, **INTERNATIONAL**.

Whether governor can be compelled to do his duty, 7, 636

Whether or not a person is a fugitive, 7, 639

Who Are Fugitives from Justice, 3, 707; 7, 646

Definition of fugitives from justice, 7, 646

Proof of identity, 7, 647

Purposes for which accused left state, 7, 646

Showing that there was no flight, 7, 647

Judicial notice of treaties, 12, 160

Requisition imperative, 3, 707

What crimes, 3, 708

EXTRA HAZARDOUS, 9, 317

See HAZARDOUS.

EXTRAORDINARY, 7, 657

Extraordinary care, 2, 732; 7, 657

EXTRA SESSIONS, see **STATUTES**.**EXTREME**, 7, 657**FABRICATE**, 7, 658**FABRICS**

Textile fabrics, 14, 272

FACE, 7, 658

Face of the tunnel, 15, 505, 544

Face to face, 7, 658

FACILITY, 7, 658

Reasonable facilities, 19, 1077

FACT

Errors of fact, 7, 658

Fact in truth, 7, 658

Malice in, 7, 659

Marriage in, 7, 659

Material fact, 14, 976

Matter of fact, 14, 977

FACTORIZING, see GARNISHMENT.**FACTORS**, see COMMISSION MERCHANTS.

Authority of, 1, 1034

Implied authority to buy and sell in their own name, 1, 1034

FACTORY, 7, 659

Nuisance, 10, 828

Smoke, 16, 948, 949

Factory prices, 7, 659

FACTS, 7, 658; 18, 301

See QUESTIONS OF LAW AND FACT.

Collateral facts, 3, 310

Facts constituting causes of action, 7, 658

Facts of his case, 3, 29

FAIL, 7, 659

Distinguished from refuse, 7, 659

Fail to prosecute, 7, 659

FAILURE, 7, 659**FAIR**, 7, 660

Fair valuation, 28, 46

Just and fair, 12, 384

FAIRLY

Distinguished from truly, 7, 660

FAITH, 7, 660

As to sister state judgments, see JUDGMENTS OF SISTER STATES.

Bad, 7, 660

Faith, credit, and effect, 6, 173

Good, 7, 660

FAITHFUL, 7, 660**FALL**, 7, 661

If building should fall, 2, 603

FALSE, 7, 661

False swearing, 7, 661

FALSE IMPRISONMENT, 7, 661

See ABDUCTION; ASSAULT; KIDNAPING; MALICIOUS PROSECUTION; PROBABLE CAUSE; WARRANTS.

Action, 7, 686

Form of, 7, 686

Trespass, 7, 686

Apprentices, 7, 665

Arrest

Actual detention, 7, 663

Service of a writ, 7, 663

Threats, 7, 663

What Constitutes, 7, 662

See ARREST.

Attorney and client, 7, 682

Attorney's liability, see *infra*, LIABILITY OF ATTORNEY.

By bail, 7, 666

By Judicial Officers and Courts, 7, 668

Acts in absence of jurisdiction, 7, 668

Arrest upon complaint void on its face, 7, 670

Civil arrests upon defective affidavits, 7, 669

Complaint on information and belief, 7, 670

Contempts, 7, 669, 671

Courts of limited jurisdiction, 7, 669

General rules, 7, 671

Malice, 7, 670

Presumption as to jurisdiction, 7, 669

Quasi judicial tribunal, 7, 671

Responsibility for judicial acts, 7, 669

Superior courts, 7, 668

By master, 7, 665

By master of a vessel, 7, 666

By parent, 7, 665

By teacher, 7, 666

Carriers of passengers, 14, 820, 825

Corporations, 4, 254, 279; 7, 684; 19, 516

Damages, 7, 690

Advice of attorney, 7, 693

Amount of, 7, 693

Attorney's fees, 7, 690

Compensatory, 7, 690

Condition of jail, 7, 691

Discomfort, 7, 691

Excessive damages, 5, 60; 7, 693

Exemplary Damages, 7, 687, 691

For bad faith, 7, 692

In general, 7, 691

Interruption of business, 7, 690

Loss of work, 7, 691

Mental and bodily suffering, 7, 691

Mitigation of, 7, 690, 692; 15, 686

Passion or prejudice, 7, 693

Remoteness, 7, 690

Definition, 1, 809; 7, 661

Distinguished from assault and battery, 7, 663

Distinguished from malicious prosecution, 7, 663

Election, see *infra*, PLEADING.

Circumstances of arrest, 7, 686

Elevated railroads, 23, 1088

Evidence, 7, 688

Malice, 7, 688

Probable cause, 7, 688

Variance

Discharge after trial, 7, 689

Evidence of character, 7, 689

Failure of judgment to support process, 7, 689

Irregularities of process, 7, 689

Record, 7, 689

Special damages, 7, 689

Guardian and ward, 9, 100

Habeas corpus, 7, 694

Jailer, 7, 685

Joinder

Libel and slander, 13, 458

Malicious prosecution, 14, 16

Justice of the Peace, 7, 668

Arrest in civil action, 7, 669

Arrest upon defective affidavit, 7, 669

Examples of what have and have not been held false imprisonment, 7, 670

When liable, 7, 669

Liability of Attorney, 1, 952; 7, 682, 683

Liability for arrest on void process, 7, 683

Liability for laying facts before committing magistrate, 7, 683

Liability for maliciously or illegally obtaining execution of void process, 7, 683

Liability for suing out void process, 7, 683

FALSE IMPRISONMENT—Cont'd

Liability of party arresting upon void warrant, 1, 750

Malice, 7, 663

Master and servant, 14, 820, 825

Matters of Defense, 7, 689

Advice of counsel, 7, 688

Miscellaneous matters, 7, 690

Mitigation of damages, 7, 690

Probable cause, 7, 690

Showing that process was legal, 7, 689

Military order, 7, 685

Mitigation of damages, see *infra*, DAMAGES.

Municipal corporations, 7, 685

Officer Making Arrest Without Process, 7, 675

Breach of peace in officer's presence, 7, 675

Breach of peace not permitted in officer's presence, 7, 675

Cases holding arrest illegal, 7, 675

Illustrations, 7, 675

Officer must act in good faith, 7, 675

Suspicion of felony, 7, 675

Unreasonable detention after arrest, 7, 676

What constitutes reasonable suspicion of felony, 7, 676

Officer Making Arrest with Process, 7, 671

Court without jurisdiction, 7, 672

Examples of process void upon its face, 7, 674

Forged writ, 7, 672

Issuance by unauthorized person, 7, 672

Issued from proper court, 7, 671

Jurisdiction appearing upon face of instrument, 7, 672

Knowledge of defects in previous proceedings, 7, 674

Necessity of process being valid on its face, 7, 671

Officer bound to know the law, 7, 673

Process issued under unconstitutional law, 7, 674

Process of de facto officer, 7, 674

Process of inferior court, 7, 672

Requisites of process, 7, 671

Requisites of warrant, 7, 672

Validity of proceedings, 7, 673

Voidable authority, 7, 673

Void writ, 7, 671

Warrant

Against person unknown, 7, 673

Grounds of issuance appearing on face, 7, 673

Name of person to be apprehended, 7, 673

When officer is protected, 7, 672

Writ defective upon its face, 7, 673

Of Insane Persons, 7, 666

Care to be exercised in restraint, 7, 666

Certificate of physician, 7, 667

Insane person not dangerous, 7, 666

Self-protection, 7, 666

Where there has been an adjudication, 7, 667

Where there has been no adjudication, 7, 666

Party Procuring Arrest, 7, 679

Agency, 19, 516

Attorney and client, 7, 682

Causing void or illegal process to issue, 19, 516

Complaint merely stating facts and circumstances, 19, 517

Facts complained of by defendant true though insufficient to justify arrest, 19, 517

Filing affidavit, 7, 682

Jurisdiction of court wanted, 19, 517

Liability void for want of jurisdiction, 7, 680

Liability where writ is void, 7, 679

Omission of statutory oaths, 7, 680

Opinion of officer issuing writ as to sufficiency of facts stated, 7, 681

Party acting by attorney, 7, 680

Party aiding and abetting, 7, 682

Party liable to malicious prosecution though not to false imprisonment, 7, 680, 681

Personal presence of defendant, 19, 516

Process erroneous because of facts not stated, 7, 680

Procuring or directing arrest, 19, 516

Sufficient facts to ground arrest upon, 7, 680

Writ void upon its face, 7, 679

What constitutes, 19, 516

Where court exercises discretion, 19, 517

Where court has jurisdiction, 19, 518

Persons Assisting Officer, 7, 677

Duty of person to assist when called upon, 7, 677

Officer's process void, 7, 677

Person absent but encouraging and abetting, 7, 677

Protection afforded to, 7, 677

Volunteers, 7, 677

Persons privileged from arrest, 7, 694

Pleading

Answer of defendant, 7, 688

Election, 7, 686

Joinder with malicious prosecution, 7, 686, 687

Of wrongful arrest, 7, 686

Under code, 7, 686

Without probable cause, 7, 686

Exemplary damages, 7, 687

General denial, 7, 688

Gravamen of offense, 7, 686

Justification, 7, 688

Matters in aggravation, 7, 688

Special damages, 7, 688

Private Citizen Making Arrest, 7, 677

After affray has terminated, 7, 678

Commission of felony, 7, 677

Felony must have actually been committed, 7, 678

- Preventing breach of the peace, 7, 677
 Reasonable suspicion in mitigation of damages, 7, 679
 Right generally, 7, 677
 Suspicion of felony, 7, 678
 Survival of action for, 7, 266
 Threats, 25, 1063
 Unlawful imprisonment as an assault, 1, 808
 Waiver, 7, 694
What Constitutes, 6, 661
 Act relied upon must have been intended as an arrest, 7, 665
 Holding person an unreasonable time upon lawful arrest, 7, 664
 Mistaken arrest, 7, 664
 Necessity of malice, 7, 664
 Question of motive, 7, 664
 Unlawful continuance of a lawful imprisonment, 7, 664
 Unlawful detention, 7, 663
 Unreasonable detention after arrest, 7, 676
 Want of lawful authority, 7, 664
FALSE PERSONATION, 7, 695
 As a false pretense, 7, 695
 Assuming fictitious character as an officer or jurymen, 7, 695
 At common law, 7, 695
 Attempt to personate a person who is dead, 4, 667; 7, 697
 Cheat, 7, 695
 Conspiracies to falsely personate, 7, 695
 Definition, 7, 695
 Distinguished from larceny, 7, 696
 Forgery, 8, 468
 Forming part of forgery, 7, 696
 Forming part of larceny, 7, 696; 12, 773
Fraudulent Sales
Bona Fide Holder, 8, 844
 Application of the doctrine, 8, 845
 Bargain with buyer personally, 8, 845
 Inducing sale rather than delivery, 8, 844
 Mistaken identity, 8, 845
 Rights of bona fide purchasers, 8, 845
 Sale to one party and possession obtained by another, who represents himself as purchaser, 8, 844
 Larceny, 7, 696; 12, 773
 Misdemeanor at common law, 7, 695
 Personating attorney, 7, 695
Statutory Offenses
 General provisions, 7, 697
 Inducing another to personate a voter, 7, 698
 In England, 7, 697
Personating
 Annuity, 7, 697
 Bail, 7, 698
 Pensioners, 7, 697
 Soldiers, 7, 697
 Stockholder, 7, 697
 Person personated dead, 4, 667; 7, 697
- FALSE PRETENSES**, 7, 699, 764
See FALSE PERSONATION; FALSE TOKENS.
 Aider by verdict, 7, 766
 Arrest of judgment, 7, 777
At Common Law, 7, 703
 Conspiracy to cheat, 4, 605; 7, 703
 False weights, 7, 703
 Public interests, 7, 703
 Attorney and client, 7, 756
Bank Notes, 7, 734
 Flash notes, 7, 734
 Illustrations, 7, 734-736
 Insolvent bank, 7, 735
 Notes printed by merchant as advertisement, 7, 734
 Valueless notes, 7, 735
Begging Letters, 7, 706, 707, 722
 Jurisdiction, 7, 759
Bills and Notes, 7, 736
 At common law, 7, 736
 Counterfeit notes, 7, 736
 Illustrations, 7, 736-738
 Misrepresentation as to person executing note, 7, 737
 Note partly paid, 7, 737
Obtaining Signature, 7, 743
 Note to be used for illegal purpose, 7, 744
 Statute against obtaining any money, property, or valuable thing whatever, 7, 744
 What representation is criminal, 7, 743
 Passing worthless notes, 7, 736
 Blindness of horses, 7, 729
 Burden of proof, 7, 780
By Purchasers of Goods, 7, 723
 In general, 7, 723
 Ownership of property, 7, 725
 Pretenses as to nature of business, 7, 725
 Pretenses as to solvency, 7, 724
 Pretenses must be relied on, 7, 724, 725
 Statements as to business, social standing, wealth, etc., 7, 723
 To obtain credit, 7, 723
By Sellers of Goods, 7, 727
 As to quantity, 7, 729
 As to weight, 7, 729
 Body not the same as surface, 7, 728
 Executory contract of sales, 7, 718
 False marks and brands, 7, 731
 False statement as to weight under statute, 7, 730
 Pretense as to quality and soundness, 7, 727
 Putting sand in cotton, 7, 729
 Representations as to quality, 7, 707, 727
 Sale by sample, 7, 707
 Smaller quantity at common law, 7, 729
 Soundness of animals, 7, 729
 Warrant as a defense, 7, 729

FALSE PRETENSES—Cont'd

By Use of Fictitious and Worthless Writing, 7, 733

Bank notes, see *infra*, BANK NOTES.

Bills and notes, see *infra*, BILLS AND NOTES.

Checks, see *infra*, CHECKS.

In general, 7, 733

Charitable donations, 7, 722

Checks, 7, 738

Check signed in fictitious name, 7, 741

Implication as to funds in bank, 7, 739

Payment in check when property is to be weighed and paid for in cash, 7, 741

Post-dated checks, 7, 739, 740

Representation that drawer has money in bank, 7, 738

Conspiracy to entrap in the offense, 7, 705

Criminal conspiracy to obtain money under false pretenses, 4, 605; 7, 703

Deception of Party Injured, 7, 706

Begging letters, 7, 706

Means of detection, 7, 707

Necessity that party be deceived, 7, 706

Pretense not calculated to deceive, 7, 707

Pretenses obviously false, 7, 707

Representations as to quality, 7, 707

Representations true, 7, 706

Sale by sample, 7, 707

Whether pretense calculated to deceive, question for jury, 7, 708

Whether pretense did deceive, question for jury, 7, 708

Declarations and Admissions, 7, 782

Admissions in writing, 7, 785

Declarations of co-conspirators, 7, 783

Definition, 7, 700

Defrauding Employers, 7, 746

False tokens or checks, 7, 746

Obtaining pay for work done by another, 7, 746

What acts are criminal, 7, 741-748

Defrauding Intending Employee

Intelligence offices, 7, 745

Promise of employment, 7, 715

What representation is criminal, 7, 745

Distinguished

From embezzlement, 6, 457; 7, 703

From forgery, 7, 702

From larceny, 7, 700; 12, 770

From other offenses, 7, 700

From passing counterfeit coin, 7, 703

Employment agents, 7, 745

Essentials of Offense, 7, 704

Deception of party injured, see *infra*, DECEPTION OF PARTY INJURED.

Inducement to part with property, see *infra*, INDUCEMENT TO PART WITH PROPERTY.

Intent, see *infra*, INTENT.

Nature of the pretense, see *infra*, NATURE OF THE PRETENSE.

Obtaining, see *infra*, OBTAINING.

Property obtained, see *infra*, PROPERTY OBTAINED.

Evidence, 7, 780

Admissibility, 7, 786

Competency, 7, 786

Confined to allegations in indictment, 7, 786

Declarations and admissions, 7, 782

Declarations of co-conspirators, 7, 783

Defendant's insolvency, 7, 782

Documentary Evidence, 7, 784

Admissions in writings by which fraud is effected, 7, 784

Defendant's books, 7, 785

Letters showing general scheme to defraud, 7, 784

Writings used for the purpose of effecting fraud, 7, 784

Writings admissible to prove falsity of pretenses, 7, 785

Misrepresentation of indebtedness, 7, 786

Offer to refund, 7, 787

Parol evidence as to writings, 7, 783

Relevancy, 7, 786

Showing intent, 7, 786

Testimony as to Similar Pretenses, 7, 780

General scheme to defraud the public, 7, 780

Illustrations, 7, 781

In the same neighborhood, 7, 780

Representations as to responsibility, 7, 782

To show falsity of pretense, 7, 786

To show reliance on pretenses, 7, 786

To show that check was of value, 7, 787

False marks and brands, 7, 731

False personation as a false pretense, 7, 695

Fraudulent Sales

Bona fide purchaser, 8, 846

Illegal contract, 9, 911

Illegal Purposes, 7, 710

Compounding a felony, 7, 710, 711

Conflict of authority, 7, 710

Property parted with for, 7, 710

In Collection of Debts, 7, 751

Instances, 7, 751

Representation that a greater amount is payable than really is, 7, 751

Subscriptions to directory, 7, 714, 751

In contracts of carriage, 7, 750

Indictment

Allegation of scienter, 7, 764

Description of Property, Money, etc., Obtained, 7, 774

Arrest of judgment for want of allegation of ownership, 7, 777

Bank notes, 7, 775

Cheating at cards, 7, 776

Goods and money, 7, 774

Money, 7, 774

Money obtained from wife, agent, or son, 7, 777

Necessity of allegation of ownership, 7, 776

- Not setting forth all property obtained, 7, 774
- Ownership of property, 7, 776
- Ownership where name is not known, 7, 777
- Particularity as to money, 7, 774
- Particularity as to property, 7, 774
- Property, 7, 774
- Signatures, 7, 775
- Specifying sum of money, 7, 774
- Statutes dispensing with allegation of ownership, 7, 777
- Tenor of writing, 7, 775
- Writing, 7, 775
- Description of Writing Used**, 7, 770
 - Illustrations, 7, 770
 - Setting out, 7, 770
 - Whether tenor should be given, 7, 770
- Duplicity, 7, 779
- For obtaining goods under, 4, 749
- Inducement to Part with Property**, 7, 771
 - Bogus draft, 7, 772
 - Connecting false pretenses with the obtaining of goods, 7, 772
 - Illustrations, 7, 771, 772
 - Showing that goods were obtained by means of false pretenses, 7, 771
 - Sufficient allegation, 7, 771, 772
 - Whether it must be alleged that party relied upon allegation, 7, 771
- Intent**, 7, 765
 - Necessity of allegation, 7, 765
 - What sufficient allegation, 7, 765
- Joint offenders, 7, 764
- Negating False Pretenses**, 7, 772
 - Averments that pretenses were false, 7, 772
 - Distinctness required, 7, 772
 - Illustrations, 7, 773
 - Representations partly true and partly false, 7, 773
- Reliance upon representations, 7, 771
- Repugnancy, 7, 779
- Specification of Pretenses**, 7, 766
 - Clearness required, 7, 768
 - Detail, 7, 768
 - Illustrations, 7, 766, 768
 - Necessity of statement of pretenses, 7, 766
 - Representations as to existing facts, 7, 769
 - Several false pretenses, 7, 769
- Sufficiency**, 7, 778
 - Allegations necessary, 7, 778
 - Conspiracy, 7, 779
 - In general, 7, 778
 - Statutory form, 7, 778
- Uncertainty, 7, 779
- What sufficient allegation of scienter, 7, 764
- Inducement to Part with Property**, 7, 708
 - Necessity that pretense induce the parting, 7, 708
- False pretense not the sole inducement, 7, 709
- Running away with money to be changed, 7, 709
- Intelligence offices, 7, 745
- Intent**, 7, 704
 - Conspiracy to entrap in the offense, 7, 705
 - Essentiality, 7, 704
 - Implication, 7, 705
 - Indictment, 7, 765
 - Intent to restore money or property, 7, 705
 - Knowledge of falsity of the pretense, 7, 705
 - To obtain property for a limited time, 7, 705
- Joinder**, 7, 762
 - Misdemeanors, 7, 762
 - With embezzlement, 7, 763
 - With larceny, 7, 763
- Joinder of counts, 7, 764
- Jurisdiction**, 7, 758
 - Defense commenced in one state and completed in another, 7, 759
 - False pretenses in one jurisdiction, goods delivered to carrier in another, 7, 761
 - Place where goods or money is obtained, 7, 758
 - Property mailed to defendant, 7, 759
 - Representations as to solvency made by letter, 7, 761
- Larceny**, 7, 700, 763; 12, 770
 - Evidence of false pretenses, 12, 853
 - Variance, 12, 862
- Libel and slander, 13, 338
- Loans**, 7, 752
 - As to securities, 7, 753
 - Existing facts, 7, 954
 - False pretenses of an existing fact, 7, 752
 - False promise, 7, 754
 - Instances, 7, 752, 754
 - Money obtained as a loan, 7, 752
 - Used for various purposes, 7, 752
- Married woman, 7, 756
- Money intrusted to person for temporary use, 7, 701
- Money for margins, 7, 757
- Mortgages**, 7, 733
 - Representations as to incumbrances, 7, 733
 - Representations as to improvements, 7, 733
 - What pretense is criminal, 7, 733
- Nature of the Pretense**, 7, 714
 - Acts as false pretenses, 7, 721
 - Assertion of power to do something, 7, 716
 - Charitable donations, 7, 722
 - Combined falsehood and promise, 7, 717
 - Conduct as false pretenses, 7, 721
 - Contract obtained by false pretense, 7, 718
 - Executory contract of sales, 7, 718
 - Existing or past facts, 7, 714
 - False representations to agent, 7, 720

FALSE PRETENSES—*Cont'd***Nature of the Pretense—*Cont'd***

- Matters of opinion, 7, 717
- Obtaining board, 7, 719
- Procuring indorsement to promissory note, 7, 715
- Promise of employment, 7, 715
- Promise to perform some act in the future, 7, 714
- Remoteness, 7, 718
- Sale of horses with warranty, 7, 719
- Shipment of goods, 7, 715
- Silence, 7, 721
- Spiritualistic mediums, 7, 716
- Statements made at different periods, 7, 718
- Statement that money is required to make up a certain sum and defendant has balance in hand, 7, 716
- Subscription to directory, 7, 714
- Suppression of truth, 7, 721

Obtaining board, 7, 719**Obtaining Goods by, 7, 757; 9, 911**

- Defendant representing himself to be sent by owner, 7, 757
- In general, 7, 757

Obtaining Signature by, 7, 742, 750

- Bills and notes, see infra, BILLS AND NOTES.*

- To deeds, 7, 742

Offenses against postal laws, 18, 856**Parol evidence as to writings, 7, 783****Partnership Transactions, 7, 749**

- Inducing person to become partner, 7, 749
- Partnership accounting, 7, 750
- Procuring signature by false pretenses, 7, 749
- Sale of interest in partnership, 7, 750

Pledges, 7, 744

- Party relying on his own judgment, 7, 745
- Representation as to quality, 7, 744
- What representations are criminal, 7, 744

Presentation of false accounts, 7, 754**Pretending to be merchants, 7, 725****Promises, 7, 714**

- Of employment, 7, 745

Promise of Marriage, 7, 715, 748

- Connected with false statement, 7, 748
- In general, 7, 748
- Representing one's self as single, 7, 748

Property Obtained, 7, 711

- By use of forged writings, 7, 702
- In payment of debts, 7, 712
- Obtaining consent to judgment, 7, 713

Under False Pretenses, 7, 791

- Power of court at common law, 7, 791
- Sale in market overt, 7, 792
- Statute in England, 7, 791
- Without value, 7, 712

Property Parted with for Illegal Purpose

- Obtaining signature for bill and note to be used for illegal purpose, 7, 744

Quack doctor, 7, 755**Real Estate Transactions, 7, 731**

- Location of property, 7, 732
- Sales, 7, 731
- Statements as to value of lots, 7, 731
- Unincumbered title, 7, 731

Receiving Goods Obtained by False Pretenses, 7, 758

- Indictment, 7, 769
- Statutes, 7, 758
- What constitutes the offense, 7, 758

Representation of servant to certain moneys due, 7, 700**Representations to agents, 7, 720****Restitution of property, 7, 791****Ring-Dropping, 7, 702**

- Aiding or abetting ring-dropping, 7, 702

Soundness of horses, 7, 729**Statutory offense, 7, 704****Stock transactions, 7, 757****Subscriptions to directory, 7, 714, 751****Sufficiency of false pretenses, 7, 757****The Obtaining**

- Necessity that property be obtained, 7, 705
- Property not received in person, 7, 706

Valuable thing, 28, 44**Variance, 7, 787**

- Allegation of substance, 7, 788
- As to amount paid, 7, 789
- As to currency in which money was paid, 7, 789
- As to party defrauded, 7, 790
- As to pretenses, 7, 788
- As to property, 7, 789
- As to value, 7, 787

- Charge of loan to two, proof of loan to one, 7, 788

- Charge of obtaining money and proof of obtaining note, 7, 789

Drafts, 7, 789**False certificate of stock, 7, 788**

- Necessity of proving whole pretenses charged, 7, 787

Precise words, 7, 789**Pretense proved in substance, 7, 788**

- Representations of money on deposit, 7, 788

Worthless drafts, 7, 788**Writings, 7, 790****Venue, 4, 736; 28, 237****Verdict, 7, 790**

- Of attempt, 7, 791
- Two counts, one of which is good, 7, 790

Surplusage, 7, 790

- Upon count for conspiracy and count for false pretenses, 7, 791

When not a crime, 4, 654**Witnesses, 7, 787**

- Husband and wife, 7, 787

FALSE REPRESENTATIONS, 7, 792**See DECEIT; FALSE PRETENSES.****Estoppel**

- Married women, see MARRIED WOMEN.*

Rescission of contract, see RESCISSION.

Married women, 14, 647-649

Mortgages

Assignments, 15, 863

Of Solvency

To a Mercantile Agency, 15, 297

Action for deceit, 15, 297

False representations of third person's solvency, 15, 300

Intent, 15, 298

Intent that representations be relied upon, 15, 299

Plaintiff's knowledge of representations, 15, 299

Showing intent, 15, 298

Sheriff's Sales, 22, 603

Examples, 22, 603-605

Necessity of setting aside, 22, 604, 605

Purpose of bid, 22, 604

Time of sale, 22, 603

Vacating the sale, 22, 603

Validity of title, 22, 604

Value of property, 22, 603

Statute of frauds, 21, 5

FALSE SWEARING, 7, 793; 13, 463

See generally, OATH.

See INSURANCE; PERJURY.

In insurance law, see FIRE INSURANCE.

Allegations in indictment, 7, 493

Colloquium, 13, 463

Common law offense, 18, 306

Corroboration of witnesses, 7, 794

Definition of offense, 7, 793

Distinguished from perjury, 18, 306

Examples, 7, 793; 18, 306

Fatality of omission, 13, 464

Indictment, 7, 793

Instances, 7, 793; 18, 306

Libel and slander, 13, 463

Materiality determined by court, 13, 464

Misdemeanor at common law, 7, 793

Registration of voters, 7, 793

Ships and shipping, 22, 715

Surplusage in indictment, 7, 794

Testimony must be material, 13, 464

To defraud United States, 7, 793

To obtain a marriage license, 7, 793

FALSE TOKENS, 7, 794

False checks, see FALSE PRETENSES.

At common law, 7, 703

Checks, 7, 795

Claiming to be a merchant, 7, 795

Definition, 7, 794; 26, 50

Delivery of less goods, 7, 795

False marks and brands, 7, 731

Indictable at common law, 7, 794

Larceny, 12, 773

Marks upon packages, 7, 795

Misrepresentation in writing, 7, 796

Selling alloy goods, 7, 795

Selling blind horse, 7, 795

What constitutes cheating by, 26, 50

Whether lies, 7, 795

FALSELY, 8, 504

Feloniously equivalent to, 4, 751

Indictment for perjury, 18, 316

FALSE WEIGHTS AND MEASURES, 7,

796

See WEIGHTS AND MEASURES.

Actions and proceedings, 7, 800

At common law, 7, 793

Definition, 7, 796

Inspection and seizure, 7, 798

Liability of inspectors, 7, 799

New York doctrine, 7, 797

Obstructing inspection, 7, 800

Possession, 7, 798

Powers and duties of inspectors, 7, 798

Punishable at common law, 7, 796

Punishments, 29, 53

Representations

Definition, 7, 796

False representations as to quantity or weight, 7, 797

New York doctrine, 7, 797

Punishable at common law, 7, 796

Right of seizure, 7, 799

Seizure, 29, 53

Weighing machine out of order, 7, 796

Weight in favor of purchaser, 7, 799

What constitutes the offense, 7, 796

FALSIFYING, 7, 801

As to falsifying accounts, see ACCOUNTS.

As to falsifying records, see RECORDS.

Definition, 7, 801

FAMILY, 7, 803; 11, 374

See FRAUDULENT CONVEYANCES; PARENT AND CHILD.

Claims for Services, 17, 336

Adult children, 17, 337, 338

Board, 17, 341

Brother and sister, 17, 342

Burden of proof, 17, 337

Examples, 17, 336-342

Express promise, 17, 337

General rule, 17, 336

Implied promise, 17, 340

Intention of the parties, 17, 337

Legacy, 17, 341

Parties related by marriage, 17, 341

Presumption as to the nature of services, 17, 336

Quantum meruit, 17, 339

Question of law or fact, 17, 340

Request from father, 17, 340

Son-in-law, 17, 341

Subsequent promise, 17, 341

Commutation ticket, 25, 1090

Definition, 7, 803

Desertion of family, 28, 40

Families or heirs, 16, 48

Family Arrangements, 7, 808

Binding upon parties, 7, 808

Consideration, 7, 808

Definition, 7, 808

Family Bible, see BIBLE.

Marriage, 14, 524

Family compromises, 15, 668

Family library, 7, 810

Family Meetings, 7, 808

Louisiana Law, 7, 808

Citation, 7, 809

FAMILY—*Cont'd***Family Meetings**—*Cont'd***Louisiana Law**—*Cont'd*

Friends in default of relations, 7, 808

Judicial nature, 7, 808

Number of relatives, 7, 808

Ordered by judge, 7, 808

Powers and duties, 7, 808

Procès-verbal, 7, 809

Questions to be considered, 7, 808

Relations whose interests are adverse to heir, 7, 809

The under-tutor, 7, 809

Waiver of citation, 7, 809

What relations are chosen, 7, 809

Who presides, 7, 809

Family physician, 7, 810; 13, 637; 18, 427

Family Quarrel

Laches, 12, 569

Delay not strictly regarded, 12, 569

Importance of relationship, 12, 569

Loss of evidence, 12, 569

Head of**Exemption from Execution**

Illustrations, 7, 132

Husband and wife, 9, 812, 813

Homestead and Exemption Laws, 7, 804

Brother supporting widowed sister, 7, 804

Examples of what have been held to constitute a family, 7, 804-807

Family relation one of status and not of contract, 7, 804

Legal and moral duty to support, 7, 804

Master and servants, 7, 804

Parent and dependent children, 7, 805

Persons not progeny of a common ancestor, 7, 806

Relations having no common residence, 7, 806

Sons supporting mother and other children, 7, 805

State of dependence, 7, 804

Stepchildren, 7, 804

Two heads of families in one house, 7, 806

Unmarried woman living with her mother, 7, 804

Where members leave home, 7, 806

Where obligation to support is not a legal one, 7, 806

Whether relation of parent and child or husband and wife is necessary, 7, 804

Widow, 7, 805

In an insurance policy, 7, 803

Member of family, 15, 261

Mutual insurance, 16, 51

Proof of handwriting, 9, 274

Relationship of master and servant, 14, 768

Tickets and fares, 25, 1090

Wills, 7, 807

Context, 7, 807

Particular relations, 7, 807

Relations by marriage, 7, 807

Relations of every degree, 7, 807

When it has meaning of heir at law, 7, 807

When it means next of kin, 7, 807

Whether term includes parents, 7, 808

Whether void for uncertainty, 7, 807

FANCY, 7, 810

FANCY BREAD, 7, 810

FARE

Distinguished from freight, 8, 902

Rate of fare, 7, 810

FARINA, 7, 811

FARM, 7, 811

Farm out, 7, 812

Home farm, 9, 421

In a deed of will, 7, 811

In American law, 7, 811

In English law, 7, 811

FARMER, 7, 813

Farming implements and utensils, 7, 812

Farming purposes, 7, 812

Products of his own farm, 7, 812

FARO, see GAMING.

FAST, 7, 813

Fast day, 9, 420

Fast estate, 7, 813

Fast fish, 7, 813

Very fast, 7, 813

FAST FREIGHT LINES

Definition, 7, 814

Discrimination, 8, 965

Limitation of liability, 7, 814

Railway partnerships, 7, 814

FATHER, 7, 817

See CHILD; PARENT AND CHILD.

FAULT, 7, 817

All faults, 27, 814

And neglect, 7, 817

Sale with all faults, 7, 817

With all faults, 29, 519

Without fault, 29, 526

FAVORABLE, 7, 818

FEALTY, 7, 820

FEAR, 7, 818

See DURESS.

Putting in fear, see ROBBERY.

FEASANT

Damage feasant, see ESTRAYS.

FEAT, 7, 818

FEDERAL, 7, 819

Distinguished from national, 7, 819

FEDERAL QUESTIONS, see REMOVAL OF CAUSES.

FEE, 7, 819

See PUBLIC OFFICERS.

Contingent fees, see CHAMPERTY AND MAINTENANCE.

Action of debt for, 5, 166

Distinguished from costs, 7, 819

Qualified fee, 19, 592

When due, 7, 819

When synonymous with charge, 7, 819

When synonymous with compensation, 7, 820

FEED, 7, 820

Feed stable, 7, 820; 13, 935

FEELINGS, 7, 820**FEIGNED DISEASE, see MEDICAL JURISPRUDENCE.****FELLOW SERVANTS, 7, 821***See COUPLING CARS.**Assumption of risks of employment, see RISKS OF EMPLOYMENT.*

Command accompanied by threat, 7, 837

Criterion, 7, 834

Grade or rank of offending servant, 7, 834

In Maine, 7, 835

In Massachusetts, 7, 835

In Texas, 7, 835

Person performing master's duties not a fellow servant, 7, 824

Power to employ and discharge servants, 7, 835

Servants of different masters, 7, 836

Various rules, 7, 834

Different Departments

Doctrine, 7, 843

In Georgia, 7, 843

In Illinois, 7, 843

In Kentucky, 7, 843

In Tennessee, 7, 843

Duty of Master*As to master's duties generally, see MASTER AND SERVANT.*

Duty as to establishment of proper rules and regulations, 7, 832

Duty as to youthful and inexperienced servants, 7, 832

*Duty in the selection and retention of sufficient and competent servants, see infra, INCOMPETENCY OF FELLOW SERVANTS.***Duty to Furnish Suitable Machinery and Appliances, 7, 825**

Defective scaffold, 7, 829

General duty, 7, 828

Injury partly by defective machinery and partly by negligence, 7, 828

Perfection of machinery, 7, 825

Promoting cause, negligence of fellow servant, 7, 828

Safe place to work, 7, 828

Duty to keep machinery and appliances in repair, 7, 830

Duty to make proper inspections and examinations of machinery, 7, 830

Evidence

General reputation of incompetence, 7, 852

Incompetency of fellow servants, 7, 852

Of specific acts of incompetence, 7, 849, 852, 854

France, 7, 823

General rule, 7, 821

Incompetency of Fellow Servants

Burden of proof, 7, 851

Degree of care required, 7, 845

Drunkenness, 7, 850

Evidence of, 7, 852

General reputation, 7, 852

Specific acts of incompetence, 7, 849-852, 854

Examples of care required in selection of servants, 7, 845-848

Examples of negligence in the retention of servants, 7, 848, 851

General rule, 7, 844

Implied by general agent, 7, 855

Incompetency not presumed, 7, 851, 852

Injuries not resulting from unskillfulness, 7, 844

Knowledge of master as to unfitness, 7, 848

Master's duty in selecting and retaining servants, 7, 832

Negligence in retention of servants, 7, 848

Notorious incompetence, 7, 850

Pleading, 7, 855

Averment of incompetence, 7, 855

Averment of notice of incompetence, 7, 855

Averment of want of knowledge in the injured servant, 7, 856

Averment of want of ordinary care, 7, 855

Presumption as to continuation of good qualities, 7, 849

Questions for jury, 7, 856

Servants generally known to be incompetent, 7, 847

Sufficient number of servants, 7, 831

Where injured servant knew of incompetence, 7, 850

Where injured servant made no complaint of incompetence, 7, 851

Where injured servant might have known of incompetence, 7, 850

Whether master warrants competency of his servants, 7, 845

Willful negligence in employing servants, 7, 846

Injury at crossings, 4, 949

Injury to servant's wife, 7, 837

Irish law, 7, 824

Italian law, 7, 823

Limitations on Rule, 7, 838**Different Department Limitations, 7, 842**

Doctrine, 7, 843

In Georgia, 7, 843

In Illinois, 7, 843

In Kentucky, 7, 843

In Tennessee, 7, 843

Vice-principal limitations, 7, 838

Master's Duties, see infra, DUTY OF MASTER.

Origin and history of rule, 7, 822

Partnership agreement between two roads, 7, 837

Pleading, 7, 863

Averment of ignorance of fellow servant's incompetence, 7, 855, 856

Averment of incompetence, 7, 855

FELLOW SERVANTS—Cont'd**Pleading—Cont'd**

Averment of want of ordinary care,

7, 855

Demurrer, 7, 863

Stating facts to show master's liability

7, 863

Prussian law, 7, 823

Reasons for rule, 7, 824

Roman law, 7, 823

Scotch law, 7, 824

Statutes

American, 7, 858

What Employees Come Within Provisions of the Statute

In Iowa, 7, 859

In Kansas, 7, 860

Constitutionality, 7, 862

Contracts in contravention, 7, 863

Contributory negligence, 7, 862

English Employers' Liability Act, 7, 856

Accident by Reason

Of acts or omissions in obedience to by-laws or particular instructions, 7, 856

Of defects in works, machinery, etc., 7, 856

Of negligence of person in control of locomotive engine, 7, 856

Of negligence of person in control of signal points, 7, 856

Of negligence of person in control of train, 7, 856

Of negligence of persons in superintendence, 7, 856

Of negligence of superiors, 7, 856

Cases construing the act, 7, 857

Imposing duties at crossings, 7, 861

In California, 7, 858

In Colorado, 7, 858

In Dakota, 7, 859

In Georgia, 7, 858

In Iowa, 7, 858

In Kansas, 7, 858

In Kentucky, 7, 858

In Maine, 7, 858

In Mississippi, 7, 858

In Missouri, 7, 858

In Montana, 7, 858

In Pennsylvania, 7, 858

In Rhode Island, 7, 859

In Tennessee, 7, 858

In Wisconsin, 7, 858

In Wyoming, 7, 858

Whether cause of action accruing under statute may be enforced in another state, 7, 858

Street Railways

Liability for negligence, 23, 1010

Sunday work, 7, 837

Vice-Principal Limitation, 7, 838

Cases adopting the limitation, 7, 839

Cases holding different employees vice-principals, 7, 838

Cases repudiating the limitation, 7, 842

Nature of the limitation, 7, 838

Origin of, 7, 838

Vice-principal doing co-servant's work, 7, 842

What constitutes a servant vice-principal, 7, 840

Volunteers, 7, 838

Who are, a question of fact, 7, 835

Who Have and Who Have Not Been Held Fellow Servants

Acting manager and employee in iron works, 7, 864

Agent and workman, 7, 864

Agent to hire hands and foreman, 7, 864

Agent to purchase locomotive and those using it, 7, 864

Apprentice and foreman, 7, 864

Architect and laborer, 7, 864, 881

Assistant agent and express agent, 7, 877

Assistant and yardmaster, 7, 888

Assistant blacksmith and blacksmith, 7, 864

Baggageman and train hands, 7, 887

Baggage master and car inspector, 7, 864, 868

Baggage master and conductor, 7, 864, 870

Baggage master and employees on freight train, 7, 864

Baggage master and switchman, 7, 864

Baggage master and trainmen, 7, 864

Blacksmith and assistant blacksmith, 7, 864

Blaster and miner, 7, 864, 882

Blaster and rock-hauler, 7, 864

Boat owner and laborer, 7, 881

Boat rower and laborer, 7, 864

Boatswain and stevedore, 7, 864, 885

Boiler-maker and boiler-tester, 7, 864

Boiler-maker and engineer, 7, 864, 874

Boiler-maker and fireman, 7, 864, 877

Boiler-maker and mechanic in repair shop, 7, 864, 882

Boiler-tester and boiler-maker, 7, 864

Boss repairer and subordinate car-reporter, 7, 868

Boy apprentice and foreman, 7, 878

Boy not in service and conductor, 7, 864, 870

Brakeman acting as conductor and brakeman, 7, 867

Brakeman and brakeman, 7, 864

Brakeman and brakeman acting as conductor, 7, 867

Brakeman and brake-repairer, 7, 864, 867

Brakeman and car-coupler, 7, 864

Brakeman and car-inspector, 7, 864, 868

Brakeman and car-repairer, 7, 865, 868

Brakeman and conductor, 7, 865, 870

Brakeman and conductor acting as engineer, 7, 865, 871

Brakeman and employee putting defective car on track, 7, 865

- Brakeman and employees on another train, 7, 865
 Brakeman and engineer, 7, 866, 874
 Brakeman and engine-repairers, 7, 866, 877
 Brakeman and fireman, 7, 866, 877
 Brakeman and flagman, 7, 866, 878
 Brakeman and foreman, 7, 878
 Brakeman and foreman in yard, 7, 866
 Brakeman and general manager, 7, 866, 880
 Brakeman and laborer, 7, 881
 Brakeman and laborer and derrick operator, 7, 872
 Brakeman and laborer loading dirt, 7, 866
 Brakeman and laborer on construction train, 7, 866
 Brakeman and laborer setting up derrick, 7, 866
 Brakeman and master-mechanic, 7, 866, 881
 Brakeman and mechanic in repair shops, 7, 882
 Brakeman and roadmaster, 7, 866, 883
 Brakeman and road supervisor, 7, 883
 Brakeman and section boss or section foreman, 7, 884
 Brakeman and section hand, 7, 884, 886
 Brakeman and section master or section boss, 7, 866
 Brakemen and shovelers, 7, 884, 886
 Brakeman and station agent, 7, 867, 884
 Brakeman and supervisor of roads, 7, 867
 Brakeman and switchman, 7, 867, 886
 Brakeman and trackman, 7, 867, 887
 Brakeman and track repairer, 7, 887
 Brakeman and train dispatcher, 7, 867, 887
 Brakeman and train hands, 7, 867, 887
 Brakeman and tunnel repairer, 7, 888
 Brakeman and yardmaster, 7, 867, 888
 Brakeman employed by different company and conductor, 7, 870
 Brakeman going to work and signal man, 7, 867
 Brakeman working switch and engineer, 7, 874
 Brake-repairer and brakeman, 7, 864, 867
 Brake-repairer and car inspector, 7, 867, 868
 Bridge builder and carpenter, 7, 867
 Bridge builder and fireman, 7, 867, 877
 Captain and clay digger, 7, 867
 Captain and mate of vessel, 7, 882
 Car coupler and brakeman, 4, 429, 7, 864
 Car-coupler and car inspector, 7, 867, 868
 Car-coupler and car loader, 7, 867
 Car-coupler and conductor, 7, 867, 870
 Car-coupler and engineer, 7, 867, 874
 Car-coupler and foreman in repair shops, 7, 868
 Car-coupler and yardmaster, 7, 868
 Car driver assisting passenger, 7, 883
 Car inspector and baggage master, 7, 864-868
 Car inspector and brakeman, 7, 864-868
 Car inspector and brake repairer, 7, 867-868
 Car inspector and car-coupler, 7, 867, 868
 Car inspector and engineer, 7, 868-874
 Car inspector and switchman, 7, 868-886
 Car inspector and trainmaker, 7, 888
 Car inspector and yardmaster, 7, 868
 Car loader and car-coupler, 7, 867
 Carpenter and bridge builder, 7, 867
 Carpenter and draftsman, 7, 869, 873
 Carpenter and engineer, 7, 869, 874
 Carpenter and foreman, 7, 869, 878
 Carpenter and laborer, 7, 869
 Carpenter and mason, 7, 869, 881
 Carpenter and millwright, 7, 869, 882
 Carpenter and plumber, 7, 882
 Carpenter and station agent, 7, 869, 885
 Carpenter and superintendent, 7, 885
 Carpenter and superintendent of manufacturing corporation, 7, 869
 Carpenter and train despatcher, 7, 887
 Carpenter and train hands, 7, 869, 887
 Carpenter and turntable employee, 7, 869
 Carpenter building bridge and train hands, 7, 869
 Carpenter going from work and engineer, 7, 874
 Carpenter in repair and flagman, 7, 869, 878
 Car repairer and brakeman, 7, 865, 868
 Car repairer and engineer, 7, 868-874
 Car repairer and flagman, 7, 878
 Car repairer and foreman, 7, 868, 878
 Car repairer and switchman, 7, 868, 886
 Car repairer and watchman, 7, 888
 Car repairer and yardmaster, 7, 868
 Chain carrier and conductor, 7, 869
 Chief stevedore and stevedore, 7, 885
 Clay digger and captain, 7, 867
 Coal heaver and trackwalker, 7, 870, 887
 Coal hoister and employees loading vessel, 7, 870
 Coal hoister and laborer, 7, 881
 Coal miner and conductor, 7, 870
 Common sailor and mate, 7, 872
 Common workman and miner, 7, 882
 Conductor acting as engineer and brakeman, 7, 865, 871
 Conductor and baggage master, 7, 864-870
 Conductor and boy not in service, 7, 864-870
 Conductor and brakeman, 7, 865-870
 Conductor and brakeman employed by different company, 7, 870
 Conductor and car-coupler, 7, 867-870

FELLOW SERVANTS—Cont'd**Who Have and Who Have Not Been Held****Fellow Servants—Cont'd**

Conductor and chain carrier, 7, 869
 Conductor and coal miner, 7, 870
 Conductor and contractor's servant, 7, 870, 871
 Conductor and engineer, 7, 870, 874
 Conductor and fireman, 7, 870-877
 Conductor and laborer on construction or gravel train, 7, 870
 Conductor and laborer on track, 7, 871
 Conductor and laborers, 7, 881
 Conductor and laborers employed in construction, 7, 871
 Conductor and laborers loading cars, 7, 870
 Conductor and laborers riding on train, 7, 870
 Conductor and shovelers, 7, 884
 Conductor and superintendent, 7, 871, 885
 Conductor and surveyor, 7, 886, 871
 Conductor and telegraph operator, 7, 871, 886
 Conductor and track-repairer, 7, 871-887
 Conductor and train dispatcher, 7, 871-887
 Conductor and train hands, 7, 871-887
 Conductor and train hands on passenger trains, 7, 871
 Contractor's laborer and engineer, 7, 874
 Contractor's servant and conductor, 7, 871
 Contractor's servant and engineer, 7, 871
 Contractor's servant and laborer, 7, 881
 Contractor's servant and servants of sub-contractor, 7, 871
 Contractor's servants and trainmen, 7, 872
 Crew and master of lighter, 7, 872-881
 Crew and pilot, 7, 872
 Crew and stevedore, 7, 872
 Deck hand and employee on one vessel, 7, 872
 Deck hand and mate, 7, 872
 Deck hand and mate of vessel, 7, 882
 Deck hand and pilot, 7, 872, 883
 Defendant's servant and elevator engineer, 7, 873
 Depot superintendent and laborer, 7, 872-881
 Derrick foreman and laborer, 7, 881
 Derrick manager and laborer and foreman, 7, 872
 Derrick operator and brakeman and laborer, 7, 872
 Detective and engineer, 7, 873, 874
 Detective and servants running hand car, 7, 873
 Directors and employees, 7, 873
 Directors and fireman, 7, 877
 Draftsman and carpenter, 7, 869-873

Drawer of iron and hammerer, 7, 873
 Driller and laborer, 7, 873
 "Driver boss" and "mining boss," 7, 873-882
 Driver of stage coach and guard, 7, 873
 Driver of street car and passenger, 7, 873
 Driver of truck and "helper" in foundry, 7, 880
 Elevator engineer and defendant's servant, 7, 873
 Employee and director, 7, 873
 Employee and machinery inspector, 7, 881
 Employee and volunteer, 7, 888
 Employee bound to keep fire apparatus in repair and millhand, 7, 873
 Employee going to work and signalman, 7, 884
 Employee in engine yard and engineer, 7, 874
 Employee in iron works and acting manager, 7, 864
 Employee in iron works and general superintendent, 7, 880
 Employee loading vessel and coal-hoister, 7, 870
 Employee making repairs and steam-hammer operator, 7, 885
 Employee of lessor company and lessee company's employees, 7, 881
 Employee of steamboat and express agent, 7, 877
 Employee on another train and brakeman, 7, 865
 Employee on freight train and baggage master, 7, 864
 Employee on freight train and express agent, 7, 877
 Employee on one vessel and deck hand on another, 7, 872
 Employee putting defective car on track and brakeman, 7, 865
 Employee riding free and train hands, 7, 873, 887
 Employee using hand-car and track repairer, 7, 873
 Employee using machinery and machine repairer, 7, 881
 Employee working hand-car and track repairer, 7, 887
 Engine builders and repairers and engineer, 7, 874
 Engine driver and teamster, 7, 886
 Engineer and boiler maker, 7, 864, 874
 Engineer and brakeman, 7, 866, 874
 Engineer and brakeman working switch, 7, 874
 Engineer and car-coupler, 7, 867, 874
 Engineer and car inspector, 7, 868, 874
 Engineer and carpenter, 7, 869, 874
 Engineer and carpenter going from work, 7, 864
 Engineer and car repairer, 7, 868, 874
 Engineer and conductor, 7, 870, 874

Engineer and contractor's laborer, 7, 874
 Engineer and contractor's servant, 7, 871
 Engineer and employee in engine yard, 7, 874
 Engineer and engine builders and repairers, 7, 874
 Engineer and engineer on different engine, 7, 874
 Engineer and detective, 7, 873, 874
 Engineer and engine repairer, 7, 877
 Engineer and express agent, 7, 877
 Engineer and fireman, 7, 875, 877
 Engineer and foreman, 7, 878
 Engineer and foreman of crew of wreckers, 7, 875
 Engineer and laborer, 7, 881
 Engineer and laborer on construction train, 7, 875
 Engineer and machinists, 7, 875, 881
 Engineer and master mechanic, 7, 875, 881
 Engineer and mechanic in repair shops, 7, 882
 Engineer and person having entire charge and control of freight business, 7, 875
 Engineer and repairmen, 7, 875
 Engineer and roadmaster, 7, 875, 883
 Engineer and section hand, 7, 875, 884
 Engineer and section master, 7, 884
 Engineer and section master or section foreman, 7, 875
 Engineer and servants of lessee road, 7, 875
 Engineer and shoveler, 7, 875, 884
 Engineer and signalman, 7, 875, 884
 Engineer and station agent, 7, 875, 885
 Engineer and station master, 7, 875, 885
 Engineer and sub-contractor, 7, 876
 Engineer and superintendent, 7, 876, 885
 Engineer and switchman, 7, 876, 886
 Engineer and teamster, 7, 876
 Engineer and telegraph operator, 7, 876, 886
 Engineer and trackman, 7, 887
 Engineer and track repairer, 7, 876, 887
 Engineer and train dispatcher, 7, 876, 887
 Engineer and workman in same business, 7, 877
 Engineer and workman in tunnel, 7, 876
 Engineer and yard hand, 7, 888
 Engineer and yardman, 7, 877
 Engineer and yard master, 7, 877
 Engineer at mine and miners in shaft, 7, 877
 Engineer in charge of steam shovel and workman, 7, 877
 Engineer on different engine and engineer, 7, 874
 Engine repairer and brakeman, 7, 866, 877

Engine repairer and engineer, 7, 877
 Engine repairer and fireman, 7, 877
 Engine stripper and yard hand, 7, 877, 888
 Engine wiper and train hands, 7, 887
 Excavator and mining engineer, 7, 877, 882
 Express agents, 7, 552
 Express agent and assistant agent, 7, 877
 Express agent and employees of steamboat, 7, 877
 Express agent and employees on freight train, 7, 877
 Express agent and engineer, 7, 877
 Express agent and section boss, 7, 877, 884
 Express agent and trainmen, 7, 877, 887
 Express company's employee and manager, 7, 877
 Factory boss and girl operators, 7, 877
 Flagman and brakeman, 7, 866-878
 Flagman and carpenter in repair shop, 7, 878
 Flagman and car repairer, 7, 878
 Flagman and yardmaster, 7, 878
 Fireman and boiler-maker, 7, 864, 877
 Fireman and brakeman, 7, 866-877
 Fireman and bridge builder, 7, 867-877
 Fireman and conductor, 7, 870-877
 Fireman and directors, 7, 877
 Fireman and engineer, 7, 875-877
 Fireman and engine repairer, 7, 877
 Fireman and general superintendent, 7, 878
 Fireman and mail catcher, 7, 878-881
 Fireman and master mechanic, 7, 878, 881
 Fireman and master of steam tug, 7, 878-881
 Fireman and roadmaster, 7, 878, 882
 Fireman and superintendent, 7, 885
 Fireman and switch constructor, 7, 878
 Fireman and switchman, 7, 878, 886
 Fireman and telegraph operator, 7, 878, 887
 Fireman and track walker, 7, 887
 Fireman and train dispatcher, 7, 878-887
 Fireman and trainmaster, 7, 888
 Foreman and agent to hire hands, 7, 864
 Foreman and apprentice, 7, 864
 Foreman and boy apprentice, 7, 878
 Foreman and brakeman, 7, 878
 Foreman and carpenter, 7, 878
 Foreman and car repairer, 7, 868, 878
 Foreman and engineer, 7, 878
 Foreman and general superintendent, 7, 880
 Foreman and hod carrier, 7, 879, 880
 Foreman and laborer, 7, 881
 Foreman and laborer or subordinate, 7, 879
 Foreman and machinist helper, 7, 879
 Foreman and mason, 7, 879-881
 Foreman and night watchman, 7, 879

FELLOW SERVANTS—Cont'd**Who Have and Who Have Not Been Held
Fellow Servants—Cont'd**

Foreman and saw mill operatives, 7, 888

Foreman and superintendent, 7, 881

Foreman and watchman, 7, 880

Foreman and yard hand, 7, 880, 888

Foreman carpenter and carpenter, 7, 869

Foreman in charge of derrick and laborer moving stone, 7, 872

Foreman in repair shops and car-coupler, 7, 868

Foreman in yard and brakeman, 7, 866

Foreman of a round shop and machinist helper, 7, 881

Foreman of crew and night watchman, 7, 882-888

Foreman of crew of wreckers and engineer, 7, 875

Foreman of shops and master mechanic, 7, 888

Gas fitter and switchman, 7, 880, 886

General manager and brakeman, 7, 866-880

General manager and scaffolder, 7, 880, 883

General superintendent and employee in iron works, 7, 880

General superintendent and fireman, 7, 878

General superintendent and foreman, 7, 880

General superintendent and mill employee, 7, 880

Girl operators and factory boss, 7, 877

Guard and driver of stage coach, 7, 873

Hammerer and drawer of iron, 7, 873

Head stevedore and stevedore, 7, 880

"Helper" in foundry and driver of truck, 7, 880

Hod carrier and foreman, 7, 879, 880

Hoisting engineer and men in mining shaft, 7, 880

Laborer and architect, 7, 864, 881

Laborer and boat owner, 7, 881

Laborer and boat rower, 7, 864

Laborer and brakeman, 7, 881

Laborer and carpenter, 7, 869

Laborer and coal hoister, 7, 881

Laborer and conductor, 7, 881

Laborer and contractor's servants, 7, 881

Laborer and depot superintendent, 7, 872, 881

Laborer and derrick foreman, 7, 881

Laborer and driller, 7, 873

Laborer and engineer, 7, 881

Laborer and foreman, 7, 881

Laborer and foreman and derrick manager, 7, 872

Laborer and roadmaster, 7, 883

Laborer and section foreman, 7, 884

Laborer and station agent, 7, 885

Laborer and steam-hammer operator, 7, 885

Laborer and stevedore, 7, 885

Laborer and stevedore's foreman, 7, 885

Laborer and superintendent, 7, 885

Laborer and train hands, 7, 881

Laborer employed in construction and conductor, 7, 871

Laborer loading cars and conductor, 7, 870

Laborer loading dirt and brakeman, 7, 866

Laborer moving stone and foreman in charge of derrick, 7, 872

Laborer on construction or gravel train and conductor, 7, 870

Laborer on construction train and brakeman, 7, 866

Laborer on construction train and engineer, 7, 875

Laborer on track and conductor, 7, 871

Laborer on wood train and section foreman, 7, 884

Laborer or subordinate and foreman, 7, 879

Laborer riding on train and conductor, 7, 870

Laborer setting up derrick and brakeman, 7, 866

Laborer shoveling grain and master of steam tug, 7, 881

Lessee company's employees and employees of lessor company, 7, 881

Longshoreman and officers of ship, 7, 881

Machine repairer and employee using machinery, 7, 881

Machinery inspector and employees, 7, 881

Machinist and engineer, 7, 875, 881

Machinist helper and foreman, 7, 879

Machinist helper and foreman of a round shop, 7, 881

Mail catcher and fireman, 7, 878, 881

Manager and express company's employee, 7, 877

Managers of train and trackman, 7, 887

Mason and carpenter, 7, 869, 881

Mason and foreman, 7, 879

Master and mate of vessel, 7, 882

Master mechanic and brakeman, 7, 866, 881

Master mechanic and engineer, 7, 875, 881

Master mechanic and fireman, 7, 878, 881

Master mechanic and foreman of shops, 7, 888

Master mechanic and plumber, 7, 881, 883

Master of lighter and crew, 7, 872, 881

Master of steam tug and fireman, 7, 878, 881

Master of steam tug and laborer shoveling grain, 7, 881

Master of steam tug and shoveler, 7, 884

- Master of vessel and mate, 7, 881
 Master of vessel and seaman, 7, 872, 882
 Mate and common sailor, 7, 872
 Mate and deck hand, 7, 872, 882
 Mate and master of vessel, 7, 881
 Mate of vessel and captain, 7, 881
 Mate of vessel and master, 7, 882
 Materialman and track laborer, 7, 882
 Materialman and track repairer, 7, 887
 Mechanic in repair shops and boiler-maker, 7, 864, 882
 Mechanic in repair shops and brake-man, 7, 882
 Mechanic in repair shops and engineer, 7, 882
 Mechanic in repair shops and other employees, 7, 882
 Member of city fire department and member of street department, 7, 882
 Member of street department and member of city fire department, 7, 882
 Men in mining shaft and hoisting engineer, 7, 880
 Men working on construction train and water carrier, 7, 888
 Mill employee and general superintendent, 7, 880
 Mill hand and employee bound to keep fire apparatus in repair, 7, 873
 Mill operator and servants, 7, 882
 Millwright and carpenter, 7, 869, 882
 Mine roof superintendent and miner, 7, 882
 Miners and blasters, 7, 864, 882
 Miners and common workman, 7, 882
 Miners and miner, 7, 882
 Miners and mine roof superintendent, 7, 882
 Miners and mining boss, 7, 882
 Miners and pickers, 7, 882
 Miners and roadmen, 7, 882
 Miners and runner of steam engine, 7, 882
 Miners and sub-foreman, 7, 882
 Miners and superintendent, 7, 882
 Miners in shaft and engineer at mine, 7, 877
 "Mining boss" and "driver boss," 7, 873, 882
 Mining boss and driver boy, 7, 882
 Mining boss and miner, 7, 882
 Mining engineer and excavator, 7, 877, 882
 Night watchman and foreman, 7, 879
 Night watchman and foreman of crew, 7, 882, 888
 Officers of ship and longshoremen, 7, 881
 Operator in factory and superintendent, 7, 886
 Other employees and mechanic in repair shops, 7, 882
 Other employees and under boss of gravel train, 7, 888
 Passenger and driver of street car, 7, 873
 Passenger assisting car driver, 7, 883
 Person employed to load cars and switch tender, 7, 886
 Person having entire charge and control of freight business and engineer, 7, 875
 Pickers and miners, 7, 882
 Pilot and crew, 7, 872
 Pilot and deck hand, 7, 872, 883
 Plumber and carpenter, 7, 882, 883
 Plumber and master mechanic, 7, 881, 883
 Pop corn vendor and train hands, 7, 882, 888
 Repairmen and engineer, 7, 875
 Rigger and scaffolder, 7, 883
 Roadmaster and brakeman, 7, 866, 883
 Roadmaster and engineer, 7, 875, 882
 Roadmaster and fireman, 7, 878, 882
 Roadmaster and laborer, 7, 883
 Roadmaster and section man, 7, 883, 884
 Roadmen and miners, 7, 882
 Road supervisor and brakeman, 7, 883
 Rock blaster and teamster, 7, 883, 886
 Rock breaker and superintendent, 7, 883
 Rock breaker at mine and superintendent, 7, 886
 Rock-hauler and blaster, 7, 864
 Rowers of boat and steersman, 7, 883
 Runner of steam engine and miners, 7, 882
 Saw mill operatives and foreman, 7, 888
 Scaffolder and general manager, 7, 880, 883
 Scaffolder and rigger, 7, 883
 Seaman and master of vessel, 7, 872, 882
 Section boss and express agent, 7, 877, 884
 Section boss and section hand, 7, 884
 Section boss or section foreman and brakeman, 7, 884
 Section foreman and laborers, 7, 884
 Section foreman and laborers on wood train, 7, 884
 Section foreman and train hands, 7, 884, 888
 Section hand and brakeman, 7, 866, 884
 Section hand and engineer, 7, 875, 884
 Section hand and roadmaster, 7, 884
 Section hand and section boss, 7, 884
 Section hand and train hands, 7, 884
 Section man and roadmaster, 7, 883
 Section master and engineer, 7, 884
 Section master and switchman, 7, 884, 886
 Section master or section boss and brakeman, 7, 866
 Section master or section foreman and engineer, 7, 875
 Servants and mill operator, 7, 882
 Servants of lessee of road and engineer, 7, 885

FELLOW SERVANTS—Cont'd**Who Have and Who Have Not Been Held****Fellow Servants—Cont'd**

Servants of sub-contractor and contractor's servant, 7, 871

Servants running hand car and detective, 7, 873

Shovelers and brakeman, 7, 866, 884

Shovelers and conductor, 7, 884

Shoveler and engineer, 7, 875, 884

Shoveler and master of steam tug, 7, 884

Shovelers and track layers, 7, 884

Signalman and brakeman going to work, 7, 867

Signalman and employees going to work, 7, 884

Signalman and engineer, 7, 875, 884

Station agent and brakeman, 7, 867, 884

Station agent and carpenter, 7, 869, 885

Station agent and engineer, 7, 875, 885

Station agent and laborer, 7, 885

Station master and engineer, 7, 875, 885

Steam hammer operator and employee making repairs, 7, 885

Steam hammer operator and laborer, 7, 885

Steersman and rowers of boat, 7, 883

Stevedore and boatswain, 7, 864, 885

Stevedore and chief stevedore, 7, 885

Stevedore and crew, 7, 872

Stevedore and head stevedore, 7, 880

Stevedore and laborer, 7, 885

Stevedore's foreman and laborers, 7, 885

Stockholder and train hands, 7, 887

Stockholder riding free and train hands, 7, 885

Sub-contractor and engineer, 7, 876

Sub-contractor and train hands, 7, 885

Sub-foreman and miners, 7, 882

Subordinate car reporter and boss repairer, 7, 868

Superintendent and carpenter, 7, 885

Superintendent and conductor, 7, 871, 885

Superintendent and engineer, 7, 876, 885

Superintendent and fireman, 7, 885

Superintendent and foreman, 7, 881

Superintendent and laborer, 7, 885

Superintendent and miner, 7, 882

Superintendent and operator in factory, 7, 886

Superintendent and rock breaker, 7, 883

Superintendent and rock breaker at mine, 7, 886

Superintendent of manufacturing corporation and carpenter, 7, 869

Supervisor of roads and brakeman, 7, 867

Surveyor and conductor, 7, 871, 886

Switch constructor and fireman, 7, 878

Switchman and baggage master, 7, 864, 886

Switchman and brakeman, 7, 867, 886

Switchman and car inspector, 7, 868, 886

Switchman and car repairer, 7, 868, 886

Switchman and engineer, 7, 876, 886

Switchman and fireman, 7, 878, 886

Switchman and gas fitter, 7, 880, 886

Switchman and section master, 7, 884, 886

Switch tender and person employed to load cars, 7, 886

Teamster and engine driver, 7, 886

Teamster and engineer, 7, 876

Teamster and rock blaster, 7, 883, 886

Telegraph operator and conductor, 7, 871, 886

Telegraph operator and engineer, 7, 876, 886

Telegraph operator and fireman, 7, 878, 887

Those using locomotive and agent to purchase, 7, 864

Tie watcher and train hands, 7, 888

Track laborer and materialman, 7, 882

Track laborer and train dispatcher, 7, 881

Track layers and shovelers, 7, 884

Trackman and brakeman, 7, 867, 887

Trackman and engineer, 7, 887

Trackman and managers of train, 7, 887

Track repairer and brakeman, 7, 887

Track repairer and conductor, 7, 871, 887

Track repairer and employee using hand car, 7, 873

Track repairer and employees working hand car, 7, 887

Track repairer and engineer, 7, 876, 887

Track repairer and materialman, 7, 887

Track repairer and train dispatcher, 7, 887

Track repairer and train hands, 7, 887, 888

Track walker and coal heaver, 7, 870, 887

Track walker and fireman, 7, 878, 887

Train dispatcher and brakeman, 7, 867, 887

Train dispatcher and carpenter, 7, 887

Train dispatcher and conductor, 7, 871, 887

Train dispatcher and engineer, 7, 876, 886

Train dispatcher and fireman, 7, 878, 887

Train dispatcher and track laborer, 7, 881

Train dispatcher and track repairer, 7, 887

Train hands and baggageman, 7, 887

Train hands and brakeman, 7, 867, 887

Train hands and carpenter, 7, 869, 887

Train hands and carpenter building bridge, 7, 869

Train hands and conductor, 7, 871, 887

- Train hands and contractor's servants, 7, 887
 Train hands and employees riding free, 7, 873, 887
 Train hands and engine wiper, 7, 887
 Train hands and express agent, 7, 887
 Train hands and laborers, 7, 881
 Train hands and pop corn vendor, 7, 883, 888
 Train hands and section foreman, 7, 884, 888
 Train hands and section hands, 7, 884
 Train hands and stockholder, 7, 888
 Train hands and stockholder riding free, 7, 885
 Train hands and sub-contractor, 7, 885
 Train hands and tie watcher, 7, 888
 Train hands and track repairer, 7, 887, 888
 Train hands on passenger trains and conductor, 7, 871
 Train maker and car inspector, 7, 888
 Train maker and yard master, 7, 888
 Train master and fireman, 7, 888
 Train men and baggage master, 7, 864
 Train men and contractor's servants, 7, 872
 Train men and express agent, 7, 877
 Tunnel repairer and brakeman, 7, 888
 Turntable employee and carpenter, 7, 869
 Under boss of gravel train and other employees, 7, 888
 Volunteers and employees, 7, 888
 Watchman and car repairer, 7, 888
 Watchman and foreman, 7, 880
 Water carrier and men working on construction train, 7, 888
 Wife of employee, 7, 888
 Workman and agent, 7, 864
 Workman and engineer in charge of steam shovel, 7, 877
 Workman in same business and engineer, 7, 877
 Workman in tunnel and engineer, 7, 876
 Yard hand and engineer, 7, 888
 Yard hand and engine stripper, 7, 877, 888
 Yard hand and foreman, 7, 880, 888
 Yardman and engineer, 7, 877
 Yardmaster and assistant, 7, 888
 Yardmaster and brakeman, 7, 867, 888
 Yardmaster and car-coupler, 7, 868
 Yardmaster and car inspector, 7, 868
 Yardmaster and car repairer, 7, 868
 Yardmaster and engineer, 7, 877
 Yardmaster and flagman, 7, 878
 Yardmaster and trainmaker, 7, 888
- FELON—FELONY**, see CRIMINAL LAW
FELONIOUS HOMICIDE, see HOMICIDE.
FELONIOUSLY, 9, 620; 19, 956; 27, 696
 Distinguished from unlawful, 4, 752
 Equivalent to falsely, 4, 751, 752
 In indictment, 10, 598
 Larceny, 12, 817
FELONY, 7, 889
 See CRIMINAL LAW.
- As to incapacity of felons*, see INFAMY.
Compounding a felony, see COMPOUNDING OFFENSES.
 Aiders and abettors, 4, 653
 At common law, 4, 653
Civil Actions for Damages in Case of Public Wrongs, 17, 515
 At common law, 17, 515
 Felony resulting in death, 17, 515
 Larceny, 17, 515
 Limitation to common law rule, 17, 515
 Public wrongs without special damage to the individual, 17, 516
 Robbery, 17, 515
 Statutory provisions in the United States, 17, 516
 Definition, 4, 651
 Distinguished from misdemeanor, 4, 651
 "High crimes and misdemeanors," 9, 361
 Information, 10, 703
 Libel and slander, 13, 338, 387
 Mayhem, 14, 991
Misprision of, 4, 655; 15, 623
 What is, 4, 655
 Receiving stolen property, 20, 452
Recovery for
 In civil action, 15, 358
 Solicitation to commit a, 4, 671
 Statutory felonies, 4, 652
 What acts are felonious, 4, 653
- FEMALE SUFFRAGE**, see WOMEN.
FEME COVERT, see HUSBAND AND WIFE.
FEME SOLE, see MARRIED WOMEN.
 Married woman living as, 1, 170
 Women, divorce a vinculo, 1, 169
 Where presumption of husband's death, 1, 169
- FENCES**, 7, 889
 See IMPOUNDING.
Action for Damages, 7, 905
 By stock, 7, 905
 Cattle in the hands of an agistor, 7, 905
 Custodian of trespassing animals, 7, 905
 Damages for injuries, generally, 7, 905
 Joining several owners in one action, 7, 905
 Adverse possession, 1, 248
As a Fixture, 7, 905; 8, 57, 58
 Fence and material detached, 7, 906
 Fence built on land of another without agreement, 7, 906
 Material placed on the line in contemplation of a fence, 7, 906
 Rails, 7, 905
 Replevy of rails, 7, 905
 Whether a part of realty, 7, 905
As an element of adverse possession, 1, 257
As boundaries, 2, 500
Boundaries, see *infra*, **PARTITION FENCES**.
Cattle Guards, 7, 912
 Definition, 7, 912
 Duty to repair, 7, 914
 Injury to crops, 7, 914

FENCES—Cont'd**Cattle Guards—Cont'd**

- In towns and villages, 7, 913
- Obligation to maintain in absence of statute, 7, 913
- Obligation under statutes, 7, 913
- Proper cattle guards, 7, 913

Definition, 2, 509; 7, 889

Division, see *infra*, PARTITION FENCES.

Element of damages in eminent domain proceedings, 9, 939

Farm Crossings

- Gate left open by landowner, 7, 917

Fence-Viewers, 2, 511

- Conclusiveness of judgment, 2, 511
- Necessity of decision being in writing, 2, 511

Proceedings before, 2, 511

Fixtures, 7, 905; 8, 57, 58

See *infra*, AS A FIXTURE.

Impairment of Obligation of Contracts

- Right of state to regulate, 8, 622

Injunctions

- Covenant not to erect, 10, 938

Injury to Crops by Cattle

- Master and servant, 14, 835

Injury to

- By exercise of right of eminent domain, 6, 551

Landlord and Tenant, 12, 708

Stock, 12, 719

Lawful

- What constitutes, 2, 510; 7, 900

Master and Servant

- Injury to crops by cattle, 14, 835

Mechanics' liens, 15, 31

Necessity of, at common law to protect land against estrays, 2, 509

Obligations of railroads, 8, 605

Obstructing light and air, 26, 593

Outside fences, 2, 509

Partition Fences, 2, 509; 7, 894

Agreement binding upon lessee, 7, 898

Agreement to divide partition fence between two landowners, 7, 897

Agreement to keep up stock, 7, 897

Agreement to maintain specific portion of fence, 7, 895

Animals falling into pit, 7, 901

Apportionment, 7, 901

Cattle entering through portion of fence which their owner is bound to maintain, 7, 895

Cattle entering where both portions are out of repair, 7, 895

Compelling lessee to contribute, 2, 510

Conflict as to what is a division fence, 7, 894

Constructed directly on boundary line, 2, 510

Contribution, 7, 898

Agreement to dispense with fence, 7, 898

Allowing land to lie open as a common, 7, 899

Fence more expensive than required by statute, 7, 898

Line in dispute, 7, 898

Line not conforming with boundary, 7, 898

New York statute, 7, 899

Obligation to contribute a chose in action, 7, 899

Rights by prescription, 7, 900

Town and city lots, 7, 899

Unimproved lands, 7, 899

What is land "in common," 7, 899

When land subject to, 7, 899

Who bound to contribute, 7, 898

Cutting ditch half on land of adjacent owner, 7, 894

Defective fence, 7, 901

Defective fence as a defense for trespass of cattle, 7, 895

Definition, 7, 894

Division of fence by verbal agreement, 7, 897

Duty of each to keep up fence until apportionment, 7, 901

Encroachment on another's land, 7, 904

Enforcing contribution from adjoining owner, 2, 509

Enforcing contribution where fence is not on division line, 2, 510

Fences established by agreement, 7, 897

Fence-Viewers, 2, 511; 7, 902

Application for viewers, 7, 903

Conclusiveness of their decisions, 7, 902

Decision by two viewers, 7, 904

Inspection, 7, 903

Jurisdiction, 7, 903

Nature of tribunal, 7, 902

Notice, 7, 903

Notice of decision, 7, 904

Notice of proceedings, 7, 903

Powers, 7, 902

Relationship to the parties, 7, 903

Specification of particular defects, 7, 904

Whether decision should be in writing, 7, 904

Joint property of adjoining proprietors, 2, 511

Lawful Fences, 2, 510; 7, 900

Height of fence, 7, 900

Statutory height, 7, 900

Substitute for statutory fence, 7, 900

What is a lawful fence, 7, 900

What sufficient fence, 7, 901

Wild animals, 7, 900

Necessity of consent of both parties to removal, 2, 511

Notice of intention to revoke, 7, 898

Notice of removal, 7, 902

Owner throwing down fence built on his land, 7, 904

Placing fence half on land of adjacent owner, 7, 894

Placing fence partly on land of adjoining owner, 7, 905

- Prescriptive duty to maintain specific operation, 7, 900
 Prescriptive obligation to maintain a particular portion, 7, 895
 Presumption as to agreement to maintain specific portion of fence, 7, 895
 Railroad adjoining owner, 7, 939
 Remedy upon agreement to keep up specific part, 7, 895
 Removal of fences, 7, 902
 Removal of fence without notice, 7, 902
 Revocation of agreement as to partition fences, 7, 897
 Revocation of license to join to a fence, 7, 905
 Rights and remedies generally, 7, 901
 Right to occupy land on each side of the true line, 7, 894
 Right to remove a fence built by mistake on another's land, 7, 895
 Statutory regulations, 7, 896
 Sufficient fence at place of cattle's entrance, 7, 901
 Waiver of statutory rights, 7, 896
 What amounts to a waiver of statutory rights, 7, 896
 What courts have jurisdiction over disputes concerning, 2, 511
 When recovery may be maintained for cattle entering, 7, 896
 Whether covenant for partition fence runs with land, 7, 897
 Worm fence as, 2, 510
 Public lands, 19, 372
Railroads, 7, 906
 Angular approaches to highway crossing, 7, 938
 At common law, 7, 906
 Constitutionality of statutes imposing attorney's fees, 3, 698
 Constitutionality of statutes permitting double damages for stock killed, 3, 717
 Contributory negligence of owner, 7, 907
 Covenants, 19, 851
 Degree of care to be used in running trains, 7, 906
 Duty to Fence in the Absence of Statute, 19, 938
 Contractor, 14, 835
 Statutes requiring fences, 19, 942
 Duty to repair gaps, 7, 916
 Gaps made by railroad, 7, 915
 Gates allowed at farm crossings, 7, 916
 Gate left open by landowner, 7, 917
 Imputed contributory negligence where gate is left open, 7, 917
Injury to Animals, 7, 922
 See infra, RAILROADS, STOCK-KILLING CASES.
 Where Company Bound to Fence, 7, 927
 Burden of proof as to place of entry, 7, 929
 Cattle entering at a point which company is not bound to fence and straying to a point at which it is, 7, 928
Contributory Negligence, 7, 929
 Animals running at large, 7, 929
 Animals technically trespassing, 7, 931
 Cattle not lawfully on adjoining lands, 7, 933
 Cattle running at large in violation of statute, 7, 932
 Cattle straying without owner's fault, 7, 933
 Company liable unless injury the result of owner's act, 7, 932
 Land owned by owner of cattle, 7, 931
 Letting cattle stray at large, 7, 932
 Railroad owning land, 7, 931
 Rule in Kansas, 7, 933
 Rule in Massachusetts, 7, 933
 Rule in Michigan, 7, 933
 Rule in Minnesota, 7, 933
 Rule in Nebraska, 7, 933
 Rule in New Hampshire, 7, 933
 Rule in Vermont, 7, 933
 Running at large in violation of statute, 7, 929
 States where common law prevails, 7, 933
 Crazy horses, 7, 928
 Evidence, 7, 929
 Impracticable to fence, 7, 927
 Injuries not caused by train, 7, 928
 Injuries upon bridges, 7, 928
 Killing swine, 7, 927
 Liability in general, 7, 927
 Place of entry, 7, 927
 Presumption of negligence, 7, 927
 Private crossings, 7, 929
 Proving place of entry, 7, 929
 Question of negligence, 7, 927
Where no Fence Required, 7, 922
 Assent of owner for failure to fence, 7, 925
 Burden of proof, 7, 925
 Cattle coming on track at point that railroad is not bound to fence, 7, 925
 Contributory negligence, 7, 923
 Exercise of ordinary care, 7, 923
 In Indiana, 7, 923
 In Pennsylvania, 7, 923
 In Maryland, 7, 923
 In Massachusetts, 7, 923
 In Michigan, 7, 923
 In New Hampshire, 7, 923
 In New Jersey, 7, 923
 In New York, 7, 923
 In Vermont, 7, 923
 Injury to third person where adjacent owner has agreed to maintain fence, 7, 925
 Liability in general, 7, 922

FENCES—Cont'd**Railroads—Cont'd****Injury to Animals—Cont'd****Where no Fence Required—Cont'd**

Liability to same extent as any other owner of land, 7, 922

No presumption of negligence from fact of killing, 7, 926

Ordinary care, 7, 923

Prevailing doctrine, 7, 923

Public crossings, 7, 927

Stations, 7, 926

Switch limits, 7, 926

Wanton injury, 7, 922

What negligence renders owner liable, 7, 923

Where adjacent owner has agreed to maintain the fence, 7, 924

Where compensation is awarded owner for building fence when land is taken, 7, 925

Whether the fact that the railroad was unfenced may be taken into consideration, 7, 924

Yards, 7, 926

Injury to stock by negligence, 7, 906

Joint liability, 19, 902

Keeping up bars, 7, 916

Liability for injuries at common law, 7, 906

Liability of company for animals entering through open gate, 7, 916

Liability of lessee, 19, 902

Liability of lessor, 19, 902

Questions for jury, 7, 917

Statutes, 7, 907; 19, 942

Abandonment to public use, 7, 911

Action for injuries after lapse of statutory period, 7, 908

Action Under, 7, 934

Affidavit of motive, 7, 934

Allegation of negligence, 7, 934

Cattle guard, 7, 937

Damages

Arkansas statute, 7, 938

Attorney's fees, 7, 937

Defective cattle guard, 7, 938

Double Damages

Constitutionality of Missouri law, 7, 938

Interest, 7, 938

Interest where double damages are recovered, 7, 937

Measure of, 7, 937

On property lost, 7, 937

Right of assignee to recover double damages, 7, 938

What may be included in damages, 7, 937

Declaration in court of record, 7, 934

Double damages, 7, 935

Evidence, 7, 936

Evidence of place of entry, 7, 936

Evidence that company was bound to fence, 7, 936

Interest on property lost, 7, 937

Notice and affidavit of loss, 7, 935

On whom service of notice may be made, 7, 936

Pleadings in Illinois, 7, 934

Pleadings in Indiana, 7, 935

Pleadings in Missouri, 7, 935

Requisite allegations, 7, 934

Statutory exceptions to duty of fencing, 7, 934

Sufficiency of fence, 7, 937

Written declaration or complaint, 7, 934

Burden of proof, 7, 908

Cattle guards, 7, 912, 913

Cities and towns, 7, 911

Constitutionality of statutes, 7, 910

Contributory negligence, 7, 919

County road running parallel with railroad, 7, 909

Defective fences, 7, 918

Degree of diligence required of company, 7, 919

Depot grounds, 7, 911

Excessive speed on station grounds, 7, 912

Expense incurred in protecting crops, 7, 909

Fencing against swine, 7, 921

Gates and bars, 7, 915

Highway crossings, 7, 910

Implied release, 7, 908

Injuries to crops arising from failure to fence, 7, 908

Lessee of railroad, 7, 908

Liability for stock injured by negligence where obligation to fence does not exist, 7, 912

Liability irrespective of negligence, 7, 907

Machine shops, 7, 912

Negligence inferred from lapse of time where fence is defective, 7, 919

Negligence of owner, 7, 907

Notice of defects, 7, 918

Partition fences, 7, 939

Party operating railroad, 7, 909

Placing cattle in field where fence is defective, 7, 919

Presumption of notice of defects, 7, 918

Provisions of the statute, 7, 907

Release of obligation by owner of land, 7, 907

Repairs within reasonable time, 7, 918

Stations, 7, 911

Statutory obligations, 7, 907

Statutory provisions as to time of fencing, 7, 908

Sufficiency of Fence, 7, 920

As to trespassers, 7, 921

Infant child, 7, 921

In Iowa, 7, 920

In Kansas, 7, 920

In Michigan, 7, 920

In Minnesota, 7, 920

In Missouri, 7, 921
 Where not defined by statute, 7, 921
 Test as to whether railroad is bound to fence, 7, 911
 Time when road should be fenced, 7, 908
 Towns and villages, 7, 913
 Vicinity of engine house, 7, 912
 What is a reasonable time for repair, 7, 918
 When obligation absolved, 7, 907
 Whether abutting owner fencing land excuses railroad, 7, 908
 Wire fence, 7, 920
Stock-Killing Cases, 19, 938
See infra, RAILROADS, INJURY TO ANIMALS.
 Care to prevent injury, 19, 938
 Dogs, 19, 941
 Duty to fence in absence of statute, 19, 938
 Duty to keep a lookout, 19, 940
 Duty to stop train, 19, 941
 Examples, 19, 938-942
 Injuries not caused by actual collision, 19, 941
 Liability in general, 19, 938
 Liability where owner is not required to keep stock inclosed, 19, 939
 Liability where owner is required to keep his stock inclosed, 19, 939
 Ordinary care to discover stock, 19, 939
 Presumption arising from fact of injury, 19, 941
 Statutes requiring fences, 19, 942
 Statutory requirements as to lookout, 19, 940
 Willful injuries, 19, 939
 Receiver of railroad, 20, 391
Stations (Railroad), 23, 132
 Duty to fence, 23, 132
 How far exemption extends, 23, 132
 In general, 23, 132
 Meaning of station or depot, 23, 132
 Side-track, 23, 132
 Statutory fence may be varied by agreement of adjoining owners, 2, 509
Streets and Sidewalks
 Removal of fences, 24, 32
Trespass, 26, 593
 As part of freehold, 26, 593
 In general, 26, 593
 Obstructing light and air, 26, 593
 When trespass lies for removal, 26, 593
Who Bound to Fence, 7, 890
Land Owners, 7, 890
See infra, PARTITION FENCES.
 Cattle wrongfully on highway, 7, 893
 Choice of fencing or submitting to depredations of cattle, 7, 891
 Common law rule, 7, 890
 Control of unfenced land, 7, 892
 Defective fence, 7, 892

Driving cattle from unfenced lands, 7, 892
 Duty of commissioners, 7, 894
 Herding on another's land, 7, 892
 Obligation to fence under statute, 7, 891
 Outside fences, 7, 892
 Pasturing cattle on highway, 7, 893
 Right to drive cattle on highway, 7, 893
 Rule in Arkansas, 7, 890
 Rule in California, 7, 890
 Rule in Colorado, 7, 890
 Rule in Delaware, 7, 890
 Rule in Georgia, 7, 890
 Rule in Illinois, 7, 890
 Rule in Indiana, 7, 890
 Rule in Iowa, 7, 890
 Rule in Kentucky, 7, 890
 Rule in Maryland, 7, 890
 Rule in Massachusetts, 7, 890
 Rule in Michigan, 7, 890
 Rule in Minnesota, 7, 890
 Rule in Mississippi, 7, 890
 Rule in Missouri, 7, 890
 Rule in New Hampshire, 7, 890
 Rule in New Jersey, 7, 890
 Rule in New York, 7, 890
 Rule in North Carolina, 7, 890
 Rule in Ohio, 7, 890
 Rule in South Carolina, 7, 890
 Rule in Texas, 7, 890
 Rule in Vermont, 7, 890
 Rule in West Virginia, 7, 899
 Rule in Wisconsin, 7, 890
 Statutory regulations, 7, 891
 To what fences statutes relate, 7, 891
 Unnecessary injury in driving cattle, 7, 892
 Use of dog to keep cattle off, 7, 892
 Where cattle are prohibited from running at large, 7, 893
 Willful trespass, 7, 892

FENCE-VIEWERS, *see* FENCES.

FEOFFMENT

Enfeoff, 6, 641

FERMENTATION, 2, 237

See INTOXICATING LIQUORS.

FERMENTED, 7, 940

FERRIES, 7, 941; 9, 366

See TAXATION.

As common carriers, 2, 782, 785; 7, 947-949

As public highways, 9, 366

Compared with bridges, 2, 540

Definition, 7, 941

Duties of Owner

After nightfall, 7, 946

Providing proper servants, 7, 946

To accommodate public, 7, 946

Winds rendering dangerous to cross, 7, 946

Eminent Domain, 7, 952.

For the exercise of eminent domain generally, *see* EMINENT DOMAIN.

A public use, 6, 526

FERRIES—Cont'd

Exclusive right, 7, 752

Ferry Boat

Collision, 16, 304

Ferryman as servant, 14, 748

Franchise, 7, 941

Creature of sovereign power, 7, 942

Descent, 7, 943

Definition, 7, 941

Exercising without consent of state, 7, 942

Free ferry, 7, 944

How Acquired and Established, 7, 942

Indemnity to owner of soil, 7, 942

In England, 7, 942

In United States, 7, 942

Legislative authority, 7, 942

Power of state to establish ferries, 7, 942, 952

Prescriptive right, 7, 943; 19, 29

Proprietorship of soil, 7, 942

How Lost, 7, 943

Misuser, 7, 943

Non-user, 7, 943

How Protected, 7, 944

Encroachment a nuisance, 7, 944

Infringement of ferryman's right, 7, 944

Injunction, 7, 945

Liability of municipal corporation after granting rival franchise, 7, 946

Right of action against non-used ferry, 7, 944

Right of a person to use his own boat, 7, 944

Right of stranger to question, 7, 944

Transportation by railroads, 7, 945

What It Concludes

Exclusive right of transportation, 7, 944

Whether a matter of right, 7, 942

Whether assignable, 7, 942

Whether pendent to land, 7, 945

Whether real estate, 7, 942

Impairment of Obligation of Contracts

State punishing misconduct, 8, 624

Injunctions, 10, 979

Absence of remedy at law, 10, 980

Erection of bridge, 10, 979

Examples, 10, 980

Forfeited franchise, 10, 980

Infringement of ferry franchise, 10, 979

Protection of exclusive right, 10, 979

Rival ferries, 10, 979

When right exclusive, 7, 952

Interstate commerce, 11, 542, 556

Liability of ferrymen as common carriers, 2, 784

Liability of Owners, 7, 947

As Common Carriers, 2, 782, 785; 7, 947

As common carriers of goods, 7, 947

Carrying freight, 7, 947, 948

Having exclusive custody of property, 7, 947, 948

For negligence, 7, 949

When ferry treated as common carrier, 7, 947

License, 13, 526

Municipal corporations, 13, 537

Power of state to grant, 11, 556

Municipal Corporations

Legislative control, 15, 986

Obstructing, 7, 952

Owner's Liability for Negligence, 7, 949

Bill lading, 7, 950

Gratuitous carriage, 7, 951

Letting down chains before footing is secured, 7, 949

Specific acts of negligence, 7, 949-951

When begins, 7, 950

Power of State to Create, Regulate, etc., 7, 952

Eminent domain, 6, 526; 7, 952

Establishing rival ferry, 7, 952

Establishment, 7, 952

License fees, 7, 952

Power of congress, 7, 952

Power to authorize competing ferry, 7, 952

River between two states, 7, 952

Prescription, 7, 943; 19, 29

Private ferry not a common carrier, 2, 785

Public, 7, 941

Railroad operating, 19, 824

Res judicata, 21, 147

Rights of action against unauthorized, 7, 951

Rights of Ferryman, 7, 951

Landing passengers between high and low water mark, 7, 946

Landing upon wharf of another ferryman, 7, 952

Obstructing ferry, 7, 952

Of action against unauthorized ferryman, 7, 951

Reception of passengers, 7, 952

To extend rope across river, 7, 947

To use land for disembarking, 7, 951

Rolling Stock

Joint owner of another railroad, 19, 824

Statutory Regulations

In Alabama, 7, 955

In Arkansas, 7, 955

In California, 7, 955

In Georgia, 7, 955

In Illinois, 7, 955

In Indiana, 7, 955

In Kansas, 7, 955

In Kentucky, 7, 956

In Louisiana, 7, 956

In Massachusetts, 7, 956

In Minnesota, 7, 956

In Mississippi, 7, 956

In Missouri, 7, 956

In New Jersey, 7, 956

In New York, 7, 956

In North Carolina, 7, 956

In Ohio, 7, 953, 956

In Oregon, 7, 956

In Pennsylvania, 7, 956

In South Carolina, 7, 956

In Tennessee, 7, 956

In Texas, 7, 957

In Virginia, 7, 957

- Tolls, 7, 951
 Rights of, 7, 951
 Common law right, 7, 951
 Custom to pass free, 7, 951
 Tolls fixed by statute, 7, 951
 When ferryman's liability begins, 2, 804
- FERTILIZERS**
 Warranty, 28, 773
Sales of fertilizer, see ILLEGAL SALES.
- FEUD**, 7, 957
- FEW**, 7, 957
- FICTION OF LAW**, 7, 957
- FIDUCIARY**, 7, 957
See ASSIGNMENTS FOR THE BENEFIT OF CREDITORS; CHARITY; DIRECTORS; EXECUTORS AND ADMINISTRATORS; GUARDIAN AND WARD; IMPLIED TRUSTS; MASTER AND SERVANT; OFFICERS; POWERS; PUBLIC OFFICERS; TRUST DEEDS AND POWER OF SALE MORTGAGES; TRUSTS AND TRUSTEES; AGENCY, etc., etc.
As to imprisonment for debt of person occupying fiduciary relation, see IMPRISONMENT FOR DEBT.
As to purchase by fiduciary with trust funds, see IMPLIED TRUSTS.
 Fiduciary capacity, 2, 722, 7, 957
- FIELD**, 7, 958
 Cultivated field, 7, 958
 In field, 10, 323
 Whether a garden is a field, 8, 1095
- FIERI FACIAS**, 7, 958
See EXECUTION.
 Breaking doors to execute, 1, 723
- FIGHT**, *see AFFRAY; ASSAULT; PRIZE FIGHT.*
- FIGURES**, 7, 959
 Marginal figures in bills and notes, 1, 517; 2, 329
 Court records, 7, 960
- FILE**, 7, 960
See RECORDING ACT.
 Among file, 7, 963
 Delivery must be for the purpose of filing, 7, 962
 Delivery to agents of filing officer, 7, 961
 Delivery to officer when he is not in his office, 7, 960
 Delivery to one in charge of vacant officer, 7, 961
 Depositing in office without delivery to officer, 7, 961
 Duties imposed upon filing officer, 7, 962
 Evidence of filing, 7, 963
 "Filed," 3, 194
 Filed for record, 7, 963
 Filed in open court, 7, 963
 "File" included under returned, 7, 963
 Filed with the pleading, 7, 963
 Necessity of paper filed remaining in the custody of the filing officer, 7, 962
 To whom delivery may be made, 7, 961
 When agency will be implied, 7, 961
- FILING**, *see INDICTMENT.*
- FILL**, 7, 963
 An office filled, 7, 964
 Fill a prescription, 7, 963
 Filled in with brick, 7, 964
 Fill shares of stock, 7, 963
- FILUM AQUÆ**, 7, 964
See ACCRETION; BOUNDARIES.
- FILUM VIÆ**, 7, 964
See BOUNDARIES.
- FINAL**, 7, 965
Final process, see EXECUTION.
 Final and conclusive, 7, 965
 Final decision, 7, 965
 Final disposition, 7, 965
 Final disposition of the cause, 3, 47
 Final division, 7, 965
 Final jurisdiction, 12, 317
 Final sailing, 7, 965
 Final settlement, 7, 965
 Final trial, 7, 965
- FINAL JUDGMENT AND DECREES**, 1, 617; 12, 63
See DECREE.
 Alias summons, 6, 816
 Alimony, 12, 68
Appeal, *see DECREE.*
 Alimony, 12, 68
 Attachment, 12, 67
 Change of venue, 12, 65
 Continuance, 12, 65
Criminal Cases, 12, 70
 Order overruling demurrer to indictment, 12, 70
 Order sustaining demurrer to indictment, 12, 70
 Default, 12, 67
 Definition of final judgment, 12, 63
 Directing payment of costs, 12, 64
 Dismissal of action, 12, 65
 Divorce, 12, 68
 Eminent domain, 12, 68
 Exceptions, 12, 64
 Executions, 12, 67
 Executors and administrators, 12, 68
 Foreclosure, 12, 68
 Garnishee, 12, 68
 Habeas corpus, 12, 69
 Illustrations, 12, 69
 Interlocutory judgment, 12, 64
 Judgment for cost, 12, 66
 Judgment for costs after dismissal, 12, 67
 Judgment in criminal cases, 12, 64
 Judgment not settling rights of all parties, 12, 64
 Judgment on scire facias proceedings, 12, 69
 Judgment reserving question of cost, 12, 67
 Judgment settling only parts of several issues, 12, 64
 Mandamus, 12, 69
 Nonsuit, 12, 67
 On demurrer, 12, 65
 Order as to settlement of statement on, 12, 70

FINAL JUDGMENT AND DECREES—*Cont'd***Appeal—Cont'd**

Order directing payment of money into court, 12, 67

Order granting new trial, 12, 66

Order refusing to enter judgments, 12, 69

Order striking cause or petition from docket, 12, 70

Order vacating judgments, 12, 66

Partition, 12, 68

Quashing writs, 12, 65

Reference to master, 12, 69

Removal from state to federal court, 12, 65

Reversal of judgment of lower court, 12, 66

Rule to show cause, 12, 65

Setting aside former judgment, 12, 66

Settling interests of some parties whose rights are not connected with others, 12, 64

Attachment, 12, 67

Change of venue, 12, 65

Contempt, 6, 814

Continuance, 12, 65

Criminal Cases, 12, 70

Order overruling demurrer to indictment, 12, 70

Order sustaining demurrer to indictment, 12, 70

Criminal contempt, 6, 814

Decree to carry into effect a, 6, 813

Default, 12, 67

Definition of, 12, 63

Directing payment of costs, 12, 64

Dismissal of action, 12, 65

Disposition of whole matter at issue, 6, 813

Distinguished from interlocutory, 11, 427

Divorce, 12, 68

Eminent domain, 12, 68

Exceptions, 12, 64

Executions, 12, 67

Executors and administrators, 12, 68

Foreclosure, 12, 68

Garnishee, 12, 68

General rule, 6, 813

Habeas corpus, 12, 69

Illustrations, 12, 69

In account render, 1, 133

Instances, 6, 813-817

Interlocutory judgment, 12, 64

Judgment for cost, 12, 66

Judgment for costs after dismissal, 12, 67

Judgment in criminal cases, 12, 64

Judgment not settling rights of all parties, 12, 64

Judgment of fine, 7, 992

Judgment of reversal, 6, 814

Judgment on scire facias proceedings, 12, 69

Judgment reserving question of cost, 12, 67

Judgment settling only parts of several issues, 12, 64

Justice of the Peace, 12, 475

Order to pay money into court, 12, 476

Mandamus, 12, 69

Nonsuit, 12, 67

On demurrer, 12, 65

Order as to settlement of statement on appeal, 12, 70

Order directing payment of money into court, 12, 67

Order granting new trial, 12, 66

Order refusing to enter judgments, 12, 69

Order striking cause or petition from docket, 12, 70

Order vacating judgments, 12, 66

Partition, 12, 68

Interlocutory Judgment, 17, 750

Altering or changing, 17, 750

Amendments, 17, 750

Discontinuance, 17, 750

In general, 17, 750

Lis pendens, 17, 750

Setting aside, 17, 750

Statutory right to appeal, 17, 751

Whether appealable, 17, 750

Quashing writs, 12, 65

Reference to master, 12, 69

Removal from state to federal court, 12, 65

Res judicata, 21, 266

Reversal of judgment of lower court, 12, 66

Rule to show cause, 12, 65

Setting aside former judgment, 12, 66

Settling interests of some parties whose rights are not connected with the others, 12, 64

United States courts, 27, 613, 614

What is, 1, 617; 6, 813, 843

What is, over which the United States supreme court has jurisdiction, 7, 966

Where future orders of court may become necessary, 6, 814

Where nothing remains but to execute it, 6, 814

FIND, 7, 974

Find committing offenses, 7, 975

Origin, 7, 991

Service of process, 7, 974

FINDER OF PROPERTY, 7, 977*See generally*, DERELICTS; ESTRAYS;

LOST PAPERS; TREASURE TROVE; WRECKES.

See REWARDS.**Ballments, 7, 986**

Bailee for hire, 7, 986

Care to be exercised, 7, 986

Voluntary bailee, 7, 986

When bailee for hire, 7, 986

When voluntary bailee, 7, 986

Definition, 7, 977

Finder's Obligations, 7, 986

Care to be exercised, 7, 986

Obligation to return to true owner, 7, 986

Ordinary care of bailee for hire, 7, 986

Perishable goods, 7, 987

Slight care of a voluntary bailee, 7, 986

Vol. I.

- When answerable for negligence, 7, 986, 987
- Finder's Rights**, 7, 985, 987
- Absolute title, 7, 985, 988
- Affected by place where found, 7, 989
- Affected by relation to third party, 7, 990
- Against all world, 7, 985
- Against true owner himself, 7, 986
- All rights and responsibilities of ownership, 7, 985
- Bailee for hire where reward is offered, 7, 986
- Lien**, 5, 557; 7, 987; 13, 592
- Where no reward is offered, 7, 987
- Where reward is offered, 5, 557; 7, 987
- May maintain trover, 7, 985
- Necessary and reasonable expenses, 7, 987
- Of finder affected by special circumstances, 7, 989
- Relation of bailee, 7, 986
- Rights against owner of premises upon which property was found, 7, 986
- Rights against subsequent finder, 7, 986
- Source, 7, 985
- Voluntary bailee, 7, 986
- Identification of lost property, 7, 988
- Larceny**, 7, 977
- English cases, 7, 980
- Finder must have means of discovering owner at hand, 7, 980
- Ignorance of law, 7, 981
- In Missouri, 7, 979
- In New York, 7, 978
- In Tennessee, 7, 977
- Of finder, 7, 977
- Old rule and new, 7, 980
- When fraudulent intent must be formed, 7, 980
- Whether there can be larceny of lost property, 7, 977
- Legal Losing**, 7, 984
- Accidental, 7, 984
- Involuntary, 7, 984
- Property mislaid merely, 7, 984
- What constitutes, 7, 984
- Legal Possession**, 7, 977, 981
- Animus domini, 7, 982
- Control over thing found, 7, 982
- Distinction between intent to exclude others and animus domini, 7, 982, 984
- Intention to remain owner of thing found, 7, 982
- Intent to exclude others, 7, 982
- Knowledge of possession, 7, 981
- Necessity that animus domini continue, 7, 984
- Necessity that physical control continue, 7, 984
- Physical power over subject found, 7, 982
- What constitutes, 7, 981
- Liens**, 7, 987; 13, 592
- Where no reward is offered, 7, 987
- Where reward is offered, 5, 577; 7, 987
- Master and servant, 7, 990
- Property merely mislaid, 15, 622
- Quasi deposits, 5, 571
- Reward, see REWARD.
- Right to, between employer and employee, 5, 575
- Sales by, 21, 568
- Title of transferee, 7, 990
- What Constitutes Legal Finding**, 7, 977
- Finder's legal possession*, see *infra*, LEGAL POSSESSION.
- Property legally lost*, see *infra*, LEGAL LOSING.
- Good faith of finder, 7, 977
- What determines whether owner can be found with reasonable diligence, 5, 575
- FINDING**, 7, 991
- See INDICTMENT; INFORMATION; JURY.
- Construction, 28, 356
- Justice of the Peace**, 12, 456, 458
- Taking case under advisement, 12, 458
- Leaving part of issue undisposed of, 12, 72
- Mandatory or directory, 23, 459
- New trial, 16, 515, 611, 612
- Record, 20, 489, 589
- Responsiveness of verdict to issue, 28, 293
- Special Verdict**
- Master in chancery, 14, 938
- Weight of Evidence**
- New trial, 16, 555
- FINES**, 9, 991
- See PENALTIES.
- United States revenue laws*, see REVENUE LAWS.
- Alternative of fine and imprisonment, 7, 993
- Amount of, 7, 991
- As punishment for misdemeanor, 4, 727
- By building and loan associations, 2, 620
- Collection of, 7, 992
- Contempt, 9, 219
- Costs, 7, 993
- Discharge, 7, 993
- Discretion of court in ordering imprisonment until the fine is paid, 4, 723
- Distinguished from amercement, 7, 991
- Distinguished from debt, 7, 993
- Distinguished from forfeiture, 7, 992
- Distinguished from ordinances, 17, 258
- Distinguished from penalty, 7, 992
- Excessive, 7, 114
- In absence of defendant, 7, 993
- Infant's liability, 7, 993
- In statutes, 7, 992
- Joint sentence, 7, 993
- Judgment a final one, 7, 992
- Militia, 15, 479
- Misdemeanor, 12, 411
- Mitigation of damages, 15, 690
- Nominal, 7, 993
- Ordinances**, 17, 256
- Certainty, 17, 256
- Imprisonment in Default of Payment**, 17, 257
- Authority, 17, 257

FINES—Cont'd**Ordinances—Cont'd****Imprisonment in Default of Payment—***Cont'd*

Compliance with terms of power,
17, 258

Nature, 17, 257

Whether a punishment, 17, 257

Whether power to imprison is im-
plied, 17, 258

Minimum prescribed by charter, 17,
256

Nature, 17, 256

Payment, 17, 257

Penalty in excess of charter power, 17,
256

Prohibition of acts, 17, 257

Reasonableness, 17, 256

Whether a debt, 17, 256

Pardon, 17, 326, 327

Questions of law and fact, 19, 645

Quo warranto, 19, 662, 684

Remission, 7, 993

Replevin, 20, 1073

Sentence, 7, 992; 21, 1077

Collection of fine by imprisonment, 21,
1079

Duration of imprisonment where fine
is not paid, 21, 1077

Imprisonment for debt, 21, 1077

In alternative of fine or imprisonment,
21, 1077, 1078

Indefinite imprisonment, 21, 1077

Magistrate's jurisdiction, 21, 1077

Omission of the provision that the
prisoner stand committed, 21,
1078

Order that prisoner stand committed
until paid, 21, 1077

Rate of imprisonment to discharge
fine, 21, 1077

Whether imprisonment is unconsti-
tutional, 21, 1077

Where statute imposes a specific fine,
and judgment is for less amount, 4,
727

Whether both fine and imprisonment
may be imposed, 4, 727

Whether included in the term debt, 5,
152

Whether synonymous with punishment,
19, 569

Working out, 7, 993

FINISH, 7, 994**FIRE, 7, 994**

See ARSON; FIRE CAUSED BY THE
OPERATION OF RAILROADS; FIRE IN-
SURANCE.

By lightning, 7, 994

**Destruction of Private Property to Prevent
the Spread of Fire, 18, 756**

See FIRE DEPARTMENT.

In bill of lading, 2, 234

Liability of city for, 29, 7

Loss by fire in inn, 11, 63

Nuisances, 16, 956

Presumptions as to the spread, 19, 77

Waterworks and Water Companies

Liability of Private Company for Losses

**Resulting from Inadequate Water
Supply, 29, 21**

Contract with city to indemnify citi-
zen, 29, 22

Contract with private party, 29, 23

Examples, 29, 21-23

In general, 29, 21

Liability of insurance company, 29,
22

Where city has raised taxes to pro-
vide sufficient supply, 29, 22

FIRE-ARM, 7, 997

See CONCEALED WEAPONS; EXPLOSION.

FIRE DEPARTMENT, 15, 1170

Authority in absence of statute, 15, 1170,
1171

Authority of municipal corporations, 15,
1170

Destruction from public necessity, 6,
563

**Destruction of Building to Prevent Spread
of Fire, 6, 563; 7, 999; 18, 756; 26, 127,
600**

Fire insurance, 5, 70; 7, 995, 1041

**Liability of Municipal Corporations, 7,
999**

Building partly burned, 15, 1162

Eminent domain, 15, 1162

Examples, 15, 1162, 1163

Liability in absence of statute, 15,
1161

Liberal construction, 15, 1163

Right to destroy building, 15, 1161

To what statute applies, 15, 1162

Expert and opinion evidence, 7, 510

Fire Limits, Erection of Frame Building,

15, 1171; 26, 124

Enjoining erection of buildings, 10,
965; 15, 1172

Generally, 26, 124

In Alabama, 26, 125

In Arkansas, 26, 125

In California, 26, 125

In Colorado, 26, 125

In Connecticut, 26, 125

In Dakota, 26, 125

In England, 26, 129

In Georgia, 26, 125

In Illinois, 26, 125

In Indiana, 26, 125

In Iowa, 26, 125

In Kansas, 26, 126

In Kentucky, 26, 126

In Louisiana, 26, 126

In Maine, 26, 126

In Massachusetts, 26, 126

In Michigan, 26, 126

In Minnesota, 26, 126

In Mississippi, 26, 126

In Missouri, 26, 126

In Montana, 26, 126

In Nebraska, 26, 127

In Nevada, 26, 127

In New Hampshire, 26, 127

In New Jersey, 26, 127

- In New Mexico, 26, 127
- In New York, 26, 127
- In North Carolina, 26, 127
- In Ohio, 26, 127
- In Oklahoma, 26, 127
- In Ontario, 26, 128
- In Oregon, 26, 127
- In Pennsylvania, 26, 127
- In Rhode Island, 26, 128
- In South Carolina, 26, 128
- In Tennessee, 26, 128
- In Texas, 26, 128
- In Utah, 26, 128
- In Vermont, 26, 128
- In Virginia, 26, 128
- In Washington, 26, 128
- In West Virginia, 26, 128
- In Wisconsin, 26, 128
- In Wyoming, 26, 128
- Removal of building, 15, 1172
- Strict construction of provision, 15, 1173
- Illegal, 7, 1000
- Immoderate driving, 7, 1001
- Liability of a Municipal Corporation for Neglect of Its Fire Department, 7, 997**
 - Destruction of buildings to prevent the spread of fire, 7, 999; 15, 1162
 - In general, 7, 997
 - Injuries to firemen, 7, 999
 - Injuries to property, 7, 999
 - Personal injuries, 7, 997
 - Statutory liability, 7, 1000
- Municipality**
 - Purchase of fire apparatus, 15, 1054
- Ordinance as to immoderate driving, 7, 1001
- Prevention of fire, 15, 1170
- Removal of Members, 7, 1000**
 - Commissioners in Brooklyn, 7, 1000
 - For incapacity, 7, 1000
- Taxation, 7, 1001; 25, 92
- FIRE INSURANCE, 7, 1002**
 - See generally, FIRE DEPARTMENT; INSURANCE.*
 - See INSURANCE AGENTS.*
 - As to premium, see INSURANCE.*
 - As to reinsurance, see INSURANCE.*
 - As to remedies, see INSURANCE.*
 - As to reputation, see INSURANCE.*
 - As to waiver or estoppel, see INSURANCE.*
 - As to warranty, see INSURANCE.*
 - Rescission, see RECISSION.*
 - Service of process, see SERVICE OF PROCESS.*
- Adjustment**
 - Effect of, 7, 1052
- Alienation, 15, 808**
 - Absolute deed with defeasance, 15, 808
- Change of Interest, etc., 3, 89; 7, 1028**
 - Application to any change of title, 7, 1029
 - Assignment in bankruptcy, 7, 1030
 - Change of possession, 7, 1031
 - Change of titles within provision, 7, 1029
- Contract or sale, 7, 1030, 1031**
- Contract to convey, 7, 1029**
- Conveyance by husband to third party, and by him to wife, 7, 1030**
- Dissolution of partnership, 7, 1029**
- Examples of application of clause, 7, 1029-1031**
- Indorsement of consent, 7, 1032**
- Indorsement "payable in case of loss," 7, 1032**
- Indorsement payable in case of transfer, 7, 1032**
- Knowledge of alienation by company, 7, 1032**
- Levy of an execution, and sale, 7, 1031**
- Levy of an execution, 7, 1029**
- Mortgage, 7, 1029, 1031**
- Proceedings to foreclose any lien, 7, 1031**
- Sale of interest of one partner, 7, 1029**
- Sale of merchandise from stock in trade, 7, 1030**
- Sale of portion of interest, 7, 1029**
- Sale under decree of foreclosure, 7, 1029**
- Validity of clause, 7, 1028**
- Void alienation, 7, 1028**
- Waiver, 7, 1031**
- Foreclosure sale, 15, 808**
- Mortgage, 7, 1030, 1031; 15, 808**
- Assignment of Policy, 7, 1025**
 - Agreement to assign, 7, 1026
 - Assignment after loss, 7, 1025
 - Assignment of property insured, 7, 1026
 - Consent, 7, 1026
 - Indorsement of consent, 7, 1026
 - Invalid assignment, 7, 1026
 - Pledge of policy, 7, 1026
 - Policy accompanied by assignment of interest, 7, 1025
 - Provision against assignment, 7, 1025
 - Rights of assignee, 7, 1027
 - Substantial compliance with conditions, 7, 1026
 - Transfer to assignee in bankruptcy, 7, 1026
 - Validity of provision against assignment, 7, 1025
 - Waiver of provision, 7, 1027
 - What assignments are valid, 7, 1026
 - Whether assignee takes policy subject to all conditions, 7, 1027
 - Whether assignor can invalidate policy in the hands of assignee, 7, 1027
- Benzine, 11, 289**
- Builder's Risk**
 - Absence of provision, 7, 1040
 - Immateriality of increased risk, 7, 1039
 - Nature of the provision, 7, 1039
- Building**
 - Illegally used, 7, 1007
 - Meaning of term, 2, 601
- "Burning-Fluid,"**
 - Meaning of term, 2, 698

FIRE INSURANCE—Cont'd**Camphene**

Meaning of term, 2, 715

Canceling Policy

Cancellation by assured, 7, 1010

Company's option, 7, 1011

Condition as to time within which notice must be given, 7, 1010

Notice of desire to cancel, 7, 1010

Notice of intention to cancel, 7, 1010

Notice to broker, 7, 1010

Notice to deliver for cancellation, 7, 1010

Notice to mortgagee, 7, 1010

Payment by assured, 7, 1011

Provisions terminating risk, 7, 1009

Return of premium, 7, 1010

Short rates, 7, 1011

Surrender of policy, 7, 1011

Unequivocal demand, 7, 1010

Unequivocal notice, 7, 1010

Where danger of fire is imminent, 7, 1010

Where there is no provision, 7, 1009

Cease to be operated, 3, 48

Cease to reside, 3, 48

"Change in property, its use or occupation," 3, 89; 7, 1032

Change of occupants, 7, 1034; 11, 300

Change of title, 3, 89; 7, 1028

"Coal," 3, 287

Compliance with Requirements of Policy,**Conditions Precedent,** 7, 1043

Books of account, 7, 1045

Certificate of chief of fire department, 7, 1044

Certificate of magistrate, 7, 1044

Fact of provision for production of books, 7, 1045

Production of books, 7, 1045

Statement of interest of assured, 7, 1044

Statement of other insurance, 7, 1044

Substantial compliance sufficient, 7, 1045

Where compliance is impossible, 7, 1045

Concealment, see INSURANCE.**Facts That Must Be Stated**

Examples, 11, 303

Contribution, 4, 7

Countersigning policy, 7, 1009

Damages to be recovered, see infra, LIABILITY OF COMPANY AND DAMAGES TO BE RECOVERED.

Definition of dwelling house, 6, 101

Description of Property, 7, 1004*See infra, LOCATION OF PROPERTY.*

Effect of misdescription, 7, 1004

Examination of property by company's surveyor, 7, 1005

Immaterial error, 7, 1005

Reasonable certainty, 7, 1004

Warranty of correctness, 7, 1005

Destruction of Buildings to Prevent Spread**of Conflagration,** 5, 70; 7, 995*See FIRE DEPARTMENT.*

Burning of ships, 7, 995

Goods in building, 7, 995

Duration of Policy, 7, 1008

When policies cease, 7, 1008

Where partial loss is paid, 7, 1008

Whether it includes last day, 7, 1008

Effect of adjustment, 7, 1052

Erection and Occupation of Neighboring**Buildings,** 7, 1038

Effect of absence of provision, 7, 1038

Increased risks, 7, 1039

Nature of provision, 7, 1038

Representations as to distance from other buildings, 7, 1039

Validity of provision, 7, 1038

Estoppel, 7, 1054*See INSURANCE.*

By agent's acts, 7, 1054

Examination Under Oath, 7, 1046

Demand for examination, 7, 1047

Effect of provision, 7, 1047

Failure to comply with provision, 7, 1046

What is sufficient compliance, 7, 1047

Expert and opinion evidence, 28, 12

Explosions, 7, 996, 1041; 11, 289

Caused by fires, 7, 995

Loss partly by explosions and partly by fire, 7, 995

Extra hazardous, 9, 317

Falling Building, 7, 1043

Absence of provision, 7, 1043

Construction of provision, 7, 1043

Provision as to, 7, 1043

When building is "fallen," 7, 1043

"Family," 7, 803

Fires caused by operation of railways, 8, 1

Fixtures, 11, 290

Forfeiture of policy, 8, 447

Fraud and False Swearing, 7, 1047

Discrepancy between preliminary proof and plaintiff's testimony, 7, 1048

Overstatement of value, 7, 1047

Provision that policies shall void for, 7, 1047

Questions of fact, 7, 1048

Validity of provision, 7, 1047

What constitutes fraud and false swearing, 7, 1047

Garnishment, 8, 1163

Gasoline, 7, 1033; 11, 289

"Have and keep," 9, 305

Hazardous, 9, 317

"His," 9, 318

Increased Risk, see infra, ERECTION AND OCCUPATION OF NEIGHBORING BUILDINGS; USE AND OCCUPATION; VACANCY.

Question for jury, 7, 1032

Incumbrances, 7, 1023; 10, 372*See infra, UNINCUMBERED.*

Concealment when disclosure is necessary, 10, 373

Construction in favor of insured, 10, 375

Description, 10, 372

Description in general terms, 10, 374

Vol. I.

- Failure to disclose judgments, 7, 1023;
 10, 376
 False answers, 10, 373
 False statement innocently made, 10,
 374
 Indefinite responses, 10, 374
 Insurable interest notwithstanding
 liens, 10, 374
 Judgments, 10, 376
 Leaving blanks, 10, 374
 Misleading statements, 10, 373
Mortgages, see *infra*, MORTGAGES.
 Necessity of making known limited in-
 terests, 10, 373
 Notice of incumbrances required, 10,
 375
 Ownership, 10, 376
 Personal property, 10, 375
 Successive incumbrances, 10, 376
 Terms, 10, 372
 Understatements, 10, 373
 What applicant should disclose, 10,
 373
 Inflammable fluid, 12, 518
Insurable Interests, see INSURANCE.
 See *infra*, PARTNERSHIP.
Mortgages, 15, 805
 How long mortgagor's interest con-
 tinues, 15, 807
 Insurance at the expense of mort-
 gagor, 15, 806
 Mortgagee, 15, 805
 Mortgagee's claim upon the policy,
 15, 807
 Mortgagor, 15, 805
 Subrogation, 15, 806
 When insurance money must be ap-
 plied to debt, 15, 806
 Whether mortgagee can enforce
 mortgage after receiving insurance
 money, 15, 806
 Whether mortgagee must apply in-
 surance money to debt, 15, 806
 Of common carriers, 2, 837
Warehouse and Warehouseman, 28, 670
 Agreement to insure, 28, 671
 Examples, 28, 670-672
 In general, 28, 670
 Insurance in warehouseman's name,
 28, 670
 Liability to owner, 28, 671
 Whether warehouseman has an in-
 surable interest, 28, 670
 Wharfinger, 29, 102
Invasion or Insurrection, 7, 1042
 Burning bridge on military order, 7,
 1043
 Clause limiting risk, 7, 1042
 Fire caused by convicts, 7, 1043
 Loss caused by mob, 7, 1043
 Notorious resistance, 7, 1043
 Riots, 7, 1043
 Joint tenants and tenants in common, 11,
 1088
 "Keep," 12, 517
 Kerosene, 12, 518
 Kerosene permit, 11, 289
**Liability of Company and Damages to Be
 Recovered**, 7, 1050
 Cash value at time of loss, 7, 1050
 Consequence of damages, 7, 1051
 Cost of rebuilding, 7, 1050
 For example, 7, 1051
 In case of destruction of building, 7,
 1050
 Limiting measure of recovery, 7, 1050
 Market value of property destroyed, 7,
 1050
 Mortgagee, 7, 1051
 Mortgagor, 7, 1051
 Total loss, 7, 1050
 Where property is only damaged, 7,
 1050
Lightning, 13, 660
Location of Property, 7, 1005; 11, 289
 Essence of contract, 7, 1005
 Located in particular building, 7, 1006
 Nature of property, 7, 1005, 1006
 Permission to remove, 7, 1006
 Removal to avoid risks, 7, 1006
 Temporary removal, 7, 1006
 Uses to which property is put, 7, 1006
 Loss and adjustment, 7, 1043
 Loss by collision, 7, 995
Loss by Fire
 Fire by lightning, 7, 994
 What is, 7, 994-996
 Machinery, 13, 1195
 Mechanic's lien, 15, 6
 Mobs and riots, 7, 1043
 More hazardous business, 2, 701
Mortgages, 15, 826
 Application of insurance money to
 debt, 15, 806
 Covering both real and personal prop-
 erty, 10, 375
**Effect of Provision Requiring Mortgagors
 to Insure**, 15, 807
 Alienation by mortgagor, 15, 809
 Deed with defeasance, 15, 808
 Examples, 15, 807, 808
 Insurance in mortgagor's name, 15,
 807
 Mortgagee's lien upon policy, 15, 807
 Policy payable to mortgagee, 15,
 809
 Provision against alienation, 15, 808
 Subrogation, 15, 809
 Whether foreclosure sale is aliena-
 tion, 15, 808
 Whether it runs with the land, 15,
 808
Insurable Interests, 7, 1021; 15, 805
 How long mortgagor's interest con-
 tinues, 15, 807
 Insurance at the expense of mort-
 gagor, 15, 806
 Mortgagee, 15, 805
 Mortgagee's claim upon the policy,
 15, 807
 Mortgagor, 15, 805
 Subrogation, 15, 806
 When insurance money must be ap-
 plied to debt, 15, 806

FIRE INSURANCE—Cont'd**Mortgages—Cont'd****Insurable Interests—Cont'd**

Whether mortgagee can enforce mortgage after receiving insurance money, 15, 806

Whether mortgagee must apply insurance money to debt, 15, 806

Liability of Company and Damages to Be Recovered

Mortgagee and mortgagor, 7, 1051

Mortgagee recovering from mortgagor, 15, 826

Mortgagee's claim upon policy, 15, 806

Provision against alienation, 15, 808

Subrogation, 15, 806, 809

Unrecorded, 10, 374

Whether foreclosure sale is an alienation, 15, 808

Whether mortgage is an alienation, 15, 808

Without consent, 10, 375

Without notice, 10, 375

"Nearest magistrate," 16, 366

Notice and Proof of Loss

Certificate of chief of fire department, 7, 1044

Certificate of nearest magistrate, 7, 1044

Duty of company to notify insured as to defects, 7, 1045

Estoppel to prove additional loss, 7, 1046

Forthwith, 8, 572

Giving Notice

Manner of, 7, 1048

Sent by mail, 7, 1048

To agent of insurer, 7, 1048

Waiver of written notice, 7, 1048

Negating exceptions, 7, 1046

Provision against waiver of, 7, 1054

Question of fact for jury, 7, 1046

Substantial compliance sufficient, 7, 1045

Time of Furnishing Notice and Proof, 7, 1048

"Forthwith," 7, 1049

"Immediately," 7, 1049

Policy fixing no definite time, 7, 1049

"Soon as possible," 7, 1049

Waiver of, 7, 1054

By examination of premises, 7, 1054

By parol, 7, 1056

Declining to pay on account of policy being void, 7, 1055

Declining to pay upon no ground, 7, 1055

Election to rebuild, 7, 1055

Holding proofs without objection to them, 7, 1055

Mere silence, 7, 1056

No objections to sufficiency of proof, 7, 1054

Of notice not waiver of proof, 7, 1056

Question for jury, 7, 1056

Reasonable time within which to object, 7, 1056

Where agent has adjusted loss, 7, 1054

Who May Make Proof, 7, 1048

Agent, 7, 1048

Generally, 7, 1048

Husband, 7, 1048

Notice of cancellation, see infra, CANCELLING POLICY.

Occupancy, see infra, VACANCY AND NON-TENANCY.

Open policy, 7, 1002

Other Insurance, 7, 1012, 1015

"Additional insurance permitted," 7, 1019

Another policy in same company, 7, 1013

Assignee of policy, 7, 1013

Assignee without notice of assignment, 7, 1015

Assignee without notice of prior insurance, 7, 1015

Assignor taking out other insurance, 7, 1015

Before insurance by mortgagee and mortgagor, 7, 1015

Binding nature of provision, 7, 1012

By renewal, 7, 1012

Consent substantially complying with conditions, 7, 1019

Consent to and renewal in another company, 7, 1016

Consent to, implies consent to renewal, 7, 1016

Immediate notice, 7, 1018

Indorsement of consent, 7, 1018

Intention of party in obtaining additional insurance, 7, 1012

Interests insured must be identical, 7, 1015

Interests of different persons, 7, 1015

Knowledge by agent, 7, 1017

Knowledge by general agent, 7, 1017

Knowledge by local agent, 7, 1017

Merely speaking of, in presence of officer, 7, 1016

Notice after destruction by fire, 7, 1017

Notice substantially complying with provisions of policy, 7, 1016

Notice to be given with reasonable diligence, 7, 1017

"Permitted without notice," 7, 1019

Policies must be by same person, 7, 1015

Prior insurance, 7, 1015, 1019

Prior policy, 7, 1015

Property insured by two policies not wholly identical, 7, 1014

Provision that policy should be void though other insurance is valid, 7, 1014

Ratable proportion of loss where there is other insurance, 7, 1020

Recovery back of payment, 7, 1052

Statement as to its conditions precedent, 7, 1044

Terms of provision, 7, 1015

- Time within which notice should be given, 7, 1017
 Validity of provision, 7, 1012
 Verbal consent to, 7, 1018
 Waiver of breach of condition, 7, 1012
 Waiver of consent in writing, 7, 1018
 Waiver of notice by general agent, 7, 1017
 Waiver of written notice, 7, 1016
 What is reasonable diligence, 7, 1017
 What notice should contain, 7, 1016
 When company entitled to pro-rate, 7, 1020
 Where assured receives payment for void second policy, 7, 1013, 1014
 Where one holding a policy takes an assignment of another, 7, 1015
 Where other insurance has ceased to exist, 7, 1013
 Where provision is in charter, 7, 1012
 Whether breach renders policy void or voidable, 7, 1013
 Whether provision applies to prior insurance, 7, 1015
 Who may grant consent, 7, 1019
 Written notice, 7, 1016
Owner, 17, 303
Parties to Actions, 17, 522
 Insurance obtained by one person and insurance money expressly payable to third person, 17, 523
 "Loss, if any, payable to B, as his interest may appear," 17, 523, 524
 Parties to adjustment, 7, 1050
Partnership, 17, 1084
 Action on assigned policy, 17, 1085
 Assignment of policy, 17, 1085
 Change of title, 17, 1085
 Dissolution, 17, 1085
 Equitable assignment, 17, 1085
 Insurable interest, 17, 1084
 One partner insuring entire interest in his own name, 17, 1084
 One partner insuring entire property, 17, 1084
 Prohibition of any sale, transfer, or conveyance, 17, 1085
 Ratification by other partners, 17, 1084
 Sales to third persons, 17, 1085
 Transfer or change of title, 17, 1086
 Transferring an interest from one partner to another, 17, 1084
 Whether one partner can settle a loss, 17, 1086
Payment
 Company claiming that policy is void, 7, 1052
 Institution of suit before expiration of time, 7, 1051
Recovery Back of Payments of Loss, 7, 1052
 Fire caused by design, 7, 1052
 Fraud on part of insured, 7, 1052
 Where company knew at the time of payment there was something vitiating the policy, 7, 1052
 Where there was other insurance, 7, 1052
 Sixty days after proof of loss, 7, 1051
 Time of, 7, 1051
 When time begins to run, 7, 1051
Policy, 7, 1002-1012
See INSURANCE.
 Pledge of, 18, 651
 Premises, 19, 5
 Property illegally kept for sale, 7, 1007
 Property illegally used for immoral purposes, 7, 1007
Questions of Law and Fact
 Increase of risk, 28, 12
 Reasonable doubt, 19, 1087
Rebuild, Repair, or Replace, 7, 1052
 Absence of provision, 7, 1053
 Action for damages, 7, 1053
 Damages for delay, 7, 1053
 Defective execution of work, 7, 1053
 Loss payable to a third party, 7, 1053
 Measure of damages, 7, 1054
 Noncompletion of work, 7, 1053
 Policy as a building contract, 7, 1054
 Reasonable time within which to make election, 7, 1053
 Validity of provision, 7, 1052
 When election to restore must be made, 7, 1053
 When recovery may be had on policy, 7, 1053
 Where rebuilding is forbidden by municipal ordinance, 7, 1053
Receipts, 19, 1126
 Parol evidence, 19, 1118, 1126
 Whether conclusive upon the company, 19, 1126
 Whether conclusive upon the insurer, 19, 1126
 Reference to referees, 20, 675
 Refined oil or earth oil in policy, 3, 287
Reformation of Instruments, 15, 671
 Examples, 15, 671-673
 Form of policy, 15, 673
 In general, 15, 671
 Mistake of law, 15, 671
 Parol testimony, 15, 673
 Renewal, 15, 672
Renewal of Policy, 7, 1011
 Effect of renewal, 7, 1012
 Waiver of breach of conditions, 7, 1012
 Waiver of misrepresentations, 7, 1012
 What amounts to a, 7, 1011
Risk or Peril Insured Against, see infra, LOSS BY FIRE.
 Articles excluded in policy, 7, 1041
 Cause of fire immaterial, 7, 1040
 Covers everything properly connected with main risk, 7, 1040
 Damages by water in extinguishing fire, 7, 1042
 Damages in removal of goods, 7, 1042
 Destruction of buildings to prevent spread of conflagration, 7, 1041
 Extra hazardous risk, 7, 1040
 Freshet, 7, 1042

FIRE INSURANCE—Cont'd**Risk or Peril Insured Against—Cont'd**

- Goods kept in country store, 7, 1041
- Lightning, 7, 1042
- Loss by fire, what is, 7, 1040
- Loss caused by heat merely, 7, 1040
- Loss necessarily following from fire 7, 1040
- Necessity of ignition, 7, 1040
- Spontaneous combustion, 7, 1042
- Theft at fire, 7, 1042

Schools, 21, 813

Shifting risk, 7, 1008

Specific Performance

- Agreements to insure, 22, 998

Stoppage in Transitu

- Whether vendor entitled to insurance money, 23, 933

Subrogation, see SUBROGATION.

Suit by beneficiary, 16, 896

Surveys, 24, 1024

- Definition, 24, 999

Title of Insured, 7, 1020

- "Absolute," 7, 1023
- Absolute estate, 7, 1020
- "As interest may appear," 7, 1025
- Falsity of representations as to, 7, 1020
- Mortgagor, 7, 1021
- Notice, 7, 1025
- Officers having knowledge of true state of title, 7, 1024
- Owner of property, 7, 1020
- Partner or joint owner, 7, 1021
- Person who had agreed to purchase, 7, 1021
- Person who had agreed to sell, 7, 1021

Provision that Insured Must Have Unconditional and Sole Ownership of Property, 7, 1022

- Construction of clause, 7, 1022
- Existence of lien, 7, 1022
- Mortgagor of real estate, 7, 1022; 15, 805

Vendee in possession, 7, 1022

Statement as to a condition precedent, 7, 1044

Tenant for years, 7, 1021

"True Title," 7, 1021

Lessee, 7, 1021

Mortgagee, 7, 1021; 15, 805

Mortgagor, 7, 1021; 15, 805

Part owner, 7, 1021

Tenant by curtesy, 7, 1021

Vendee, 7, 1021

Whether lease must be stated, 7, 1022

Whether mortgage must be stated, 7, 1022

Unincumbered, 7, 1023; 10, 372See *infra*, INCUMBRANCES.

Attachment, 7, 1023

Contingent right of curtesy and dower, 7, 1023

Invalid mortgage, 7, 1023

Judgment liens, 7, 1023; 10, 376

Liens for taxes, 7, 1023

Mechanic's lien, 7, 1023

Mortgages, 7, 1023

Paid but uncanceled, 7, 1023

Property a homestead, 7, 1023

True amount of incumbrances must be given, 7, 1024

Unstamped and undelivered mortgage, 7, 1023

Vested right of dower, 7, 1023

What are incumbrances, 7, 1023

What have been held not incumbrances, 7, 1023

Waiver, 7, 1024

Warehousemen, 7, 1024

When insured must state interest, 7, 1020

When title must be stated, 7, 1021

Trusts and trustees, 27, 163

Two-Thirds or Three-Fourths Clause, 7, 1009See *infra*, VALUED POLICY.

Insuring in excess of limits, 7, 1009

Value determined by officer, 7, 1009

Unoccupied, see *infra*, VACANCY AND NON-TENANCY.

Meaning of term, 2, 425

Use and Occupation, 7, 1032

Agent authorizing use, 7, 1033

Agent knowing of prohibited hazard, 7, 1033

Camphene, spirit gas, burning fluid, etc., 7, 1034

Ceasing to occupy premises, 7, 1035

Change, 3, 89

By accident, 7, 1032

By something over which assured had no control, 7, 1032

From dwelling to boarding house, 7, 1034

Held to vitiate policy, 7, 1035

In absence of the provision, 7, 1032

Increasing risk, 7, 1032

In occupants, 7, 1034; 11, 300

Classified list of hazards, 7, 1033

Effect of cause or origin of the fire, 7, 1032

Gasoline, 7, 1033

Grocery business, where not prohibited, although articles kept are prohibited, 7, 1033

Implied waiver, 7, 1036

Increased Risk

Question for jury, 7, 1032

Intention to change, 7, 1035

Keeping fireworks, 7, 1034

Knowledge by insured of change, 7, 1035

Making repairs to dwelling houses, 7, 1034

Mortgaging property insured, 7, 1036

Necessity of discontinuing policy when company has knowledge of increased risks, 7, 1036

Preparation to change, 7, 1035

Prohibited use without regard to increase of hazard, 7, 1033

"Running by daylight only," 7, 1034

Running extra hours, 7, 1036

- Shutting down factory temporarily, 7, 1034
- Statement of present use not a warranty as to the future use, 7, 1036
- Substantial change, 7, 1035
- Temporarily using gasoline, 7, 1035
- Temporary change, 7, 1035
- Temporary use of prohibited articles, 7, 1034
- Using an engine occasionally, 7, 1034
- Validity of provision, 7, 1032
- Waiver of provisions, 7, 1036
- What constitutes change, 7, 1034
- What is change increasing risk, 7, 1032
- Usurped power, 7, 1043
- Usury, 27, 1021
- Vacancy**
- “Occupied and unoccupied,” 17, 33
- Vacancy and Non-Tenancy**, 7, 1036; 28, 5
- Beyond control of assured, 7, 1038
- Beyond thirty days, 7, 1038
- Definite removal, 7, 1038
- Description as to Future Tenancy**, 28, 10
- Effect of description, 28, 10, 11
- Examples, 28, 10, 11
- In general, 28, 10
- Whether a warranty, 28, 10, 11
- Description of Present Tenancy**, 28, 7
- Examples, 28, 7-10
- In general, 28, 7
- Misdescription, 28, 8
- Whether a warranty, 28, 8, 9
- “If the Premises Become Unoccupied,”** 28, 14
- Cease to be occupied, 28, 16
- Examples, 28, 14-16
- House and outbuildings, 28, 15
- In general, 28, 14
- Non-tenancy, 28, 15
- Reasonable time, 28, 16
- Substantial occupancy, 28, 14
- Tenement house, 28, 14
- Waiver, 28, 16
- Increase of Risk Prohibited**, 28, 11
- Examples, 28, 11-13
- Expert testimony, 28, 12
- Maine statute, 28, 13
- Question of law or fact, 28, 12
- Vacancy not an increase of risk, 28, 11
- In general, 28, 5
- Materially increased risk, 7, 1036
- Meaning of term, 7, 1037
- Nature of the clause, 28, 5
- Nature of provision, 7, 1036
- Necessity of express stipulation, 28, 6, 7
- Notice of, 7, 1038
- Not mentioned, 28, 6
- Of part of property, 7, 1037
- Pending change of tenants, 7, 1038
- Policy not containing provision, 7, 1036
- Question for jury, 7, 1037
- Reasonable effort to obtain tenant, 28, 7
- Substantial vacancy, 7, 1037
- Temporary, 7, 1037
- Use and description of words relating to tenancy, 28, 7
- “Vacant and Unoccupied,”** 28, 21
- Cases construing, 28, 21
- Effect, 28, 21, 22
- In general, 28, 21
- Temporary suspension, 28, 22
- Waiver, 28, 23
- Whether equivalent in meaning, 28, 21
- Whether vacant and unoccupied synonymous, 28, 21, 23
- “Vacant or Unoccupied,”** 28, 24
- Change in tenants, 28, 29
- Factory, 28, 27
- House and outbuildings, 28, 32
- In general, 28, 24
- Leaving furniture, 28, 26
- Leaving miscellaneous effects, 28, 27
- Leaving tools, 28, 27
- Mills and factories, 28, 30
- Partial non-tenancy, 28, 31
- Presence of human being, 28, 26
- Requisites of occupancy, 28, 26
- Risk not increased, 28, 25
- Sleeping as occupancy, 28, 33
- Store building, 28, 27, 30
- Temporary Absence**, 28, 28
- Absence of family to visit sick friend, 28, 28
- Examples, 28, 28, 29
- In general, 28, 28
- Tenement Houses**, 28, 29
- Change of tenants, 28, 29
- Examples, 28, 29, 30
- Trying to procure a tenant, 28, 27
- Vacancy incident to the purpose for which the building is used, 28, 29
- Vacancy of one of several buildings, 28, 32
- Vacancy of part, 28, 32
- Vacancy preparatory to occupation, 28, 31
- Visitation insufficient, 28, 27
- Waiver**, 28, 33
- Agent's power, 28, 34
- Examples, 28, 33, 34
- In general, 28, 33
- Insuring vacant buildings, 28, 33
- Knowledge of non-occupancy, 28, 34
- Promised occupancy, 28, 34
- Use the same as when first insured, 28, 34
- When clause is not enforced, 28, 28
- When clause is valid and enforceable, 28, 24
- “Vacant,” “Vacated,”** 28, 20
- Change of tenants, 28, 20
- Examples, 28, 20, 21
- In general, 28, 20
- Temporary absence, 28, 20
- “Vacated by the Removal of Owner or Occupant,”** 28, 16
- Consent of agent, 28, 18

FIRE INSURANCE—Cont'd**Vacancy and Non-Tenancy—Cont'd****"Vacated by the Removal of Owner or Occupant"—Cont'd**

Enforcement of the provision, 28, 16, 17

Examples, 28, 16-20

In general, 28, 16

Knowledge of local agent, 28, 17

Meaning of the words "owner or occupant," 28, 19

Notice of vacancy, 28, 19

Temporary removals, 27, 18

Validity of provisions, 7, 1036

Waiver, 28, 33

Agent's power, 28, 34

Examples, 28, 33, 34

"If premises become unoccupied," 28, 18

In general, 28, 33

Insuring vacant buildings, 28, 33

Knowledge of agent, 28, 23

Knowledge of non-occupancy, 28, 34

Of conditions, 7, 1038

Power of agent, 28, 18

Promised occupancy, 28, 34

Use the same as when first insured, 28, 34

"Vacant or unoccupied," 28, 23

"Vacated by removal of owner or occupant," 28, 18

Without knowledge of assured, 7, 1038

Validity of clause, 7, 1009

Valued and open policy, 7, 1002

Valued Policy, 7, 1002, 1003

Actual loss less than valuation, 7, 1003

Partial loss, 7, 1003

Stipulation that valuation shall not be conclusive, 7, 1003

Wager policy, 28, 513

Warehouse and Warehouseman**Insurable Interest, 28, 670**

Agreement to insure, 28, 671

Examples, 28, 670-672

In general, 28, 670

Insurance in warehouseman's name, 28, 670

Liability to owner, 28, 671

Whether warehouseman has an insurable interest, 28, 670

What is, 7, 1002

What Policy Covers, 7, 1006

Building used for immoral purposes, 7, 1007

Examples, 7, 1006-1008

"Furniture," 7, 1007

Implication, 7, 1006

Insurance on building, 7, 1007

Liquor illegally kept for sale, 7, 1007

Machinery, 7, 1007

Material in building, 7, 1007

Property expressly mentioned, 7, 1006

Steam saw mill, 7, 1007

Stock in trade, 7, 1006

Unfinished structure, 7, 1007

Whether insurance goes to personal representative or heir, 7, 281

Who Entitled to Enforce a Policy, 7, 1003

Alienation, 7, 1004

Joint owners, 7, 1004

Mortgagee, 7, 1004

Policy in favor of agent, 7, 1004

Policy in favor of "whom it may concern," 7, 1004

Ratification by principal, 7, 1004

The insured, 7, 1003

To be named, 7, 1003

Undisclosed principal, 7, 1004

Vendee, 7, 1004

FIRE LIMITS, see FIRE DEPARTMENTS.**FIRE POLICY**

Mutual insurance, 16, 34

FIREPROOF, 7, 1056**FIRES CAUSED BY OPERATION OF****RAILWAYS, 8, 1**

Absence of negligence, 8, 1

Burden of Proof, 8, 5

Conflict of opinion as to presumption of negligence, 8, 9-11

Negligence where shown that fire originated from defendant's engine, 8, 9, 10

Operation of engine, 8, 5

Presumption as to negligence, 8, 10

Proof of origin of fires, 8, 7

Rule in various states, 8, 9-11

Care depending on nature of country, 8, 3

Care proportionate to danger, 8, 3

Cautions to be adopted by railway, 8, 2

Common-law rule as to liability, 8, 1

Comparative negligence, 8, 19

Constitutionality of statutes imposing liability, 8, 2

Construction of Engines, 8, 3, 605; 19, 926

Costly improvements, 8, 4

Engines which have been held effective, 8, 5

Every invention, 8, 5

Evidence, 8, 5

To show that fire may be prevented from escaping, 8, 4

Generally, 8, 3

Improvement interfering with efficient working of engine, 8, 4

Insignificant danger, 8, 4

Negligence per se, 8, 5

Recent discoveries, 8, 3

Safeguards which have been tested, 8, 5

What amounts to negligence in construction of engine, 8, 5

Whether contrivance must be most perfect possible, 8, 4

Whether negligence question for jury, 8, 6

Contributory Negligence, 8, 16

Buildings erected near line, 8, 16

Duty as to woodland, 8, 16

Duty to keep ground free from dry grass and weeds, 8, 16

Examples, 8, 16-19

Failure to provide suitable fire-breaks, 8, 16

Failure to remove wheat stubble, 8, 17

- Failure to take precautions against negligence of railway, 8, 16
- General rule, 8, 16
- Permitting pane of glass to be out of window, 8, 18
- Permitting roof to be in condition to take fire easily, 8, 17
- Question of fact, 8, 18
- Reasonable exertions to extinguish fire, 8, 18
- Warehouse allowing its windows to be open, 8, 17
- Credibility of witnesses, 8, 19
- Devices to prevent, 8, 3, 605; 19, 926
- Duty to keep right of way clear, 8, 605
- Failure of company's employees to watch for and extinguish fires, 8, 3
- High wind blowing, 8, 3
- In England, 16, 452
- In Georgia, 16, 451
- In Illinois, 16, 452
- In Iowa, 16, 451
- In Maryland, 16, 452
- In Minnesota, 16, 451
- In Mississippi, 16, 451
- In Missouri, 16, 452
- In Nebraska, 16, 452
- In Nevada, 16, 452
- In Tennessee, 16, 452
- In United States, 16, 452
- In Utah, 16, 452
- In Wisconsin, 16, 452
- Liability of railways, 8, 1; 19, 890
- Negligence in Management of Engine, 8, 5**
 - Fuel, 8, 6
 - Grade and speed unnecessary, 8, 7
 - Question for jury, 8, 6
 - Unlawful rate of speed, 8, 7
 - Wood used in coal-burning engines, 8, 7
- Obligation of Railroads**
 - Spark arresters, etc., 8, 3, 605; 19, 926
- Ordinary and reasonable care, 8, 2
- Patrol along track, 8, 3
- Prima facie evidence of negligence, 16, 450
- Proof of Origin of Fires, 8, 7**
 - Circumstantial evidence, 8, 7
 - Coals of fire previously found on defendant's track, 8, 8
 - Fire discovered shortly after engine passed, 8, 9
 - Necessity of showing from which engine fire escaped, 8, 9
 - Proof as to particular engine, 8, 7
- Proof that Same Engine**
 - Emitted sparks, 8, 8
 - Emitted sparks at a later time, 8, 9
 - On same trip caused other fires, 8, 8
- Proximate and Remote Cause, 8, 11**
 - Question for jury, 8, 12
 - Where fire is communicated from one building to another, 8, 13
 - Where fire spreads, 8, 11
- Questions of Law and Fact, 8, 7**
 - Appliances, 8, 5
 - Care used in operation of engine, 8, 7
 - Contributory negligence, 8, 18
 - Credibility of witnesses, 8, 19
 - Proximate cause where fire spreads, 8, 12
 - Rubbish on right of way, 8, 15
 - Rubbish on Right of Way, 8, 14**
 - Cases illustrating rule, 8, 15
 - Duty of railway to keep its right of way clear, 8, 14
 - Question for jury, 8, 15
 - Rule as to liability in United States, 8, 1
 - Statutes, 16, 451, 452
 - Statutes imposing liability, 8, 2
 - Subrogation**
 - Insurance company, 24, 307
 - Subrogation between fire insurance company and railway company, 2, 838
 - Trustee operating road, 19, 932
 - Unusual dry season, 8, 3
 - Watchmen, 8, 3
 - What care required, 8, 2
 - Where Fire Spreads, 8, 11**
 - Averment of negligence as to allowing fire to spread, 8, 12
 - Direct and natural result of fire, 8, 12
 - Fire Communicated from One Building to Another, 8, 13**
 - General rule, 8, 13
 - Proper instructions, 8, 13
 - Unforeseen results, 8, 13
 - Where new cause intervenes, 8, 13
 - Passing through intervening fields, 8, 11
 - Question of proximate cause for jury, 8, 12
 - Strong wind, 8, 12
 - Where fire would not have spread but for dry weather, 8, 12
- FIREWOOD, 29, 849**
 - Manufacture of firewood, 14, 259
- FIREWORKS, 8, 20**
 - Explosions, 7, 524
 - Fire insurance, 7, 1034
 - Suppression by city authority, 7, 524
- FIRING, 8, 20**
- FIRM, 8, 20**
 - For said, 8, 92
- FIRMLY, 8, 20**
- FIRST, 8, 21**
 - Consent first had, 8, 22
 - First boat, 8, 21
 - First cost, 8, 21
 - First cousin, 8, 21
 - First day, 8, 21
 - First inventor, 8, 21
 - First male heir, 8, 21
 - First mortgage, 8, 21
 - First privilege, 8, 22
 - First received, 8, 22
 - First son, 8, 22
 - First term, 8, 22
 - First tried, 8, 22
 - In the first place, 8, 22
- FIRST CLASS, 8, 23**
- FIRST DRAW, 8, 21**
- FISCAL, 8, 23**

FISH AND FISHERIES, 8, 23*See* OYSTERS; PROFIT À PRENDRE.

Assumpsit, 8, 39

Common, 8, 23

Common of piscary, 10, 355

Common right, 8, 1024

Constitutionality of statute regulating
8, 1028

Definition, 8, 23

Distinguishing between free and com-
mon, 8, 24

Exclusive right, 8, 32

Fishing

Foreign, 8, 280

Fishing and Fowling

Great ponds—Massachusetts, 12, 635

Massachusetts, 12, 635

Fishing Vessels

Navigation, 16, 326

Fishways**Chutes**Required in dams by statute, 4, 976;
8, 34

Fixed engine, 6, 644

Free Fisheries

Definition, 8, 24

Great Ponds—Massachusetts, 12, 635Compensation for taking land for fish-
eries, 12, 636

Right to fish in great ponds, 12, 636

When pond is place where fishes are
artificially cultivated, 12, 636**Impeding Passage of Fish, 8, 32**

Duty of dam owners 4, 976; 8, 34

Incorporeal right, 8, 32

In North Carolina, 8, 32

In Pennsylvania, 8, 32

In South Carolina, 8, 32

International Fisheries, 8, 28*See* INTERNATIONAL LAW.

Jurisdiction of country, 8, 28

Navigable Waters

Cannon shot, 8, 28

Jurisdiction over sea, 8, 28

In the Sea and Navigable Waters, 8, 24, 28, 32

Common law of England, 8, 28

Exclusive right of individuals, 8, 25

Inhabitants of town, 8, 28

In Pennsylvania, 8, 25

Prescriptive right of individuals, 8, 25

Right beyond ebb and flow of tide,
8, 26

Right of passage, 8, 26

Right of public, 8, 24

Riparian owners, 8, 27

Seashores held by private grant, 8, 28

Shore of tidal waters, 8, 28

Tidal lake, 8, 26

Waters made navigable by act of par-
liament, 8, 26**Lakes and Ponds, 12, 626**

In general, 12, 626

In Michigan, 12, 627

In New Jersey, 12, 628

In Ohio, 12, 627

Private rights, 12, 628

Profit à prendre, 12, 626

Public rights, 12, 627

What are "private ponds" in Pennsyl-
vania, 12, 627When user by individual considered
permissive, 12, 628Whether right to fish can be acquired
by custom, 12, 626**Massachusetts**Compensation for taking land for fish-
eries, 12, 636

Right to fish in great ponds, 12, 636

When pond is place where fishes are
"artificially cultivated," 12, 636

Miscellaneous points, 8, 38

Navigable waters, 16, 269

Prescription, 8, 32; 19, 25

In navigable waters, 8, 32

Private Fisheries, 8, 31Assignment of right conferred by stat-
ute, 8, 33

Exclusive right, 8, 31

Grant of private fisheries, 8, 31

Impeding passage of fish up rivers, 8,
32

In navigable waters, 8, 25

In North Carolina, 8, 32

In Pennsylvania, 8, 32

In South Carolina, 8, 32

In tide water, 8, 26

Navigable streams, 8, 33

Navigable waters, 8, 32

Owners of dams, 8, 34

Proof by prescription of grant, 8, 32

Right of public, 8, 31

Right to pass over another man's land
for purpose of fishing, 8, 32

Riparian property, 8, 31

Taking shell fish, 8, 32

What are navigable streams, 8, 33

Remedies against wrong-doers, 8, 39

Right of common, 8, 39

Right of public, 8, 32

Riparian owner's exclusive right to fish
in stream, 3, 166

Riparian rights in larger lakes, 8, 1026

Sale of exclusive, 7, 116

Several fisheries, 8, 24

Shell FishRight to take below high water mark,
8, 38Taking between high and low water
mark, 8, 32, 33**Statutes**

Construction, 8, 39

Statutory Regulations

Constitutionality of statutes, 8, 35

In Albemarle Sound, 8, 36

In Illinois, 8, 35

In Missouri

Revised statute, 8, 36

Legislative control in general, 8, 34

Miscellaneous points, 8, 38

Police powers inalienable, 8, 35

Prohibiting non-residents, 8, 36

Taking private property for compensa-
tion, 8, 35

The Maryland act, 8, 37
 The Massachusetts act, 8, 37
 The New Hampshire acts, 8, 37
 The New Jersey act, 8, 37
 The New York act, 8, 37
 The Vermont act, 8, 37
 The Virginia act, 8, 37
 Whether fish subject to ownership, 8, 34

Towns and townships, 26, 162

Trespass, 8, 39; 10, 26; 26, 607

On lands of others in order to fish, 8, 33

What are navigable streams, 8, 33

FISHING BILL, 8, 40

FIT, 8, 40

For cultivation, 8, 40

FITTINGS, 8, 40

Gas, 8, 40

FIXED

Fixed machinery, 13 1196

FIXTURES, 8, 41

Agreements, 8, 61

Effect of, 8, 61

Modifications, 8, 61

Proven by parol, 8, 62

Rights of bona fide purchaser of lands, 8, 62

Statute of frauds, 8, 62

Validity of, 8, 61

Agricultural, 8, 57

Annexation, 1, 591, 7, 249, 250; 8, 43

Actual or constructive, 8, 42

Indispensable article, 8, 42

Physical, 8, 42, 50

Purpose for which, was made, 8, 43

Use, 8, 42

As Between Assignees in Bankruptcy and Other Persons, 8, 44

General rule, 8, 44

Mortgagee and assignee in bankruptcy, 8, 45

Trade Fixtures, 8, 45

Where house has been parted with by bankrupt, 8, 45

Where house is mortgaged, 8, 45

As Between Debtor and Creditor, 8, 45

Fixtures erected by owner of freehold, 8, 46

Fixtures that debtor is at liberty to remove, 8, 45

General rule, 8, 45

Manure, 8, 46

Purchaser at sales, 8, 46

Right of purchaser to enter and remove, 8, 46

Steam engine and boiler, 8, 46

As Between Executor or Tenant for Life and Remainderman, 7, 248; 8, 54

General rule, 8, 54

Hangings, pictures, tapestries, etc., 8, 54

Ornamental fixtures, 8, 54

As Between Heir and Executor, 7, 248; 8, 47

Examples, 8, 47, 48

Furnaces, etc., 8, 48

General rule, 8, 47

Machinery, 8, 47

As Between Landlord and Tenant, 7, 251; 8, 48

Agricultural tenants, 7, 251

Boiler, 8, 48

Extension of time by agreement, 8, 49

Injury to freehold, 8, 48

Ornamental fixtures, 8, 48

Trade fixtures, 8, 48

What fixtures tenant may remove, 8, 48

When removal must be made, 8, 49

As Between Mortgagor and Mortgagee, 8, 50

Annexation made after mortgage, 8, 51

Annexation merely to steady property, 8, 53

Bridges, rails, and other property of railroad, 8, 51

Buildings erected after foreclosure of mortgage, 8, 52

Electric light wires, 8, 51

Fact that annexations are called chattels, 8, 53

Fixtures erected by lessee of mortgagor, 8, 52

General rule, 8, 50

Intention of mortgagor, 8, 53

Looms, cards, and spinning-machine frames, 8, 51

Machinery in mill, 8, 50

Machinery which is motive power of mill, 8, 51

Machinery which is not motive power of mill, 8, 51

Mortgagee consenting to fixture remaining personal property, 8, 51

Mortgage of a factory eo nomine, 8, 51

Physical annexation, 8, 50

Presumption as to permanency, 8, 53

Scales, 8, 50

Steam engine, 8, 51

Trade fixtures, 8, 52

When machinery is fixture, 8, 51

Where chattel mortgage is given on machinery, 8, 51

Whether agreement between vendor and vendee binds subsequent mortgagee, 8, 52

Whether same rule applies between heirs and executors, 8, 53

Whether same rule applies between vendor and vendee, 8, 53

As between tenants in common, 8, 54

As Between Vendor and Vendee, 8, 55

Agreement between owner of land and vendee or seller of fixtures, 8, 56

Agreement that property shall remain personalty, 8, 56

Buildings erected by license, 8, 57

Fences, 8, 57

Fixtures erected under a contract or purchase, 8, 57

General rule, 8, 55

Lamps, chandeliers, and gas fixtures, 8, 55

Lessee's right to remove fixtures, 8, 56

FIXTURES—Cont'd**As Between Vendor and Vendee—Cont'd**

- Organ in church, 8, 55
- Personal property wrongfully annexed to realty, 8, 57
- Steam boiler, 8, 56
- Steam engine, 8, 56
- Usage, 8, 56
- Verbal reservation, 8, 55
- Trees, 8, 57

As improvements, 10, 253

- Boiler, 9, 48
- Bowling alley and appurtenances, 8, 61
- Bridges, rails, and other property of railroad, 8, 51

Buildings, 3, 166; 8, 50, 61

- Erected after mortgage, 8, 52
- Erected by consent of freeholder, 8, 60
- Erected by license, 8, 56
- Erected by persons claiming estate in land, 8, 61
- Erected without consent of freeholder, 8, 60

Chandeliers, 8, 1273**Chattel mortgage of, 3, 185****Constructive annexation, 8, 41****Definition, 7, 249; 8, 41**

- Of annexed, to freehold, 1, 591

Distinguished from heirlooms, 3, 165**Distress, 5, 710****Domestic Fixtures, 8, 59**

- Useful and ornamental, 8, 59
- What are, 8, 59
- When removable, 8, 59
- Whether considered as favorable as trade fixtures, 8, 59

Ecclesiastical, 8, 59**General rule, 8, 59****Matters of ornament, 8, 59, 60****What are, 8, 59****Ejectment for, 6, 232****Electric light wires, 8, 51****Execution, 7, 128; 8, 45**

- Fixtures erected by owner of freehold, 8, 46
- General rule, 8, 45
- Manure, 8, 46
- Nursery trees, 8, 47
- Purchaser at sale, 8, 46
- Steam engine, 8, 46

Executors and Administrators, 7, 248; 8, 47, 54**Annexation necessary, 7, 250****As between executor and heir of tenant in fee, 7, 249****As between executors and remaindermen, 7, 250****As between personal representative and heir of devisee of tenant in fee, 7, 248; 8, 47****As between personal representative of tenant for life and remainderman or reversioner, 7, 248****As to character of annexation, 7, 249****Chandeliers, 7, 251****Definition of term, 7, 248****Force of decisions between landlord and tenant, 7, 251****Machinery in mill, 7, 250****Manure, 7, 250****Ornamental fixtures, 7, 250****Stills, 7, 251****Fences, 7, 905; 8, 55, 57, 58****Fence and material detached, 7, 906****Fence built on land of another without agreement, 7, 905****Material placed on line in contemplation of a fence, 7, 906****Rails, 7, 905****Replevy of rails, 7, 905****Whether a part of realty, 7, 905****Fire insurance, 11, 290****Furniture, 8, 55****Gas fixtures, 8, 61****Heir and Executor, 7, 248; 8, 47****Whether same rules apply as to mortgagor and mortgagee, 8, 53****Hop poles, 8, 58****House upon land of another, 3, 167****Husband and wife, 14, 580****Injunction, 8, 65; 10, 875****Definition, 10, 875****Examples, 10, 875****Mortgagor and mortgagee, 10, 875****Removal, 10, 875****Judgment lien, 12, 108****Key, 12, 519****Lamps, chandeliers, and gas fixtures, 8, 55****Looms, cards, and spinning-frames, 8, 51****Machinery, 8, 47****Chattel mortgage, 8, 51****In mill, 8, 50****Mortgage of a factory eo nomine, 8, 51****Mortgagor and mortgagee, 8, 50****Placed in building after mortgage, 8, 52****Unity of title to machinery and realty, 8, 51****Which does not furnish the motive power, 8, 51****Which furnishes motive power, 8, 51****Manure, 8, 42, 46, 47****Measure of Damages****For removing fixtures, 5, 36****Mechanics' Liens, 8, 46; 15, 18, 21, 32, 35****Building, 15, 28****Examples, 15, 36, 37****Fixtures erected by lessee, 15, 18, 21****Furnaces, 15, 36, 37****Gas fixtures, 15, 36****Heating apparatus, 15, 36****In general, 15, 35****Mills, 8, 50, 58; 15, 483****Examples, 15, 483, 484****Machinery, 15, 483****Tenant's right of removal, 15, 484****Windmills, 15, 484****Millstone, 8, 42****Nursery trees, 8, 47, 58****Organ in church, 8, 55****Ornamental Fixtures****Landlord and tenant, 8, 48**

- Pictures, 8, 55
 Pipe lines, 18, 460
 Questions of law and fact, 8, 44
Remedies, 8, 64
 After expiration of lease, 8, 64, 65
 Fixtures unlawfully removed by party
 in possession, 8, 65
Replevin, 8, 65; 20, 1062
 Adverse possession, 20, 1063
 When tortiously severed, 20, 1062
 Where fixture is freehold, 20, 1062
Rolling Stock of Railroad, 8, 64; 19, 718
 Declared a fixture by statute, 19, 718
 Whether regarded as rolling stock, 19, 718
 Whether subject to levy or sale on execution, 19, 718
 Sawmill, 8, 58
 Sheriff's sales, 22, 631, 633
 Statute of frauds, 8, 55, 667, 698
 Steam engine, 8, 46
 Steam engine and boiler, 8, 51, 61
 Store fixtures, 8, 61
Test for Determining What Are Fixtures
 see *infra*, ANNEXATION.
 Intention, 8, 43, 52
 Intention of party, 8, 43
 Injury to freehold by removal, 8, 43
 Nature of article, 8, 43
 Physical annexation, 8, 42
 Proper use, 8, 43
 Purpose for which annexation was made, 8, 43
 Relations of party, 8, 43
 Structure and mode of annexation, 8, 43
 Use, 8, 43
 Theaters, 25, 1023
Time of Removal, 8, 62
 After expiration of lease, 8, 65
 Forfeiture of lease, 8, 62
 In absence of agreement during lease, 8, 62
 Materiality of way in which lease expired, 8, 62
 Presumption of abandonment, 8, 63
 Renewal of lease, 8, 63
 Stipulation for removal after expiration of term, 8, 63
 Tenancy of uncertain duration, 8, 62
 Tenant as trespasser after expiration of term, 8, 63
 Where relation of landlord and tenant exists, 8, 62
Title Deeds, 8, 42
 Whether fixtures, 8, 42
Trade Fixtures, 8, 60
 Assignee in Bankruptcy, 8, 45
 Where bankrupt has parted with house, 5, 45
 Bowling alleys and appurtenances, 8, 61
Buildings, 8, 60
 Erected by persons claiming an estate in the land, 8, 61
 Erected with consent of owner of property, 8, 60
 Erected without consent of owner of property, 8, 60
 Gas fixtures, 8, 61
 In general, 8, 60
 Landlord and tenant, 9, 48
 Machinery, 8, 61
 Mortgagor and mortgagee, 8, 52
 Size of building, 8, 61
 Steam engine and boiler, 8, 61
 Store fixtures, 8, 61
 What are, 8, 60
 Whether agricultural fixtures are considered as favorably, 8, 58
 Whether domestic fixtures are considered as favorably, 8, 59
 Trees, 8, 57
 Trespass, 26, 609
 Trover, 8, 64; 26, 774
 Usages and customs, 27, 786
 Vendor and purchaser, 28, 123
Vendor and Vendee
 Where same rule applies as between mortgagor and mortgagee, 8, 53
 Venetian blinds, 8, 42
 Waste, 28, 889
 Buildings, 28, 889
 Examples, 28, 889, 890
 In general, 28, 889
 Machinery, 28, 890
Whether Covered by Railroad Mortgage, 19, 707
 Coal, wood, etc., 19, 708
 Engines, etc., 19, 707
 Examples, 19, 707, 708
 Office furniture, 19, 708
 Rails, 19, 707
 Rolling stock, 19, 707
 Station houses, 19, 707
 Tools and implements, 19, 708
 Whether included under the term goods, 8, 1303
FLAGMAN, see CROSSINGS.
FLANGE, 8, 65
FLASH-BOARDS
 As part of dams, 4, 971
FLATS, 8, 66; 13, 1015
 See LODGINGS AND APARTMENTS.
FLEE, 8, 66
 Flee from justice, 8, 66
FLIGHT
 Presumptions from, 19, 73
FLOAT, 29, 91
FLOATAGE, see BOOM COMPANY.
FLOATING
 Floating debt, 8, 66
FLOODS, 8, 67
 See generally, SURFACE WATERS.
 Act of God, 1, 174
 Breakage of drain, 8, 68
 Definition, 8, 67
 Duty of owners of dams, 8, 69
 Freshet, 8, 981
 Liability for flood by one who collects water on his property, 8, 67
 Natural or ordinary state of stream, 8, 69
 Ordinarily recurring freshets, 8, 69

FLOODS—Cont'd

- Responsibility of Railroads for Damage
 - Caused by Floods, 8, 70
 - Duty of examination of tracks and repairs after floods, 8, 71
 - Extraordinary floods, 8, 70
 - General rule, 8, 70
 - Goods injured by flood, 8, 71
 - Overflow of water from river, 8, 71
 - Riparian owner's liability, 8, 68
 - Streams subject to great freshets, 8, 68

FLOOR, 8, 71

- Lower floor, 13, 1191

FLOOR-CLOTH, 8, 72

See CANVAS.

FLOTSAM, 8, 72

See JETSAM; WRECK.

FLOWING, 8, 72**FLUID, 8, 72**

- Inflammable fluid, 12, 518

FLYING SWITCH, 8, 73; 21, 439

See also, RUNNING SWITCH.

- At crossings, 4, 936

F. O. B., 21, 531**FODDER, 8, 73**

- Fodder for cattle, 3, 44

FÆNUS, 8, 74**FÆTICIDE, 15, 220****FOLIO, 8, 74****FOLLOW, 8, 75**

- Follow his business, 8, 76
- Follow the event, 8, 75
- Follow up, 8, 75

FOLLOWING

- In following form, 10, 323

FOOD, 8, 76

- See ADULTERATION; PROVISIONS.
- Exempt from execution, 8, 76

FOOT, 8, 77

- Foot of the mountain, 8, 77

FOOT RACING, see GAMING.**FOOT-WAY, 19, 108**

See generally, PRIVATE WAYS.

FOR, 8, 79

- Construed to mean from, 8, 97
- Contracting, 8, 89
- For and during, 8, 94
- For giving, 8, 91
- For her own use, 8, 91
- For hire or gain, 8, 91
- For his services, 8, 92
- For or in behalf of, 8, 81
- For or in consideration of, 8, 84
- For or on Account of, 8, 79
 - Whether equivalent to satisfaction, 8, 81
- For said firm, 8, 92
- For that, 8, 94
- For the future, 8, 89
- For the purpose, 8, 96
- For the time being, 8, 93
- For the use, 8, 94
- For this day and train only, 8, 93
- For whom it may concern, 8, 87
- In the sense of "for the use," 8, 97

FORBEARANCE, 8, 98**FORCE, 8, 99**

See FORCIBLE ENTRY AND DETAINER.

Assault, 8, 99

- By force, 8, 100
- Element of rape, 8, 99
- Force and arms, 8, 99
- Forced heirs, 8, 100
- Forced sale, 8, 100
- Physical force, 8, 99
- With force, 8, 100

FORCIBLE ENTRY AND DETAINER, 8, 181

See SUMMARY PROCEEDINGS.

Abatement, 8, 165

- Of action, 8, 164

Against Whom Action May Be Brought, 8, 137

Tenant holding over, see *infra*, TENANT HOLDING OVER.

Joint parties, 8, 138

- Person in possession at time of action, 8, 137

- Representative of disseizor, 8, 138

- Two or more holding in severalty, 8, 138

Allegations in Case of Landlord and Tenant, 8, 155

- Alleging that tenancy has terminated, 8, 155

- Complainant's right of possession, 8, 156

- Failure to pay rent, 8, 156

- Showing relationship, 8, 155

- Tenancy at will, 8, 155

- What allegation is sufficient, 8, 157

- Where tenant holds over, 8, 156

- Where tenant remains in possession, 8, 156

Amendments, 8, 164

- Appeal bond, 8, 183

- Introduction of new party, 8, 164

- Omission to enter judgment of restitution, 8, 164

- Variance between allegation and proof, 8, 164

- Variance between complaint and justice's indorsement, 8, 164

- What amendments may be made, 8, 164

- What amendments may not be made, 8, 164

Answers and Defenses, 8, 157

See *infra*, STATUTE OF LIMITATIONS.

- Collusion to obtain tax title, 8, 160

- Contract to lease to another, 8, 162

- Defenses in general, 8, 159

- Entry for purpose of pre-emption, 8, 159

- Equitable defenses, 8, 160

- Examples of defenses, 8, 159-163

- Fraud in obtaining lease, 8, 161

- General denial, 8, 159

- Husband and wife, 8, 160

- Land taken under eminent domain, 8, 160

- Peaceable entry, 8, 159

- Pleas in abatement, 8, 157

- Possession under legal process, 8, 160

- Set-off and counterclaim, 8, 162

- Tenant estopped to deny landlord's title, 8, 161

- Tenant evicted, 8, 161
- When term is not expired, 8, 161
- Where defendant did not enter as tenant, 8, 162
- Appeal Bond, 8, 182**
 - Amendment, 8, 183
 - Conditioned to pay future rents, 8, 183
 - Defect of, 8, 182
 - Duty of justice to approve, 8, 182
 - Liability of sureties on undertaking, 8, 183
 - Substitution of new undertaking, 8, 183
 - Sum for which it should be given, 8, 183
- Appeals and Reviews, 8, 179**
 - Appeal bond*, see *infra*, APPEAL BOND.
 - Examples, 8, 180
 - New trial, 8, 181
 - Objections not taken by law, 8, 180
 - Provisions in various states, 8, 179
 - Relief granted, 8, 181
 - Remanded judgment, 8, 181
 - Review by certiorari, 8, 181
 - Stay of execution on appeal, 8, 182
 - Undertaking by appellant, 8, 182
 - What considered on appeal, 8, 180
 - When appeal may be taken, 8, 179
- Applicable to real property only, 8, 102
- Cases in which action may be maintained, 8, 106
- Certiorari, 8, 182
- Charge to jury, 8, 163
- Color of title, 8, 126
- Commencement of action, 8, 146
- Competency of witnesses, 8, 169
- Complainant's Estate and Possession, 8, 151**
 - Estate, 8, 149
 - Possession, 8, 148
- Complaint, 8, 150**
 - Accuracy of description, 8, 153
 - Allegations**
 - See *infra*, ALLEGATIONS.
 - Of entry and detainer, 8, 152
 - Of estate, 8, 151
 - Of force, 8, 152
 - Of possession, 8, 151
 - Complainant's estate and possession, 8, 151
 - Complaint not showing that entry and detainer was unlawful, 8, 153
 - Description of property, 8, 153
 - Description of school house property, 8, 154
 - Form, 8, 157
 - General description, 8, 153
 - General rules, 8, 150
 - Objections to matters of form, 8, 157
 - Substantial compliance, 8, 150
 - Sufficiency, 8, 150
 - Time of entry, 8, 153
 - Variance, 8, 164
 - Venue, 8, 150
 - Verbal complaint, 8, 151
 - Verification, 8, 157
 - Waiver of objections to description, 8, 154
- Whether allegation of either forcible entry or retainer is sufficient, 8, 153
- Constructive possession, 8, 103, 118
- Conveyance by one party to another, 8, 129
- Costs**
 - Charges for constable's fees, 8, 176
 - Disregarding errors, 8, 176
- Criminal Action**
 - At common law, 8, 104
 - Statutory change, 8, 105
- Criminal proceedings, 8, 148
- Damages, 8, 172**
 - Double and treble, 8, 173
 - Elements of, 8, 172
 - Exceeding sum claimed, 8, 172
 - Injuries not directly incident to forcible entry and detainer, 8, 174
 - Injuries to other lands, 8, 173
 - Injury to credit, 8, 173
 - Remote, 8, 172
 - Rents and profits, 8, 172
 - Right to recovery of, 8, 172
 - To personal property, 8, 173
 - Waste and other injury, 8, 173
 - Whether necessary incident, 8, 172
 - Whether treble damages must be claimed, 8, 174
- Definition, 5, 648; 8, 101**
 - Forcible detainer, 8, 110
 - Forcible entry, 8, 106
- Demand*, see *infra*, NOTICE TO QUIT.
- Description of premises, 8, 149
- Detainer of lands held under authority of law, 8, 111
- Disposition of issues, 8, 163
- Distinction Between Forcible Entry and Forcible Detainer, 8, 103**
 - But one offense, 8, 103
 - Criminal remedy, 8, 104
 - Different remedies, 8, 104
 - Distinct and different acts, 8, 103
 - Indictment, 8, 104
 - Original entry unlawful, 8, 104
 - Remedy at common law, 8, 104
 - Restitution, 8, 105
- Enforcement of Judgment, see *infra*, RESTITUTION.**
 - Execution, 8, 177
- Evidence, 8, 165**
 - Admissibility, 8, 166
 - Adverse title, 8, 167
 - Burden of proof, 8, 166
 - Color of title, 8, 169
 - Description of premises, 8, 165
 - Force and effect of, 8, 169
 - Force or violence, 8, 165
 - Fraud and collusion, 8, 168
 - Good faith of defendant, 8, 169
 - Holding over, 8, 166
 - Knowledge of entry of defendant, 8, 168
 - Materiality, 8, 166
- Objections, 8, 170**
 - Reasons for admitting and rejecting testimony, 8, 170
 - Waiver of objections, 8, 170

FORCIBLE ENTRY AND DETAINER—*Cont'd***Evidence—Cont'd**

- Of former possession, 8, 168
- Possession, 8, 165
- Relation of landlord and tenant, 8, 169
- Subsequent detention, 8, 165
- Termination of tenancy, 8, 166
- Time of possession, 8, 169
- Title, 8, 166
 - To show purpose of entry, 8, 167
- What must be proved, 8, 165

Execution, 8, 177

Force only subject to injury, 8, 102

Formal defects, 8, 158

Gist of action, 8, 102, 119

Indictment, 8, 148**Allegations**, 8, 148

- All facts necessary to constitute the offense, 8, 149

- Charging both forcible entry and detainer in same count, 8, 149

- Description of premises, 8, 149

- Estate of plaintiff in premises, 8, 149

- Of forcible detainer, 8, 148

- Of forcible entry, 8, 148

- Peaceable possession of plaintiff, 8, 148

Inquisition, 8, 147

- Definition, 8, 147

- Practice, 8, 148

- Restitution, 8, 147

Instruction, examples of, 11, 267-272

Joinder, 8, 105

Joinder with unlawful detainer, 11, 994

Judgment, 8, 174*See infra*, **RESTITUTION**.

- As to what is not asked for in complaint, 8, 175

- Description of land, 8, 175

Effect and Conclusiveness of, 8, 176

- As to matters in issue, 8, 176

- As to matters not in issue, 8, 176

- As to other lands, 8, 177

- Fine, 8, 175

- Form of, 8, 175

- Insufficient, 8, 175

- Joint, 8, 175

- Regularity, 8, 175

- What judgment may be rendered, 8, 174

- Where plaintiff's estate terminates

- pending action, 8, 175

Jurisdiction, 8, 143

- Justice of Peace, 8, 144; 12, 495

- Limitation of their jurisdiction, 8, 144

- Removal to higher court, 8, 144

- Title to real property, 8, 144

- Various courts having jurisdiction in different states, 8, 145

Juror's oath, 8, 163

Justice of the Peace, 8, 144; 12, 495

- Appeal, 12, 482, 497

- Complaint, 12, 496

- Damages for detention, 12, 495

- Demurrer to counterclaim for damages, 12, 497

Deposition, 12, 497

Description, 12, 496

Forcible entry and unlawful detention, 12, 495

Indemnity bond, 12, 495

Jurisdiction, 12, 495

Notice to quit, 12, 495

Party aggrieved, 12, 497

Peaceable entry and unlawful detention, 12, 495

Plea, 12, 496

Time within which action may be maintained, 12, 495

Where action must be brought, 12, 495

Writ of restitution, 12, 497

Landlord and Tenant, 12, 458*u**See infra*, **TENANT HOLDING OVER**.

Action by tenant against landlord, 12, 696

In general, 12, 758*u*Inquiry into title, 12, 758*u*Question at issue, 12, 758*u*Summary nature, 12, 758*u*

Malicious prosecution, 14, 36

Mitigation of damages, 15, 686

Nature of action, 8, 102

Necessity of legal right of entry or possession, 8, 102

New trial, 16, 597

Notice to Quit and Demand for Possession, 8, 139

- Case of forfeiture, 8, 140

- Contents of notice, 8, 141

- Demand for possession besides notice to quit, 8, 141

- Manner of service, 8, 143

- Party remaining in possession after foreclosure, 8, 141

- Tenant at sufferance, 8, 140

- Tenant at will, 8, 140

- Tenant holding over, 8, 140

- Time of service, 8, 142

- To whom it should be made, 8, 142

- Waiver of notice by disclaimer, 8, 140

- Waiver of notice by stipulation in lease, 8, 141

- Where parties cannot be considered as landlord and tenant, 8, 139

- Where possession was obtained illegally, 8, 139

Object of the law, 26, 27

Pleas in abatement, 8, 158

Possession and not right to possession, 8, 119

Possession Necessary, 8, 117, 126, 162**Abandonment of Possession**, 8, 124

- Examples, 8, 124, 125

- Relinquishment of contract of sale, 8, 125

- Retaining possession, 8, 124

Actual possession, 8, 118

Constructive possession, 8, 103, 118

Evidence to prove right of possession, 8, 103

Peaceable possession, 8, 117

Pre-emption, 8, 126

Purchaser at judicial sale, 8, 133

- Scrambling possession, 8, 103, 118
- Trespasser, 8, 803
- What Constitutes Possession**
 - Acts of ownership, 8, 123
 - Bona fide possession, 8, 120
 - Constant presence of claimant, 8, 121
 - Entry during temporary absence, 8, 120
 - Exercising control of another's land, 8, 123
 - Fencing, 8, 120
 - Holding land, 8, 121
 - Husband and wife, 8, 124
 - In general, 8, 119
 - Marking, 8, 121
 - Nocturnal entry, 8, 119
 - Payment of taxation, 8, 123
 - Peaceably equivalent to lawfully, 8, 124
- Possession**
 - By agent, 8, 122
 - By vendee, 8, 121
 - Obtained by trespass, 8, 120
 - Of landlord, 8, 121
 - Of vendee, 8, 121
 - Under contract, 8, 122, 125
 - Under void writ, 8, 122
 - Residence on premises, 8, 120
- Retaining Possession, 8, 123**
 - Nailing up doors of house, 8, 124
- Staking, 8, 121
- Surveying, 8, 121
- Use of premises, 8, 119
- Using a way by owner of an easement therein, 8, 124
- Possession to support ejectment and trespass, 26, 27
- Power of court, 8, 164
- Pre-emption, 8, 126
- Question of law and fact, 8, 163
- Recordari, 8, 182
- Release of security, 8, 164
- Restitution, 8, 177**
 - See generally, RESTITUTION, WRIT OF.*
 - After judgment in ejectment, 8, 178
 - Bond, 8, 179
 - Costs, 8, 176
 - Co-tenants, 8, 179
 - Discretion of court, 8, 178
 - Entering forcibly, 8, 178
 - Executing writ, 8, 178
 - Fine, 8, 175
 - Inquisition, 8, 147
 - Judgment, 8, 174
 - Misdescription in writ, 8, 178
 - Party not held under defendant in writ, 8, 179
 - Right to property, 8, 177
 - When an appeal has been taken, 8, 178
 - When it will be awarded, 8, 177
 - Where defendant has not appeared, 8, 174
 - Where proceedings have been quashed, 8, 178
 - Where proceedings have been reversed, 8, 178
- I-D—37**
- Whether a matter of right, 8, 178
- Whether dependent upon right of possession, 8, 147
- Who may be dispossessed, 8, 179
- Right of entry, 8, 102
- Right of possession, 8, 102
- Scrambling Possession, 8, 103, 118**
 - Defense, 8, 168
 - What is, 8, 118
- Service of Process, 8, 146**
 - Manner of service, 8, 146
 - Personal service, 8, 146
 - Sufficient service, 8, 146
- Statute of Limitations, 8, 157**
 - Possession must be adverse, 8, 157
 - Usual period, 8, 157
 - When statute begins to run, 8, 157
- Summons, 8, 146**
 - Affidavit and complaint, 8, 146
 - Contents of warrant, 8, 146
 - Description of property, 8, 155
 - Form prescribed by statute, 8, 146
 - Return, 8, 146
- Tenant at will after notice to quit, 8, 139
- Tenant cannot be ejected by force, 8, 102
- Tenants Holding Over, 8, 105, 112, 138**
 - See infra, LANDLORD AND TENANT; NOTICE TO QUIT.*
 - Action by landlord, 8, 134
 - Action founded on contract, 8, 105
- Allegations in Complaint, 8, 155**
 - Complainant's right of possession, 8, 156
 - Failure to pay rent, 8, 156
 - Showing relationship, 8, 155
 - Tenancy at will, 8, 155
 - What allegation is sufficient, 8, 157
 - Where tenant holds over, 8, 156
 - Where tenant remains in possession, 8, 156
- Alleging that tenancy has terminated, 8, 155
- Entering by collusion, 8, 135
- Forfeiture of lease, 8, 134, 139
- Joining action with original action, 8, 106
- Notice, 8, 112
- Privity of parties, 8, 138
- Proof of relationship of landlord, 8, 169
- Refusal, 8, 112
- Refusal to perform agreement, 8, 112
- Relation of landlord and tenant not existing, 8, 134
- Request to surrender possession, 8, 135
- Statutory, 8, 105
- Subtenant, 8, 138
- Taking landlord's title, 8, 129
- Title, 8, 129
- Threats and Intimidation, 8, 116**
 - Act by one person, 8, 116
 - Combination of three persons, 8, 116
 - Combined numbers, 8, 116
 - Entry accompanied by sufficient violence to support an action, 8, 116
 - Examples, 8, 108
 - Instances, 8, 116, 117

FORCIBLE ENTRY AND DETAINER—

Cont'd

Threats and Intimidation—*Cont'd*

Sufficient to overawe or intimidate, 8, 116

Threats to kill, 8, 116

Title, 8, 126

Adverse title, 8, 167

As a defense, 8, 127

Boundaries, 8, 129

Conveyance by one defendant to another, 8, 129

Damages, 8, 129

Evidence of title to show possession, 8, 128

Fraud, 8, 129

How far considered, 8, 126

Instruction to jury, 8, 128

Justice of peace, 8, 144

Public lands, 8, 127

Tenant holding over, 8, 129

Tenant taking landlord's, 8, 129

To show purpose for which entry was made, 8, 167

Trying question of title, 8, 126

When admissible, 8, 166

Trespasser maintaining an action, 8, 102

Trial by jury, 8, 163

Variance, 8, 164

Venue, 8, 150

Verdict, 8, 170

Action against two tenants, 8, 171

Cause of, 8, 171

Complainant, 8, 171

Forcible entry, 8, 171

General, 8, 170

Guilty of withholding possession, 8, 171

Of court, 8, 170

Stating detention by force, 8, 171

Substantial compliance with statute, 8, 170

Technical strictness of language, 8, 171

Waiver of defects, 8, 163

Waiver of irregularities, 8, 163

Waiver of objections to complaint, 8, 155

Warrant, 8, 146

Affidavit and complaint, 8, 146

Contents of, 8, 146

Description of property, 8, 154

Form prescribed by statute, 8, 146

Requisites of, 8, 154

Return, 8, 146

What Constitutes a Forcible Detainer, 8, 110

Common law, 8, 110

Definition, 8, 110

Detainer of lands held under authority, 8, 111

Force required, see *infra*, WHAT FORCE OR VIOLENCE IS SUFFICIENT.

Holding Over, 8, 105, 112

Founded upon contract, 8, 105

Notice, 8, 112

Refusal, 8, 112

To perform an agreement, 8, 112

Statutory remedy, 8, 105

Threats, see *infra*, THREATS.

What Constitutes a Forcible Entry, 8, 106

Actual violence, 8, 108

California forcible entry act, 8, 108

Causing arrest of occupant, 8, 108

Definition, 8, 106

Degree of force, see *infra*, WHAT FORCE OR VIOLENCE IS SUFFICIENT.

Entry by owner in absence of tenant, 8, 107

Entry of one entitled to possession, 8, 108

Entry under contract to repair, 8, 109

Exciting fear of actual violence, 8, 108

Forcible detainer after unlawful entry, 8, 109

Forcibly breaking into house, 8, 107

Necessity of force or violence, 8, 107

Original entry lawful, 8, 109

Threats or menaces, see *infra*, THREATS.

When boundary is in dispute, 8, 109

When forcible detainer relates back to unlawful entry, 8, 109

What Force or Violence Is Sufficient, 8, 112

See *infra*, THREATS.

Actual force, 8, 112

Breaking doors, 8, 114

Entry by force, 8, 114

Entry by fraud or stealth, 8, 113

Examples, 8, 115

Kansas statute, 8, 113

Mere trespass, 8, 114

Mere unlawful entry, 8, 113

Modifications, 8, 113

Physical force necessary, 8, 114

Removal of fence, 8, 114

Same degree necessary to constitute forcible detainer as forcible entry, 8, 113

To Constitute Forcible Detainer, 8, 110

Threats of bodily harm, 8, 111

Threats of prosecution, 8, 111

Where relation of landlord and tenant does not exist, 8, 112

Whether force must have been used in the very act of entry, 8, 115

Whether it must amount to a breach of the peace, 8, 115

When Remedy Does Not Apply, 8, 106

Forcible detainer after entry under process of law, 8, 106

Mere trespass, 8, 106

Peaceable entry under color of title, 8, 106

Who May Bring Action, 8, 129

Against tenant of grantor, 8, 131

Agents, 8, 133

Equitable mortgage, 8, 137

Executors and administrators, 8, 136

Generally, 8, 136

Grantees, 8, 130

Husband and wife, 8, 137

Joint tenants, 8, 136

Landlord against tenant, 8, 134

Lessee against former lessee, 134
 Mortgagee, 8, 137
 Mortgagee before foreclosure, 8, 137
 Mortgagor, 8, 137
 Person deprived of possession, 8, 130
 Person dispossessed under proceedings to which he was not a party, 8, 137
 Person holding possession under color of title, 8, 130
 Possession necessary for purchaser at judicial sale, 8, 132
 Purchaser and reversioner, 8, 130
 Purchaser at judicial sale, 8, 132
 Receivers, 8, 136
 Remedy at law and in equity, 8, 131
 Remedy for vendor at law and in equity, 8, 131
 Second lessor, 8, 135
 States in which action does not lie against vendee, 8, 132
 Statutory provisions, 8, 130
 Subtenant, 8, 134
 Tenant entering by collusion or fraud, 8, 135
 Tenant in common against his co-tenant, 8, 136
 Tenants in common, 8, 136
 Vendee against vendor, 8, 131
 Vendees, 8, 130
 Vendor Against Vendee, 8, 131
 When land is subsequently conveyed, 8, 131

Witnesses, 8, 163, 169

FORECLOSURE OF MORTGAGES, 8, 185

See RAILROAD SECURITIES.

See generally SALES.

As to enjoining foreclosure or sale, see INJUNCTION.

Foreclosure of chattel mortgages, see CHATTEL MORTGAGES.

Foreclosure in power of sale mortgages, see TRUST DEEDS AND POWER OF SALE MORTGAGES.

Railroad mortgages, see RAILROAD SECURITIES.

Action to foreclosure a "special case" in New York constitution, 3, 23

Amount in controversy, 12, 286

Assignee's right to foreclose, 15, 843

Bills to Foreclose, 6, 766

Assignee of mortgagee, 6, 748

Bill in equity to redeem parties, 6, 749

Encumbrancers, 6, 748

Heirs of mortgagor, 6, 749

Mortgagor and mortgagee, 6, 748

Owner of equity of redemption, 6, 749

Parties, 6, 748

Party having beneficiary interest, 6, 748

Personal representative of mortgagee, 6, 749

Persons whose interest decree might effect, 6, 748

Redemption of mortgages, 6, 749

Subsequent purchaser or mortgagor, 6, 749

By Writ of Entry, 6, 654; 8, 186

Conditional judgment, 8, 188

Legal consequences, 8, 188

States in which it exists, 8, 188

Counterclaim, 22, 378

Definition, 8, 185

Foreclosure by entry and possession, 8, 186

Foreclosure by sale, 8, 186

Strict foreclosure, 8, 185

Demand

Necessity for, 8, 188

Not payable on demand, 8, 189, 195

Dismissal of bill to redeem, 20, 625

Dower, 5, 902

Destroying widow's rights, 5, 902

Foreclosure after husband's death, 5, 902

Making widow party to suit, 5, 902

Mortgage foreclosed during coverture, 5, 902

Extension of Time

By parol, 8, 190

Foreclosure to expiration of extended time, 8, 191

Time of Payment, 8, 190

Agreement without consideration, 8, 191

Agreement with third person respecting equity of redemption, 8, 190

Consideration, 8, 191

Giving additional security, 8, 190

Payment of interest in advance as consideration, 8, 190

Failure to pay interest, 8, 192

Final judgment, 12, 68

Foreclosure by Entry and Possession, 8, 186

In what states foreclosure in pais exists, 8, 187

Title of mortgagee to foreclosure in pais, 8, 188

Two kinds, 8, 186

Foreclosure in pais, see *infra*, FORECLOSURE BY ENTRY AND POSSESSION.

Foreclosure Sales, 8, 186, 204

Appeal, see *infra*, SETTING ASIDE SALE AND RESALE.

Notice, and see generally, as to the sufficiency of publication, NOTICE BY PUBLICATION.

Setting aside sale and re-sale, see *infra*, OPENING THE BIDDINGS.

Adjournment, 8, 247, 249; 22, 620

Appeal, 8, 277

Discretion of court, 8, 277

Effect of reversal, 8, 277

When lies, 8, 277

Application for postponement, 8, 247

Appointment of referee to investigate title, 8, 253

Attorney's fees, 8, 271

Auction, 8, 248

Bidding

Deposit of bidder, 8, 249

By whom sale should be made, 8, 243-245, 247

FORECLOSURE OF MORTGAGES—*Cont'd***Foreclosure Sales—Cont'd**

- Collateral attack upon decree, 8, 245
- Conclusiveness of decree, 8, 245
- Conduct of sale, 8, 246
- Confirmation**, 8, 250, 254, 257; 22, 686
 - Application for, 8, 249
 - Compelling purchaser to complete sale before, 8, 253
 - Cure of defects, 8, 257
 - Definition, 8, 257
 - Discretion of court, 8, 254, 257; 22, 686
 - Effect of, 8, 249
 - Irregularities after, 8, 251
 - Losses by fire, 8, 253
 - Loss of property before confirmation, 8, 250
 - Order, 8, 249
 - Purchaser's right, 8, 257
 - Rights and liabilities of purchaser before confirmation, 8, 250
 - Setting aside, 8, 250
 - Title, 8, 257
 - Crops, 22, 659
- Decree**, 8, 240
 - Cash or credit, 8, 243
 - Contents of, 8, 240
 - Conveyances by grantees of mortgagor, 8, 242
 - Deposit required, 8, 243
 - Direction as to order of sale, 8, 243
 - Equities of grantees, 8, 242
 - Officer to make sale, 8, 243
 - Permitting plaintiff to bid, 8, 243
 - Placing purchaser in possession, 8, 243
 - Repairs and improvements, 8, 244
 - Sale in inverse order of alienation, 8, 240
 - Subsequent incumbrances, 8, 241
 - Terms of sale, 8, 243
 - Time and place of sale, 8, 243
 - Time before sale in which defendant may pay debt, 8, 243
- Deed**, 8, 273
- Defenses**, 8, 230
 - Duress, 8, 230
 - Failure of consideration, 8, 230
 - Fraud, 8, 230
 - Illegality of consideration, 8, 230
 - In general, 8, 230
 - Payment, 8, 231
 - Release, 8, 231
 - Set-off, 8, 231
 - Statute of limitations, 8, 231
 - Usury, 8, 230
 - Want of consideration, 8, 230
- Deposit**, 8, 273
 - Required, 8, 243
 - Return of, 8, 253
- Discretion of officer, 8, 247
- Disposition of Proceeds of Sale**, 8, 269
 - Attorney's fees, 8, 271
 - Exceptions to referee's report, 8, 269
 - Priority of liens, 8, 270

- Reference to ascertain amount due, 8, 269
- Surplus**, 8, 269; 24, 958
 - Stands in place of equity of redemption, 8, 269
- Duty of officer conducting sale, 8, 248
- Enforcing sale by attachment, 8, 250
- Equitable jurisdiction, 8, 205
- Error and mistake in proceedings, 8, 245
- Failure to complete sale, 8, 253
- Federal courts, 8, 205
- Highest bidder as quasi party, 8, 250
- Improvements, 8, 244
- In what courts to be brought, 8, 205
- Judgment for Deficiency**, 8, 264
 - Accepting deed subject to a mortgage, 8, 266
 - Against mortgagor, 8, 265
 - Against non-resident defendants, 8, 266
 - Against party assuming mortgage, 8, 265
 - Against third person, 8, 265
 - Assignor guaranteeing payment, 8, 265
 - Assumption of mortgage debt, 8, 267
 - Contingent decree for, 8, 265
 - Execution, 8, 267
 - Grantee assuming mortgage not liable unless grantor was, 8, 266
 - How deficiency is ascertained, 8, 265
 - Lien as a judgment, 8, 267
 - Power for personal judgment, 8, 267
 - Power of court, 8, 264
 - Release of person assuming mortgage by agreement with his grantor, 8, 266
 - Statute conferring right, 8, 266
 - Statutory provisions, 8, 264
 - United States courts, 8, 267, 268
 - What deficiency can be given for, 8, 265
 - When court may give judgment in absence of statute, 8, 267
 - When judgment may be docketed, 8, 266
- Massing, 22, 614
- Memorandum of sale, 8, 247
- Nature of remedy, 8, 204
- Notice**, 8, 246
 - Contents of, 8, 246
 - Insufficient, 8, 246
 - Of postponement, 8, 247
 - Proof of publication, 8, 246
 - Regulated by statute, 8, 246
 - Sale made without, 8, 245
 - Statute strictly pursued, 8, 246
 - Time and place, 8, 246
 - Where advertised day falls on Sunday, 247
- Opening Biddings**, 8, 254
 - American practice, 8, 255
 - English practice, 8, 254
 - Offer to advance price, 8, 261
 - What is meant by term, 8, 254

- What persons may open biddings, 8, 255
- When biddings will be opened, 8, 254
- Order of Sale, 8, 232**
 - Conveyance by grantees of mortgagor, 8, 242
 - Direction as to order of sale, 8, 242
 - Equities of grantees, 8, 242
 - Sale in inverse order of alienation, 8, 240
 - Subsequent incumbrances, 8, 241
 - When rule as to sale in inverse order does not apply, 8, 242
 - Where there are different interests, 8, 232
 - Parceling, 22, 613
- Parties**
 - Beneficiaries, when numerous, 8, 227
 - Claimants by adverse title, 8, 228
 - Claimants by subrogation, 8, 226
 - Devises and legatees, 8, 227
 - Femes covert, 8, 226
 - Guarantors, 8, 226
 - Heirs and personal representatives, 8, 227
 - Infants and lunatics, 8, 226
 - Judgment and attachment creditors, 8, 227
 - Necessary, 8, 223
 - Prior and subsequent incumbrances, 8, 223
 - Remaindermen, 8, 225
 - Subsequent mortgagors and lienors, 8, 222
 - Tenants in common, 8, 225
- Parties Defendant**
 - Beneficiaries, when numerous, 8, 227
 - Claimants by adverse title, 8, 228
 - Claimants by subrogation, 8, 226
 - Devises, 8, 227
 - Femes covert, 8, 226
 - Heirs, 8, 227
 - Infants, 8, 226
 - Legatees, 8, 227
 - Lunatics, 8, 226
 - Necessary parties, 8, 228
 - Personal representatives, 8, 227
 - Prior incumbrances, 8, 228
 - Remaindermen, 8, 225
 - Subsequent incumbrances, 8, 228
 - Tenants in common, 8, 225
- Personal presence of officer making sale, 8, 247, 248
- Plaintiff the bidder, 8, 243
- Pleadings, 8, 229
- Postponement of sale, 8, 247
- Power of sale in mortgage, 8, 205
- Prevailing mode, 8, 204
- Proceedings, 8, 205
- Proceedings before sale, 8, 231
- Purchaser refusing to complete purchase, 8, 250
- Receivers, 8, 234**
 - See infra*, RECEIVERS.
 - Accounting of receivers, 8, 240
 - Accumulation of taxes, 8, 237
- Appointment**
 - After decree, 8, 239
 - After sale, 8, 239
 - Before answer, 8, 239
 - Prior to filing of bill, 8, 239
- Bad faith on part of mortgagor, 8, 234
- Circumstances justifying appointment of receiver, 8, 236
- Compensation of receiver, 8, 240
- Denial of relief, 8, 234
- Discharge of receiver, 8, 240
- Disposition of funds in hands of receiver, 8, 236
- Fraud, 8, 237
- Imminent danger of loss or injury, 8, 236
- Inadequacy of the security, 8, 234
- Insolvency of party, 8, 234
- Junior mortgagee, 8, 239
- Labor and supplies, 8, 235
- Laches on part of mortgagee, 8, 238
- Outstanding debts, 8, 235
- Personal representatives of deceased mortgagors, 8, 236
- Prior incumbrancer in possession, 8, 236
- Proper time allowed for redemption, 8, 238
- Puise mortgagee in possession, 8, 239
- Receiver's possession, 8, 239
- Removal for misconduct, 8, 240
- Rents and profits expressly pledged, 8, 234
- Time of appointing receiver, 8, 239
- Waste committed by person in possession, 8, 237
- When property is of sufficient value to pay mortgage debt, 8, 237
- When receiver will be appointed, 8, 234
- Where additional security is given, 8, 237
- Where debt is not all due, 8, 237
- Where first mortgagee is out of possession, 8, 238
- Where legal title is in mortgagee, 8, 238
- Where mortgage is impeached, 8, 238
- Where mortgagee is in possession, 8, 238
- Where property is in possession of a stranger, 8, 238
- Where rents and profits cannot be applied, 8, 238

Referee

- To investigate title, 8, 253
- Reference to determine amount of debt, 8, 232
- Reference to determine disposition of surplus, 8, 269
- Relation, 8, 273
- Remedies Against Purchaser, 8, 272**
 - Attachment against his person, 8, 273

FORECLOSURE OF MORTGAGES—*Cont'd***Foreclosure Sales—Cont'd****Remedies Against Purchaser—Cont'd**

Entering judgment against purchaser for a deficiency, 8, 272

Forfeiture of deposit, 8, 273

In general, 8, 272

Ordering resale, 8, 272

Purchaser submits to jurisdiction of court, 8, 272

Repairs, 8, 244

Reports of sale, 8, 247, 254

Rights and Liabilities of Purchaser, 8, 249

Appointment of referee to investigate title, 8, 252

As to title, 8, 250

Caveat emptor, 8, 274

Claims affecting title which existed prior to mortgage, 8, 251

Compelling purchaser to complete purchase, 8, 272

Crops growing at time of delivery of deed, 8, 273

Defects in foreclosure proceedings, 8, 251

Defects of title unknown to purchaser, 8, 251

Disbursements when purchaser is discharged from his contract, 8, 252

Formal irregularities, 8, 252

Inchoate right of dower, 8, 251

Injunction against disturbing purchaser's possession, 8, 276

Insane defendants, 8, 252

Irregularity

After confirmation, 8, 251

Prior to judgment, 8, 251

Losses by fire, 8, 253

Mistake, 8, 253

Possession, 8, 276

Possession pendente lite, 8, 273

Prior mortgage, 8, 251

Referees to investigate title, 8, 254

Rents between time of sale and delivery of deed, 8, 273

Return of deposit, 8, 253

Right to deed, 8, 273, 274

Title, 8, 251, 253, 273, 274

To have sale completed, 8, 252

What rights pass to him under sale, 8, 253

When deed should be executed, 8, 273

When entitled to possession, 8, 273

When excused from completing purchase, 8, 251

When proceedings are void, 8, 251

Where no funds are in court, 8, 252

Writ of assistance, 8, 276

Rights of highest bidder, 8, 249**Rights of purchaser after confirmation, 8, 257****Sale in Parcels, 8, 232**

Determining amount to be sold, 8, 233

Discretion of court, 8, 232

Discretion of officer making sale, 8, 234

Duty of officer conducting sale, 8, 233

Matter of right, 8, 233

Parties dictating manner of sale, 8, 234

Reference to determine whether land should be sold, 8, 232

Under the codes, 8, 233

When sold in parcels, 8, 233

Where mortgaged property is in parcels, 8, 232

Where premises described as one piece, 8, 233

Where subdivided into lots after execution of mortgage, 8, 233

Sale of land not included in decree, 8, 245

Sale to highest bidder, 8, 247

Setting Aside Sale and Resale, 8, 258

Accident, 8, 262

Accident in surprise, 8, 259

Advance in price on resale, 8, 261

After confirmation, 8, 258

Application must be prompt, 8, 259

Benefit of infants, 8, 260

By whom application should be made, 8, 261

Conditions, 8, 260

Confirmation, 8, 250

Delay in application, 8, 260

Discretion of court, 8, 260

Excusable mistake, 8, 260

False statements, 8, 259

Few bidders, 8, 259

Fraud, 8, 259, 262

Irregularity, 8, 258

In conduct of sale, 8, 259

Laches, 8, 259

Mere inadequacy of price, 8, 260

Method, 8, 258

Misconduct, 8, 259

Misconduct of officer conducting sale, 8, 263

Mistake, 8, 262

Mortgagee purchaser, 8, 259

Motion in original suit, 8, 258

Proper grounds, 8, 259

Sale improperly or unlawfully conducted, 8, 258

Surprise, 8, 262

Terms imposed by court, 8, 260

Where higher bid had been offered, 8, 262

Statute of Frauds

Whether sale is within, 8, 248

Statutes designating courts, 8, 205

Statutes regulating, 8, 205

Subrogation, 24, 261

Delaying payment of purchase-money, 24, 268

Examples, 24, 261-269

Forced sale of homestead, 24, 267

Fraud on part of purchaser, 24, 268

Grantee of purchaser, 24, 266

- In general, 24, 261
- Invalid execution sale, 24, 268
- Invalid sale, 24, 257, 258, 262
- Purchaser at administrator's sale, 24, 262
- Purchaser at foreclosure sale, 24, 261, 262
- Purchaser at guardian's sale, 24, 262
- Purchaser at judicial sale, 24, 262
- Purchaser aware of invalidity of sale, 24, 268
- Rights of purchasers, 24, 261
- Statute making an invalid sale of homestead a misdemeanor, 24, 268
- Whether purchasers are volunteers, 24, 262
- Terms of sale, 8, 243
- Title before confirmation, 8, 249
- United States courts, 8, 204
- Void sales, 8, 245
- What officer should make sale, 8, 243
- Form and contents of decree, 5, 377
- In Arkansas, 8, 188
- Infant heir, 8, 215
- Injunctions, 10, 899
- In Michigan, 8, 188
- In Minnesota, 8, 188
- Joinder Under Codes, 11, 1010**
 - Liens on realty and personal liability, 11, 1011
 - Parties liable for debt secured by mortgage, 11, 1012
 - Personal judgment with mortgage foreclosure, 11, 1011
 - Proceedings to establish mechanic's lien, 11, 1011
 - Provisions not compulsory, 11, 1014
 - Same transaction, 11, 1011
 - Several proceedings to foreclose, 11, 1010
 - Statutes authorizing the joinder of liens on realty and personal liability, 11, 1011
 - Statutory provisions authorizing personal judgment, 11, 1012
 - Subsequent purchasers from mortgagor, 11, 1013
 - Vendor's lien, 11, 1013
- Joinder with ejectment under codes, 11, 1015f
- Judgment by default, 5, 463
- Judgment for Deficiency Under Codes, 11, 1011**
 - Deceased mortgagor's heirs, 11, 1013
 - Mortgage executed as collateral security, 11, 1013
 - Parties other than mortgagor, 11, 1012
 - Subsequent purchasers from mortgagor, 11, 1013
 - Statutory provisions, 11, 1012
- Kinds of foreclosure, 8, 185
- Limitation of actions, 13, 704
- Lis pendens, 13, 905
- Marshaling assets, 14, 696
- Massing, 22, 614
- Mortgages for support, 15, 803
- Notes payable pro rata, 8, 207
- Parties**
 - See infra*, FORECLOSURE SALES.
- Parties Defendant, 8, 211**
 - Adverse claimant, 8, 222
- Annuitants, 8, 215**
 - Of subsequent lienor, 8, 220
- Assignee in Bankruptcy, 8, 217**
 - During pendency of suit to foreclose, 8, 217
 - Of subsequent lienor, 8, 220
- Voluntary, 8, 217**
- Assignee of mortgage absolutely assigned, 8, 220**
- Assignee of subsequent lien, 8, 219**
- Assignors no longer holding lien, 8, 219**
- Assignor of a mortgage assigned as collateral security, 8, 220**
- Assignor of a mortgage assigned conditionally, 8, 220**
- Assignor who has guaranteed collection of mortgage debt, 8, 220**
- Assignor who has made absolute assignment of mortgage, 8, 220**
- Cestui que trust, 8, 216**
- Committees of lunatics, 8, 220**
- Corporations, 8, 217**
- Creditors without a specific lien, 8, 219**
- Devises of mortgaged premises, 8, 215**
- Devises of subsequent lienor, 8, 220**
- Effect of omitting owner of mortgaged premises, 8, 213**
- Effect of omitting owner of the equity of redemption, 8, 213**
- Executors and administrators, 8, 215**
- Executors and administrators of subsequent lienor, 8, 220**
- Guardians of infants, 8, 220**
- Habitual drunkards, 8, 217**
- Heirs of Equity of Redemption, 8, 215**
 - Where owner of equity of redemption parted with his interest before his demise, 8, 215
- Heirs of Mortgagor, 8, 215**
 - Where mortgagor parted with his interest before his death, 8, 215
- Heirs of owner of equity redemption, 8, 215**
- Heirs of subsequent lienor, 8, 220**
- Husband of married woman, mortgagor, 8, 215**
- Idiot and lunatics, 8, 217**
- Incumbrancer pendente lite, 8, 219**
- Infant heir, 8, 215**
- Infants, 8, 217**
- Joint mortgagees, 8, 221**
- Judgment creditors, 8, 219**
- Legatees, 8, 215**
- Legatees of subsequent lienor, 8, 220**
- Married woman mortgagor, 7, 214**
- Mesne owners of equity of redemption, 8, 213**

FORECLOSURE OF MORTGAGES—*Cont'd***Parties—Cont'd****Parties Defendant—Cont'd****Mortgagor, 8, 211**

Holding any kind of an equitable or contingent interest, 8, 212

Retaining interest, 8, 212

Tenant in common, 8, 211

Municipal corporations, 8, 220

One of several contemporary mortgagees, 8, 221

Owner of mechanic's lien, 8, 219

Owner of the equity of redemption, 8, 213

Parties having paramount title, 8, 222

Parties to deeds, 8, 212

Party who has purchased equity or redemption, 8, 212

Persons not in esse, 8, 217

Prior incumbrancers, 8, 221

Prior lienors, 8, 221

Prior mortgagors and lienholders, 8, 221

Purchaser pendente lite, 8, 214

Receiver, 8, 217

Remaindermen and reversioners, 8, 217

Remedy of judgment creditor who has been omitted, 8, 219

Remedy of omitted junior incumbrancers, 8, 219

Remedy of wife or widow who has been omitted, 8, 214

Senior mortgagees, 8, 222

Subsequent incumbrancers, 8, 218

Subsequent incumbrancer who is a married woman, 8, 219

Subsequent judgment creditors, 8, 219

Subsequent Lienors, 8, 219

Equitable or contingent interest, 8, 219

Tenants and occupants of premises, 8, 217

Tenant by entirety, 8, 212

Tenant in common, 8, 212

Trustees, 8, 216

Vendor and vendee, 8, 212

Where mortgagor has conveyed, 8, 211

Where mortgagor has no interest, 8, 211

Where two or more persons claim ownership of mortgage, 8, 221

Who are necessary parties, 8, 211

Wife not executing purchase-money mortgage, 8, 214

Wife of mortgagor, 8, 214, 215

Wife of owner of equity of redemption, 8, 214, 125

Parties Plaintiff, 8, 206

Assignee in bankruptcy, 8, 209

Assignee of a debt, 8, 209

Assignee of mortgage without bond, 8, 209

Assignee of note, 8, 209

Assignee of one of several notes, 8, 207

Assignee pendente lite, 8, 209

Assignee under parol assignment, 8, 206

Cestuis que trust, 8, 211

Devises of deceased mortgagor, 8, 210

Equitable assignees, 8, 207, 208

Equitable owner by subrogation, 8, 208

Executors and administrators, 8, 210

Foreign executors and administrators, 8, 210

Heirs of deceased mortgagee, 8, 210

Heirs of deceased mortgagor, 8, 210

Holders of notes necessary parties, 8, 207

Joint mortgagees, 8, 207

Legatees of deceased mortgagor, 8, 210

Legatees of mortgagor, 8, 210

Married women owning mortgage, 8, 211

Mortgagees owning equal contemporaneous liens, 8, 209

Mortgages to persons in official capacity, 8, 211

Notes payable pro rata, 8, 207

Owner of equitable interest, 8, 208

Owner of one of several notes, 8, 207

Owner of pledged mortgage, 8, 207

Person advancing money to pay mortgage, 8, 208

Personal representative, 8, 209

Personal representative of vendor, 8, 210

Purchaser holding mortgage as collateral security, 8, 208

Receiver, 8, 209

Representatives of deceased mortgagee, 8, 207

Subsequent incumbrancer, 8, 209

Surety who has assured mortgage, 8, 208

Surety who has guaranteed mortgage debt, 8, 208

Trustees, 8, 210

Partnership

A condition for foreclosure for failure to pay interest not a penalty, 8, 192

Persons in esse, 8, 217

Presumption of Payment, 8, 199, 201

Ignorance of defendant's residence, 8, 200

Presumption from mortgagor's possession, 8, 200

Rebuttal of presumption, 8, 198-200

Presumption that mortgagor holds subordinate to mortgagee, 8, 199

Purchase-Money Mortgages

Defense, 19, 584

Action pending to try title to mortgaged premises, 19, 585

Defect in title, 19, 584

- Disposition of proceeds of sale, 19, 586
- Eviction of title paramount, 19, 585
- Examples, 19, 584-586
- Exceptions, 19, 585
- In general, 19, 584
- Miscellaneous cases under foreclosure, 19, 587
- Outstanding paramount title, 19, 584
- Parol covenants, 19, 585
- Sale effected by fraud, 19, 585
- What constitutes an eviction, 19, 586
- Purchaser pending proceedings, 13, 893
- Purchaser's or mortgagee's title, 8, 186
- Pursuing remedies concurrently, 8, 191
- Receivers**, 20, 37, 50
 - See infra*, FORECLOSURE SALES.
 - Appointment in general, 20, 57, 67
 - Conflict of jurisdiction between state and federal courts, 20, 70
 - Jurisdiction, 20, 57
 - Power of court of equity, 20, 57
- Redemption*, *see* REDEMPTION.
- Reformation, 11, 1015*d*
- Relation, 20, 733
- Remedy**
 - Of omitted judgment creditor, 8, 219
 - Of omitted junior incumbrancer, 8, 218
 - Of wife or widow who is omitted, 8, 214
 - Where owner of equity of redemption is omitted, 8, 213
 - Where owner of mortgaged premises is omitted, 8, 213
- Rent, 12, 733
- Res judicata, 21, 222
- Rights and Obligations of Purchaser**
 - Title to property, 8, 186
- Sale*, *see infra*, FORECLOSURE SALES.
- Scire Facias**, 21, 877
 - By whom action should be brought, 21, 878
 - By whom sale should be made, 21, 878
 - Defendant, 21, 877
 - Effect of sale, 21, 878
 - Extinguishing equity of redemption, 21, 878
 - Immediate cause of action appearing on face of writ, 21, 878
 - In Illinois, 21, 877
 - In Ohio, 21, 877
 - In Pennsylvania, 21, 877
 - Judgment against the property, 21, 878
 - Mortgage debt payable by installment, 21, 878
 - Proceedings in rem, 21, 878
 - Set-off, 21, 878
 - Unrecorded mortgages, 21, 877
 - Who are necessary parties defendant, 21, 878
- Set-Off**, 22, 243, 331
 - Counterclaim, 22, 378, 388
- Statute of Frauds**, 8, 697
 - Agreement by mortgagee to bid in property, 8, 702
 - Agreement by mortgagee to convey to wife of mortgagor, 8, 702
- Strict Foreclosure**, 8, 185, 188
 - Decree, 8, 187
 - Failure to pay debt, 8, 187
 - In Alabama, 8, 187
 - In California, 8, 187
 - In Connecticut, 8, 187
 - In Illinois, 8, 187
 - In Minnesota, 8, 187
 - In New York, 8, 187
 - In Vermont, 8, 187
 - In Wisconsin, 8, 187
 - Origin, 8, 185
 - Payment of debt, 8, 187
 - Pleadings, 8, 187
 - Possession, 8, 187
 - Time of redemption, 8, 187
 - What states recognize, 8, 186
 - Whether strict foreclosure operates as a satisfaction, 8, 187
- Surplus Money**, 8, 269; 24, 958
 - See* TRUST DEEDS AND POWER OF SALE MORTGAGES.
 - Bringing money into court, 24, 958
 - Character of surplus, 24, 959
 - Dower in surplus, 24, 960
 - Homestead in surplus, 24, 961
 - Judgment pending foreclosure suit, 24, 959
 - Mechanics' lien, 24, 958
 - Reference, 24, 958
 - Right of lessee for years, 24, 961
 - Sale under decree, 24, 958
 - Sale under junior mortgage, 24, 961
 - Surplus personalty or realty, 24, 959
 - What claims considered, 24, 958
 - Who entitled to surplus, 24, 960
- Title of mortgagee or purchaser when foreclosure is by entry and possession, 8, 188
- Various modes considered, 8, 186
- Waiver**, 28, 557
 - Accepting payment, 28, 557
 - Action to obtain possession of land, 28, 558
 - Assignment of mortgage, 28, 558
 - Consideration, 28, 557
 - Examples, 28, 557-559
 - Foreclosure proceedings, 28, 557
 - How mortgagee may waive, 28, 557
 - In general, 28, 557
 - Suing for the debt, 28, 557
 - When decree is final decree, 7, 968
 - When no time of payment is specified, 8, 189
- When Right of Foreclosure Accrues**, 8, 188
 - Any event constituting a default, 8, 189
 - Consideration for extension of time for payment, 8, 190
 - Expiration of extended time, 8, 190, 191
 - Extension of time for payment, 8, 190
 - Extension of time of payment by parol, 8, 190
- Failure to Pay Interest and Other Installment**, 8, 192
 - Election of mortgagee, 8, 193
 - Notice of election, 8, 193

FORECLOSURE OF MORTGAGES—*Cont'd***When Right of Foreclosure Accrues—**
*Cont'd***Failure to Pay Interest and Other Installment—Cont'd**

Proceedings to enforce mortgages showing election, 8, 194

Relieving from forfeiture, 8, 193

Waiver of right of election, 8, 193

What is sufficient election, 8, 194

What may be sold on partial default, 8, 192

Who may exercise option, 8, 193

Indemnity Mortgages, 8, 196

Lapse of time, 8, 197, 198

Security against neglect or misconduct, 8, 196

Subrogation, 8, 197

Surety not having paid debt, 8, 196

Where condition is that mortgagor shall pay debt, 8, 197

Maturity of debt, 8, 188

Necessity for demand, 8, 188

Ordinarily, 8, 188

Payment of interest in advance, 8, 190

Pursuing remedies concurrently, 8, 191

Under consideration for extension of time, 8, 191

When no time of payment is specified, 8, 189

When Right of Foreclosure Is Barred, 8, 197

Acknowledgment of debt, 8, 203

Action barred, 8, 201

Adverse possession, 8, 199

Analogy to statute of limitations, 8, 199

Examples of default, 8, 189

General doctrine, 8, 203

Lapse of time and neglect to enforce mortgage, 8, 200

Lapse of twenty years, 8, 199

Less than twenty years, 8, 203

Note barred, 8, 201

Payment by agent, 8, 203

Payment of debt, 8, 197, 203

Payment of interest, 8, 200

Possession must be hostile to divest mortgagee, 8, 200

Presumption from mortgagor's possession, 8, 200

Presumption of payment, 8, 197

Presumption that mortgagor holds subordinate to mortgagee, 8, 199

Promise to pay, 8, 200

Rebuttal of presumption of payment, 8, 198

Recognition of mortgage, 8, 200

Relationship between parties, 8, 200

Removal of bar of statute, 8, 202

Right of mortgagee after debt is barred, 8, 203

Statute of limitations, 8, 199

Statute reducing period, 8, 204

Suspension of statute, 8, 200

When statute of limitation begins to run, 8, 200

Whether decree of foreclosure is final or interlocutory, 5, 374

Whether judgment extinguished mortgage lien, 12, 115

Whether payment, 18, 155

FOREIGN, 8, 280

Bond, 8, 280

Citizens, 8, 280

Dominion, 8, 280

Fishing, 8, 280

Government, 8, 280

Markets, 8, 280

Paupers, 8, 280

Place, 8, 280

Plea, 8, 280

Port, 8, 280; 18, 838

State, 8, 281

Trade, 8, 281

Vessel, 8, 281

Voyage, 8, 281

FOREIGN ASSIGNMENTS, 8, 281

By what law form of assignment governed, 8, 281

Debts and choses in action, 8, 284

For Benefit of Creditors, 8, 284

Involuntary Assignments, 8, 284; 11, 179

Assignee or receiver taking possession of property in foreign jurisdiction, 8, 284

Domestic creditors, 8, 285

English rule, 8, 286

Extraterritorial effect of, 8, 284

Foreign creditors, 8, 285

Suit by assignee, 8, 284

Voluntary Assignments, 8, 286Assignment contrary to policy of *lex rei sitæ*, 8, 287

Exception as to real estate, 8, 287

Rule as to validity, 8, 286

What is a voluntary assignment, 8, 286

Where possession has changed, 8, 288

Form of assignment, 8, 281

Goods following owner, 7, 283

Goods in transit, 8, 283

Insolvency, 11, 179

Lex situs as a transfer of goods, 8, 283

Marriage transfer, 8, 283

Reasons for rule of transfer of goods, 8, 283

Ship at sea, 8, 283

Transfer of goods, 8, 282

When both parties reside in same state or county, 8, 283

When parties select some other law by contract, 8, 283

FOREIGN ATTACHMENT, 8, 288, 1098*See* ATTACHMENT; GARNISHMENT.*See generally*, SERVICE OF PROCESS.**Affidavit, 8, 319**

Absence of plaintiff, 8, 319

Averment of non-residence, 8, 320

Necessity of, 8, 319

Of corporation, 8, 319

Of non-resident, 16, 719, 720

Person unauthorized to make, 8, 320

- Presumption of authority to make, 8, 319
 Substantial compliance with statute, 8, 319
 The indebtedness, 8, 319
 Where attachment is incidental to summons, 8, 320
 Who should make, 8, 319
Appearance of Debtor, 8, 323
 Appearance after judgment, 8, 325
 Appearance by attorney, 8, 324
 Appearance to change venue, 8, 324
 Appellate court, 8, 325
 Effect of, 8, 323
 General appearance in Virginia, 8, 325
 Substantial appearance, 8, 324
Attachment
 After summons, 8, 320
 Cause of Action
 Damages for breach of contract, 8, 304
Bond, 8, 319
 By plaintiff before sale, 8, 328
 In Delaware, 8, 320
 In Kansas, 8, 320
 In Louisiana, 8, 320
 In Nebraska, 8, 320
 In Pennsylvania, 8, 320
 In South Carolina, 8, 320
 In Wisconsin, 8, 320
 Necessity of, 8, 320
Cause of Action, 8, 303
 Debt payable within state, 8, 303
 Debts due, 8, 303
 Tort, 8, 304
 Unliquidated damages, 8, 303
 Character remedy, 8, 289
 Conflict between foreign and domestic, 8, 291
Corporations
 Non-resident property under garnishee's control, 8, 313
 Custom of London, 8, 290
 Damages for breach of contract, 8, 304
 Debt due or becoming due, 8, 306
 Debt due payable within state, 8, 306
 Debt due to a non-resident, 8, 306
 Debt exempt in one state, yet attachable in another, 8, 307
 Debt not due, 8, 306
 Debt on contract, 8, 304
 Debt payable in another state, 8, 304
 Debt payable within state, 8, 303
 Debts due, 8, 303
 Definition, 8, 289
 Distinguished from domestic attachment, 8, 289
 Distrained to compel appearance, 8, 289
Foreign Corporations, 8, 393
 Consolidated corporations, 8, 396
 Exemptions, 8, 396
 Generally, 8, 393
 In Alabama, 8, 394
 In Georgia, 8, 395
 In Illinois, 8, 395
 In Iowa, 8, 395
 In Kansas, 8, 395
 In Kentucky, 8, 394
 In Maryland, 8, 394
 In Massachusetts, 8, 393
 In Missouri, 8, 395
 In New Hampshire, 8, 394
 In New York, 8, 394
 In Ohio, 8, 395
 In Pennsylvania, 8, 395
 In Rhode Island, 8, 394
 In Vermont, 8, 395
 In Wisconsin, 8, 395
 National corporations, 8, 296
 Personal property of debtor in hands of foreign corporation, 8, 394
 Pleading, 8, 396
 Practice, 8, 396
 Shares of stock of non-resident, 8, 393
 Under statutes regulating appointment of agents for service of process, 8, 395
 Validity, 8, 393
 Foreign debt, 8, 307
 Garnishment, 8, 1098
 In rem, 8, 291
Judgment, 8, 326
 Against garnishee, 8, 327
 As bar to suit of original claim, 12, 149c
 Bond by plaintiff before sale, 8, 328
 Formal recognition of lien, 8, 326
 Judgment in rem against garnishee, 8, 327
 Nature of the judgment against garnishee, 8, 327
 Necessity of judgment against defendant before judgment against garnishee, 8, 327
 No recognition of attachment, 8, 326
 Of sister states, 12, 148w
 Perfecting lien, 8, 326
 Personal decree, 8, 328
 Personal judgment, 8, 326
 Protection of garnishee by, 8, 327
 Retroactive effect of lien, 8, 326
 Special execution, 8, 326
 When final, 8, 328
 With privilege, 8, 326
 Modification of remedy, 8, 290
 Non-resident, 16, 719, 720
 Posting on real estate, 8, 315
Property in Hands of Third Party, 8, 317
 Admissions, 8, 316
 Attaching in garnishee's hands, 8, 316
 Garnisheeing United States officers, 8, 319
 Husband garnisheed in suit against his wife, 8, 319
 Interested garnishee, 8, 318
 Jurisdiction, 8, 317
 Nature of possession, 8, 317
 Right of garnishee, 8, 318
 Right to retain property, 8, 317
 Service, 8, 316
 Sold to garnishee, 8, 318
 Trust funds, 8, 317

FOREIGN ATTACHMENT—Cont'd

Publication, 8, 321

See generally, NOTICE BY PUBLICATION.

Compliance with statutes, 8, 321

Compliance with statutory requirements as to time, 8, 322

Delay, 8, 321

Description of personal property, 8, 322

Description of property, 8, 321

Effect of failure to comply with order, 8, 322

Full period named in order, 8, 322

How often publication should appear, 8, 322

Merely naming property situated in county, 8, 322

Minuteness of description required, 8, 322

Newspaper publication, 8, 321

Notice that sale will be ordered, 8, 322

Object, 8, 321

Order of publication, 8, 321

Personal judgment, 8, 321

Postponement of, 8, 322

Recording notice, 8, 321

What is sufficient description, 8, 322

Return of Writ, 8, 323

Description of property, 8, 323

Fatal defects of return, 8, 323

Strictness required, 8, 323

Substantial compliance with statute, 8, 323

When officer must report, 8, 323

Suit, whether a, 24, 494

The writ, 8, 319

Tort, 8, 304

Unliquidated damages, 8, 304

Waiver of privilege, 8, 297

What May and May Not Be Attached, 8, 305**Assignment**

Not recorded, 8, 305

Without notice, 8, 305

With preferences, 8, 305

Attachment lien, 8, 315

Bills and Notes, 8, 308

Non-negotiable notes, 8, 309

Note assigned, 8, 309

Note not due, 8, 309

Debt due and payable within state, 8, 306

Debt due or becoming so, 8, 306

Debt due to a non-resident, 8, 306

Debt exempt in one state, 8, 307

Debt foreign, 8, 307

Debt not due, 8, 306

Debts due defendant, 8, 306

Effected by levy, 8, 315

Fraudulent conveyance, 8, 316

Homestead exemption, 8, 316

How levy is made, 8, 315

In general, 8, 305

Insufficient affidavit, 8, 316

Judgment

Debt, 8, 307

When attachable, 8, 307

Legacies, 8, 314

Distributive share, 8, 314

Estate under administration, 8, 315

General rule, 8, 314

Statutes rendering legacies attachable, 8, 314

Money, 8, 313

Bonds payable in another state, 8, 313

Collected under execution, 8, 313

Due on insurance policy, 8, 313

General rule, 8, 313

In hands of third person, 8, 313

Negotiable notes, 8, 308

Partnership Property, 8, 311

Debt due firm, 8, 311

Debt of a partner, 8, 311

Interest of one member, 8, 312

Joint and joint and several obligations, 8, 312

Misjoinder, 8, 312

Partners non-residents, 8, 312

Posting, 8, 315

Property in the hands of lienholders, 8, 305

Real estate, 8, 315

Stocks, 8, 310

Bank, 8, 310

Certificates, 8, 311

Garnishment, 8, 310

Shares owned out of state, 8, 311

When both parties are non-residents, 8, 307

When both parties are non-residents, 8, 307

Who Liable to Have Their Property Attached, 8, 291

Absence and non-residence, 8, 292

Absence in army, 8, 296

Absence preparatory to permanent removal, 8, 295

Brief absence, 8, 295

Counties, cities, etc., 8, 297

Defendant not where ordinary process can reach him, 8, 292

Facts showing residence, 8, 293

Intention as to absence, 8, 295

Non-resident debtors, 8, 291

Non-resident present, 8, 292

One of several non-residents personally served, 8, 292

One who has recently arrived and intends to remain, 8, 292

Private Corporations, 8, 298

Corporation having agent in state, 8, 302

Domicile of a corporation, 8, 299

Foreign corporation doing business in state, 8, 299

Foreign corporations included in term non-residents, 8, 298

Funds payable in another state, 8, 301

Garnishment of foreign corporations, 8, 300

Garnishment where corporations are non-residents, 8, 302

- Garnishment where goods are in transit, 8, 301
- National banks, 8, 298
- Operating in different states, 8, 300
- Passenger's trunk, 8, 301
- Rights of residents, when conferred by statute, 8, 298
- When a corporation is foreign, 8, 298
- When corporation not liable, 8, 302
- Whether an agent or trustee of railroad company may be garnishee, 8, 302
- Protracted absence, 8, 294
- Public corporations, 8, 296
- Quasi municipalities, 8, 297
- Removal, 8, 295
- Residence**
 - Facts Showing Residence.** 8, 293
 - Absconding debtor, 8, 293
 - Place of business, 8, 293
 - Presumption, 8, 293
 - Proof of non-residence, 8, 293
 - Transient or boarder at hotel, 8, 293
 - Rule in Virginia, 8, 296
 - School districts, 8, 297
 - School funds in custodia legis, 8, 297
 - States, 8, 296
 - Statutory authorization, 8, 297
 - Statutory limit as to absence, 8, 295
 - Townships, 8, 297
 - Waiver of privilege, 8, 297

FOREIGN CONTRACT, see CONFLICT OF LAWS.

FOREIGN CORPORATIONS, 8, 329

See generally, CORPORATIONS.

See INTERSTATE COMMERCE: STOCK; STOCKHOLDERS; TAXATION (CORPORATE).

- Actions by and Against, 8, 369, 375**
 - Action for negligence causing death, 8, 379
 - Appearance by attorney, 8, 380
 - By statute, 8, 377
 - Common law, 8, 375
 - Controversy between stockholders and president, 8, 379
 - Equitable proceedings, 8, 376
 - How jurisdiction obtained at common law, 8, 377
- Incidents of Actions, 8, 402**
 - Exhibiting corporation books, 8, 404
 - Joinder of parties, 8, 404
 - Liability of corporators as partners, 8, 403
 - Presumptions, 8, 403
 - Proof of incorporation, 8, 403
 - Venue, 8, 404
- In Federal Courts, 8, 380**
 - Corporation doing business in state, 8, 381
 - Following interpretation of state courts, 8, 381
 - When jurisdiction attaches, 8, 380
 - Whether corporation is "found" within state, 8, 381
- Injunction, 8, 377**

- Jurisdiction, 8, 377**
 - Jurisdiction of person, but not of subject-matter, 8, 380
 - Liability to be sued, 8, 375
 - Mandamus, 8, 377
 - Massachusetts, 8, 376
 - Necessity for appearance, 8, 377
- Non-Residence, 8, 399**
 - Appearance of corporation, 8, 400
 - In Massachusetts, 8, 399
 - In Michigan, 8, 399
 - In New York, 8, 400
 - In Vermont, 8, 400
 - When actions may be maintained, 8, 399
- Presence of an officer within state, 8, 379**
- Proceedings in rem, 8, 377**
- Restraining the payment of stock dividends, 8, 379**
- Right conferred by letters patent, 8, 379**
- Right founded upon comity, 8, 375**
- Right to sue, 8, 375**
- What amounts to appearance, 8, 380**
- When court will decline to assume jurisdiction, 8, 378**
- Adoption of a foreign corporation, by another state, 4, 272p**
- Agreement by a foreign insurance company not to remove its cases into the federal courts, 3, 881; 8, 401; 20, 1011**
- Authority and Powers of Corporations, 8, 331**
 - Comity, 8, 331
 - Depend upon laws of state, 8, 331
 - No legal existence outside of state of creation, 8, 331
 - Outside of state of incorporation, 8, 331
- Bill in Equity**
 - Parties defendant, 6, 747
 - Parties to, 6, 741
- Citizenship, 3, 710; 8, 365**
 - Federal jurisdiction, 8, 367, 381
 - Whether corporation within constitutional provision, 25, 659
- Comity, 4, 206; 8, 331**
 - Exclusion, 8, 333, 401
 - Of nations, 3, 511
 - Repeal of, 8, 332
 - The basis of recognition, 8, 332
- Conflict of Laws, 3, 505, 511; 8, 399**
 - Suits against corporations, 3, 532
- Consent of sovereign, 4, 206**
- Constitutionality of law forbidding foreign corporations to do business in the state unless they will waive right to remove suit, 3, 881; 8, 401; 20, 1011**
- Constitutional Rights, 8, 365**
 - Interstate commerce, see INTERSTATE COMMERCE.*
 - Citizenship for purpose of federal jurisdiction, 8, 367
 - Discrimination against foreign corporations, 8, 366
 - Exclusion, 8, 333, 401

FOREIGN CORPORATIONS—Cont'd**Constitutional Rights—Cont'd**

Rights granted by federal constitution,
8, 365

Standing as citizens in state courts, 8,
367

Statutes imposing conditions, 8, 338

Whether citizens under federal consti-
tution, 3, 710; 8, 365; 25, 659

Definition, 8, 329

Devise, 8, 334, 337, 361

If devise is not lawful where made,
8, 362

Implied power, 8, 361

Implied power to take and hold, 8, 363

Policy of state, 8, 362

Power to take in state of creation, but
not in state where land lies, 8, 362

Prohibited by statute, 8, 362

Statutes, 8, 361

Discrimination against, 8, 366

Dissolution of, 8, 404

Appointment of receiver, 8, 405

Constitutionality of legislation protect-
ing home creditors, 8, 407

Corporation chartered by several
states, 8, 404

Examination of decree of incorpora-
tion, 8, 405

Holding fund though persons are ac-
countable in another jurisdiction, 8,
407

Lien protecting home creditors, 8, 407

Power of state generally, 8, 404

Prior assignment in bankruptcy, 8, 405

Protection of home creditors, 8, 405

Recognition after dissolution for pro-
tection of creditors, 8, 406

Statute giving jurisdiction over corpo-
rations, 8, 404

Valid decree, 8, 405

Valid everywhere, 8, 405

Voluntary assignment for benefit of
creditors, 8, 405

Domicile of, 8, 330

In general, 8, 330

State from which it derives its exist-
ence, 8, 330

Two domiciles, 8, 330

Ejectment by foreign corporations, 8, 361

Eminent Domain, 8, 335, 364; 19, 842

Consolidated company, 8, 364

Exercise as successor of domestic cor-
poration, 8, 364

Necessity that power be expressly con-
ferred, 8, 364

Power of state to confer, 8, 364

Equitable proceedings, 8, 376

Estoppel, 8, 354

Exclusion, 8, 333; 11, 548

Failure to comply with condition not
to remove causes to federal courts,
8, 401

Exemption from taxation, 8, 335

Exercise of privileges granted by state of
creation, 8, 335

Exhibiting corporation books, 8, 404

Foreign Attachment, 8, 298

See infra, GARNISHMENT AND AT-
TACHMENT.

Corporation having agent in state, 8,
302

Corporation operating in different
states, 8, 300

Domicile of a corporation, 8, 299

Foreign corporation doing business in
state, 8, 299

Foreign corporations included in term
non-residents, 8, 298

Funds payable in another state, 8, 301

National banks, 8, 298

Passenger's trunk, 8, 301

Rights of residents, when conferred by
statute, 8, 298

When a corporation is foreign, 8, 298

When corporation not liable, 8, 302

Whether an agent or trustee of rail-
road company may be garnishee, 8,
302

Garnishment and Attachment, 1, 899; 8,
300, 393, 1131

Consolidated corporations, 8, 396

Exemptions, 8, 396

Garnishment where corporations are
non-residents, 8, 302

Garnishment where goods are in trans-
it, 8, 301

Generally, 8, 393, 1131

In Alabama, 8, 394

In Georgia, 8, 395

In Illinois, 8, 395

In Iowa, 8, 395

In Kansas, 8, 395

In Kentucky, 8, 394

In Maryland, 8, 394

In Massachusetts, 8, 393

In Missouri, 8, 395

In New Hampshire, 8, 394

In New York, 8, 394

In Ohio, 8, 395

In Pennsylvania, 8, 395

In Rhode Island, 8, 394

In Vermont, 8, 395

In Wisconsin, 8, 395

National corporations, 8, 396

Pari materia, 8, 1131

Personal property of debtor in hands
of foreign corporation, 8, 394

Pleading, 8, 396

Practice, 8, 396

Shares of stock of non-resident, 8,
393

Statutes providing for service upon
agent, 8, 1132

Under statutes regulating appointment
of agents for service of process, 8,
395

Validity, 8, 393

Garnishment, *see infra*, GARNISHMENT
AND ATTACHMENT.

General laws of incorporating state, 8,
337

Injunctions, 8, 377

Payment of stock dividend, 8, 379

Insurance Companies

- Service of Process**, 22, 131
 - Examples, 22, 131, 132
 - General agent, 22, 132
 - In Iowa, 22, 131
 - In Wisconsin, 22, 131
 - Local agent, 22, 131
 - Recording agent, 22, 131
 - Special statutory provisions, 22, 131

Interstate Commerce, 11, 548

See INTERSTATE COMMERCE.

- Exclusion of foreign corporations, 8, 333; 11, 548
- In Alabama, 11, 548
- In Iowa, 11, 548
- License to enter into, 11, 549

Judgments, 8, 390

- Discretionary power of courts, 8, 392
- Enforcement of judgment under penalties in United States court, 8, 392
- Examining into jurisdiction of court rendering service upon officer casually in state, 8, 391
- Full faith and credit under the United States constitution, 8, 391
- Legal effect of, 8, 390
- Obtained upon publication only, 8, 391
- Service of process, 8, 390

Lease, 8, 365

Legal existence of a corporation outside of the state creating it, 4, 185

Lessee of Railroad, 8, 397

- Conflict of laws, 8, 399
- In Connecticut, 8, 398
- In Kansas, 8, 398
- In Nevada, 8, 398
- In Vermont, 8, 398
- What statute applies, 8, 398

Liability for torts, 8, 369

Liability of corporators as partners, 8, 403

License, 13, 524**Limitations of Actions**, 8, 397; 13, 711, 745

- In New York, 8, 397
- Known place of business in state, 8, 397
- Liability to service of process, 8, 397
- Test as to running of statute, 8, 397
- Whether corporation doing business is a non-resident, 8, 397

Limitations of Powers, 8, 334

See *infra*, STATUTORY CONDITIONS.
Bound by laws of state in which it is doing business, 8, 334

Charter Limitations, 8, 336

- Acts and contracts not authorized by charter, 8, 336
- Acts of agent, 8, 336
- General laws of incorporating state, 8, 337
- In general, 8, 336
- Knowledge of, 8, 336

Expression of policy must be clear to exclude corporation, 8, 335

General laws, 8, 334

Mortmain, 8, 332-334

Penal laws, 8, 334

Perpetuities, 8, 335

Policy of state controls admission, 8, 335

State lotteries, 8, 335

Substantial powers in state of creation, 8, 334

Usury, 8, 334

Managing agent, 14, 88

Mandamus, 8, 356, 377

Mortmain, 8, 332

Name, 8, 330; 16, 141

National banks, 16, 147-153

Organized for purpose of evading laws of other states, 8, 335

Penalties, whether will be enforced within United States courts, 8, 392

Perpetuities, 8, 335

Police power, 18, 758

Powers

As to personal property, 8, 365

Foreign corporations to make contracts, 4, 245

Powers as to Meetings, 8, 356

Meetings of stockholders outside the state, 8, 357

Right to hold director's meeting outside the state, 8, 356

Where the corporation has been chartered in two states, 8, 357

Powers as to Mortgages, 8, 360

Burden of proof as to power to convey, 8, 360

Chattel mortgage, 8, 361

Corporation that has not complied with statutory conditions, 8, 360

Enforcement of mortgage where company has not complied with statutory conditions, 8, 361

General power to execute, 8, 361

Power to foreclose, 8, 360

Power to receive, 8, 360

Powers as to Real Estate, 4, 233; 8, 357

See *infra*, DEVISE.

As trustees, 8, 365

In absence of restrictions, 8, 357

In New Jersey, 8, 359

In New York, 8, 359

In Pennsylvania, 8, 359

Lease, 8, 365

Right to hold real estate in general, 8, 357

Territories, 8, 359

Whether conveyance void or voidable, 8, 359

Whether question as to capacity must be raised collaterally, 8, 360

Powers Made Those of Domestic Corporations, 8, 365

In Colorado, 8, 365

In Illinois, 8, 365

In New York, 8, 365

In Pennsylvania, 8, 365

Presumptions, 8, 403

Proof of incorporation, 8, 403

FOREIGN CORPORATIONS—Cont'd**Protection of Home Creditors**, 8, 405

Attachment although receiver has been appointed, 8, 406

Constitutionality of legislation, 8, 407

Detention of fund for benefit of, 8, 407

Property governed by *lex loci*, 8, 405

Recognition of corporation *de facto*, 8, 406

Publication order, contents, and form, 16, 814

Quo warranto, 8, 356

Receivers

Appointment of, 8, 408

Auxiliary receiver, 8, 408

English decisions, 8, 409

In Rhode Island, 8, 408

Insolvency of corporations, 8, 408

Insolvency of officers, 8, 408

Reasons for, 8, 408

Right of a state to appoint, 8, 408

When appointed, 8, 408

With what powers invested, 8, 408

Recognition of, 8, 409

Authority co-extensive with jurisdiction of court by which he was appointed, 8, 410

Continuing suits, 8, 413

Personal action, 8, 412

Powers of receiver, 8, 412

Receiver of one federal court suing before another, 8, 410

Recognition by comity, 8, 410

Removal of corporate assets from state, 8, 412

Right to sue outside of jurisdiction where appointed, 8, 409

Situs of debts, 8, 413

Suing receiver in official capacity, 8, 413

Suit for recovery of unpaid subscription stock, 8, 412

Removal of Causes, 8, 401; 20, 995

See **REMOVAL OF CAUSES**.

Condition that corporations shall not remove causes, 8, 401

Exclusion of corporations, 8, 401

Power of state to deprive corporations, 8, 401

Right of corporations to removal, 8, 401

State statutes, 12, 263

When foreign corporation is made domestic corporation, 8, 402

Retaliatory Laws

Discrimination, 8, 366

Rights of citizens of other states, 3, 710

Service of Process, 8, 382; 22, 127

See *infra*, **INSURANCE COMPANIES**.

Agent in transaction out of which the suit arises, 8, 388

Agent not a resident, 8, 386, 387

Agent of manufacturing company, 8, 388

Agents generally, 22, 130

Appointment of agent to accept service, 22, 128

At common law, 8, 382

Attorney at law, 8, 388; 22, 130

Attorney of record, 8, 387

Baggage agent, 8, 388

By statute, 8, 382

Captain of steamboat, 8, 389

Conclusiveness by service, 8, 389

Conclusiveness of sheriff's return, 8, 389

Conflict of opinion as to service on officers casually in a state, 8, 384, 385

Consent of foreign corporation to conditions, 8, 383

Corporation must be engaged in business in state, 22, 132

Death of appointed agent, 22, 131

Effect of constructive service in suits in personam, 22, 133

Effect of personal judgment rendered upon constructive service, 22, 133

Estoppel by plea to jurisdiction, 8, 382

Evidence to show valid service of process, 8, 290

Federal courts follow state law as to service of process, 8, 389

Force of judgment obtained by service on officers of corporation casually in a state, 8, 384

General superintendent of express company, 8, 387

Highest resident official, 22, 128

How regularity of service is tested, 8, 390

Implied conditions, 8, 383, 384

In absence of statute, 22, 127

In Massachusetts, 8, 386

Insurance agent, 8, 387

Local agent of commercial agency, 8, 387

Local agent of insurance company, 8, 388

Local agent of slate quarry, 8, 387

Managing Agent, 8, 386; 22, 129

Complete charge, 22, 129

Examples, 22, 129

Of a bank, 8, 387

Who is a managing agent, 22, 129

Miscellaneous matters relating to service of process, 8, 389

Necessity of express power of attorney, 8, 389

Officer or agent casually within the state, 22, 132

Officer or agent inveigled into the jurisdiction, 22, 132

Personal judgment where service is on authorized agent, 22, 133

Power of legislature to declare what shall constitute sufficient service, 8, 382

Power of legislature to provide service, 22, 128

Railroad conductor, 8, 388

Railroad treasurer, 8, 387

Reasonable conditions, 8, 384

Regulation of statute, 8, 382

Resident agent, 22, 133

- Revocation of agent's authority, 22, 131
- Section foreman, 8, 388
- Service after expiration of agency, 22, 130
- Service by publication, 22, 133
- Service upon officer casually in a state, 8, 384, 392
- Sufficiency of return, 8, 390
- Superintendent and general managing agent of a railroad, 8, 387
- Term of agency, 22, 130
- Ticket agent, 8, 388
- Traveling agent, 8, 388
- Validity of judgment, 8, 390
- Voluntary appearance, 8, 384
- When served on domestic corporation, 22, 128
- Where corporation may be sued at common law, 8, 383
- Where state makes conditions as to service of process, 8, 383
- Where statute provides that a certain officer shall be agent to receive service, 22, 128
- Whether corporation has failed to act in the premises, 22, 128
- Whether corporation is "found" within district, 8, 381
- Whether statutory method exclusive, 22, 128
- Who are the proper agents for, 8, 386; 22, 130
- Who may be served at common law, 8, 382
- State authorizing, to operate within its limits, 4, 272*p*
- State providing that foreign corporations shall be deemed domestic corporations in all suits, 20, 1011
- Statute requiring secretary of state to revoke license of foreign corporation upon bringing suit in federal court, 20, 1011
- Statutory Conditions**, 8, 338, 345
 - See infra*, SERVICE OF PROCESS.
 - Action for penalties, 8, 355
 - Conclusiveness of certificate issued by state, 8, 345
 - Condition of not removing causes to federal courts, 3, 881; 8, 401; 20, 1011
 - Constitutionality of retaliatory statutes, 8, 351
 - Constitutional limitations upon power of states, 8, 338
 - Effect of Non-Compliance**, 8, 340, 341
 - Conflicting Indiana decisions, 8, 343
 - In Alabama, 8, 344
 - In Illinois, 8, 341
 - In Massachusetts, 8, 341
 - In Missouri, 8, 341
 - In Oregon, 8, 341
 - Mutual insurance company, 8, 342
 - Necessity of averring compliance with statute, 8, 345
 - Pecuniary penalty, 8, 340
 - Power to sue in courts before compliance, 8, 343
 - Premium Note**, 8, 343, 344
 - In hands of bona fide holder, 8, 344
 - Taken before compliance, 8, 341
 - Recovery of money paid upon premium note, 8, 342
 - Recovery of premiums collected by agent, 8, 342
 - Suit after filing security, 8, 345
 - Suit for goods sold and delivered in state where it was incorporated, 8, 345
 - Sureties upon an agent's bond, 8, 342
 - Suspension of power to collect premiums until compliance, 8, 343
 - Validity of act where statute has not been complied with, 8, 340
 - Validity of contracts of insurance, 8, 341
 - Whether contract is valid against company, 8, 344
 - Whether contracts are void, 8, 340
 - Whether holder of insurance can recover against non-complying company, 8, 344
 - Enforcement of mortgage by non-complying company**, 8, 361
 - Examples of statutes imposing conditions, 8, 338
 - In Alabama, 8, 339
 - In Illinois, 8, 339
 - In Indiana, 8, 339
 - In Massachusetts, 8, 339
 - In Missouri, 8, 339
 - In Ohio, 8, 339
 - In Oregon, 8, 339
 - In Vermont, 8, 339
 - Invalid Acts**, 8, 353
 - In what state they may be impeached, 8, 353
 - Necessity of a direct proceeding to impeach, 8, 353
 - Remedy, 8, 353
 - Ultra vires, 8, 354
 - Where there is a total absence of power to act, 8, 353
 - Mandamus, 8, 356
 - Miscellaneous decisions, 8, 354, 355
 - Mortgages, 8, 360
 - Nature and object of statutes, 8, 340
 - Parol evidence to show deceit in obtaining certificate, 8, 346
 - Patent rights, 8, 350
 - Penalties, 8, 355
 - Presumption of compliance, 8, 346
 - Quo warranto, 8, 356
 - Right of state to impose, 8, 338
 - Statute in Arkansas, 8, 339
 - To what agents the statutes apply, 8, 354
 - What Constitutes Doing Business Within States**, 8, 346
 - Adjustment of loss by an uncertified agent of an insurance company, 8, 348

FOREIGN CORPORATIONS—Cont'd**Statutory Conditions—Cont'd****What Constitutes Doing Business Within Statutes—Cont'd**

Corporation holding patent rights, 8, 350

Doing of a single act of business, 8, 346

Examples, 8, 346-350

Loaning money, 8, 350

Making occasional purchases, 8, 348

Obtaining subscriptions to stock, 8, 348

Owning interests in partnerships, 8, 349

Question whether contract of insurance is made in home state or at residence of agent, 8, 349

Selling of tickets by railroad company, 8, 348

Soliciting and receiving newspaper subscriptions, 8, 347

Substantial part of its business, 8, 348

Supplying another with means of doing business, 8, 348

What is doing insurance business, 8, 349

When conditions precedent, 8, 340

Whether particular agent must be named, 8, 354

Succession Taxes

Exemption from taxation, 24, 434

Taxation, see **TAXATION (CORPORATE)**.

FOREIGN EXECUTORS AND ADMINISTRATORS, 8, 414**Actions by and Against, 8, 421**

Burden of proof, 8, 424

Examples, 8, 423

Goods in itinere, 8, 425

Interpleader, 8, 421

Making administrator party, 8, 422

Necessity of first obtaining letters, 8, 421

Necessity of taking out letters, 8, 423

Pleading, 8, 424

Practice, 8, 424

Suit by virtue of letters in another state, 8, 423

Suit outside of state from which he derives his authority, 8, 421

Suits by assignees upon choses in action, 8, 425

What payment will discharge debtor, 8, 424

Assigning stock, 8, 432

Authentication of laws, 8, 431

Bonds, 7, 209

Conflict of Laws, 8, 419

Personalities, 8, 419

Realty, 8, 419

Damages for Death of Decedent, 8, 425

Comity, 8, 426

Necessity of taking out ancillary letters, 8, 426

Suit by, 8, 426

Definition of ancillary or foreign administration, 8, 414

Discretion of court, 8, 428

Distribution of assets in different jurisdictions, 8, 430

Foreclosure of Mortgages

When representative may foreclose, 8, 210

Foreign executor de son tort, 7, 185

Insolvency

Assets to be distributed among creditors who are citizens, 7, 255

Insolvent estate, 8, 429

Jurisdiction of courts of equity, 8, 433

Jurisdiction of other courts, 8, 434

Liability to account, 8, 429

Marshaling assets, 8, 434

Marshaling funds, 8, 433

Necessity of Ancillary Grant, 8, 415

Confirmation of executor's title, 8, 416

Examples, 8, 416, 417

International grant, 8, 416

Interstate grant, 8, 417

Rights over property outside jurisdiction, 8, 415

Payment Before Representative Has Taken out Letters, 8, 424

Where there are no creditors or legatees, 8, 424

Remission of assets to principal administrator, 8, 428

Rights and Responsibilities, 8, 418

Bonds, 8, 420

Control of assets in another state, 8, 420

In general, 8, 418

Rights of creditors, legatees, and distributees resident within country, 8, 415, 416

Title to and authority over estates, 8, 420

What law governs, 8, 419

Settlement and distribution, 8, 428

Taxation, 8, 432

Void proceedings, 8, 432

What law governs assets, 7, 254

When Appointment to Be Made, 8, 414

Domicile of intestate, 8, 414

Grant of administration, 8, 415

How far administrator's authority extends, 8, 415

In absence of statutory regulation, 8, 415

Law governing succession, 8, 414

Lex loci rei sitæ, 8, 415

When Between Original and Ancillary Administrations, 8, 431

Assigning stock, 8, 432

Taxation, 8, 432

Void proceedings, 8, 432

When Entitled to Ancillary Letters, 8, 427

General rule, 8, 427

Letters duly authenticated abroad, 8, 427

Privy between different administrations, 8, 427

When appointed executors by same will, 8, 428

Widow's allowance, 8, 422

FOREIGN GUARDIAN, see **GUARDIAN AND WARD**.

Conflict of laws, 3, 656

FOREIGN JUDGMENTS, 8, 434See **JUDGMENTS**.

As evidence, 7, 79

Collateral Attack

Judgment in rem, 12, 149*

Contradicting record, 12, 273

Exemplification, 12, 149^f**Foreign Decrees**, 5, 392

Collateral impeachment of, 5, 392

Judgments of Sister States, see *infra*, **RES JUDICATA**; see **JUDGMENTS OF SISTER STATES**.

Decrees of, 5, 391

Judgments of Divorce, 5, 391

Collateral proceeding in another state, 5, 391

Effect of divorce in another state as to alimony, 5, 391

Effect of divorce in another state as to costs, 5, 391

Effect of divorce in another state as to custody of children, 5, 391

Where both parties are domiciled in state rendering divorce, 5, 391

Where both parties submitted to court's jurisdiction, 5, 391

Where parties had different domiciles, 5, 391

Where party left state expressly to obtain divorce, 5, 391

Merger, 15, 341

Full faith and credit provision, 15, 341

In England, 15, 341

Of cause of action, 3, 530

Res Judicata, 21, 278**In Personam**, 21, 281

As evidence of debt, 21, 281

Examples, 21, 281, 282

Whether conclusive, 21, 281

In Rem, 21, 278Divorce, see *infra*, **DIVORCE**.

Attack upon, 21, 278

Bankruptcy, 21, 281

Decrees in admiralty, 21, 280

Fraud, 21, 281

Jurisdiction, 21, 279

Mistake, 21, 281

Notice, 21, 278

Probate, 21, 281

Judgments of Sister States, 21, 281

Conclusiveness, 21, 283

Divorce, 21, 285

Examples, 21, 283-285

Fraud, 21, 284

Garnishment, 21, 285

Inferior courts, 21, 285

Jurisdiction, 21, 284

Probate proceedings, 21, 285

United States courts, 21, 285

Set-off, 22, 456**FOREIGN LAWS**, 8, 435See **JUDGMENTS OF SISTER STATES**.*Ex-territorial effect of*, see **CONFLICT OF LAWS**.**Authentication**, 23, 293

How authenticated, 8, 438

Necessity of, 8, 437

Books as evidence, 8, 437; 23, 294, 295

Definition, 8, 435

Expert and opinion evidence, 7, 514

Judicial Notice, 8, 435; 12, 163, 202; 23, 289; 27, 976

Certificate of notary, 12, 164

Ecclesiastical law, 8, 435

Federal constitution, 8, 435

Federal statutes, 8, 435

General rule, 8, 436; 12, 163

In general, 23, 289

Law merchant, 8, 435; 12, 164

Laws of nations, 8, 435

Maritime law, 8, 435

New states erected out of old ones, 12, 163

Seal of notary, 12, 164

State laws by courts of another state, 8, 436

State laws by federal courts, 8, 435

States of union, 12, 163

United States Courts, 23, 291

State in which court was held, 23, 291

Supreme court of the United States, 23, 291

Territory ceded by other governments, 23, 291

What constitutes a crime, 12, 164

Where new state had been made from an old one, 8, 435

Where one state recognizes acts done in pursuance of laws of another state, 23, 290

Necessity of proof, 8, 436

Parol evidence, 8, 437; 23, 294

Pleading, 23, 289*Judicial notice*, see **JUDICIAL NOTICE**.

Averment of substance, 23, 290

Examples, 23, 289, 290

In general, 23, 289

Laws of sister state, 23, 289

Laws of territories ceded to the United States, 23, 291

Necessity of pleading, 23, 289

Presumption that law is same as domestic law, 23, 290

Reference to title and dates, 23, 289

Setting out in *hac verba*, 23, 290

Supreme court of the United States, 23, 291

United States courts, 23, 291

Usury laws of another state, 23, 289

Where action is not founded on a statute, 23, 289

Where one state recognizes acts done in pursuance of laws of another state, 23, 290

Presumption as to common law, 12, 164

Presumption that It Corresponds to the Lex Fori, 19, 46; 23, 290

Common law, 19, 47

Crimes *malum in se*, 19, 47

FOREIGN LAWS—Cont'd

Presumption that It Corresponds to the Lex Fori—Cont'd

Jurisprudence springs from a different source, 19, 46

Peculiar idiosyncrasies, 19, 46

Penal statutes, 19, 47

Statute law, 19, 47

Proof, 8, 435; 23, 293

Questions of law and fact, see **QUESTIONS OF LAW AND FACT**.

Authenticated copy, 8, 438; 23, 293

Books published by authority, 8, 437; 23, 295

Competency of Witnesses, 8, 448

Examples, 8, 439, 440

General rule, 8, 438

Copy authenticated by seal of state, 23, 295

District court in admiralty, 13, 294

Exemplification of a copy, 23, 293

In general, 23, 293

Parol testimony, 8, 437; 23, 294

Printed copy, 23, 294, 295

Unwritten law, 8, 438

Who may prove statute, 23, 294

Written Law, 8, 437

Books as prima facie evidence, 8, 437; 23, 294, 295

By duly authenticated copy, 8, 437

By parol, 8, 437

Necessity of authentication, 8, 437

Volume of foreign laws, 8, 437

Questions of law and fact, 8, 438; 19, 635, 647

FOREIGN LIEN, 8, 441

See **LIEN**.

FOREIGN WILLS, 8, 441

See **WILLS**.

FOREIGNER, 8, 441

See **ALIENS**.

FOREMAN, 10, 510

See generally, **GRAND JURY**.

FORESTALLING THE MARKET, 8, 441

Trust, see **TRUST AND TRADE COMBINATIONS**.

By statute, 8, 441

Corners, 8, 441

Definition, 8, 441

Offense at common law, 8, 441

What constitutes, 8, 441

FORESTS, see WOODS AND FORESTS.**FOREVER, 8, 442**

Not equivalent to heirs, 8, 442

FORFEITURE, 8, 443

See **LICENSE (PATENT LAW)**; **WAR**.

As to disclaimer, see **LANDLORD AND TENANT**.

As to forfeiture of franchises of corporations, see **CORPORATIONS**.

Building contracts, see **WORKING CONTRACTS**.

Conditions subsequent, see **DEEDS**.

For taxes, see **TAXATION**.

For violation of revenue laws, see **REVENUE LAWS**.

For waste, see **WASTE**.

Insurance policy, see **FIRE INSURANCE**; **INSURANCE**; **LIFE INSURANCE**; **MARINE INSURANCE**; **MUTUAL INSURANCE**; **TONTINE INSURANCE**.

Of charter, see **CORPORATIONS**; **ULTRA VIRES**.

Of deposits, see **DEPOSITS**.

Of lease, see **LANDLORD AND TENANT**; **RENT**; **LEASE**.

Of license, see **LICENSE**.

Of mines and mining claims, see **MINES AND MINING CLAIMS**.

Of mortgage, see **MORTGAGES**.

Of patents, see **PATENTS**.

Of stock, see **STOCK**.

By alienation, 8, 443

By attainder, 8, 444

By building and loan associations, 2, 620

By statute, 8, 449

Computation of time, 26, 3

Conditions, 8, 444

Confiscation of property, see **WAR**.

Covenants, 8, 444

Against waste, 8, 444

Bankruptcy, 8, 444

Breach of, 8, 444

In restraint of alienation, 8, 444

Non-payment of rent, 8, 445

Not to sell, dispose, or assign, 8, 444

Not to underlet, 8, 444

To insure and keep insured, 8, 444

To repair, 8, 444

Voluntary assignment, 8, 445

Definition, 8, 443

Distinguished from escheat, 6, 854

Distinguished from fine, 7, 992

Enforcement of, 8, 446

For crime, 4, 725; 8, 445

In contracts, 8, 444

In deeds, 8, 445

Injunction, 8, 446

Not a cruel or unusual punishment, 4, 725

Of copyhold, 8, 444

Of estate, 8, 446

Of marriage, 8, 448

Of office, 8, 448

Of ship, 8, 451

Ordinances, 17, 258

Animals running at large, 17, 259

Authority of city in general, 17, 258

Due process of law, 17, 259

Notice, 17, 259

Strict compliance with statute, 17, 258

Pardon, 17, 326, 327

Public lands, see **PUBLIC LANDS**, and see *infra*, **STATE LANDS**.

Relief Against, 8, 449

As to bonds, see **BONDS**.

As to mortgages, see **MORTGAGES**.

Condition that if interest is not paid, whole amount shall become payable, 8, 450

When equity will grant, 8, 449

Where forfeiture is liquidated damages, 8, 450

Specific performance, 22, 932

- State Lands, 23, 47
 - By persons failing to pay, 23, 47
 - In general, 23, 47
 - Land owned by corporation in excess of corporate power, 23, 47
- Statutes, 23, 378
 - Effect of Repeal, 23, 507
 - Common law recovery for wrong, 23, 510
 - In general, 23, 507
 - No vested right in penalties, 23, 510
 - Penalties recoverable in civil action, 23, 509
 - Recovery on common law ground, 23, 510
 - Whether action has been begun, 23, 509
- Strict Construction, 23, 378
 - In derogation of common right, 23, 383
 - Synonymous with punishment, 19, 569
- Taxation
 - As to forfeiture for noncompliance with tax laws, see TAXATION; TAX TITLES.
 - Title to chattels by, 3, 171
 - Treason, 8, 443
 - Wages, 8, 451
 - Waiver, 8, 451
 - For breach of condition in deed, 28, 569
 - Waiver by state of forfeiture of charter, 28, 568
 - What constitutes, 8, 443
- FORGERY**, 8, 452
 - See HANDWRITING.
 - Forged transfer to stock, see STOCK
 - Stock, see STOCK.
 - Acceptance of bill, 8, 467
 - Accountable receipt, 1, 135
 - Appeal, 8, 543
 - A species of fraud, 8, 456
 - At common law, 8, 453
 - Attempt to forge, though paper could not defraud, 4, 667
 - Awkward forgery, 8, 462
 - Bills and Notes, 8, 482
 - Estoppel, 7, 31
 - Lapse of time before claiming forgery, 7, 31
 - By county treasurer, 8, 465
 - By Falsely Procuring Genuine Signature, 8, 474
 - False representation and fraud, 8, 474
 - Fraudulently procuring signature to note, 8, 474
 - Fraudulent representations as to fact, 8, 475
 - Obtaining signature where party has no intention of signing, 8, 474
 - Procuring genuine signature by fraudulently representing contents of paper, 8, 474
 - Procuring signature by false reading, 8, 475
 - By false making, 8, 465
 - By Fraudulent Alteration, 8, 468, 475, 477
 - Alteration of instrument after it has served its purpose, 8, 468
 - Alterations of promissory note, 8, 476
 - Changing deed, see *infra*, FRAUDULENTLY USING FALSE DEEDS.
 - Changing receipt, 8, 476
 - Changing vignettes or marginal emblems, 8, 476
 - Detaching condition, 8, 476
 - Erasing one signature and inserting another, 8, 475
 - Erasure of indorsement, 8, 477
 - Examples, 8, 475-478
 - Filling blanks, see *infra*, BY FRAUDULENTLY FILLING BLANKS.
 - Fraudulent addition, 8, 477
 - Fraudulent erasure, 8, 477
 - Harmless alterations, 8, 476
 - Inserting false address, 8, 475
 - Material falsification, 8, 475
 - Receipts, 8, 476
 - Surplusage, 8, 468
 - When it constitutes forgery, 8, 468
 - Writing note over signature, 8, 477
 - By Fraudulently Filling Blanks, 8, 471, 477
 - Blank bank checks, 8, 471
 - By agent, 8, 471
 - Filling blank with larger sum, 8, 471
 - When forgery, 8, 471
 - Where person filling believes sum to be due him, 8, 471
 - Words of different import, 8, 471
 - By Making False Entries in Books, 8, 472, 480
 - Altering book account after settlement, 8, 473
 - False entries by clerk in books he is employed to keep, 8, 473
 - False entries by paying teller, 8, 473
 - False entries in book settlements, 8, 473
 - False entries in books of original entry, 8, 472, 480
 - False entries in journal, 8, 480
 - False entries in one's own book, 8, 472
 - False entries in pass-books, 8, 472, 480
 - False entries on memorandum slips, 8, 473
 - By Use of Another's Name, 8, 465
 - Acquiescence in use of names, 8, 466
 - At common law, 8, 465
 - Authority to use name, 8, 466
 - By county treasurer, 8, 465
 - Examples, 8, 465
 - Name of deceased person, 8, 466
 - Necessity for resemblance, 466
 - Signing by attorney, 8, 465
 - By Use of Fictitious Name, 8, 457, 469
 - Adoption of alternative name of party charged, 8, 471
 - Fictitious case before a justice of the peace, 8, 470
 - Fictitious firm, 8, 470
 - General rule, 8, 469
 - Making note in the name of fictitious person, 8, 470
 - When credit is given to person and not name, 8, 471
 - When forgery, 8, 470
 - When not forgery, 8, 471

FORGERY—Cont'd

- By Use of Same Name, 8, 468
 - Examples, 8, 469
 - Falsely personating another, 8, 468
- Fraudulent intention, 8, 468
 - When forgery, 8, 468
- Changing date of order, 8, 468
- Character of servants, 14, 800
- Conspiracy to commit, 4, 597
- Defective instrument, 8, 462
- Defendant not present at forgery, 8, 542
- Definition, 8, 453
- Deposit of forged bills; 2, 100
- Distinguished from false pretenses, 7, 702
- Doubt as to genuineness, 8, 542
- Election between counts, 8, 527
- Essentials of crime, 8, 457
- Evidence**
 - Copy of forged bill, 8, 535
 - Defendant's pecuniary condition, 8, 537
 - Evidence in defense, 8, 536
 - Evidence to show forgery of deed, 8, 538
 - Existence of bank, 8, 539
 - Forging bank notes, 8, 539
 - Illegible instruments, 8, 534
 - Instrument in possession of defendant, 8, 535
 - Introduction of instrument alleged to be forged, 8, 534
 - Possession, 8, 539
 - Proof of handwriting, 8, 534
 - Receipt, 8, 536
 - Record of former proceedings, 8, 536
 - Secondary evidence where instrument is lost, 8, 535
 - Sufficiency, 8, 538
 - To show capacity to injure, 8, 537
 - To show forgery of check, 8, 539
 - To show that forged name is fictitious, 8, 537
- False charge in person's own books, 8, 458
- False Making, 8, 458**
 - False charge in person's own books, 8, 458
 - Fraudulently altering date of satisfied order, 8, 458
 - Without intent to defraud, 8, 458
- False personation forming part of forgery, 7, 696
- Falsely making or altering, etc., 8, 453, 454
- Falsely Procuring Genuine Signature, 8, 467**
 - Acceptance of bill, 8, 467
 - Falsely reading instrument, 8, 468
 - Falsely representing character of instrument, 8, 468
 - Procuring name of one person and passing it as signature of another, 8, 467
- Forged check, 8, 462
- Forged Indorsements**
 - To bill or note, 2, 380

- Fraudulent Intent, 8, 455, 459, 465**
 - Authority to sign, 8, 459
 - Essence of crime, 8, 459
 - Existence of a person capable of being defrauded, 8, 479
 - False making without, 8, 458
 - Honest belief of right to sign, 8, 459
 - Impossibility of defrauding person intended, 8, 460
 - Intention to defraud a particular person, 8, 460, 479
- Necessity of, 8, 454**
 - Intent to defraud a particular person, 8, 460, 479
- Necessity that person should actually defraud, 8, 459
- Necessity that person should be actually defrauded, 8, 479
- No person in existence capable of being defrauded, 8, 460
- Possibility of injury being inflicted in future, 8, 461
- Two persons of same name, 8, 468
- Uttering, 8, 489, 490, 493**
 - Capacity to injure, 8, 494
 - Distinction between uttering and forging, 8, 496
 - Intent inferred, 8, 494
 - Intent to defraud particular person, 8, 494
 - Knowledge of character of instrument, 8, 496
 - Knowledge of falsity, 8, 491, 493
 - Person actually defrauded, 8, 494
- Possession with Intent to Utter, 8, 495**
 - At common law, 8, 495
 - By statute, 8, 495
- Fraudulently Using False Dates, 8, 472**
 - Antedating deed, 8, 472
 - Executing deed with false date, 8, 472
 - Filling blank in executed agreement, 8, 472
 - Use of false date, 8, 472
- How accomplished, 8, 464
- Indictment, 8, 500; 10, 595**
 - Averment of actual damages, 8, 505
- Averment of Extrinsic Facts, 8, 523**
 - Examples, 8, 523, 524
 - Innuendo, 8, 523
 - Mortgage, 8, 524
 - Railroad pass, 8, 524
 - When necessary, 8, 523
 - When not necessary, 8, 525
- Averment of Guilty Knowledge, 8, 505**
 - Charging offense, 8, 506
 - Indictment in the words of statute, 8, 505, 506
 - In general terms, 8, 505
 - Necessity for, 8, 505
 - Uttering, 8, 506
- Averment of Incorporation, 8, 525**
 - Bank, 8, 525
 - By statutes, 8, 525
 - Materiality, 8, 525
- Averment of Intent to Defraud, 8, 505, 506**
 - Actual loss, 8, 506

- Describing person whose name is forged, 8, 508
- English doctrine, 8, 509
- Intent to defraud a firm, 8, 508
- Intent to defraud estate of deceased person, 8, 508
- Intent to defraud particular person, 8, 507, 509
- Necessity for averment, 8, 506
- Order on bank, 8, 507
- The essence of crime, 8, 506
- Under statute, 8, 507
- Describing person whose name is forged, 8, 508
- Description of Alleged Offense**, 8, 500
 - Certainty and precision, 8, 501
 - Charging all ingredients, 8, 501
 - Defective Indictment**, 8, 501
 - Which charges common law of fense, 8, 501, 503
 - Degree of certainty, 8, 501
 - Description of artificial persons, 8, 502
 - "Did feloniously utter and publish as true," 8, 502
 - "Falsely," 8, 503
 - False making, 8, 500
 - "Feloniously," 8, 503
 - "Knowingly," 8, 503
 - Particular acts, 8, 500
 - "Passed, uttered, and published," 8, 502
 - Procuring to be forged, 8, 502
 - "Purporting to be" genuine, 8, 503
 - Setting out character, 8, 501
 - Stating offense in alternative, 8, 503
 - Tenor, 8, 503
- Description of Instrument**, 8, 510
 - Allegation of stealing, 8, 514
 - Alleging instrument capable of doing harm, 8, 512
 - Alteration of instrument, 8, 521
 - Bank bills, 8, 510
 - Bank check, 8, 510
 - Capacity to be used as proof, 8, 512
 - Certainty required, 8, 510
 - Date of instrument, 8, 519, 520
 - Describing person whose name is forged, 8, 508
 - Describing the instrument forged, 8, 513
 - Disjunctive form, 8, 511
 - Excusing omission, 8, 514
 - Figures, 8, 520
 - Forged deed, 8, 512
 - Forgery in foreign languages, 8, 522
 - Forging and uttering bank bills, 8, 510
 - Indorsements, 8, 512, 513
 - In hæc verba, 8, 514
 - Instrument designated by statute, 8, 515
 - Instrument in hands of defendant, 8, 514
 - Instruments designated by several names, 8, 515
 - Irrelevant indorsement, 8, 521
 - Irrelevant matter, 8, 521
 - Lost instrument, 8, 514
 - Marginal figures, 8, 520, 521
 - Misspelled names, 8, 517
 - Misuse of initial, 8, 517
 - Mortgage, 8, 510
 - Mottoes, devices, 8, 521
 - Name of forged instrument, 8, 510
 - Omission of unimportant words, 8, 519
 - Omissions in instrument, 8, 518
 - Omission to set out, 8, 513
 - Position of inserted words, 8, 521
 - Promissory note, 8, 513
 - Receipt, 8, 510, 511
 - School order, 8, 515
 - Setting forth figures, 8, 514
 - Setting forth instrument, 8, 513
 - Setting out indorsement, 8, 518
 - Setting out instrument without naming it, 8, 511, 815
 - Stamps, 8, 521
 - Surplusage, 8, 522
 - Technical designation, 8, 515
 - Tenor of instrument, 8, 515
 - Unessential parts of instrument, 8, 521
 - Variance**, 8, 516
 - In date, 8, 520
 - In name, 8, 516
 - Of a letter in a word, 8, 519
 - Promissory note, 8, 517
 - Vignettes, 8, 521
 - When variance is fatal, 8, 516
 - Exact copy of instrument, 10, 595
 - "False, forged, and counterfeited," 8, 504
 - Particular person, 8, 504
 - Persons unknown, 8, 504
 - Specifying party to be defrauded, 8, 504
 - Stating offense in different phrases, 8, 504
 - Statutory words, 8, 504
 - Variance, 8, 505
 - Where party defrauded is a firm, 8, 504, 505
 - In England, 8, 456
 - Infamous crime, 4 646; 10, 605
 - Instructions**, 8, 541
 - Defendant not present at forgery, 541
 - Doubt as to genuineness, 8, 541
 - Instrument Capable of Effecting Fraud**, 8, 461
 - Awkward forgery, 8, 462
 - Bare possibility that one may be imposed upon, 8, 464
 - Capable of deceiving persons of ordinary capacity, 8, 461
 - Defective instrument, 8, 462
 - Forged check, 8, 462
 - Name misspelled, 8, 462
 - Necessity of, 8, 454, 455
 - Omission of dollar mark, 8, 462
 - Omission of important words, 8, 462

FORGERY—Cont'd

**Instrument Capable of Effecting Fraud—
Cont'd**

Resemblance to genuine instrument, 8, 461

What is sufficient, 8, 461

Intent to Defraud, 4, 895; 8, 454

Particular person, 8, 479, 494

Unknown persons, 8, 496

Invalid instruments, 8, 479

Jeopardy, 11, 943, 945

Where same act constitutes several offenses, 11, 938

Joinder, 8, 526

Election between counts, 8, 527

Uttering not forgery, 8, 526

Justification

Allowing defendant to sign for him, 4, 811

Legal efficacy, 8, 455

Libel and slander, 13, 338, 387

Limitation of actions, 13, 725

Making false deed in own name, 8, 458

Mark, 8, 464

Married women, 14, 633

Matters of Defense, 8, 496

Drawer a fictitious person, 8, 496

Forged instrument obtained by a trap, 8, 497

Instrument usurious, 8, 496

Mistake in wrongly dating forged instrument, 8, 496

No injury resulted, 8, 496

Object illegal, 8, 496

Name misspelled, 8, 462

Name of deceased person, 8, 466

Necessity that person be actually injured, 8, 456

No person in existence, 8, 496

No person to be defrauded, 8, 479

Of deed, 8, 453

Of order for goods, 8, 456, 457

Omission of dollar mark, 8, 463

Omission of important words, 8, 462

Passing counterfeit note in name of fictitious person, 8, 492

Person actually defrauded, 8, 494

Photographic, 8, 464-466

Printed signature, 8, 464

Procuring signature to note fraudulently, 8, 467

Production of Documents

Inspection of private papers before trial, 19, 245

Records, 19, 252

Proof of Guilty Knowledge and Fraudulent

Intent, 8, 491, 528

Admission of commission of other forgeries, 8, 530

Circumstances having a bearing on question of fraud, 8, 528, 529

Criminal intent, 8, 528

Guilty knowledge, 8, 529

In general, 8, 528, 543

Passing similar forged paper, 8, 531

Possession of forged paper, 8, 531

Possession of other forged paper, 8, 532

Possession of similar forged instrument, 8, 491

Presumption of intent, 8, 528

Proof of other forgeries by defendant, 8, 530

Proof of passing similar forged paper for which party has been indicted, 8, 531

Proof of uttering on trial for forging, 8, 531

Proof of uttering similar instrument, 8, 491

Whether acquittal precludes admission of evidence in another trial, 8, 531-533

Property obtained by use of forged writings, 7, 702

Punishment, 8, 543

At common law, 8, 543

Discretion of court, 8, 543

Purport, 19, 591

Purport clause, 19, 591

Purporting to be act of another, 8, 455

Question for jury, 8, 541

Ratification of forged instrument, 1, 431

Reasonable doubt for prisoner's benefit, 9, 265

Rescission, 21, 64

Resemblance, 8, 466

Of instrument, 8, 461

School orders, 8, 515

Sentence, 8, 543

"Show forth in evidence," 8, 565

Signing

By attorney, 8, 465

Fictitious name, 8, 457

Through innocent party, 8, 464

Stating Offense in Alternative

Statutory words, 8, 504

When counterfeited, 8, 464

When uttered, 8, 503

Sufficiency to effect purpose intended, 8, 454

Theater tickets, 25, 1038

The False Making, 8, 458

Necessity, 8, 453, 454

Trespass on the case, 26, 699

Under federal statute, 8, 464

Use of Same Name

Necessity that name should be identical, 8, 469

Uttering and Publishing, 8, 454, 489; 28, 1

Assertion that instrument is good, 8, 490

By agent, 8, 489

Depositing with bank, 8, 491

Examples, 8, 492, 493

Exhibition of forged note with guilty intent, 8, 493

Fraudulent Intent, 8, 489, 490, 493

Capacity to injure, 8, 494

Distinction between uttering and forging, 8, 496

Intent inferred, 8, 494

Intent to defraud particular person, 8, 494

- Knowledge of character of instrument, 8, 496
- Knowledge of falsity, 8, 491, 493
- Person actually defrauded, 8, 494
- Possession with Intent to Utter**, 8, 495
 - At common law, 8, 495
 - By statute, 8, 495
- How knowledge is shown, 8, 491
- Independent offense, 8, 489
- Knowledge on part of defendant, 8, 491
- Offering, 8, 493
- Other offenses, 8, 491
- Passing counterfeit note in name of fictitious person, 8, 492
- Recording forged mortgage, 8, 492
- Uttering forged bank notes, 8, 492
- What acts constitute forgery, 8, 491
- What constitutes, 8, 489
- When offense is complete, 8, 489
- Whether necessary to offense, 8, 456
- Whether party must have been implicated in forgery, 8, 489
- Venue**, 8, 522
 - Concurrent jurisdiction, 8, 522
 - Crime committed in two counties, 8, 523
 - Jurisdiction in which document was received, 8, 522
 - Jurisdiction of uttering, 8, 522
 - Mailing, 8, 522
- Venue and Jurisdiction**, 8, 497
 - Binding over for forgery, 8, 500
 - Double allegiance, 8, 499
 - Forgery of bank notes, 8, 498
 - Jurisdiction of state courts, 8, 498
 - Mailing, 8, 497
 - Possession of a forged instrument, 8, 498
 - Under laws of United States, 8, 498
 - United States courts, 8, 498
 - Uttering and publishing, 8, 499
 - Uttering in a particular county, 8, 497
 - What determines jurisdiction of court, 8, 499
 - When crime is complete, 8, 497
 - Where crime is committed, 8, 497
- Verdict**, 8, 542
 - Definiteness, 8, 542
 - Sufficiency, 8, 542
- Waiver, 28, 533
- What Instruments May or May Not Be the Subject of Forgery**, 8, 478
 - Acknowledgment of money received, 8, 487
 - Acquittances, 8, 480
 - Altering accounts after settlement, 8, 481
 - Artist's name to picture, 8, 481
 - At common law, 8, 478
 - Bail bonds, 8, 484
 - Bank checks, 8, 482
 - Bank notes, 8, 482
 - Bills of exchange, 8, 482
 - Bonds, 8, 482
 - Book entries, 8, 480
 - Certificates**
 - Conferring no right, 8, 487
 - In form of indorsement, 8, 481
 - Of acknowledgment, 8, 481
 - Of character, 8, 481, 487
 - Of record, 8, 484
 - Corporate stamp, 8, 484
 - County warrants, 8, 482
 - Deed of land, 8, 481
 - Deed void on its face, 8, 487
 - Defective instruments, 8, 483
 - Diploma, 8, 481, 488
 - Due bills, 8, 483
 - Evidence of debt, 8, 481
 - Existence of person capable of being injured, 8, 479
 - Federal securities, 8, 482
 - Fraud on general public, 8, 460, 479
 - General rule, 8, 480
 - Incomplete instrument, 8, 480
 - In general, 8, 478
 - Instances, 8, 480
 - Instrument in such form as to be means of defrauding another, 8, 478
 - Instruments which if genuine would be foundation of a liability, 8, 478
 - Instrument wanting in legal formalities, 8, 483
 - Invalid instruments, 8, 479, 483, 488
 - Letters**, 8, 487, 488
 - Of credit, 8, 484
 - Of introduction, 8, 488
 - Of order by bishop, 8, 487
 - Of recommendation, 8, 484
 - Order for delivery of goods, 8, 485
 - Orders for payment, 8, 485
 - Paper exposing one to liability of suit, 8, 486
 - Paper which could not be subject of a suit, 8, 494
 - Pawnbroker's tickets, 8, 483
 - Petition to legislature, 8, 486
 - Physician's certificate of sickness, 8, 486
 - Political documents, 8, 479
 - Power of attorney, 8, 486
 - Promissory Note**, 7, 31; 8, 482
 - Which has no signature, 8, 480
 - Railway pass, 8, 486
 - Railway ticket, 8, 486
 - Receipts, 8, 482
 - Requests for loans of money, 8, 586
 - Request to pay money, 8, 486
 - Telegraphic messages, 8, 486
 - Trade-mark, 8, 486
 - Unattested deeds, 8, 483
 - Unstamped instruments, 8, 483
 - Where invalid upon face, 8, 479
 - Withdrawal card from secret organization, 8, 487
 - Wrappers, 8, 487
 - Writings containing no obligation, 8, 488
- Who May Commit**, 8, 489
 - Agent, 8, 489
 - In general, 8, 489
 - Partner, 8, 489

FORGERY—*Cont'd***Who May Commit**—*Cont'd*

Presence of person, 8, 489

Witnesses

Competency, 8, 527

Confessions, 8, 528

English rule, 8, 527

Person whose name is forged, 8, 527

Informer or prosecutor, 29, 561

Writing, 8, 464

Engraving, 8, 464

Photographic process, 8, 464

Printing, 8, 464

The hand of another, 8, 464

What constitutes, 8, 464

What false writing is forgery, 8, 465

FORM

In manner and form, 14, 254

Matter of form, 14, 978

FORMA PAUPERIS, 8, 544

Admiralty, 8, 545

Amidavit, 8, 547

Sufficiency, 8, 547

Where and by whom oath to be taken, 8, 547

After dismissal of former suit, 8, 548

At common law, 8, 544

At law and in equity, 8, 544

Costs in suit against executor, 8, 547

Costs of scandal, 8, 546, 547

Definition, 8, 544

In equity, 8, 544

Infants, 6, 545; 10, 685

Liability for costs accrued before defendant is permitted to defend as a pauper, 8, 547

Liability for costs before application, 8, 548

Liability for interlocutory costs, 8, 546

Vexatious conduct of suit, 8, 548

When application can be made, 8, 548

When may be dispaupered, 8, 548

Who May Sue or Defend in Forma Pauperis, 8, 545

Executor clearing a contempt, 8, 546

Executors and administrators, 8, 546

Executor who is also beneficiary, 8, 546

Husband and wife, 8, 546

Infants, 8, 545; 10, 685

In general, 8, 545

Married women, 8, 546

Non-residents, 8, 546

Statute 11 Hen. VII., 8, 545

FORMER ACQUITTAL, see JEOPARDY.**FORMER ADJUDICATION**, see RES ADJUDICATA.**FORMER CONVICTION**, see JEOPARDY.**FORMER JEOPARDY**, see JEOPARDY.**FORMER RECOVERY**, see RES ADJUDICATA.**FORMER SUIT PENDING**, 8, 549

Action must be prior, 8, 550

Actions at law and equity, 8, 554

Actions on a joint liability and on a several liability, 8, 549

Bill in equity, plea, 6, 794

General rule, 8, 549

How proven, 8, 555

Instances of proceedings held to be identical, 8, 549

Mandamus, 14, 226

Partition, 17, 738

Partnership action in equity for accounting, 17, 1289

Pendency, 8, 551

Affirmative proof of, 8, 551

In same state, 8, 551

Of appeal, 8, 555

On writ of error, 8, 555

Suit dismissed after plea of abatement had been interposed, 8, 551

Suit dismissed before plea to second was filed, 8, 551

Proceedings at law and proceedings in other courts, 8, 550

Proceedings in rem and proceedings in personam, 8, 549, 553

Receivers, 20, 86

Record

Proof, 8, 555

Set-Off

Counterclaim, 22, 441

As a defense to counterclaim, 22, 441

Where cause of action has been used as set-off or by way of recoupment, 22, 441

Where no judgment has been pronounced, 22, 441

Stay of Proceedings, 23, 523

Examples, 23, 523-526

In general, 23, 523

Pending in court of sister state, 23, 523

Pending in foreign country, 23, 523

Plaintiff defendant in another suit where same questions are involved, 23, 523

Plaintiff of record not same person in all actions, 23, 523

Proceedings must be identical, 23, 523

Several actions brought on same cause of action, 23, 523

Suit in another state, 8, 554

Suit in United States circuit court for one state and action brought in another state, 8, 553

Suit must be between same parties, 8, 552

Suit must be capable of being made effective, 8, 551

Suit must be for same cause and relief, 8, 552

Suit must be in a competent court, 8, 552

Suit must be of same character, 8, 552

Suits in a foreign country, 8, 554

Suits in state and national courts, 8, 553

Suits must be of same subject-matter, 8, 552

Suit so defective that no proper judgment could be rendered thereon, 8, 552

Two suits begun at the same time, 8, 550

Under the code, 18, 489, 490

When court has no jurisdiction, 12, 312

FORNICATION, 8, 555; 14, 519

See ADULTERY; INCEST; LEWD AND LASCIVIOUS COHABITATION AND CONDUCT; MARRIAGE; MISCEGENATION; RAPE; SEDUCTION.

Acquittal under an indictment for seduction a bar to the prosecution for fornication, 8, 560

Acquittal under indictment for rape, 8, 560

Believe

Imagine and, 2, 165

Conviction of Fornication Under Indictment for Other Offenses, 8, 559

Acquittal under an indictment for seduction, 8, 559

General rule, 8, 559

Indictment for adultery, 8, 559

Indictment for incest, 8, 595

Indictment for rape, 8, 560

Indictment for seduction, 8, 559

Definition, 1, 210, 211; 8, 555

Distinguished

From bastardy, 8, 556

From incest, 8, 556

From other offenses, 8, 556

From seduction, 8, 556

Essentials of Crime, 8, 556

Public and offensive lewdness, 8, 556

Single act of sexual intercourse, 8, 558

What is cohabitation openly and notoriously, 8, 557

Evidence, 8, 561

Acts subsequent to indictment, 8, 562

Circumstances, 8, 561

Examples, 8, 562

General reputation, 8, 562

Prior acts, 8, 562

Proof that parties were unmarried, 8, 563

Find and believe, 2, 165

Imagine and believe, 2, 165

In Alabama, 8, 557

In Arkansas, 8, 557

In Illinois, 8, 557

In Indiana, 8, 557

In Iowa, 8, 557

In Kansas, 8, 557

In Massachusetts, 8, 557

In North Carolina, 8, 558

In South Carolina, 8, 558

In Texas, 8, 558

In Virginia, 8, 558

Indictment and Information, 8, 560

Averment that one of parties was unmarried, 8, 560

Averment that parties were male and female, 8, 560

Charging crime generally, 8, 560

Charging in words of statute, 8, 560

Difference of race, 8, 561

Examples, 8, 560

Joint indictment, 8, 561

Open and notorious, 8, 561

Open lewdness, 8, 560

Intercourse with one man, 19, 291

Knowledge and belief, 2, 165

Libel and slander, 13, 304, 336, 338, 345

Married man and unmarried female, 1, 210; 8, 555

Misdemeanor, 8, 563

Offenses under statute, 8, 556

Openly living together, 1, 211

Presumption as to marriage, 8, 563

Prior acts of, 1, 215

Single act of sexual intercourse, 8, 538

Unmarried man with unmarried woman, 1, 210

What amounts to a charge, 3, 161

When it becomes adultery, 8, 556

When it becomes bastardy, 8, 556

When it becomes incest, 8, 556

When it becomes rape, 8, 556

When it becomes seduction, 8, 556

Whether one may be acquitted without the other, 13, 281

Whether one may be prosecuted without the other, 13, 281

FORSWEAR, 8, 564**FORTH**, 8, 565**FORTHCOMING BOND**, 8, 565

See generally, INDEMNITY CONTRACTS.

After security, 8, 568

Bond taken for more than is due, 8, 567

Burden of proof, 8, 571

Care required of custodian of property, 8, 568

Condition to deliver after return day, 8, 568

Conformity to execution, 8, 567

Damages, 8, 570

Definition, 8, 565

Description of the property, 8, 568

Duty of officer taking bond, 8, 569

Effect of bond, 8, 567

Equivalent to a seizure, 7, 150; 8, 567

Essentials to validity, 8, 566

Estoppel of defendant, 8, 567

Executed after death of plaintiff, 8, 566

Failure to recite, parties, 8, 566

Failure to recite that execution is against more than one defendant, 8, 566

Fictitious security, 8, 568

Forfeiture, 8, 569

Death of animal for which forthcoming bond is given, 8, 569

Not delivered until after time, 8, 569

Partial delivery, 8, 569

Where all property is not delivered up, 8, 569

Form of bond, 8, 565

Fraud in executing, 8, 568

Given to a party other than defendant, 8, 566

In Ohio, 8, 566

Made payable to officer instead of plaintiff, 8, 566

Object of bond, 8, 565

Obviating necessity of actual levy, 7, 150; 8, 567

Officer's return, 8, 571

Party benefited, 8, 568

Recitals, 8, 566

Right of sureties, 8, 571

FORTHCOMING BOND—*Cont'd*

- Signed in blank, 8, 567
- Validity of bond, 8, 567, 569
- When authorized, 8, 566
- When forthcoming bond operates as a judgment, 8, 570
- When good as common law bond, 8, 566
- Whether defendant must join in execution, 8, 567
- Whether it removes a lien from property attached, 8, 568
- Whether satisfaction of original judgment, 8, 568
- Whether waiver of previous irregularities, 8, 567
- Whether waiver of right to claim that property is exempt from execution, 8, 567
- Who may bring action upon, 8, 568

FORTHWITH, 3, 146; 8, 571; 16, 820;

- 21, 534
- Enter judgment forthwith, 12, 466
- Fire insurance, 8, 572
- In insurance policy, 7, 1049
- Judgment rendered, 12, 468
- Reasonable time a question for jury, 8, 573
- Recording acts, 20, 547
- Synonymous with a reasonable time, 8, 571
- Synonymous with immediately, 8, 571
- What is a reasonable time, 8, 572

FORWARDING MERCHANTS, 8, 573

- See BILL OF LADING; CARRIERS OF GOODS; CONNECTING CARRIERS; EXPRESS COMPANIES; WAREHOUSEMEN.
- Attraction of thieves by receipt of other valuable goods, 8, 575
- Bill of particulars in suit against forwarder, 8, 584
- Breaking carriage, 8, 582
- Burden of proof as to negligence, 8, 575
- Damages, 8, 584
- Definition, 8, 573
- Distinguishing forwarder from carrier, 8, 577
- Duty to advise consignee, 8, 575
- Duty to obey instructions of consignor, 8, 575
- Exercise of ordinary care, 8, 574
- Instructions by shipper, 8, 575
- Liability for neglect, 8, 574
- Liability for not forwarding by steam, 8, 577
- Liability for ordinary diligence only, 8, 574
- Liability to receive goods, 8, 573
- Negligence of consignor in marking goods, 8, 576
- Responsibility of carrier as forwarding agent, 8, 583
- Right to refuse goods, 8, 573
- Warehouse and warehouseman, 28, 651
- What Renders Liable as Common Carrier**, 8, 577
 - Advances, 8, 577

Goods awaiting orders, 8, 578

Inference as to instructions to forward forthwith, 8, 578

Instructions that goods are at owner's risk, 8, 578

Where bailee is common carrier, 8, 579

Whether a common carrier, 8, 574

FOUND

Found intoxicated, 7, 976

FRACTIONAL, 8, 584**FRANCHISES**, 8, 584; 10, 357

See FERRIES; PIPE LINES; ULTRA VIRES.

As Contracts, see CONTRACTS.

Exemption from taxation, see TAXATION (CORPORATE).

Individual rights of stock-holders, see STOCK-HOLDERS.

As to charter of corporations, see CORPORATIONS.

As to the elective franchise, see ELECTIONS.

Forfeiture, see CORPORATIONS.

Of a bank, see BANKS AND BANKING.

Remedies for the enforcement of public duties, see CORPORATIONS.

Taxation, see TAXATION (CORPORATE).

Definition, 8, 585; 10, 357

Eminent Domain

Power of the states to take under the right of eminent domain, see EMINENT DOMAIN.

As a franchise, 8, 595

Exclusive franchises, 6, 536

Granting rival franchises, 6, 545

Irrevocable franchise, 6, 536

Taking franchises under, 6, 536s

When franchises may be taken, 6, 536

Execution and Sale of, 4, 238; 8, 634*i*Authority derived from statute, 8, 634*k*Corporations which owe no public duty, 8, 634*j*In Arkansas, 8, 634*k*In Illinois, 8, 634*k*In Missouri, 8, 634*k*In Nebraska, 8, 634*k*In Texas, 8, 634*k*In West Virginia, 8, 634*k*

Liability for, 4, 288

Preventing corporation from fulfilling its public duties, 8, 634*i*Property not essential for corporate purposes, 8, 634*j*Property of canal company, 8, 634*i*Real estate acquired by eminent domain, 8, 634*j*Road of a railroad, 8, 634*i*Rolling stock, 8, 634*k*Whether subject to it, at common law, 8, 634*i***Gas Companies**

Use of streets and highways, 8, 586, 1280

Granting rival franchise, 6, 545

Information, 10, 703

Injunctions, 10, 967

Forfeiture, 10, 967

Interfering with exclusive franchise,
10, 967When injunction will not be granted,
10, 967**Instances of***Exemption from taxation*, see TAXATION.Incidental powers of corporations, 8,
594

Monopolies as franchises, 8, 598

Municipal aid as a franchise, 8, 597

Lotteries, 13, 1164, 1167, 1171

Mortgage, Sale and Transfer of, 4, 238; 8,
634, 634^h*See infra*, EXECUTION.*As to exemption from*, see TAXATION
(CORPORATE).Alienation of part of franchises, 8, 634^dAuthority a question between state and
corporation, 8, 634ⁱAuthority to mortgage includes to sell,
8, 634^hAuthority to purchase, implied author-
ity to sell, 8, 634^hConstruction of power of alienation,
8, 634^eContracts rendering corporations in-
capable of performing their duties, 8,
634^bEffect of invalidity of franchise, mort-
gage of property properly subject
thereto, 8, 634^hIntervention of third party, 8, 634ⁱLegislative authority, 8, 634^b, 634^cMiscellaneous, 8, 634^hNecessity of express legislative author-
ity, 8, 634^aPurchasing under foreclosure of mort-
gage, 8, 634^cRatification of illegal transfer, 8, 634^dRight to operate railroad after fore-
closure, 8, 634^eRight to use streets on foreclosure of
gas company, 8, 634^eTransfer of corporate powers, 8, 634^bWhether purchasers require right to
be corporations, 8, 634^e**Obligation of Contracts**

Lottery franchise, 13, 1167-1171

Of toll-bridges, 2, 563

Prescription, 19, 29

Quo warranto, 19, 674

Right to lay gas pipes, 8, 586; 1280

Transfer of

Failure to construct road, 6, 603

Generally, 6, 603

Eminent Domain, 6, 603

Purchaser liable for damages, 6, 603

Right to have damages assessed in a
particular way, 6, 603

Transfer by majority, 6, 603

When transfer may be had, 6, 603

Waterworks and water-companies, 29, 24

Whether franchise passes at foreclosure
sale, 19, 766*Whether "person" includes a corporation*,
see CORPORATIONS.*Whether property*, 19, 285**FRATERNITY**, 8, 634^l**FRAUD**, 8, 635*See* CATCHING BARGAIN; CHATTEL
MORTGAGES; CHEAT; DECEIT; DU-
RESS; FALSE PRETENSES; FORGERY;
FRAUDULENT CONVEYANCE; FRAUD-
ULENT DEBTOR; FRAUDULENT SALES;
INSURANCE; JUDGMENTS OF SISTER
STATES; MARRIAGE SETTLEMENTS;
REFORMATION OF INSTRUMENTS;
RESCISSION; SALES; VENDOR AND
PURCHASER; WARRANTY.*Agent's fraud*, see AGENCY.*As to imprisonment for*, see IMPRISON-
MENT FOR DEBT.*As to when fraud gives rise to implied
warranty*, see IMPLIED WARRANTY.*Elections*, see ELECTIONS.*Fraud on marital rights*, see HUSBAND
AND WIFE.*Impeachment of judgment*, see JUDG-
MENT.*Liability of corporations for fraud*, see
CORPORATIONS.*Limitation of actions*, see LIMITATION
OF ACTIONS.*Retention of possession*, see FRAUDU-
LENT SALES.**Suretyship***Discharge of surety*, see SURETYSHIP.Acknowledgment, impeachment of mar-
ried women's, for, 1, 165

Actual, 6, 717; 8, 635

Actual and constructive distinguished, 1,
184^g*As affecting adverse possession*, 1, 292*As defense to covenant*, 4, 548**As Evidence of**, 10, 327, 334Confidential or fiduciary relation, 10,
327

Expectancy, 10, 329

Gross inadequacy, 10, 330

Inadequacy coupled with weakness of
mind, 10, 327

Sale by auctioneer, 10, 330

Badge of

Inadequate consideration, 10, 331

Beneficiary in will promising to carry out
intentions of testator, 5, 335**Bill in Equity**

Allegation of, 6, 756

Specifically alleged in, 2, 211

Bills to impeach decree in equity on the
ground of, 6, 773**Bonds**Obtaining signature to, by fraud, 2,
457**Burden of Proof**, 2, 650; 8, 654

Fiduciary relation, 8, 654

General rule, 8, 654

To show that party did not rely on
misrepresentations, 8, 654Where false representations are proved,
8, 654

FRAUD—Cont'd

Character (in Evidence)

Where there is a charge of fraud, 3
113

Compulsory References, 20, 678

Conflicting authorities, 20, 678

Examples, 20, 678, 679

In general, 20, 678

Substantial issue fraud, 20, 678

Concealment, see *infra*, SUPPRESSION
VERI.

Confederate money, 15, 707

Consent Obtained by

No defense to criminal action, 3, 665

Constructive, 6, 717; 8, 635, 646

See *infra*, IN FIDUCIARY RELATIONS.

Marriage brokerage contracts, see ILLEGAL
CONTRACTS.

Trusts, see IMPLIED TRUSTS.

When it exists, 8, 646

Covin

Definition, 4, 570

Debtor

Discharge of a Poor Debtor, 18, 830, 831

Concealment of debt, 18, 830

Effect of conviction in case of fraud,
18, 831

Fraud in contracting indebtedness,
18, 830

In general, 18, 830

Deceit and fraud distinguished, 5, 347

Deed obtained by, 5, 430

Defense to mortgage foreclosure, 8, 230

Definition, 8, 635, 791

Delay in seeking relief, 8, 653

Distinguished from negligence, 16, 395

Duress, 5, 430

Effect of discharge in bankruptcy, 11, 226

Evidence, 8, 654

Admissibility of, 8, 655

Circumstantial evidence, 8, 654

Mere suspicion, 8, 655

Necessity of positive proof, 8, 654

Sufficiency, 8, 654

Foreclosure of Mortgages

Appointment of receiver, 8, 237

Setting aside sale, 8, 262

Foreign judgments in rem obtained by,
3, 528

Fraudulent Sales

Definition of fraud, 8, 791

Indemnity contracts, 10, 407

In equity, 6, 717

In Fiduciary Relations, 8, 647; 10, 327

Attorney and client, see ATTORNEY
AND CLIENT.

Guardian and ward, see GUARDIAN
AND WARD.

Physician and patient, see PHYSICIANS
AND SURGEONS.

Principal and agent, see AGENCY.

Trusts, see TRUSTS.

Dealings a short time after relation
has terminated, 8, 649

Examples of fiduciary relationship, 8,
649

General rule, 8, 647

Rebutting presumption of fraud, 8, 647

To what cases principle extends, 8, 647

In fraud, 10, 323

Injunctions

Judgment, 10, 896

Judgments obtained through, 10, 905

Insolvency

Instruction, examples of, 11, 274

Instruction, examples of, 11, 271-274

Insurance policy, 11, 346

Intent

Instruction, examples of, 11, 268

Joinder of parties, 17, 601

Judgment of sister states, 3, 532

Laches, 12, 600

See RESCISSION OF CONTRACT.

Concealment by defendant, 12, 600

Court, 12, 574

Discovery of fraudulent act, 12, 602

General principles, 12, 600

Knowledge of defendant, 12, 602

Plaintiff ignorant of fraud, 12, 600

Presumption in favor of innocence, 12,
601

Rights of third parties, 12, 603

Unreasonable delay, 12, 602

Landlord and Tenant, 12, 691

Concealing defective condition of
premises, 12, 691

Concealing unsafe condition, 12, 691

Contagious disease, 12, 692

Examples of landlord's fraud, 12, 691

Landlord's knowledge, 12, 692

Legal, 8, 635

Liability for

General rule, 4, 259

Liability of principal for agent's fraud,
1, 417

Libel and slander, 13, 304

Marriage, 14, 509

Antenuptial unchastity, 14, 510

Assuming a false name, 14, 508

Coachman, 14, 509

Concealment of pregnancy, 14, 510

Conspiracy, 14, 510

Examples, 14, 509

Falsely pretending to be pregnant, 14,
510

False pretense of affection, 14, 510

False representation as to character,
14, 510

False representation as to health, 14,
510

Nullity suit, 14, 534

Promise of marriage obtained by
fraud, 2, 523

Repudiation before consummation, 14,
509, 510

Weak mind, 14, 509

What will invalidate marriage, 14,
509

Youthfulness, 14, 509

Married Women, 14, 647

Avoidance of Deed, 14, 633

Bona fide purchaser, 14, 633

Party to the fraud, 14, 633

Party with notice, 14, 633

Misrepresentations, 8, 635

Action for, see DECEIT.

As to policy of insurance, see INSURANCE.

See WARRANTY.

As to credit and solvency of a third person, 8, 639

Conduct, 8, 635

Duty of party deceived, 8, 643

Fact as distinguished from opinion, 8, 636

False statement, 8, 636

Material matter, 8, 637

Matter of fact and not of law, 8, 636

Miscellaneous examples, 8, 639, 642

Must be relied upon, 8, 637

Not a mere promise for future, 8, 637

Parties on unequal footing, 8, 644

Whether sole inducement, 8, 637

Who May Rely on Representations, 8, 643

Made to influence public generally, 8, 643

Made to one to be communicated to another, 8, 643

Person to whom they are made, 8, 643

More or less, 15, 723

Mortgage obtained by fraud, 15, 773

No Presumption of Fraud

When instrument is altered, 1, 514, 520

Open and close, 17, 203, 206

Opinion

Instruction, examples of, 11, 273

Parol Evidence, 17, 437

Acknowledgment, 17, 438

Delivery in escrow, 17, 438

Fraud upon party to the instrument, 17, 437

Fraud upon third party, 17, 437

Illegality, 17, 438

Illegality or failure of consideration, 17, 441

Immorality, 17, 438

Incapacity of party, 17, 438

In general, 17, 437, 438

Lease, 17, 437

Mistake, 17, 438

Record, 17, 437

Subject to a condition, 17, 438

To prove, 7, 91

Want or failure of consideration, 17, 438

Partnership, 17, 897

Patent Law

Assignment procured by fraud, 18, 142

Defenses to actions on contract, 18, 142

Jurisdiction, 18, 143-145

Jurisdiction of equity, 18, 143

Payment voluntary, 18, 218

Penalties

Statutes imposing, 8, 935

Pleading, 8, 653

Allegation of actual fraud and proof of constructive fraud, 8, 654

Alleging specific acts, 8, 653

Defense, 8, 653

General terms, 8, 653

Poor Debtors, 18, 830

Concealment of debt, 18, 830

Effect of conviction in case of fraud, 18, 831

Examples, 18, 830, 831

Fraud in contracting indebtedness, 18, 830

In general, 18, 830

Presumption as to, 1, 514, 520; 5, 344; 8, 654; 19, 42

Promise of marriage obtained by, 2, 523

Promptness, 8, 653

Proof

Instruction, examples of, 11, 267-274

Questions of law and fact, 8, 656

Rape, 19, 950

Reasonable doubt, 19, 1088

Receivers of Railroads

Fraud and misconduct of officials, 20, 347

Necessity of appointment, 20, 363

Recording Acts

Suspicious from delay in recording, 20, 547

Recoupment, 22, 361

Redemption of mortgage, 20, 628

Release, 20, 748

Claim for personal injury, 20, 763

Pleading, 20, 767

Remedies, see DECEIT; RESCISSION.

Concurrent jurisdiction of law and equity, 8, 651

Election, 8, 651

In Equity, 8, 651

By reformation of instruments, see REFORMATION OF INSTRUMENTS.

By setting up fraud as a defense, 8, 651

Miscellaneous cases as to remedies, 8, 652

Pursuing concurrent remedies, 8, 651

Setting up fraud as a defense, 8, 650

When law and equity have not concurrent jurisdiction, 8, 651

Representation

Instruction, examples of, 11, 267-269

Representations as to Credit

Effect of Actual Fraud, 21, 12

Examples, 21, 12-14

In general, 21, 12

Whether actual fraud removes case from operation of statute, 21, 12

Rescission, 21, 27

Concealment, 21, 29

Confidential relations, 21, 32

Examples, 21, 31-33

Latent defects, 21, 32

Statement true so far as it goes, 21, 32

Suggestio falsi, 21, 31

What concealment justifies rescission, 21, 31

Willful concealment of facts, 21, 31

FRAUD—Cont'd

Rescission—Cont'd

Concurrent jurisdiction of law and equity, 21, 33

Conduct of parties, 21, 33

Constructive fraud, 21, 34

Deeds, 21, 64

Election of party defrauded, 21, 28

False Representations, 21, 28, 29

Conduct of the party, 21, 33

Examples, 21, 29-31

Ignorance of facts, 21, 30

Ignorance of party making statement, 21, 30

Implied, 21, 33

Inducing to contract, 21, 30

In writing, 21, 33

Knowledge of falsity, 21, 30

Material, 21, 30

Matters of law, 21, 30

Means equally accessible to both parties, 21, 31

Orally, 21, 33

Positive statement of facts, 21, 29

Right to rely upon representations, 21, 30, 31

Statement of matters of opinion, 21, 29

Fraud practiced by a stranger, 21, 33

Implied fraud, 21, 33

In general, 21, 27

Manner of making, 21, 33

Mistake on one side and fraud on the other, 21, 30

Principal and agent, 21, 33

Relief in equity, 21, 33, 34

Sale, 21, 49

Concealment of defects, 21, 49

Essentials of fraud, 21, 49

Examples, 21, 49-53

In general, 21, 49

Insolvency, 21, 52

Intention not to pay for goods, 21, 52

Intent not to pay at time of purchase, 21, 52

Knowledge that would induce vendor not to part with goods, 21, 52

Misrepresentations, 21, 49, 50

Misrepresentations as to debt, 21, 50

On part of vendee, 21, 50

On part of vendor, 21, 49

Pecuniary standing, 21, 50

Suppressio veri, 21, 31

Where no injury has resulted to party seeking relief, 21, 34

Res Judicata

Foreign judgments, 21, 281

Judgments of sister states, 21, 284

What might have been litigated, 21, 222

Scienter, 8, 642

Conflict of opinion, 8, 642

Necessity of scienter to constitute fraud, 8, 642

Reckless statements, 8, 643

Silence, see infra, SUPPRESSIO VERI.

Specific Performance

Conveyance to defraud others, 22, 1026

Duress, 22, 1027

Enforcement, 22, 1022

Failure to read contract, 22, 1027

Fraudulent concealment, 22, 1025

Ignorance, 22, 1027

In general, 22, 1022

Insanity, 22, 1027

Instances of fraud, 22, 1027

Instances of misrepresentations, 22, 1027

Intoxication, 22, 1027

Misrepresentations, 22, 1024

Undue influence, 22, 1026

Unfairness, 22, 1023

Stated account, opening, 1, 125

Stockholders

Partnership or Individual Liability, 23, 879

Examples, 23, 879

False advertisements, 23, 879

How liability incurred, 23, 879

Illegal business, 23, 879

In general, 23, 879

Subscriptions, 24, 334

Suggestio falsi, see infra, MISREPRESENTATIONS.

Suppressio Veri, 8, 644

Caveat emptor, 8, 644

Concealment by buyers on credit, 8, 646

Duty to communicate, 8, 644

Fiduciary relationship, 8, 645

Insolvent buyer, 8, 646

Latent defects, 8, 645

One "stands by," 8, 645

Parties upon equal footing, 8, 644

Remaining silent while one asserts rights, 8, 645

When it will amount to fraud, 8, 644

Taxation

Officer

Redemption, 25, 423

Purchaser

Redemption, 25, 424

Trover

In obtaining possession of property, 26, 739

Trusts and trustees, 27, 315

Undue Influence, 8, 649

See UNDUE INFLUENCE.

Unlawful Use of the Mails, 18, 856

Evidence, 18, 856, 857

Indictment, 18, 856, 857

In general, 18, 856

Statutory provisions, 18, 856

Upon courts, 8, 642

Usages and customs, 27, 906

Warranty Distinguished from, 28, 740

Action ex contractu, 28, 740

Fraud need not be proved nor alleged, 28, 741

In general, 28, 740

Whether it must be proved beyond a reasonable doubt, 8, 656

FRAUD, STATUTE OF, 1, 1001; 8, 657

See FRAUDULENT SALES.

Acceptance and Actual Receipt, 8, 729

See SALES.

Acceptance, 8, 732

Acceptance by carrier, 8, 735

English cases, 8, 732

Exercising act of ownership over goods, 8, 734

Goods set aside for buyer with his consent, 8, 734

Implied acceptance, 8, 734

Inspection and approval by buyer, 8, 734

Law in United States, 8, 733

Meaning of the term, 8, 732

Opportunity to examine goods, 8, 734

Preceding or following actual receipt, 8, 733

Promise to accept, 8, 735

Revocation of contract, 8, 734

Seller as buyer's agent, 8, 735

Where buyer detains goods after receipt, 8, 734

Where goods are unspecified, 8, 734

Where sale is by sample, 8, 733

Actual Receipt, 8, 730

Buyer exercising some act of ownership, 8, 731

Delivery to agent, 8, 731

Delivery to buyer, 8, 731

Delivery to carrier, 8, 731

Duration of vendee's possession, 8, 730

Evidence to support an actual receipt, 8, 732

Holding by buyer already in possession, 8, 731

Holding by vendor as bailee of buyer, 8, 731

Intention, 8, 731

Relinquishment of vendor's lien, 8, 730

Something more than mere words, 8, 732

Symbolic delivery, 8, 731

Taking for purpose of examination, 8, 730

Taking of goods by vendee, 8, 730

Tortious taking, 8, 731

What essential to, 8, 730

When actual receipt is complete, 8, 731

Burden of proof, 8, 730

Distinguished from delivery, 8, 729

Generally, 8, 729

Necessity of, 8, 730

Part of Goods, 8, 735

Purchases at auction, 8, 735

Samples, 8, 735

Sufficiency of part, 8, 735

Where only part of goods are in existence, 8, 735

Where several articles are purchased, 8, 735

Question for court, 8, 730

Question for jury, 8, 730

I-D—39

Time, 8, 735

After contract has been revoked, 8, 735

Before action is brought, 8, 735

Sunday, 8, 735

After judgment by default, 5, 496²⁵³

Agent for both parties, 2, 591; 23, 594

Agreements

As to partition fences, 7, 897

Meaning of the term as used in the statute, 2, 123

Partly bad and partly good, 8, 662

To build a party wall, 4, 499

To comply with statute, 8, 664

To leave property by will, 5, 315, 317; 8, 696

Attorney undertaking to pay client's costs, 8, 660

Auction Sale, 8, 704

Memorandum contained in several papers, 1, 1002

Mistake in memorandum corrected in equity, 1, 1002

Signature of auctioneer where interested in contract, 1, 1002

Whether they are within, 1, 1000

Who may take advantage of defect in memorandum, 1, 1003

Bill in Equity

Plea, 6, 793

Bought and sold note satisfying statute, 2, 591

Brokers, 2, 591

Agent for both parties, 2, 591

Bought and Sold Note

Constitute contract, 2, 591

Variance, 2, 591

Oral sale, 8, 660

Signed entry constitutes contract, 2, 591

Building Contracts, 29, 858

In general, 29, 858

Promises to pay for work and improvements on land, 29, 860

Where consideration of the contract is a conveyance of land, 29, 859

By joint tenants, 8, 672

By tenants in common, 8, 672

Certified check, 16, 883

Character, see *infra*, REPRESENTATIONS.

Chattel mortgages, 3, 178; 8, 705

Construction of acts for the suppression of, 23, 416

Contract of Indian, 10, 445

Contracts for Sale of Goods, Wares, and Merchandise, 8, 704

See *infra*, STOCK.

Agreement to deliver goods in payment of a debt, 8, 705

Chattel mortgage, 3, 178; 8, 705

Contract for resale, 8, 705

Contracts of barter, 8, 704

Contracts of exchange, 8, 704

Contracts of sale, 8, 704

Contract to manufacture, 8, 709

FRAUD, STATUTE OF—*Cont'd*

Contracts for Sale of Goods, Wares, and Merchandise—*Cont'd*

Distinction between contract for work and labor and contract of sale, 8, 705-709

English rule where subject-matter is not in existence, 8, 708

Examples of contracts to which the statute does not apply, 8, 704

Executed sales, 8, 704

Executory sales, 8, 704

Goods, Wares, and Merchandise, 8, 709

Bank notes, 8, 710

Book accounts, 8, 710

Chattels possessed of intrinsic value, 8, 709

Choses in action, 8, 710

In England, 8, 709

Interest in patent rights, 8, 710

"Option," 8, 710

Promissory notes, 8, 710

Scrip, 8, 710

In United States, 8, 704

Partnership agreement for sale of personal property, 8, 705

Rule in Maryland where subject-matter is not in existence, 8, 709

Rule in Massachusetts where subject-matter is not in existence, 8, 708

Rule in New Hampshire where subject-matter is not in existence, 8, 709

Rule in New York where subject-matter is not in existence, 8, 707

Sales by auction, 1, 1002; 8, 704

Statute of Charles II., 17th sec., 8, 704

Subject-matter of sale not in existence, 8, 705-709

Subject-matter to be prepared for delivery, 8, 705-709

The Price, 8, 710

Burden of proof that price is greater than statutory limit, 8, 710

Fact that transaction covers other matters besides sale, 8, 710

Where it was not known that price would exceed statutory limit, 8, 710

Where many different articles are bought at same time, 8, 710

To what contracts statute applies, 8, 704

What amounts to a re-sale, 8, 705-709

Where contract is for work and labor, 8, 709

Contracts for Sale of Interests in Lands, 8, 694; 28, 99

See infra, BUILDING CONTRACTS; LEASES; LODGINGS; LOGS.

Agreements

As to use to be made of land, 8, 703

Between joint owners of property to be foreclosed, 8, 702

By mortgagee to bid property in at foreclosure sale, 8, 702

For assignment of lease, 8, 696

Modifying interests already acquired, 8, 697

Not to use building as a tavern, 8, 703

That mortgagee shall not take possession, 8, 697

To break down an outstanding claim of title, 8, 703

To change mortgage into conditional sales, 8, 697

To convey to wife of mortgagor, 8, 702

To divide profit and loss from sale of land, 8, 701

To execute a defeasance, 8, 697

To execute a mortgage, 8, 697

To extend time for redemption of mortgage, 8, 697

To find a purchaser, 8, 703

To foreclose a mortgage, 8, 697

To form a partnership for the purpose of trading in land, 8, 701

To get a patent, 8, 695

To join in purchase of land, 8, 700

To loan money to purchase land with, 8, 702, 703

To pay one if he will buy land belonging to third party, 8, 703

To procure an interest in land, 8, 703

To refund, 8, 704

To release a claim for damages where land has been taken for public purposes, 8, 703

To release a mortgage, 8, 697

To rescind a deed or contract, 8, 697

Assignment of dower to widow, 8, 696

Contract for sale of a bond which is security for land, 8, 696

Contract for sale of fixtures, 8, 698

Contract to act as agent for another, 8, 704

Contract to devise lands, 8, 696

Contract to make a will of lands, 5, 315, 317; 8, 696

Contract to pay for improvements, 8, 698

Dower rights, 8, 696

Easements, 6, 143; 8, 658, 696

Examples of agreement within statute, 8, 694-704

Exchange of land, 8, 695

Foreclosure of mortgages, 8, 248, 702

Growing Crops, 4, 893, 894; 8, 598, 698

Fructus industriales, 8, 700

Fructus naturales, 8, 700

In Pennsylvania, 8, 694

Interest as vendor in a contract for purchase of lands, 8, 695

Interest given by covenant for quiet enjoyment, 8, 698

Interest given by covenant of warranty, 8, 698

Interest of cestui que trust, 8, 695

In United States, 8, 694

Judgment constituting a lien, 8, 696

Judicial sales, 8, 694, 695

Land indirectly connected with contract, 8, 701

Miscellaneous instances of interest in land, 8, 791

- Nature of consideration immaterial, 8, 695
- Parol power of sale in mortgage, 8, 697
- Pews, 18, 416
- Possession of lands, 8, 696
- Pre-emption right, 8, 695
- Profit à prendre, 8, 696
- Promises to pay all or part of proceeds if more than fixed price is obtained, 8, 701
- Promise to pay for services, 8, 695
- Sale by auction, 8, 695
- Sale by executors and administrators, guardians, etc., 8, 695
- Sale by sheriff, 8, 695
- Sale of equitable title, 8, 695
- Sale of equity of redemption, 8, 695
- Sale of legal title, 8, 695; 28, 99
- Statute of 29 Charles II., ch. 3, 8, 694
- Timber, 8, 698
- Transfer of a mining claim, 8, 696
- What are lands, etc., 8, 695
- Contracts in Consideration of Marriage, 2, 522, 8, 684**
 - Promise to marry as, 8, 689
- Contracts Not Performable Within a Year, 8, 685**
 - See infra*, MASTER AND SERVANT.
 - Agreement to continue until a contingency, express or implied, 8, 690
 - Agreement to enter into a partnership, 8, 689; 17, 898
 - Agreement to refrain from doing certain acts until happening of a contingency, 8, 690, 691
 - Allowing additional time for performance beyond a year, 8, 688
 - Contract of insurance, 8, 690
 - Contracts which cannot be fully performed within a year, 8, 685
 - Contracts which may be determined by either party, 8, 692
 - Contract to continue during life of a person, 8, 690
 - Contract to labor for more than a year, see infra*, MASTER AND SERVANT.
 - Contract which may be defeated on a given event, 8, 692
 - Computation of year, 8, 694
 - Expectation that the contract will not be performed within a year, 8, 686
 - Hiring from year to year, 8, 687
 - In Louisiana, 8, 685
 - In North Carolina, 8, 685
 - In Pennsylvania, 8, 685
 - Intention of parties, 8, 688
 - Leases, 8, 669
 - Limitation to such contracts as "by their terms" are not to be performed within a year, 8, 685
 - Meaning of word "terms," 8, 685
 - Partnership, 8, 689, 17, 898
 - Part performance, 8, 745
 - Performance dependent upon a contingency, 8, 689, 690
 - Promise that one's executor should pay, 8, 690
 - Promise to leave by will, 8, 690
 - Promise to marry, 2, 522; 8, 687, 689
 - Promise to pay upon marriage of another, 8, 690
 - Statute of 29 Charles II., ch. 3, 8, 685
 - Stock, 23, 596, 789
 - To continue to do an act for a period greater than one year, 8, 687
 - To do any act at a time more than a year distant, 8, 687
 - To do any act upon death of a third person, 8, 690
 - To pay a sum of money by instalments, 8, 688
 - To pay during life of some person, 8, 691
 - To pay when a suit is determined, 8, 690
 - To refrain from doing an act during a period greater than one year, 8, 688
 - To support during life of a person, 8, 691
 - To take a lease for a year, term to begin at future day, 8, 686
 - To what contracts provision applies, 8, 685
 - Undertaking to refrain altogether from a certain course, 8, 692
 - United States in general, 8, 685
 - Where contract may possibly be performed within a year, 8, 689, 690
 - Where further performance may cease at option of either party, 8, 692
 - Where one party is to perform within a year, 8, 692
 - Where time for performance is not specified, 8, 689
- Creation of Estates in Land, 8, 664**
 - See infra*, LEASES.
 - Deeds, 8, 664
 - Estates less than a freehold, 8, 664
 - Execution, 8, 664
 - Execution by Agent, 8, 665**
 - Authority of agent, 8, 665
 - Instrument executed in blank, 8, 665
 - Ratification, 8, 665
 - Sealing as signature, 8, 664
 - Signature, 8, 664
 - Signature made by another in party's presence, 8, 665
 - When agent's authority must be under seal, 8, 665
 - When authority must be in writing, 8, 665
 - Freehold estate, 8, 664
 - Instrument not under seal, 8, 664
 - The written instrument, 8, 664
- Credit, see infra**, REPRESENTATIONS.
- Crops, 4, 893, 894; 8, 598, 698
- Damages for preventing one from performance within statute, 8, 660
- Demurrer to bill in equity, 6, 787
- Disputed boundary line, 8, 673
- Earnest, 5, 580; 6, 137; 8, 736**
 - See infra*, PART PAYMENT.
 - Deposit of money with third party, 8, 736

FRAUD, STATUTE OF—Cont'd

Earnest—Cont'd

To be forfeited, 8, 736

What it must consist of, 8, 736

Easements, 6, 143; 8, 658, 696

Effect, 8, 658

Action on an oral contract made before enactment of statute, 8, 659

Action upon original contract where contract is modified, 8, 663

Agreement a good consideration for another contract, 8, 659

Agreement in alternative, 8, 663

Agreement partly bad and partly valid, 8, 662

Agreement to comply with statute is within its provisions, 8, 664

Agreement unenforceable by statute as ground for defense, 8, 664

Attorney's oral undertaking to pay client's costs, 8, 660

Compelling party to set up defense, 8, 659

Conflict of laws, 8, 659

Covenant valid though lease invalid, 8, 660

Damages for breach, 8, 658

Damages for preventing party from performing contract, 8, 660

Grantor recovering against principal debtor, 8, 659

Improvements made in reliance upon agreement, 8, 661

Money paid under oral contract within the statute cannot be recovered back, 8, 660

Of Actual Fraud, 21, 12

In general, 21, 12

Whether actual fraud removes case from the operation of the statute, 21, 12

Oral agreement as to accord and satisfaction, 8, 660

Proper rights acquired prior to its passage, 8, 659

Recovery for services rendered within contract, 8, 661

Recovery where plaintiff himself rebutted agreement, 8, 661

Retention of money upon contract within statute, 8, 661

To prevent direct enforcement, 8, 658

Trustee setting up an oral promise to pay third party, 8, 660

Upon modified contract, 8, 663

Upon passage of title to personalty sales, 8, 662

Value of property conveyed, 8, 661

Where everything has been performed on one side, 8, 662

Whether it discharges good consideration, 8, 659

Whether it renders contract void, 8, 658

Who may take advantage of the defense, 8, 659

Equitable Mortgages

Parol evidence to show, 6, 678

Equity, 8, 737

See *infra*, PART PERFORMANCE.

Declaring absolute conveyance a mortgage, see **EQUITABLE MORTGAGES**.

Where compliance has been fraudulently prevented, see **SPECIFIC PERFORMANCE**.

Compensation for damages, 8, 745

Oral promise to make particular use of property, 8, 738

Relief against statute in equity, 8, 737

Whether binding upon a court of equity, 8, 737

Escrow, 6, 871

Exchanges of land, 8, 695

Executors and Administrators

Promise to pay the debt of the estate, 7, 338; 8, 673

Factors, *del credere* commissions, 8, 679

Fixtures, 8, 667

Agreement, 8, 62

Reservation of, 8, 55

Foreclosure of Mortgages

Whether sale is within statute, 8, 248, 702

Garnishment, 8, 1164

Garnishee's defense, 8, 1213

Garnishee's right to rely on his verbal promise to pay the debt to another, 8, 1165

Promise to pay one's own debt to a third party, 8, 1164

Good consideration, 8, 1358

Grant of right to overflow lands, 4, 983, 8, 667

Growing crops, see *infra*, **CROPS**.

Guaranty, 9, 71, 75, 81

Guaranty of dividends, 9, 75; 23, 595

History of the statute, 8, 657

In Alabama, 8, 658

In District of Columbia, 8, 658

In Maryland, 8, 658

In New Mexico, 8, 658

In North Carolina, 8, 658

In Pennsylvania, 8, 658

In Utah, 8, 658

In Virginia, 8, 658

Indemnity contracts, 10, 404

Infant's contract, 10, 649

Judicial sale, 8, 672

Justice of the peace, 12, 452

Lease, 8, 666, 696; 12, 979

Assignment, Grant, and Surrender of Existing Terms, 8, 669

Assignment or surrender to take effect in future, 8, 670

Necessity of seal, 8, 669

When within statute, 8, 669

Where term might be granted by parol, 8, 669

Whether special form of words necessary, 8, 669

Assignment or Surrender by Operation of Law, 8, 670, 696

Acceptance of new lease, 8, 670

- Acceptance of new tenant, 8, 670, 671
- Accepting keys, 8, 671
- Agreement to make and to assent to change of possession, 8, 671
- Assignment in writing, 8, 671
- Exception in terms, 8, 670
- Exercise of ownership by landlord, 8, 671
- Implied assent of tenant, 8, 672
- Implied consent of landlord, 8, 671
- Lease determinable on a contingency, 8, 670
- Lease of new tenant invalid, 8, 671
- Materiality of quantum of new lease, 8, 671
- Necessity of actual change of possession, 8, 671
- Necessity of assent by both landlord and original tenant, 8, 671
- New lease void, 8, 670
- New lease voidable, 8, 670
- New term must begin before old one terminates, 8, 671
- Resumption of possession by landlord, 8, 670, 671
- What is a surrender by operation of law, 8, 670
- Where not excepted in terms, 8, 670
- Contract for sale of interest in land, 8, 696
- Covenants in invalid lease, 8, 660
- Creation of estate at will, 8, 666
- Creation of estate from year to year, 8, 666
- Effect of parol demise, 8, 666; 12, 978
- Examples, 12, 978
- Excepted by Statute, 8, 667**
 - Computation of time, 8, 668
 - Contracts not to be performed within a year, 8, 669
 - In Maine, 8, 667
 - In New Hampshire, 8, 667, 668
 - In New Jersey, 8, 668
 - In North Carolina, 8, 668
 - In Ohio, 8, 667
 - In Pennsylvania, 8, 668
 - Lease not to take effect until a future date, 8, 668
 - Leases from year to year, 8, 668
 - Materiality of amount of rent reserved, 8, 668
 - Terms for one year, 8, 668
 - Terms for three years, 8, 668
 - The English statute, 8, 667
- For a year or more to begin at a future day, 8, 687
- From year to year, 8, 669
- In Alabama, 12, 979
- In Connecticut, 12, 979
- In Delaware, 12, 979
- In Georgia, 12, 979
- In Illinois, 12, 980
- In Indiana, 12, 979
- In Massachusetts, 12, 979
- In Mississippi, 12, 980
- In Missouri, 12, 979
- In New Hampshire, 12, 979
- In New Jersey, 12, 979
- In New York, 12, 979
- In North Carolina, 12, 980
- In Ohio, 12, 979
- In Tennessee, 12, 980
- Memorandum, 8, 725
- Necessity of seal, 8, 664
- Necessity of writing, 8, 664
- Parol lease, 8, 666; 12, 978
- Valid covenants, 8, 660
- What Constitutes a Lease Within Statute, 8, 666**
 - Agreement to provide board and lodging, 8, 666
 - Exclusive possession of the premises, 8, 666
 - Holding on shares, 8, 666
 - In general, 8, 666
 - Mere license, 8, 666
 - Permission of tenant to remain who has been notified to quit, 8, 666
 - Permission to build a dam, 8, 667
 - Permission to build a permanent structure, 8, 667
 - Permission to construct a dwelling, 8, 667
 - Permission to construct market buildings, 8, 667
 - Permission to cut a canal, 8, 667
 - Permission to cut and stack timber, 8, 667
 - Permission to dig a drain, 8, 667
 - Permission to dig and carry away ore, 8, 667
 - Permission to enter and occupy permanently for a railroad, 8, 667
 - Permission to haul logs, 8, 667
 - Permission to lay pipe, 8, 667
 - Permission to leave fixtures, 8, 667
 - Permission to overflow land, 4, 983; 8, 667
 - Permission to remove timber, 8, 667
 - Permission to use a hall for dancing, 8, 667
- What lease is covered by a statute, 8, 666
- Lodgings and Apartments, 8, 666; 13, 1007**
 - Furnished apartment, 13, 1014
- Logs and Lumber, 13, 1020**
 - Parol contract as license, 13, 1021
 - Payment subsequent to the time of making contract, 13, 1021
 - Performance within a year, 13, 1021
 - Recovery on quantum meruit, 13, 1021
 - Services to be performed within a year, 13, 1021
- Whether interest in land, 13, 1020
- Lord Tenterden's act, 10, 649
- Loss**
 - Memorandum, 8, 711
- Lost will, 13, 1138
- Marriage Settlements, 14, 542**
 - See infra*, PROMISE MADE UPON CONSIDERATION OF MARRIAGE.

FRAUD, STATUTE OF—Cont'd

Marriage Settlements—Cont'd

Considerations other than marriage,
14, 542

Contract wholly performed, 14, 543

Examples, 14, 543

Letters, 14, 542

Part performance, 14, 543

Pleading, 14, 543

Provisions in the English statute, 14,
542

Signatures, 14, 542

What sufficient writing, 14, 542

Master and Servant, 8, 686; 14, 763, 766

At common law, 14, 763

Contract for More than a Year, 8, 687;

14, 764

Contract as evidence of new contract,
14, 765

Contract to employ infant, 14, 765

Contract to run one year after date,
14, 765

Contract which may be completed
within a year, 14, 765

Labor to be begun as soon as con-
venient, 14, 764

Necessity of writing, 14, 764

Services for a year to commence at
a future date, 14, 764

To be terminated after eleven months
by three months notice, 14, 764

What contracts within the statute,
14, 764, 765

Where the whole work may be per-
formed within a year, 14, 765

Deeds, 14, 763

Memorandum, 14, 766

Necessity of writing, 14, 764

Presumption as to commencement of
contract, 14, 766

Telegram as memorandum, 14, 766

Term of service in memorandum, 14,
767

When no time is fixed for commence-
ment, 14, 766

Written and parol contracts generally,
14, 763

Memorandum, 8, 248, 710; 16, 785

Account stated, 8, 711

A vote of a corporation, 8, 711, 712;
17, 86

Bill of parcels, 8, 711

Bought and sold notes not agreeing in
their terms, 8, 714

Broker's entry unsigned, 8, 714

By telegram, 8, 717

Contents, 8, 721

Collateral agreements, 8, 722

Consideration, 8, 727

Forbearance, 8, 729

Guaranties, 8, 729

Necessity in England, 8, 727

Necessity in United States, 8, 727

Necessity of setting out expressly,
8, 727, 728

Recital of one dollar, 8, 729

"Value received," 8, 729

Essential Terms, 8, 722

Of the contract, 8, 721

Generally, 8, 721

Non-essential terms, 8, 721

Parol evidence as to technical terms,
8, 722

Parol evidence to show terms omitted,
8, 721

Parol evidence to show that mem-
orandum does not embody all
terms, 8, 721

Particularity necessary, 8, 722

Parties, 8, 723, 726

Identification of, 8, 723

Letter addressed to one party by
another, 8, 724

Name on outside of book, 8, 724

Necessity of showing parties to
contract, 8, 723

Parol evidence to show that one is
merely an agent, 8, 724

Parties signing, 8, 723

Showing which is vendee, 8, 723

Showing which is vendor, 8, 723

What reference to party is suffi-
cient, 8, 724

Whether reference must be by
name, 8, 723

Price

Necessity of stating price, 8, 726

Where it states that price has been
paid, 8, 726

Where no price is actually agreed
on, 8, 726

Showing circumstances at time of
making, 8, 722

Subject-Matter, 8, 724

Agreement for lease, 8, 725

Description unnecessary, 8, 725

Necessity of fixing subject-matter,
8, 724

Parol evidence to identify, 8, 726

Where subject-matter is land, 8,
725

Terms, 8, 726

Credit, 8, 727

Time and place of delivery, 8, 727

Time and place of performance, 8,
727

What are essential terms, 8, 726

Varying from contract, 8, 721

Deed, 8, 716

Director's resolutions entered upon
minutes, 8, 711, 712; 17, 86

Distinguished from writing which con-
stitutes the agreement itself, 8, 710

How connection between several
papers must be established, 8, 712

Its construction, 8, 711

Letter to agent, 8, 717

Letter to third party, 8, 717

Made by Agents, 8, 719

Agent must be authorized to sign,
8, 721

Attorney, 8, 721

Auctioneer agent for both parties, 8
720

- Auctioneer's clerk, 8, 720
- Auctioneer's nominal interest, 8, 719
- Brokers, 8, 720
- Broker's clerk, 8, 720
- Form of execution by agent, 8, 721
- Necessity that agent's authority be in writing, 8, 719
- One party as the agent of another, 8, 719
- Partners, agents of the firm, 8, 720
- Person not a public officer, 8, 720
- Ratification by parol, 8, 719
- Same person as agent for both parties, 8, 719, 720
- Sheriffs, administrators, commissioners, etc., 8, 720
- Signature by agent, 8, 718
- Master and servant, 14, 766
- Necessity of a formal document, 8, 710
- Necessity of seal, 8, 717
- Necessity that connection appear by external evidence, 8, 713
- Need not be a single piece of paper, 8, 711
- Of auctioneer, 1, 984
- Of sale, 15, 278
- Parol evidence to connect several papers, 8, 712
- Parol Evidence to Identify, 8, 713**
 - The papers, 8, 712
- Physical connection between several papers, 8, 712
- Printed, 8, 712
- Proof of any loss, 8, 711
- Receipt for money, 8, 711
- Several papers taken together, 8, 712
- Sheriff's return of execution, 8, 711
- Sheriff's Sales, 22, 616**
 - Effect of omission, 22, 616
 - Necessity of memorandum, 22, 616
 - Sufficiency, 22, 616
 - Whether indorsement of return is sufficient memorandum, 22, 616
- Signature, 8, 717**
 - Attached as that of a witness, 8, 718
 - By agent, see *infra*, MEMORANDUM MADE BY AGENTS.
 - By initial, 8, 717
 - By mark, 8, 717
 - In blank, 8, 718
 - Intent that name should constitute final signature, 8, 718
 - In third person, 8, 717
 - Memorandum by telegraph, 8, 717
 - Necessity of, 8, 717**
 - Both parties signing a memorandum of a sale of land, 8, 719
 - Other party signing a valid memorandum, 8, 718
 - Party to be charged, 8, 718
 - Place of, 8, 717
 - Printed, 8, 717
 - Stamped, 8, 717
 - Subscription, 8, 718
- Stamped, 8, 712
- The Delivery, 8, 715**
 - A deed which has been delivered, 8, 716
 - A deed which has not been delivered, 8, 716
 - Necessity of, 8, 715
- Time of Making, 8, 715**
 - Any time before action is brought, 8, 715
 - Auctioneer's memorandum, 8, 715
 - Showing by parol, 8, 715
 - What it must contain, 8, 710
 - Whether the notes or the broker's entry are the original memorandum, 8, 715
 - Why only one note is given in evidence, 8, 715
 - Writing not intended as a memorandum, 8, 716
 - Writing repudiating any obligation, 8, 716, 717
 - Written in pencil, 8, 712
 - Written offer or proposal of a contract, 8, 711
- Mercantile agencies, 15, 295
- Merchandise, 15, 302**
 - Baggage, 15, 303
 - Bank bills, 15, 302
 - Bills and notes, 15, 302
 - Cattle, 15, 303
 - Fruit, 15, 304
 - Gold coin, 15, 302
 - Horses, 15, 303
 - Insurance policy, 15, 303
 - Meat, 15, 304
 - Stocks, 15, 302
- Modified contract, 8, 663
- Necessity of signatures to deed, 5, 441
- Necessity that it states that an agreement has been actually made, 8, 711
- Non-existent person, 21, 16
- Novation**
 - Certified check, 16, 883
 - How affected by, in general, 16, 896
 - Incoming partner, 16, 912
 - Promise for benefit of third persons, 16, 895
- Nuncupative wills, 16, 1009, 1010
- Parol Evidence**
 - Memorandum**
 - Showing that memorandum does not embody all the terms, 8, 721
 - Showing that one is merely an agent, 8, 724
 - To show the meaning of technical terms, 8, 722
 - To show the subject-matter, 8, 725
 - Parol modifications of the contract within the statute, 17, 448
 - Partnership lands, 17, 962
 - To connect pages as a memorandum, 8, 712
- Parol gift of real estate, 8, 1338
- Partition, 8, 672; 17, 667**
 - Necessity of deed, 17, 667, 668
 - In England, 17, 667
 - In United States, 17, 668

FRAUD, STATUTE OF—*Cont'd*

Partition—*Cont'd*

Whether parol agreement accompanied by possession is sufficient, 17, 668

Partnership, 8, 689; 17, 898

Acknowledgment of a contract required to be in writing, 17, 1054

As between the parties, 17, 899

Assumption of debts by purchasing partner, 17, 1111

Contract not to be formed within a year, 17, 898

For purchase of real property, 17, 898

Guaranty signed by one partner, 17, 1054

Necessity of writing, 17, 898

Not to begin within a year, 17, 898

Partner promising to pay firm's debts, 8, 680

Presumption that articles contain all terms of partnership, 17, 899

Proof of Character of Firm's Real Property, 17, 962

Agreement to make lands partnership property, 17, 963

As between partners, 17, 962

Books of account, 17, 964

Parol evidence, 17, 962

Partnership formed for purpose of dealing in land, 17, 962

Recognition in writing, 17, 964

Resulting trusts, 17, 962

Ratification of unauthorized acts, 17, 1054

Real property, 17, 948

Real property held as an incident of business, 17, 899

To continue more than a year, 17, 898

Trade in lands, 17, 899

When contract of partnership is within the statute, 17, 898

Part Payment, 8, 736, 742

See infra, EARNEST.

Actual transfer question for jury, 8, 737

Promise, 8, 736

Promise to give credit, 8, 736

Tender, 8, 736

What constitutes, 8, 736

What time part payment should be made, 8, 737

Whether it amounts to part performance, 8, 742

Part Performance, *see infra*, EFFECT.

Acts merely preparatory to performance, 8, 741

Acts must be such that but for agreement they would not have been performed, 8, 741

Acts must be those of plaintiff, 8, 740

Agreement relating to land, 8, 740

Agreement relating to person, 8, 740

Agreement to leave property by will, 5, 317

Assumption of possession, 8, 742

Compensation for damages actually suffered, 8, 745

Consummation of marriage, 8, 685

Contracts not performable within a year, 8, 745

Definite agreement, 8, 740

Delivery and assumption of possession, 8, 743

Doctrine in England, 8, 739

Effect at law, 8, 739

Effect in equity, 8, 738

Exclusive possession, 8, 744

General rules, 8, 738

Guaranties, 8, 745

Making improvements, 8, 742, 745

Marriage, 8, 742

Mere continuance in possession, 8, 744

Notorious possession, 8, 744

Ordering papers to be drawn up, 8, 741

Origin of the doctrine, 23, 411

Part Payment, 8, 736, 742

Accompanied by entry into possession, 8, 742

Party already in possession, 8, 744

Payment of whole or part of purchase-money, 8, 742

Possession must be in lifetime of vendor, 8, 744

Possession must be pursuant to agreement, 8, 744

Possession must be with knowledge of vendor, 8, 744

Possession unaccompanied by other acts, 8, 743

Registration of the conveyance, 8, 745

Scope of the doctrine in the United States, 8, 740

Specific performance at suit of vendor or vendee, 8, 745

Statutes of several states, 8, 739

Tender of a deed, 8, 743

Unaccompanied by possession, 8, 743

When equity will decree specific performance, 8, 740

Where recognized as law, 8, 739

Where there is inadequate remedy in damages, 8, 740

Pews, 18, 416

Pleading, 8, 745

By Defendant, 8, 746

Bill of discovery, 8, 747

By plea, 8, 746

Claiming benefit though admitting the contract, 8, 748

Demurrer, 8, 746

Failure to set up as waiver of the benefit, 8, 747

How benefit of statute must be taken, 8, 746

Under the general issue, 8, 747

What amounts to a waiver, 8, 747

Where bill sets out facts to avoid statute, 8, 747

By Plaintiff, 8, 745

In England, 8, 745

In United States, 8, 745

- Presumption that statute has been complied with, 8, 745
 Where bill discloses an oral agreement, 8, 746
 Justice of the peace, 12, 452
Promise Made Upon Consideration of Marriage, 2, 522; 8, 684
See infra, MARRIAGE SETTLEMENTS.
 Agreement to reduce to writing after marriage, 8, 684
 Consummation of marriage as part performance, 8, 685
 Contract merely in contemplation of marriage, 8, 684
 Contract to marry, 2, 522; 8, 689
 In Louisiana, 8, 684
 In North Carolina, 8, 684
 In Pennsylvania, 8, 684
 In United States in general, 8, 684
 Marriage must be consideration, 8, 684
 Mutual promises of marriage, 8, 684
 Promise of marriage not to be performed within a year, 2, 522; 8, 687, 689
 What agreement implies, 8, 684
Promises to Answer for Debt of Another, 8, 673; 9, 71
Promise to answer for debt, default, miscarriage of another, see *infra*, STOCK.
 Agreement by purchaser of mortgaged property, 9, 74
 Antecedent debt, 9, 72
 Assignments of debts, 9, 74
 Boarding of laborers, 9, 73
 Contract of suretyship, 8, 674
Debt, Default, or Miscarriage, 8, 675
 Binding obligation, 8, 676
 Implied obligation, 8, 676
 Necessity of a clear obligation resting upon another person, 8, 675, 676; 9, 71
 Obligation already in existence, 8, 676
 Promise to answer for debt of a married woman, 8, 676
 Promise to answer for debt of a minor, 8, 676
 Prospective obligation, 8, 676
 What liability is comprehended by, 8, 675
 Discharge of principal, 9, 74
 Examples of cases not within the statute, 9, 73
 Examples of cases within the statute, 9, 72, 76
 Executors and administrators, 7, 338; 8, 673
 Forbearance, 8, 682; 9, 73, 75
 For becoming bail, 9, 72
 For money, etc., to be furnished, 9, 72
 For payment of note, 9, 72
 Garnishee's right to rely upon his promise to pay the debt of another, 8, 1165
 General principles, 9, 73
 Goods charged, 9, 73
 Goods furnished, 9, 72, 74
 Guarantor's payment of his debt by note of third person, 9, 75
Guaranty, 9, 71-75, 81; 23, 595
 For the tort of another, 9, 76
 Of dividends on stock, 9, 75; 23, 595
 Of solvency, 9, 75
 Husband's promise to settle suits against his wife's real estate, 9, 75
 In Alabama, 8, 674
 In Arizona, 8, 674
 In California, 8, 674
 In Colorado, 8, 674
 In Dakota, 8, 674
 In Delaware, 8, 674
 In Idaho, 8, 674
 In Louisiana, 8, 674
 In Maryland, 8, 674
 In Minnesota, 8, 674
 In Nevada, 8, 674
 In New Mexico, 8, 674
 In Pennsylvania, 8, 674
 In Utah, 8, 674
 In Wisconsin, 8, 674
 Indemnity contract, 8, 674
 Labor and material, 9, 72
 Miscellaneous cases, 9, 75
 Necessity of primary liability of another person, 9, 71; 8, 675, 676
 Necessity that promise be made to creditor, 9, 71
 Novation, 16, 896
 Object of the promise, 9, 71
 Promise after bankruptcy, 9, 75
 Promise for the benefit of another, 16, 895
 Promise to debtor, 8, 676
 Promise to pay one's own debt, 8, 677, 1164
 Promise to pay out of principal's property, 9, 74
 Promise to pay rent to landlord who is about to distrain, 9, 75
 Promise to physician, 9, 74
 Purchaser of real estate, 9, 73
 Reading of statute, 9, 71
 Rules to ascertain whether promise is within the statute, 9, 71
Special Promise, 8, 677
 Agreement that property pledged shall remain pledged, 8, 679
 Consideration, 8, 678
 Distinction between promise to pay debt of another, and an independent liability, 8, 678
 Existence of a new consideration apart from benefit to original debtor, 8, 681
 Factor selling on a *del credere* commission, 8, 680
 Forbearance to enforce a claim, 8, 682; 9, 73, 75
 Goods furnished to third person on credit of promisor, 8, 678
 In England, 8, 683
 In Massachusetts, 8, 683
 In New York, 8, 683

FRAUD, STATUTE OF—*Cont'd*

Promises to Answer for Debt of Another—*Cont'd*

Special Promise—*Cont'd*

- Intent of parties, 8, 683
- New consideration inuring directly to promisor, 8, 681
- New consideration where original liability remains, 8, 682
- Oral promise to accept bill of exchange, 8, 579
- Partner's promise to pay firm debt, 8, 680
- Person employing contract or promising to answer to employees, 8, 682
- Person interested in property under lien promising to pay debt, 8, 680, 681
- Promise to answer for one's own debts, 8, 677, 1164
- Promise to answer for one's own debt where another is also liable, 8, 677
- Promise to execute note as surety, 8, 679
- Promise to indemnify subsequent indorsee, 8, 678
- Promise to indorse note of another, 8, 679
- Promise to join others in making note to pay the debt of a third party, 8, 679
- Promise to pay in order to secure surrender and transfer of lien, 8, 681
- Promise to pay orders issued by one's creditors, 8, 678
- Promise to pay out of debtor's property, 8, 677
- Promise to put an end to obligation, 8, 677
- Question as to whom credit was given, 8, 679
- Relinquishment of lien, 8, 692
- Service furnished to third person on credit of promisor, 8, 678
- Stockholder's promise to pay debt of a corporation, 8, 680
- To save harmless from a trespass, 8, 678
- To save one from payment when making note to a third party, 8, 678
- To whom bill is sent, 8, 679
- To whom goods delivered, 8, 679
- Transfer of obligation in payment of one's debt, 8, 680
- What is a promise, 8, 678
- What promise is within statute, 8, 678; 9, 71
- Where credit is given to two jointly, 8, 679
- Where direct benefit inures to promisor, 8, 681
- Where former obligation is not extinguished, 8, 682

Who is charged upon seller's books, 8, 679

Statute of 29 Charles II., ch. 3, 8, 673

Stock, see *infra*, **STOCK**.

The promise, 8, 676

To whom the promise must be made, 8, 676

Transfer of debts, 9, 73

What promise is within the statute, 8, 678; 9, 71

Widow's guaranty of husband's debt, 9, 73

Work and labor, 9, 74

Work to be done, 9, 72

Writing required to charge third person, 8, 823

Proprietors of common and undivided lands held by title from certain states, 8, 673

Real property, see *infra*, **CONTRACTS FOR SALE OF INTEREST IN LAND; CREATION OF ESTATES IN LAND; LEASES**.

Recording acts, 8, 673

Recovery of money paid on oral agreement, 8, 661

Re-insurance, 11, 344

Representations as to Character and Credit, 8, 824; 21, 4, 8

Acted fraud, 21, 15

Agents, 21, 7

False representations relating to character and credit, 21, 5

Form of action, 21, 5

Lord Tenterden's act, 21, 6

Mere false statement as to another person's solvency, 8, 824

Nature of representations, 21, 7

Necessity of writing, 21, 5

Origin, 21, 5

Particular property, 21, 8

Partnership, 21, 7

Provisions of statute to answer for debt, default, or miscarriage of another, 21, 6

Representations Must Relate to Another, 21, 7

As to solvency and dealings of a corporation, 21, 8

In general, 21, 7

Intent question for jury, 21, 8

Misrepresentations as to credit or solvency of the maker of a note, 21, 8

Representation as to one's own credit, 21, 8

Representation by officer of corporation, 21, 8

Representation by partner, 21, 8

Representations Partly Oral, 21, 14

Examples, 21, 14, 15

In general, 21, 14

Whether misrepresentations may be given in evidence, 21, 15

Whether there can be recovery, 21, 14

Representations part of contract, 21, 15

- Scope and purpose of statute, 21, 5
- Signature, 21, 7
- The statute, 21, 5
- Ultimate Purpose Immaterial**, 21, 9
 - Examples, 21, 9-12
 - Purpose to obtain advantage for defendant, 21, 9
 - Purpose to obtain credit for third person, 21, 9
 - Where party afterwards obtains goods from the buyer, 8, 824
 - Writing required, 8, 825
- Resulting Trust**, 10, 25
 - Direct rule, 10, 25
 - In Alabama, 10, 25
 - In Arkansas, 10, 25
 - In Colorado, 10, 25
 - In England, 10, 25
 - In Florida, 10, 25
 - In Georgia, 10, 25
 - In Idaho, 10, 25
 - In Illinois, 10, 25
 - In Indiana, 10, 25
 - In Iowa, 10, 25
 - In Kansas, 10, 25
 - In Maine, 10, 25
 - In Massachusetts, 10, 25
 - In Michigan, 10, 25
 - In Minnesota, 10, 25
 - In Mississippi, 10, 25
 - In Missouri, 10, 25
 - In Nebraska, 10, 25
 - In New Hampshire, 10, 25
 - In New Jersey, 10, 25
 - In New York, 10, 26
 - In Pennsylvania, 10, 26
 - In South Carolina, 10, 26
 - In Utah, 10, 26
 - In Vermont, 10, 26
 - In Wisconsin, 10, 26
 - Statute exemption, 10, 25
 - Statute, existence merely declaratory, 10, 26
- Rewards, 21, 392
- Sale of Land**, 8, 694, 695; 28, 99
 - Sale by beneficiary, 28, 99
 - To whom act applies, 28, 99
- Sales**, 21, 537
 - Postponement of delivery, 21, 537
- Set-off, 22, 269
- Sheriff's Sales**
 - Memorandum**, 22, 616
 - Effect of omission, 22, 616
 - Examples, 22, 616, 617
 - Necessity of memorandum, 22, 616
 - Sufficiency, 22, 616
 - Whether indorsement of return is sufficient, 22, 616
 - Promise to purchase for owner, 22, 636
- Specific performance*, see **SPECIFIC PERFORMANCE**.
- Statute 29 Charles II., ch. 3, 8, 657
- Stock**, 23, 593, 673
 - See *infra*, **SUBSCRIPTIONS**.
 - Agreement not to be performed within a year, 23, 596
 - Agreement of owner to purchaser, 23, 673
 - Company not yet formed, 23, 673
 - Fourth section, 23, 595
 - Oral contract for sale of shares, 23, 673
 - Part payment, 23, 673
 - Pleadings, 23, 596
 - Promise to Answer for Debt, etc., of Another**, 23, 595
 - Agreement to find purchasers for shares, 23, 595
 - Assurance of dividends, 23, 595
 - Guaranty of par value, 23, 595
 - In general, 23, 595
 - Sale of Goods, Wares, and Merchandise**, 23, 593
 - Agreement to purchaser, 23, 595
 - American doctrine, 23, 593
 - Consideration for collateral agreement, 23, 595
 - Contract for purchase of stock, 23, 594
 - English doctrine, 23, 595
 - Examples, 23, 593-595
 - In general, 23, 593
 - Parol promise to subscribe, 23, 594
 - Part payment, 23, 594
 - Part performance, 23, 594
 - Stockbroker as agent for both parties, 23, 594
 - Whether shares of stock within the section, 23, 593
 - Sale of land, 23, 596
 - Seventeenth section, 23, 593
 - Subject-matter to which the rule applies, 8, 664
 - Subscription, 8, 718
 - Subscription to Stock**, 23, 594, 789
 - Contract to be performed within a year, 23, 789
 - Whether contract must be in writing, 23, 790
 - Sunday, 24, 570
 - Telegraphs and telephones, 25, 886
 - Tenancy from year to year, 12, 678
 - Transfer by act of law, 8, 672
 - Transfer by act of law*, see *infra*, **LEASES**.
 - Trust Deeds and Power of Sale Mortgages**, 26, 934
 - In general, 26, 934
 - Memorandum as evidence, 26, 934
 - Purchaser's right to memorandum, 26, 934
 - Whether purchaser can take advantage of failure to comply with statute, 26, 934
 - Trusts and Trustees**, 27, 46
 - Construction of statute, 27, 46
 - Constructive trusts, 27, 50
 - Creation of trust, 27, 46
 - Examples, 27, 46-53
 - Failure to plead statute, 27, 50
 - Fraud, admitting parol evidence, 27, 52
 - In general, 27, 46

FRAUD, STATUTE OF—Cont'd**Trusts and Trustees—Cont'd**

- Letters, 27, 50
- Memorandum, 27, 50
- Necessity of creation in writing, 27, 46, 47
- Necessity of proof in writing, 27, 46, 47
- Necessity of writing, 27, 46
- Object and nature of trust, 27, 51
- Parol agreement to reconvey land, 27, 48
- Parol evidence, 27, 47
- Parol evidence to contradict written instrument, 27, 52
- Personal property, 27, 54
- Proof, 27, 46, 47
- Provisions of the statute, 27, 46
- Receipts, 27, 50
- Seventh section of the statute, 27, 46
- Statute not permitted to effectuate fraud, 27, 49
- Trust in lands, 27, 46
- Unsatisfactory parol evidence, 27, 49
- Whether all papers must be signed, 27, 51
- Writings executed by trustee, 27, 50

Waiver, 28, 541

- Contracts for sale of land, 28, 541
- Dispensation of performance, 28, 541
- Examples, 28, 541-543
- In general, 28, 541
- In Massachusetts, 28, 542
- Of benefit of statute, 8, 747
- Part performance, 28, 543
- Total discharge or rescission, 28, 543
- To what rule applied, 28, 542
- Where new agreement would not be within the statute, 28, 542
- Whether new agreement must be in writing, 28, 541

Warranty

- Parol evidence, 28, 801
- What is sufficient writing, 7, 339
- What memorandum of auction sale must contain, 1, 1001
- Where everything has been performed on one side, 8, 662
- Widow's dower, 8, 672

FRAUDULENT CONVEYANCES, 5, 180; 8, 748**See FRAUDULENT SALES; MARRIAGE SETTLEMENTS.**

Assignments for the benefit of creditors conflicting with statute, see ASSIGNMENTS FOR THE BENEFIT OF CREDITORS.

Contracts in evasion of marriage rights, see MARRIAGE.

Absolute conveyance by way of security, 8, 761

Alienation by heir or devisee of land subject to debts of his ancestor, 5, 264

At common law, 5, 180

Badges of Fraud

See FRAUD; FRAUDULENT CONVEYANCES.

Between husband and wife and other members of the family, see infra, BETWEEN HUSBAND AND WIFE AND OTHER MEMBERS OF THE FAMILY.

Definition, 8, 770, 781

Examples, 8, 783

False statements, 8, 783

General gifts without exception of donor's apparel, 8, 770

Inadequacy of consideration, 8, 759, 770, 782; 10, 331

Inferences from, 8, 781

Recital that the gift was bona fide, 8, 770

Retention of Possession, see FRAUDULENT SALES.

See infra, RETENTION OF POSSESSION.

Sale upon credit, 8, 784

Secrecy, 8, 783

Submitted to jury, 8, 781

Twyne's case, 8, 770

Unusual transactions by debtor, 8, 783

Whether they constitute fraud, 8, 770, 781

Between Husband and Wife and Other Members of Family, 5, 437; 8, 764, 784

See infra, PARENT AND CHILD.

Agreement to support one's parents, 8, 767; 17, 333

Close attention by court, 8, 784

Conveyance of entire estate, 8, 784

Gifts, 8, 765

Necessity that benefits clearly appear, 8, 765

Obligation to perform services, 8, 766

Sales of property by father to son, 8, 767

Transaction between members of family, 8, 765

Valid Conveyances, 8, 767

To wife, 5, 437; 8, 764; 9, 804

Wife as creditor of husband, 8, 764

Bona Fide Purchasers, 5, 182; 8, 756, 758, 782

Mortgagee as bona fide purchaser, 8, 756

Payment of purchase-money before notice of fraud, 8, 756

Rights as against creditors, 8, 756

Valuable consideration, 8, 756

Without notice, 8, 756

Burden of Proof, 2, 650; 8, 752, 777

Existing creditors, 8, 752

Subsequent creditors, 8, 752

Circumstances which should put purchaser on his inquiry, 5, 181

Consideration, 5, 182, 437

Adequate consideration, 8, 782

Agreement to support one's parents, 8, 767.

Bona fide purchaser, 8, 756

Conveyance without consideration, 8, 759

Good faith of grantee, 8, 759

Good faith of grantor, 8, 759

Illegal consideration, 8, 760

- Inadequate consideration, 8, 759, 770, 782; 10, 331
- Marriage as consideration, 8, 760
- Moral application founded upon an antecedent legal obligation, 5, 182
- Moral obligation, 8, 782
- Obligation to perform services for a member of the family, 8, 766
- Services, 8, 760
- Subsequent creditors, 5, 435
- Valuable and adequate consideration, 8, 759
- Voluntary Conveyances**, 8, 760
 - To wife or child, 5, 437; 8, 764
- Conveyances of household property, 5, 183
- Definition, 8, 748
- Divorce, 5, 771
- Effect of Fraudulent Conveyances as Between Parties**, 8, 771
 - As to debtor or grantor, 8, 771
 - General rule, 8, 771
 - Moral obligation on part of grantee, 8, 771
 - Refusal of courts to interfere, 8, 771
 - Where parties are not in pari delicto, 8, 771
- Equitable Jurisdiction**, 5, 180
 - Following money invested in improvements, 5, 181
 - Where property cannot be reached by execution, 5, 181
- Equitable mortgages, 6, 676
- Essentials, 8, 749
- Evidence**, 8, 777
 - See FRAUD.
 - Examples, 8, 777
- Examples**, 8, 749, 762, 777
 - Of conveyances which have been held not fraudulent, 8, 763
- Executions, 7, 128, 129
- Executors and Administrators**, 7, 244
 - Action by personal representative to set aside, 7, 245
 - Fraudulent marriage settlements, 7, 245
 - Inventory of land fraudulently assigned, 7, 245
 - Knowledge that conveyance was fraudulent, 7, 245
 - Property recovered as assets, 7, 244
 - Void transfer, 7, 245
 - Whether decedent must have been insolvent at time of transfer, 7, 2
- Foreign attachment, 8, 316
- Form and nature of conveyance, 8, 761
- Gifts, 8, 765, 1341
- "Good consideration," 8, 1357
- Husband and Wife**, 5, 437; 8, 764, 784
 - Possession**, 9, 804
 - General rule, 9, 804
 - How far rule applies to husband and wife, 9, 805
 - Husband as wife's agent, 9, 805
 - Schedule of separate property, 9, 805
 - Wife standing by while husband claims title, 9, 805
- Impeachment after death of creditor, 5, 183
- Inadequate Consideration**, 8, 760, 770, 782
 - Badge of fraud, 8, 759, 777, 782; 10, 331
 - Conveyance allowed to stand as security, 10, 332
 - Notice of purchase of fraudulent character, 10, 331
 - Purchaser had no notice of fraud, 10, 332
- in bankrupt act, 2, 83
- Injunction, 10, 807
- Instructions, examples of, 11, 267-274
- Intent of Debtor**, 8, 753
 - Conveyance fraudulent notwithstanding good intention, 8, 753
 - Definition of intent, 8, 753
 - Hindering or delaying creditors, 8, 781
 - How intention is shown, 8, 781
 - Intent alone, 8, 781
 - Intent to defraud may be expressed or implied, 5, 181
 - Intent to hinder and delay creditors, 5, 181; 8, 753
 - Presumption as to intent, 8, 753
 - Question of fact, 8, 781
 - Voluntary conveyances, 8, 781
 - Where part of a scheme to defraud creditors, 8, 781
 - Whether intent alone renders conveyance fraudulent, 8, 753
- Judgment lien, 12, 108
- Laches in Proceedings to Set Aside**, 12, 598
- Debtor remaining in possession, 12, 599
- General rule, 12, 598
- Institute proceedings within reasonable time, 12, 598
- No person claimed adversely to debtor, 12, 599
- Statute of limitation, 12, 599
- Liability of fraudulent grantees for the proceeds of sale, 8, 758
- Limited Partnership**, 13, 829
 - Assignments of separate property by special partner, 13, 830
 - Collusion, 13, 829
 - Confession of judgment, 13, 829
 - General rule, 13, 829
 - Inability to pay, 13, 830
 - Liability of special partner, 13, 831
 - Meaning of insolvency, 13, 830
 - Preference to creditor, 13, 829
 - Preference to partner, 13, 829
 - Transfers after dissolution of firm, 13, 831
 - Validity, 13, 829
 - Validity as between assignor and assignee, 13, 830
 - Validity as to creditors, 13, 830
 - Who may take advantage of invalidity, 13, 830
- Mistake, 15, 678
- Mortgages**, 15, 773
 - Articles Consumable in the Use**, 15, 775
 - Examples, 15, 775, 776
 - Not necessarily consumable, 15, 776

FRAUDULENT CONVEYANCES—*Cont'd*

Mortgages—*Cont'd*

Articles Consumable in the Use—*Cont'd*

Provision that mortgagor shall retain possession, 15, 775

Where mortgagor does not use the articles, 15, 775

Benefits reserved to mortgagors, 15, 775

Burden of proof, 15, 774

Election of the creditors, 15, 777

Examples, 15, 773-775

Fraudulent intent, 15, 774

Fraudulent preferences, 15, 777

Mortgagee's knowledge, 15, 774

Mortgagee's participation, 15, 774

Setting aside, 15, 774

Validity of mortgages in fraud of creditors, 15, 775

When not void, 15, 776

Where creditors do not intervene, 15, 777

Notice, 5, 181

Parent and Child, 17, 332

See infra, BETWEEN HUSBAND AND WIFE AND OTHER MEMBERS OF FAMILY.

Constructive delivery, 17, 333

Examples, 17, 332-336

Gift from child to parent, 17, 334

Gift from parent to child, 17, 332

Gifts just after majority, 17, 334

Peace of the family, 17, 335

Transfer for support, 8, 767; 17, 333

Transfers of land, 17, 333

Undue influence, 17, 334

Validity, 17, 332

Parties

Remedies, see *infra*, REMEDIES.

Suits to set aside, see *infra*, SUITS TO SET ASIDE.

Preferences, 5, 184; 8, 768

Assignment for the benefit of creditors, see ASSIGNMENT FOR THE BENEFIT OF CREDITORS.

Adequacy of consideration, 5, 185

At common law, 8, 784

Character of person to whom given, 5, 184

Creditor's knowledge of debtor's insolvency, 5, 184

Debtor's insolvency, 5, 184

Debtor's intention to defeat execution, 5, 185

Debtor's right to make, 8, 768

Examples, 8, 768

General right of debtor to prefer creditors, 5, 184

Hindering and delaying other creditors, 5, 185

Loss of entire debts to other debtors, 5, 184

Manner of transfer, 5, 184

Necessity of new consideration, 5, 184

Person preferred must be bona fide creditor, 8, 769

Preferences tainted with fraud, 8, 769

Relations, 5, 184

Secret motives of debtor, 5, 184

Secret trusts, 5, 185

Statutes, 8, 769

Transfer of property to one creditor to the exclusion of all others, 8, 768

Presumption as to voluntary conveyance, 8, 752

Property not subject to execution, 5, 183

Purchaser's knowledge of debtor's insolvency, 5, 181; 8, 757

Purchasers with Notice, 5, 181; 8, 757

Actual Notice, 8, 757

By implication, 8, 757

Question for jury, 8, 757.

Constructive notice, 8, 757

Fraudulent grantee's liability, 8, 758

From a bona fide purchaser, 8, 758

Of fraud, 8, 758

"Received," 19, 1131

Receivers

Grounds for appointment, 20, 311

In proceedings to avoid, 20, 323

Reformation of instruments, 15, 678

Remedies, 8, 771

See infra, SUIT TO SET ASIDE. *See* CREDITOR'S BILL; SUPPLEMENTARY PROCEEDINGS.

Action on the case, 8, 779

Exclusive jurisdiction of equity, 8, 772

Jurisdiction at law, 8, 772

Kinds and jurisdiction, 8, 771

Parties, 8, 774

Administrators and executors, 8, 774

Assignees in bankruptcy, 8, 774

Assignee under assignment for the benefit of creditors, 8, 774

Attaching creditors, 8, 774

Creditors, 8, 774

Creditor's duty to exhaust remedy at law, 8, 775

Creditors who have not obtained judgment, 8, 774

Joinder of judgment creditors, 8, 775

Plaintiff, 8, 774

Return of execution unsatisfied, 8, 775

Suit by one creditor in behalf of all, 8, 775

Relief by injunction, 8, 779

Right to have the conveyance set aside, 8, 772, 774

Right to treat the transfer as a nullity and proceed at law, 8, 772

Suit to set aside, 8, 774

Res judicata, 21, 249

Retention of Possession, 8, 754, 770

See CHATTEL MORTGAGES; FRAUDULENT SALES.

Statutory regulations, 8, 755

Secret trusts, see TRUSTS.

Secret trusts for debtor, 5, 182

Sheriff's sales, 22, 645

Specific performance, 22, 1026

- Statute declaratory at common law, 8, 748
 Statute of 29 Eliz., 8, 748
 Subject-matter, 8, 775
Subrogation
 Voluntary conveyance by principal, 24, 203
 Subsequent creditors, 5, 183, 438
 Suits, 5, 180
Suits to Set Aside, 8, 774
 Parties Defendant, 8, 775
 Fraudulent grantee, 8, 776
 Judgment debtors, 8, 775
 Parties in general, 8, 776
 Parties to intermediate conveyances, 8, 776
Pleading, 8, 776
 Averment of answer in property subject to execution, 8, 777
 Denial of fraud, 8, 777
 Examples, 8, 776, 777
 Particularity required, 8, 776
 Setting out facts which constitute fraud, 8, 776
 Showing lack of legal remedy, 8, 776
 Showing status as judgment creditor, 8, 776
 Showing that claim existed at time of fraudulent alienation, 8, 776
 The answer, 8, 777
Suretyship, 8, 751
 Bill in equity by surety to set aside, 24, 789
The Creditor, 8, 750
 Cause of action for tort, 8, 750
 Liability for another as surety, 8, 751
Subsequent Creditor, 8, 751
 Burden of proof, 8, 752
 Conveyance in contemplation of future indebtedness, 8, 752
 Fraud as to creditor's existing title, 8, 752
 Fraud as to subsequent creditor, 8, 751
 Knowledge of conveyance, 8, 752
 Right where conveyance is avoided by existing creditors, 8, 753
 What constitutes personal credit within the statute, 8, 750, 751
The Subject-Matter
 Choses in action, 8, 759
 General rule, 8, 759
 Homestead, 8, 758
 Intangible rights, 8, 759
 Person having legal right to damages, 8, 750
 Property exempt from execution, 8, 758
 Property in which the debtor had no beneficial interest, 8, 759
 Property without value, 8, 759
 Something from which grantor could have realized, 8, 758
 Voluntary alienation not itself sufficient to evidence fraud, 5, 183
 Voluntary conveyances, 8, 759, 760, 782
 What constitutes, 8, 749
 Where conveyance is for a valuable consideration but intent to defraud exists, 5, 181
 Where debtor has ample means left to pay his debts, 5, 182
 Where donor is insolvent or largely indebted, 5, 182
FRAUDULENT DEBTOR, 8, 780
 See CREDITOR'S BILLS; DECEIT; FRAUD; FRAUDULENT CONVEYANCES; FRAUDULENT SALES; IMPRISONMENT FOR DEBT; POOR DEBTOR; SUPPLEMENTARY PROCEEDINGS.
 Badges of fraud, *see* FRAUDULENT CONVEYANCES; FRAUDULENT SALES.
 Punishment of fraudulent debtor, *see* IMPRISONMENT FOR DEBT.
 Absconding debtor, 8, 785
 Fraudulent debt, 5, 165
 Fraudulently contracting debts, 8, 780
FRAUDULENT REPRESENTATIONS
 Statute of Frauds, 21, 12
 Examples, 21, 12-14
 In general, 21, 12
 Whether actual fraud removes case from operation of statute, 21, 12
FRAUDULENT SALES, 8, 786
 See ASSIGNMENT FOR BENEFIT OF CREDITORS; FRAUDULENT CONVEYANCES.
 Bills of sale acts, *see* BILLS OF SALE.
 By executors or administrators, *see* EXECUTORS AND ADMINISTRATORS.
 Stifling competition at auction sales, *see* AUCTIONS AND AUCTIONEERS.
Action for Damages
 Where buyer has affirmed sale, 8, 819
 Actual and continued change of possession, 1, 184*h*
Affirmance of Sale, 8, 819
 Right to recover damages, 8, 819
Badges of Fraud
 Fictitious consideration, 8, 770
 Inadequacy of consideration, 8, 770
 In general, 8, 770
 Insolvency, 8, 770
 Instances, 8, 770
 Made pending writ, 8, 770
 Secret conveyance, 8, 770
 Trust between parties, 8, 770
Bona Fide Purchasers
 As to rights of bona fide purchasers, *see* SALES.
 Criminal nature of original transaction, 8, 822
 Intention to defeat execution of creditor, 8, 853
 Intent to defraud creditors, 8, 856
Protection of, 8, 833
 Application of doctrine, 8, 840
 Cases recognized in doctrine in this country, 8, 833
Doctrine of Estoppel and Superior Equity, 8, 837
 Apparent ownership of original buyer, 8, 837

FRAUDULENT SALES—*Cont'd***Bona Fide Purchasers—*Cont'd*****Protection of—*Cont'd*****Doctrine of Estoppel and Superior Equity—*Cont'd***

Exceptions to rule as to taking only title transferred, 8, 838

Good faith of purchaser, 8, 838

Incorporation of idea of voidable or defeasible title, 8, 839

In New York, 8, 837

Nature of estoppel raised, 8, 838

One of two innocent persons, 8, 838

Placing vendee in position to deceive, 8, 837, 838

Statement of doctrine, 8, 837

Superior equity of honest purchaser, 8, 838

Doctrine of Voidable or Defeasible

Title, 8, 836, 839

Grounds of doctrine, 8, 836

Incorporated with doctrine of equitable estoppel, 8, 838

In England, 8, 837

In this country, 8, 836

Modern English doctrine, 8, 839

Seller's option to affirm or disaffirm, 8, 837

Transfer to innocent party, 8, 837

Doctrine on subject, 8, 833

Exception to ordinary rules, 8, 835

Fraud on Creditors, 8, 860

Effect of notice before payment of entire consideration, 8, 861

Need of valuable consideration, 8, 860

Seller's retention of possession, 8, 867

Goods in hands of bona fide purchaser, 8, 839

Grounds of exemption, 8, 834

Ground that fraudulent purchaser had voidable or defeasible title, 8, 834

Modern English doctrine, 8, 839

Property formerly regarded as not passing, 8, 839

Statement of rules, 8, 839

Who Are, 8, 840

Additional consideration besides previous indebtedness, 8, 843

Advances by consignees, 8, 842

Advances on property, 8, 842

Agents, 8, 840

Amount paid before notice, 8, 842

Assignee for benefit of creditors, 8, 843

Assignee in bankruptcy, 8, 843

Attaching creditor, 8, 843

Bailees, 8, 841

Bargaining with buyer personally, 8, 845

Brokers, 8, 840

Burden of proof, 8, 841

Carriers, 8, 840

Circumstances to put one upon inquiry, 8, 841

Consideration of transfer, 8, 842

Creditor purchasing at execution sale, 8, 843

Custodian treated as purchaser, 8, 840

Exceptions to bill of exchange, 8, 842

Factors, 8, 840

False Personation

Application of doctrines, 8, 845

Bargain with buyer personally, 8, 845

Inducing sale rather than delivery, 8, 844

Rights of bona fide purchaser, 8, 845

Vendor having obtained goods by false pretenses, 8, 846

False pretenses, 8, 846

Fraud or collusion, 8, 841

Fraudulent inception of bailment, 8, 844

Fraudulent possession, 8, 843

Good faith and notice, 8, 841

Incurring liability, 8, 842

Master of vessel, 8, 840

Meaning of term purchasers, 8, 840

Mistaken identity, 8, 844

Necessity of absolute purchase, 8, 842

Necessity of consideration, 8, 842

Notice of fraud, 8, 841

Payment of preëxisting debt as consideration, 8, 842

Person acquiring a limited or qualified interest, 8, 840

Pledges, 8, 840

Purchaser with notice, 8, 841

Vendor, bailee, or trustee, 8, 844

Vendor having stolen goods, 8, 844

Vendor obtaining goods by false personation, 8, 844

Vendor's original possession obtained by fraud, 8, 843, 844

Breach of warranty, 8, 800

Burden of Proof

Action for replevin by vendor, 8, 848

Bona fide holder, 8, 841

Bona fide purchaser, 8, 849

Buyer's Fraud, 8, 822

Chilling bids at judicial sales, see JUDICIAL SALES.

Misrepresentations of credit, see FRAUD, STATUTE OF.

Remedies, see RESCISSION.

Stifling competition, see AUCTIONS AND AUCTIONEERS.

Buyer's fraudulent devices, 8, 822

Checks which will be dishonored, 8, 822

Counterfeiting money, 8, 822

Criminal fraud, 8, 822

Depressing Price, 8, 830

Caveat emptor, 8, 830

Concealment of facts enhancing price, 8, 830

Deceitful conduct, 8, 830

Effect of concealment, 8, 830

- Examples, 8, 830
- Illustrations, 8, 831
- Misleading words, 8, 830
- Valuable mine on land, 8, 830
- Where special trust is reposed in buyer, 8, 830
- Design Not to Pay for Goods, 8, 825**
 - Conflicting opinions, 8, 827
 - Direct evidence of design, 8, 828
 - Dishonest intention as to prerequisite, 8, 829
 - False rating in mercantile agency, 8, 828
 - Fraud authorizing avoidance of sales, 8, 825
 - Fraudulent conduct as showing intent, 8, 826
 - General doctrine, 8, 825
 - In absence of fraudulent representation, 8, 825
 - Intent not to pay, 8, 826
 - Intent not to pay at time agreed upon, 8, 826
 - Mere concealment of insolvency, 8, 826
 - Necessity of deceptive artifice, 8, 827
 - Possession recoverable against assignee for creditors, 8, 829
 - Proof of design, 8, 826, 828
 - Secreting property bought, 8, 826
 - Subsequent insolvency, 8, 826
- Inducing Sale to Insolvent, 8, 824**
 - Liability of buyer for, 8, 824
 - Merely false statement as to another's solvency, 8, 824
- Instances, 8, 822
- Misrepresentations of Credit, 8, 822**
 - See FRAUDS, STATUTE OF.
 - Communication of representations, 8, 823
 - Effect of, 8, 822
 - Expressions of opinion, 8, 824
 - Inducing sale, 8, 824
 - Materiality, 8, 823
 - Recaption, 8, 823
 - Recommendation of third party, 8, 823
 - Requisites of misrepresentations, 8, 823
 - Writing required to charge third person, 8, 823
- Misrepresentations of pecuniary standing, 8, 822**
 - Obtaining goods under false pretenses, 8, 822
 - Payment in fictitious bills, 8, 822
 - Payment in stolen property, 8, 822
- Ratification or Affirmation, 8, 850**
 - Suit for price, 8, 850
 - Where credit has been given, 8, 850
 - Whether suit for price amounts to affirmation, 8, 850
- Remedies**
 - Where Design Not to Pay, 8, 829**
 - Disaffirmance and reclamation, 8, 829
- Possession recoverable against assignee for creditors, 8, 829
- Suit for price, 8, 850
- Varieties, 8, 822
- What fraud renders sale voidable, 8, 822
- Caveat Emptor, 8, 795**
 - Concealment by buyer of facts enhancing price, 8, 830
 - Effect of expression of opinion, 8, 795
 - Established doctrine, 8, 808
 - False representation as to cost of property, 8, 795
 - Goods fraudulently billed, 8, 795
 - Recognized principles, 8, 796
 - Sellers need not point out defects, 8, 808
- When Buyer Not Protected, 8, 808**
 - Demand for a warrant, 8, 808
 - Duty of purchasing party, 8, 808
 - Inspection by buyer, 8, 809
 - When a buyer takes a thing with all its faults, 8, 809
 - Where a buyer relies on his own judgment, 8, 809
 - When inapplicable, 8, 811
 - Where no artifices to hide defects are used, 8, 808
- Change of Possession**
 - See *infra*, RETENTION OF POSSESSION.
- Acts Indicating Change of Possession or Want of It, 8, 894**
 - Families of parties staying in same house, 8, 895
 - Furnishing bill of parcels, 8, 895
 - Inventory, 8, 894
 - Purchaser assuming charge of stores, 8, 894
 - Retaining sign, 8, 895
 - Selecting, packing, and charging goods, 8, 896
 - Stenciling buyer's name on sides of cars, 8, 895
- Actual and Continued Change of Possession Required, 8, 885**
 - Change of location of property, 8, 887
 - Connecticut doctrine, 8, 892
 - Delivery Required, 8, 884, 890**
 - Change of location of property, 8, 887
 - Examples, 8, 888
 - Formal delivery, 8, 888
 - Generally, 8, 887
 - In California, 8, 887
 - In Minnesota, 8, 886
 - In Nebraska, 8, 886
 - In New York, 8, 885
 - In Wisconsin, 8, 886
 - Made in good faith in New York, 8, 886
- Actual, visible, and continued change of possession, 8, 892**
 - Cattle left in same custody, 8, 893
 - Character of property, 8, 892
 - Concurrent possession, 8, 893

FRAUDULENT SALES—Cont'd**Change of Possession—Cont'd**

Connecticut rule as to possession before attachment, 8, 894

Continuance of possession, 8, 896

Delay in Change of Possession, 8, 897

Delivery next day, 8, 897

No business hours covered by delay, 8, 897

Over Sunday, 8, 897

Delivery Required, 8, 884, 887, 890

Actual delivery, 8, 895

Animals, 8, 891

Cattle, 8, 891

Character of the property sold, 8, 890

Chattels in possession of a third person, 8, 884

Collecting animals and turning them out to pasture on accustomed range, 8, 891

Distinction between ponderous and light articles, 8, 890

Goods in third person's custody, 8, 891

Impossibility not exacted, 8, 890

In Delaware, 8, 884

In Massachusetts, 8, 884

In Missouri, 8, 884

In Nevada, 8, 884

Manual possession, 8, 884, 890

Nature of required acts of possession, control, and ownership, 8, 890

Notice to custodian, 8, 884

Presentation of delivery order and pointing out of cattle, 8, 891

Seller retaining possession as warehouseman or bailee, 8, 885

Sheep selected, marked, and left in third person's hands, 8, 891

Variation with circumstances, 8, 890

What constitutes delivery, 8, 890

What evidence of actual delivery sufficient, 8, 885

Determination of character of possession, 8, 892

Effect of Want of Change of Possession, 8, 889

Dependent upon statutes, 8, 889

In Colorado, 8, 889

In Pennsylvania, 8, 889

Employment of Vendor, 8, 896

Change of possession sufficiently appearing, 8, 897

Doctrine concerning, 8, 897

Employment in subordinate capacity, 8, 896

Employment of vendor's brother, 8, 897

Vendor acting as vendee's agent, 8, 896

Goods delivered into bailee's custody, 8, 893

Goods incapable of manual delivery, 8, 893

In Arkansas, 8, 895

In California, 8, 892

In Massachusetts, 8, 889

In Pennsylvania, 8, 893

In South Carolina, 8, 889

Manual change of possession, 8, 892

Open, Notorious, and Unequivocal Possession, 8, 892

Colorado doctrine, 8, 892

Pennsylvania rule as to concurrent possession, 8, 893

Possession before attachment, 8, 894

Public, continuous, and substantial possession, 8, 892

Questions of Law and Fact, 8, 876

Doctrine in England, 8, 876

Doctrine in federal courts, 8, 876

Doctrine in United States, 8, 877

Voluntary transfer, 8, 877

Substantial and Visible Change Required, 8, 885

Province of court and jury, 8, 885

Vermont doctrine, 8, 885

Sufficient assumption of control, 8, 893

Vendor's control not precluded, 8, 896

Vermont rule as to concurrent possession, 8, 894

Change of title, 8, 792**Concealment, 8, 802, 812**

See infra, MATTERS OPEN TO OBSERVATION; SILENCE.

Acts intended to deceive, 8, 802

Devices calculated to deceive, 8, 802, 803

Distinguished from silence, 8, 803

Fiduciary Relationship, 8, 804

Agents, 8, 804

Dealings by other parties as agents, 8, 804

Effect of failure to disclose, 8, 804

Examples, 8, 804

Guardians, 8, 804

Promoter of companies, 8, 804

Nature of, 8, 803

Necessity of positive representation, 8, 802

Of facts enhancing price, 8, 830

Of insolvency, 8, 826, 827

Of material fact, 8, 802

Silence when party ought to speak, 8, 802

Conditional Sales

Sale to bona fide purchaser by conditional vendee, 3, 436

Where the conditional sale is called a lease and lessee sells to a bona fide purchaser, 3, 437

Contract founded in fraud, 8, 856

Dealer's talk, 8, 810

Election

Between contract and tort, 6, 247; 8, 819; 26, 795

Entry of vendor to retake goods fraudulently purchased, 19, 1106

Estoppel

Actual, 7, 19

Where owner allows alleged vendee to exercise acts of ownership, 7, 18

- Expression of Opinion**, 8, 810
See infra, OPINIONS; RELIANCE UPON REPRESENTATION.
 Buyer's fraud, 8, 824
 Dealer's talk, 8, 810
 Representation as to credit, 8, 811
 Whether ground for avoiding sale, 8, 810
- Failure of consideration**, 8, 800
- False personation**, 8, 845
- False Pretenses**
False pretenses by purchasers of goods, see FALSE PRETENSES.
False pretenses by sellers of goods, see FALSE PRETENSES.
 Bona fide purchaser, 8, 846
- Fraud and Warranty Distinguished**, 8, 819
 Election to sue in tort or contract, 6, 247; 8, 819; 26, 795
 Joinder, 8, 820
 One founded upon contract, the other upon tort, 8, 819
 Scienter and damages, 8, 820
 Fraud distinguished from mistake, 8, 791
- Fraud of agents**, 8, 821
- Fraud on Creditors**, 8, 851
Bills of sale acts, see BILLS OF SALE.
- Admissibility of Vendor's Declarations**, 8, 860
 Admissible when forming part of *res gestæ*, 8, 860
 Inadmissible when entirely apart from sale, 8, 860
- Agreement with indorser of buyer's note**, 8, 859
- Defeating Executions**, 8, 853
 Chattel mortgage, 8, 854
 Confession of judgment, 8, 854
 Intention alone, 8, 853
- Effect of special agreement**, 8, 859
- Fraud for Pre-Existing Debt**
 When valid, 8, 861
- Hasty sale to creditor for his debt and cash**, 8, 859
- Hurried sales under peculiar circumstances**, 8, 859
- Promise to use property so as to confer pecuniary benefit**, 8, 859
- Retaining ownership on transfer of stock**, 8, 859
- Sale on unusual credit**, 8, 859
- Statutory Regulations**, 8, 851
 Declaratory of common law, 8, 581
 Delaying or hindering creditors, 8, 852
 Scope of enactments, 8, 851
 Scope of statute of Elizabeth, 8, 852
 Statute of Elizabeth, 8, 851
- Subsequent Creditors**, 8, 852
 Actions to set aside sale by, 8, 852
 Continued possession by debtor, 8, 853
 Intention to defeat, 8, 853
 When protected by, 8, 852
 Where not made with a view to future indebtedness, 8, 853
- Where transfer fraudulent as to existing creditors, 8, 853
 Where transfer not fraudulent as to existing creditors, 8, 852
 What transfers covered by, 8, 852
- Transfer for Pre-Existing Debt**, 5, 163; 8, 861
 When invalid, 8, 861
- Valid Between Parties**, 8, 856
 Valid as against third persons, 8, 856
 Variety of peculiar features, 8, 859
- General rule**, 8, 804
 Husband and wife, 8, 855; 9, 804
- Inducement for Sale**
 Buyer's fraud, 8, 824
- Inducement to Contract**, 8, 793
 Artifices which fail to deceive, 8, 793
 Common law, 8, 793
 Materiality of representation, 8, 798
 Need not be sole inducement, 8, 794
 Person must be deceived, 8, 793
 Predominant inducement, 8, 794
 Representation not material question, 8, 799
 Seller's fraud, 8, 811, 812
 When parties unaware of the truth, 8, 794
- Injunction**, 10, 807
- Injury to Party Deceived**, 8, 801
 Gravamen of charge, 8, 802
 Inducement for payment of plaintiff's debt, 8, 802
 Necessity of, 8, 801
 In pari delicto, 8, 857
- Intent to Deceive**, 8, 799
 Belief in truth of representation, 8, 799
 Necessity of concurrence of fraudulent intent and fraudulent representation, 8, 800
 Party having no knowledge on subject, 8, 800
 Reckless statements, 8, 800
- Joint tenants and tenants in common**, 11, 1091
- Knowledge of Fact Asserted**, 8, 800
See infra, INTENT TO DECEIVE.
 Affirming, 8, 800
 Genuine knowledge, 8, 801
 Making reckless statements, 8, 801
 Where party might have known representation to be false, 8, 801
 Where party was misinformed, 8, 801
- Liability in Tort to Strangers**, 8, 797
Deceptive prospectus of companies, see CORPORATIONS.
 Intent that they should be acted upon by third person, 8, 797
 Sale of dangerous articles, 8, 797
 Strangers injured by false representation, 8, 797
- Materiality of Representation**, 8, 798
See infra, INDUCEMENT TO CONTRACT.
 As to repairing of ships, 8, 799

FRAUDULENT SALES—Cont'd**Materiality of Representation—Cont'd**

- Criterion suggested, 8, 799
- False representation as to shipping, 8, 798
- Illustrations, 8, 798
- Immaterial representation, 8, 799
- Necessity that representation should be legal, 8, 798
- Representations relating to another matter, 8, 798

Matters Open to Observation, 8, 803

See *infra*, OPINIONS CONCERNING VALUE OR COST.

Where truth can be ascertained by ordinary diligence, 8, 803

Measure of Damages, 8, 820

- Consequential damages, 8, 820
- Difference between actual and represented value, 8, 820
- Recoupment, 8, 820

Misrepresentation, 8, 792

Representations must be such as to deceive ordinary persons, 8, 792

Misrepresentation of Law, 8, 796

- Foreign laws, 8, 797
- Presumption as to knowledge of law, 8, 796
- Private acts, 8, 797

Statement as to validity of patent, 8, 797

Where there is no misunderstanding as to law, 8, 796

Mistakes, 8, 800

- Distinguished from fraud, 8, 791
- Nature of fraud, 8, 791

Opinion, see *infra*, EXPRESSION OF OPINION; MISREPRESENTATIONS; RELIANCE UPON REPRESENTATION.**Opinions Concerning Value or Cost, 8, 795**

Affirmation that a patent has been largely sold, 8, 810

Doctrine Concerning, 8, 809

- Defense of a suit for price, 8, 810
- Price paid by third person, 8, 809
- Statements concerning held immaterial, 8, 809
- Statement that an old stock of goods is new, 8, 810

When principle inapplicable, 8, 810

Effect of representations as to values, 8, 803

Possession

Equitable assignments, 6, 662

Preferences, 8, 854

- Assignment for benefit of creditors with preferences, 8, 857
- General doctrine, 8, 856

Honest Intention to Pay Debt, 8, 855

Under *bankruptcy*, see *BANKRUPTCY*.

Corporation preferring directors, 8, 855

Good faith of debtor, 8, 855

Husband preferring his wife, 8, 855

Under assignment, 8, 855

Insolvent buyer disclaiming sale, 8, 854

Secret preferences, 8, 858

Stoppage in transitu, 8, 855

When fraudulent, 8, 854

When not fraudulent, 8, 855

Where insolvent buyer comes into possession of goods, 8, 854

Puffers, 8, 813

Allowing one puffer to prevent sacrifice, 8, 815

Employment fraudulent, 8, 813

English chancery practice, 8, 815

Exceptions, 8, 814

Good faith as criterion, 8, 814

Limiting bids, 8, 814

Next preceding bid genuine, 8, 814

Number of, 8, 815

Purchaser not induced to bid more by the puffing, 8, 814

Relief against purchase, 8, 813

Reservation of right to bid, 8, 814

Restoration of property by rescinding purchaser, 8, 814

Sales under order of court, 8, 813

Sale without reserve, 8, 814

Sheriff's sale, 8, 813

Question of fact, 8, 791

Ratification of Contract, 8, 819

Acquiescence, 8, 819

Acts affecting, 8, 819

Delay in ratification, 8, 819

Express words, 8, 819

Receivers

Ground for appointment, 20, 311

Recording acts, see *RECORDING ACTS*.

Recoupment, 8, 820

Reliance Upon Representation, 8, 794, 811

Buyer's reliance, 8, 811

Illustration from seller's representation, 8, 795

Necessity for further inquiry, 8, 794

Necessity that parties should rely upon representation, 8, 794

Opportunity of buyer to examine the same, 8, 812

Presumption as to reliance, 8, 794

Rebuttal of presumption of reliance, 8, 795

Sales by experts, 8, 812

Tricks and artifices, 8, 812

Remedies, see *RESCISSON*.

Remedies and damages, 8, 806

Replevin, 20, 1048

Representation

As to credit, 8, 811

Knowledge of falsity

Evidence in tort of fraud in sale, 8, 793

Mere expressions of opinion, 8, 793

Requisites of fraud, 8, 792

Retention of Possession, 8, 770

See *BILLS OF SALE*.

See *infra*, CHANGE OF POSSESSION.

Chattel mortgages, see *CHATTEL MORTGAGES*.

Conclusive evidence of fraud, 8, 755

- Conclusiveness of proof of fraud, 8, 877
 Conclusive presumption of fraud, 8, 883
 Continuous change of possession, 8, 756
 Doctrine in Alabama, 8, 881
 Doctrine in Connecticut, 8, 883
 Doctrine in England, 8, 877, 878
 Doctrine in federal courts, 8, 877, 878, 880
 Doctrine in Illinois, 8, 882
 Doctrine in Indiana, 8, 881
 Doctrine in Kentucky, 8, 882
 Doctrine in Maine, 8, 880
 Doctrine in Massachusetts, 8, 881
 Doctrine in New Hampshire, 8, 881
 Doctrine in New Jersey, 8, 881
 Doctrine in Ohio, 8, 880
 Doctrine in Pennsylvania, 8, 883
 Doctrine in Rhode Island, 8, 881
 Doctrine in United States, 8, 877, 878
 Evidence of fraud, 8, 878
 Exclusive, 8, 755
 Fraud of creditors, 8, 861
 General rule, 8, 754
 Growing crops in Kentucky, 8, 882
Judicial Sales
 In Illinois, 8, 882
 In Pennsylvania, 8, 883
 Necessity of actual change of possession, 8, 755
 Necessity of immediate change of possession, 8, 755
Possession Coupled with Power to Sell, 8, 882
 Fraud a question of fact, 8, 883
 Retention by seller constitutes fraud, 8, 882
 Sale as agent for buyer, 8, 883
 Presumptive evidence of fraud, 8, 754
 Property incapable of being removed, 8, 882
 Questions of law and fact, 8, 883, 885
 Reasonable time for changing possession, 8, 755
 Retention *prima facie* fraudulent, 8, 880
 Statutory provisions, 8, 878
 Transfer of stock, 8, 859
 Whether fraud *per se*, 8, 877
Rights of Third Parties
 Execution against vendee, 3, 437
 Mortgage by vendee, 3, 437
 Where conditional sale is called a lease, 3, 437
 Where conditional sales are treated as chattel mortgages, 3, 437
 Sale for purpose of defrauding creditors, 9, 911
Seller's Fraud, 8, 807
 See infra, RELIANCE UPON REPRESENTATIONS.
As to Expression of Opinion, *see infra*, EXPRESSION OF OPINION; OPINIONS; RELIANCE UPON REPRESENTATIONS.
- Liability for Fraud** 8, 811
 Seller's concealment and silence, *see infra*, CONCEALMENT AND SILENCE.
 When inapplicable, 8, 811
 Avoidance of contract for seller's fraud, 8, 807
 Fraud on buyer in general, 8, 807
 Inducement to contract, 8, 811, 812
 Opinions concerning value or price, 8, 809
 Sheriff levying upon third party, 22, 539
Silence, 8, 804, 812
 Concealing existence of encumbrance upon property, 8, 812
 Defects which should be disclosed by usage of the trade, 8, 812
 Seller's silence, 8, 812
 Unintentional concealment or omission, 8, 812
 When amounts to false representation, 8, 804
 Willful hiding of some internal defect, 8, 803
 Stock, 22, 592
 Succession taxes, 24, 464
Trover
 Election between trover and assumpsit, 6, 247; 8, 819; 26, 795
Liability of Fraudulent Vendee, 26, 785
 Examples, 26, 785-787
 False representations as to credit, 26, 785
 Property passing to bona fide purchaser, 26, 786
 Right of true owner to maintain trover, 26, 785
 Sub-vendee with notice of fraud, 26, 786
 Valid between parties, 8, 856
Valid Sales by Insolvents and Purchases from Them, 8, 856
 Protection of innocent purchaser, 8, 856
 Validity of sales in good faith, 8, 856
Value
 Statement as to cost, 8, 795
 Statement as to doctrine, 8, 796
FRAUDULENTLY, 12, 523
 Fraudulently Steal
 Larceny, 12, 817
FRAUDULENT TRANSFER
 Succession taxes, 24, 464
FREE, 8, 898
 Free from average unless general, 8, 898; 14, 408
 Freely to be possessed and enjoyed, 8, 898
 Free of charge, 3, 120
 Free on board, 21, 531
 Free use, 17, 29
FREEDOM OF SPEECH
 Constitutional right of, 3, 713
FREEHOLD, 8, 898
 Estate of, 6, 895
 Qualification of juror, 12, 324

FREEHOLDERS, 8, 899**FREELY**

Equivalent to understandingly, 1, 169

FREEMASONS

Charitable gifts to, 3, 132

Trade-Marks, see **SYMBOLS AS TRADE-MARKS**.**Misrepresentations**

Devices or symbols, 26, 252

FREEMEN, 8, 899**FREE ON BOARD**

F. O. B., 1, 18

FREE PASSES, see **TICKETS AND FARES**.**FREESTONE QUARRY**, 15, 501**FREEZING**

In bill of lading, 2, 236

FREIGHT, 8, 900See **BILL OF LADING**; **CARRIERS OF GOODS**; **CARRIERS OF LIVE STOCK**; **FAST FREIGHT LINES**; **INTERSTATE COMMERCE**; **MARINE INSURANCE**; **RAILROAD COMPANIES**; **SHIPS AND SHIPPING**.*State statutes establishing railroad commissions*, see **RAILROAD COMMISSIONS**.

Admiralty jurisdiction over, 1, 198

At **Common Law**, 8, 902**Charging Another Too Little**, 8, 904

Conflict of opinion, 8, 904

Equality as a criterion, 8, 905

Reasonableness of charge, 8, 904

Weight of authority, 8, 905

Court a judge of reasonableness of freight charges, 8, 906

Discrimination, 8, 902

Fact that carrier is a corporation, 8, 903

Guilty of charge, 8, 904

Rights of carriers and customers, 8, 902

Statutes declaratory of common law, 8, 906

Upon what principle it depends, 8, 902

Authority of agents as to freight contracts, 8, 933

Collision, 16, 357

Company Organized Under Laws Not Limiting Freight Charges, 8, 925

Purchasing privileges of company which existed before such laws, 8, 926

Connecting Carriers in Their Relation to, 8, 927, 937, 938

Carrier limiting his liability to one state, 8, 921

Connecting carriers paying illegal back charges, 8, 927, 928

Excessive freight by connecting carriers, 8, 938

Liability of receiving carrier where subsequent carriers charge a higher rate than that contracted for, 8, 927

Consolidated company subject to freight restrictions, 8, 926

Constitutional Provision Against Impairing Obligation of Contracts, 8, 622, 914

Maximum rates, 8, 916

Power of courts in absence of statutory regulations, 8, 916

Power of legislature, 8, 915

Power to regulate not power to destroy, 8, 917

Provision permitting railroad to fix reasonable rates, 8, 914

Provision providing a maximum rate, 8, 914

Subsequent act inflicting greater penalties, 8, 916

Statutes prohibiting all discrimination, just or unjust, 8, 917

Where legislature fixes improper rate, 8, 916

Whether it is for railroad to determine reasonable rates, 8, 914

Constitutional provisions in regard to, 8, 923

Constitution of Colorado, 8, 923

Constitution of Michigan, 8, 923

Constitution of Pennsylvania, 8, 923

Constitution of West Virginia, 8, 923

Construction of Statutes, 8, 925

Illinois statute, 8, 925

Nebraska statute, 8, 925

North Carolina statutes, 8, 925

When liberal, 8, 925

When strict, 8, 925

Definition, 8, 901, 942

Discrimination, 8, 941**Action for Damages**, 8, 943

Burden of proof, 8, 945

Discrimination appearing in pleadings, 8, 945

Against Particular Localities, 8, 956See **INTERSTATE COMMERCE**.**As Between Different Consignors or Consignees**

Competitive rates, 8, 962

At Common Law, 8, 902**Charging Another Too Little**, 8, 904

Conflict of opinion, 8, 904

Equality as a criterion, 8, 905

Reasonableness of charge, 8, 904

Weight of authority, 8, 905

Based Upon Character of Goods, 8, 946

Classification, 8, 946

Compressed and uncompressed cotton, 8, 946

Contract that goods shall be classified in a certain way, 8, 947

Discrimination by means of classification, 8, 947

Dried fruits and raisins, 8, 947

Evidence as to classification by railroad, 8, 947

Hubs, 8, 947

Liability of, 8, 946

Lumber, 8, 947

Oil in tanks, 8, 947

Pearline and common soap, 8, 946

Railroad ties and rough timber, 8, 946

Same rate for goods before and after manufacture, 8, 949

Saw-logs, 8, 947

- Soft and hard coal, 8, 946
- Violation by differences in classification, 8, 947
- What to be considered in classification, 8, 948
- Based Upon Quantity of Goods, 8, 949**
 - Agreement to give one's traffic to railroad, 8, 951
 - As between towns, 8, 950
 - Based solely upon quantity of goods shipped, 8, 950
 - Discount based upon quantity of freight received by any one shipper, 8, 951, 952
 - Examples, 8, 949-952
 - Legality of discrimination, 8, 949
 - Rebates, 8, 951
- Between Different Consignors and Consignees, 8, 954-956**
 - Contract to deliver all grain to one warehouse, 8, 954
 - Examples, 8, 954, 956
 - One rate to one warehouse and a different rate to another, 8, 954, 955
 - Pro-rate not same with others, 8, 955
 - Rival steamboat companies, 8, 962
- Between termini, 8, 967
- Branch roads, 8, 966
- By Railroads**
 - Express companies, 7, 573
 - Cars assured of a return load, 8, 968
 - Cars of a peculiar build, 8, 968
 - Caused by grouping places into districts, 8, 965
 - Charity, 8, 969
 - Connecting carriers, 8, 965
 - Consolidated company, 8, 967
- Depending Upon Distance as Affected by Competition, 8, 961**
 - See* INTERSTATE COMMERCE ACT.
 - Giving benefit of competitive rates to some while refusing it to others, 8, 962
 - In England, 8, 961
 - In Iowa, 8, 962
 - In United States generally, 8, 962
 - Reduction in rates resulting from competition, 8, 962
- Depending Upon Distance Goods Are Carried, 8, 959**
 - See also*, INTERSTATE COMMERCE.
 - See infra*, LEGALITY OF RATES.
 - In England, 8, 959
 - Proportionate rate for long and short haul, 8, 959
- Differences in grade, 8, 968
- Drawback, 8, 943
- Examples of, 8, 942-945
- Generally, 8, 941
- Goods of Same Class Shipped Under Like Circumstances, 8, 945**
 - Burden of proof, 8, 945
 - Difference in cost to carrier, 8, 945
 - Discrimination must appear in pleading, 8, 945
 - What is meant by goods of same class, 8, 945
 - What is meant by like circumstances, 8, 945
 - Higher charge not unreasonable, 8, 942
 - Improved stock-cars, 8, 968
 - In cost of hauling, 8, 955
 - Increase of speed, 8, 968
 - In favor of a person living at a distance from line, 8, 961
 - In favor of some independent business of railroad company, 8, 962
 - In favor of traffic coming over its own lines, 8, 962
 - In Illinois, 8, 956
 - Injunction, 8, 967
 - Injunction to prevent multiplicity of suits, 8, 967
 - In loading and unloading, 8, 955
 - In packed parcels, 8, 953
 - Legality of, 8, 956
 - Miscellaneous, 8, 967
 - Oil transported in barrels, 8, 968
 - Penalty, 8, 967
 - Prohibitory rates of freight, 8, 967
 - Reasonable, 8, 943, 944
 - Reasonable interests of carrier, 8, 944
 - Reasonableness dependent upon person to be charged, 8, 944
 - Reasonableness of question of fact, 8, 943
 - Rebate, 8, 942, 943
 - Refusing to ship full carloads, 8, 968
 - Same carrier operating parallel roads, 8, 966
 - Switching, 8, 955
 - Unequal mileage rate, 8, 942
 - Unequal profit per mile. 8, 942
 - With respect to origin of traffic, 8, 962
- Distinguished from fare, 8, 902
- Distinguished from toll, 8, 901; 26, 51
- Enforcement of contract which would prevent the discharge of carrier's duty, 8, 929
- English freight statutes, 8, 923
- Freight pools, 8, 980
- Freight Statutes in United States, 8, 923**
 - In Illinois, 8, 924, 956
 - In Iowa, 8, 924
 - In Maryland, 8, 924
 - In Massachusetts, 8, 924
 - In Mississippi, 8, 924
 - In Missouri, 8, 924
 - In Nebraska, 8, 924
 - In New Hampshire, 8, 924
 - In New York, 8, 925
 - In North Carolina, 8, 924
- General average, 8, 1306
- Insurable interests, 11, 317
- Legality of Rates, 8, 928**
 - Proportionate Rate for Long and Short Haul, 8, 931**
 - Conflict of authority, 8, 931
 - In Alabama, 8, 932
 - In Georgia, 8, 932
 - In South Carolina, 8, 932
 - In Tennessee, 8, 931
 - In Texas, 8, 932

FREIGHT—Cont'd**Legality of Rates—Cont'd****Proportionate Rate for Long and Short Haul—Cont'd**

- Intention of legislature, 8, 931
- Proportionate charge maximum, 8, 931
- Rate per ton for specified distance, 8, 932
- Rate per ton per mile, 8, 932
- Same charge for an amount less than a unit, 8, 932

What are lawful rates, 8, 928

Where maximum is fixed by statute, 8, 929

Legislative Control, 8, 907

See INTERSTATE COMMERCE.

Execution of penalties, 8, 910

Fixing greater penalties, 8, 916

Power to regulate does not include power to destroy, 8, 917

Preventing collection of any freight, 8, 917

Regulating words where maximum has been fixed, 8, 914

Statute prohibiting excessive freight charge, 8, 910

Subject to, under the police power, 8, 909

Whether charter provision relating to freight is a contract, 8, 914

Lessees subject to freight restrictions, 8, 926

Lien, see CARRIERS OF GOODS.

Local freight, 13, 989

Long and short haul, 8, 931

Loss through collision, 16, 354

Maritime liens, 14, 438

Mortgages, 15, 752

On freight, 17, 186

On right delivery, 3, 147

Payment of freight in advance, 8, 969

Penalties, 8, 910, 916, 938

Connecting carrier paying illegal back charges and collecting from consignee, 8, 927

Limitation of actions, 8, 939

Miscellaneous, 8, 941

Practice, 8, 940

Pleading, 8, 940

Statutes Imposing**Mandamus**

Illegal freight, 8, 935

Repeal of statute, 8, 935

Statutory procedure must be valid, 8, 934

Venue, 8, 940

Whether an action sounding in tort, and not in contract, 8, 938

Whether freight must be paid, 8, 939

Prohibitory rates of freight, 8, 967

Purchaser of railroad takes subject to restrictions, 8, 925

Purchaser under foreclosure sale subject to freight restrictions, 8, 926

Rates, 8, 902

Reasonableness of question of fact, 8, 943

Refusing to undertake transportation upon tender, 8, 918

Remedies for Excessive, 8, 934

Carrier's liability to refund excessive freight, 8, 934

Mandamus, 8, 935

Penalties, see *infra*, PENALTIES.

Question for jury, 8, 935

Who may sue, 8, 935

Requiring prepayment, 8, 928

Ships and Shipping, 22, 746, 770

Capture of neutral vessel, 22, 771

Consignee unable to receive goods, 22, 748

Consignee unwilling to receive goods, 22, 749

Counterclaim, 22, 776

Default on part of owner of cargo, 22, 771

Delivery to wrong person, 22, 771

Entire voyage, 22, 770

Extra freight, 22, 771

Freight Pro Rata, 22, 772

Acceptance of part of property at end of voyage, 22, 772

Capture, 22, 773

Disabled by perils of the sea, 22, 772

Examples, 22, 772, 773

Prevented from proceeding on voyage, 22, 772

General rule, 22, 770

Liability for Freight, 22, 773

Assignees, 22, 774

Carrier's right to refuse delivery before payment, 22, 774

Consignee, 22, 773

Consignor, 22, 773

Delay by perils of the sea, 22, 775

Set-off of losses chargeable to freight, 22, 775

Where all of the goods are destroyed, 22, 775

Where part of the goods are destroyed, 22, 775

Liability for increased freight arising from the hire of another vessel, 22, 753

Misdelivery not occasioned by fault of ship, 22, 771

Recovery of back freight, 22, 776

Refusal of master to forward goods or hire another vessel, 22, 753

Ship obliged to return by reason of perils of the sea, 22, 748

Ship prevented from arriving by blockade or other reasons, 22, 748

Vessel driven into intermediate port by stress of weather, 22, 771

Voyage prevented by owner of cargo, 22, 770

When no freight is earned, 22, 771

When shipper not bound to pay freight, 22, 753

State freight statute as affecting interstate commerce, see INTERSTATE COMMERCE.

State freight statutes as denying equal protection of laws, 8, 922

- State Statutes Regulating as an Exercise of Police Power**, 8, 907, 921
 Application of doctrine to quasi public corporations, 8, 908
 company subject to legislative control in absence of charter stipulations, 8, 909
 Inherent power of state, 8, 908
 Penalties, 8, 910
 Right of legislature to pass laws prohibiting excessive freights, 8, 909, 910
 Statutory penalties for excessive, 8, 938
- Statutory Regulations**
 Generally, 8, 906
 In England, 8, 907
 In United States, 8, 907
 Statutes declaratory of common law, 8, 906
- Taxation**
Interstate Commerce, 25, 31
 Constitutionality, 25, 31, 32
 Examples, 25, 31
 In general, 25, 31
- Voluntary Payment for Excessive**
What Constitutes, 8, 935
 Actual protest, 8, 937
 Connecting carriers, 8, 937, 938
 Consignor under moral duress, 8, 935
 Demand for monthly settlements, 8, 937
 Demand for repayment, 8, 936
 Exacting excessive freight as a condition of delivery, 8, 937
 In Maryland, 8, 938
 In South Carolina, 8, 938
 Mistake, 8, 936, 938
 Necessity of protest, 8, 935
 Statutory right of action, 8, 936
 Voluntary payment for a long time, 8, 938
- What May Be Included in Charges**, 8, 929
 Collieries, 8, 930
 Extra or special services, 8, 929
 Food for and care of live-stock, 8, 930
 Haulage and shunting, 8, 930
 Necessary expenses in preservation of goods, 8, 930
 Station accommodations, 8, 930
 Terminal charge, 8, 931
 Tolls, 8, 931
 Transportation from depot to elevator, 8, 929
 What may not be included, 8, 930
 When right to sue for accrues, 8, 929
- FRENCH FLATS**, see **LODGINGS AND APARTMENTS**.
- FREQUENT**, 8, 980
- FRESH**, 8, 980
 Fresh fish, 8, 980
 Fresh seed, 8, 980
- FRESHET**, 8, 980
- FROM**, 8, 981; 14, 343; 19, 834; 23, 964
 "At and from," 14, 343
 Construed to mean for, 8, 97
 Fixing the termini of roads, 8, 981
 From a dwelling, 8, 982
 From and after, 8, 982
 From and to, 26, 49, 50
 From the day and year aforesaid, 1, 320
 From thenceforth, 8, 982
 From the person, 8, 982
 From time to time, 8, 982
 Heard from, 8, 982
 Lease, 12, 985
 Line from one object to another, 2, 501
 "Say from," 21, 544
 Whether exclusive or inclusive of its object, 8, 981
- FRONT**, 8, 982
- FRUIT**, 8, 983
 Overhanging trees, 26, 559
- FUGITIVE FROM JUSTICE**, 12, 389
 See **EXTRADITION**.
 Justice of the peace, 12, 425
 Statute of limitations, 4, 785
- FULL**, 8, 983
 Distinguished from good, 15, 378
 Full and complete cargo, 3, 147
 Full cash value, 28, 48
 Full proof, 8, 983; 19, 283
Full prosecution, see **LIS PENDENS**.
 In full, 10, 323
- FUNDS**, 8, 983
 In the sense of money, 8, 984
- FUNERAL EXPENSES**, see **BURIAL**;
DEBTS OF DECEDENTS.
- FURNACE**, 8, 984
- FURNISH**, 8, 984
- FURNISHED APARTMENTS**, see **LODGINGS AND APARTMENTS**.
- FURNITURE**, 8, 985; 15, 944
 Household, 9, 782
 Exemption from execution, 7, 137
- FURTHER**, 8, 986
- FUTURE**, 8, 986; 13, 53
 See **GAMBLING CONTRACTS**.
 For, 8, 89
 Future edition, 6, 155
- FUTURE ACQUIRED PROPERTY**, 8, 987
Assignments of wages and earnings, see **ASSIGNMENTS**.
By accession, see **ACCESSION**.
By increase, see **ACCESSION**.
By substitution, see **ACCESSION**.
Lien on, see **LIENS**.
Passing by will, see **WILLS**.
Pledge of, see **PLEDGE AND COLLATERAL SECURITY**.
Railroad mortgages, see **RAILROAD SECURITIES**.
 Definition, 8, 987
- Mortgages**, 15, 749
 Domestic animals, 15, 752
 Earnings of a vessel, 15, 752
 Estoppel, 15, 749
 Examples, 15, 750-753
Freight, see **FREIGHT**.
 Furniture of a hotel, 15, 752
Future crops, see **CROPS**.
 How operative, 15, 749
 In England, 15, 749
 In United States, 15, 749
 Miscellaneous, 15, 753

FUTURE ACQUIRED PROPERTY—*Cont'd***Mortgages—Cont'd**

- New and old sales, 15, 752
- Present contract, 15, 749
- Property having a potential existence, 15, 750
- Subject to whatever liens rest upon the property, 15, 752
- Substituted property, 15, 752
- The doctrine at common law, 15, 750
- Whether it may be mortgaged, 15, 749

GAG, 8, 992**GAIN, 8, 992**

For hire or, 8, 91

GALLON, 8, 992**GAMBLERS, see GAMING.****GAMBLING, see GAMING; GAMBLING CONTRACTS; LOTTERIES.****GAMBLING CONTRACTS, 8, 992***See* COMBINATION IN RESTRAINT OF TRADE; LOTTERIES.*See generally, STOCK-BROKERS.**Cheating and unfair dealing, see CHEATING.**Responsibility of brokers and agents, see STOCK-BROKERS.**Wager policies, see INSURANCE.***Action to Recover Back Money Paid, 8, 1021****Action by Loser Against Winner, 8, 1001**

Where winner had no notice of repudiation of wager, 8, 1001

Where winner had notice of repudiation of wager, 8, 1001

Assignment of right of action, 8, 1023

At common law, 8, 1021

By master where servant loses his money, 8, 1022

In *pari delicto*, 8, 1021

Statutes conferring right, 8, 1022

Suit by real party in interest, 8, 1022

Who may maintain their action, 8, 1022

At Common Law, 8, 993

Election bets, 8, 996

In relation to a matter against public policy, 8, 993

In United States, 8, 994

Invalidity, 8, 995

Involving breach of the peace, 8, 993

Tendency to hold all gambling contracts illegal, 8, 994

Validity of, 8, 993

Wagers against public policy, 8, 994

Attachment

Money in hands of stake-holder, 8, 1000

Bets and Wagers, 8, 995**Election Bets, 8, 996**

At common law, 8, 996

Bet made after election, 8, 996

Character of the election, 8, 996

Nominee at primary election, 8, 996

Parties not electors, 8, 996

Presidential election, 8, 996

State or local election, 8, 996

Statute prohibiting, 8, 996

Validity of note, 8, 996

Invalidity, 8, 995

Responsibility to agents, 8, 998

Under Guise of Legal Contracts, 8, 997

Compromise by tossing penny, 8, 998

Price of goods adjusted by chance or contingency, 8, 997

Sale, 8, 997, 998

Suppers and dinners, 8, 998

Under the statutes, 8, 995

Validity at common law, 8, 993

Betting agents, 8, 998

Bills and Notes

No consideration for, 2, 368

Conflict of Laws, 8, 1021

Proof of validity where made, 8, 1021

Transaction legal where made, 8, 1020

Contracts

For supply of articles to be used in gaming, 8, 1004

In furtherance of gaming, 8, 1003

With ticker in bucket shop, 8, 1004

With trainer or jockey, 8, 1003

Definition, 8, 993

Device, 5, 660

Effect of license upon validity of contract, 8, 1003

Enforcement of contract to pay money lost at play, 8, 995

Entrance Fees and Prizes, 8, 1001

Match race, 8, 1002

Purse not a wager, 8, 1001

Recovery back for entrance fee, 8, 1001

Where statute prohibits horse racing, 8, 1002

Whether bet or stake within meaning of statute, 8, 1001

Garnishment, 8, 1191

Horse racing, 8, 994

Infants, 10, 635

Interest

Money in hands of stake-holder, 8, 1000

Judgment

Equitable relief against, 12, 146

Loans for Gambling Purposes, 8, 1015; 15, 710

Absolute loans, 8, 1016

Advanced by betting agent, 8, 1016

Knowledge of lender, 8, 1015

Money advanced in order to enable borrower to pay game debts, 8, 1016

Money placed absolutely at disposition of borrower, 8, 1016

Recovery by lender, 8, 1015

Lotteries, 13, 1187

Lottery tickets, see LOTTERIES.

Margin, 14, 316

Obligations and Securities for Gambling Considerations, 8, 1017

Conveyance of land, 8, 1017, 1020

Equity ordering securities to be given up, 8, 1020

Equity restraining collection, 8, 1020

- Equity restraining collection of a judgment, 8, 1020
 Equity restraining grantee from assigning obligation, 8, 1020
 Invalid because against public policy, 8, 1018
 Not payable in event of candidate being elected, 8, 996
 Substitution of a new obligation for original obligation, 8, 1019
Validity in Hands of Bona Fide Holders, 8, 1018
 At common law, 8, 1018
 By statute, 8, 1018
 Validity in hands of grantee, 8, 1017
 Validity in hands of transferee with notice, 8, 1017, 1018
 Validity where statute declares obligation to be void, 8, 1018
 Where obligor has declared he has no defense, 8, 1018, 1019
Partnership formed for gaming purposes, 8, 1003
 Penalties, 25, 815
 Policy playing, 8, 994
Repudiation of wager or bet, see *infra*, **STAKES AND STAKE-HOLDERS**.
Speculative Dealings, 8, 1004; 23, 725
 Actual purchase on margins, 8, 1008
 Broker's commissions, 23, 629
 Burden of proof, 8, 1010
 Calls, 8, 1004; 23, 725
 Conclusion of written contract, 8, 1010
 Corners in stock, 23, 746
 Evidence of intent, 8, 1010
 Financial standing and magnitude of transaction, 8, 1010
 Futures, 8, 1004
 Gambling distinguished from speculation, 8, 1006
 Intent a question of fact, 8, 1010
 Meaning of terms, 8, 1004
 Mutual intent, 8, 1008
 Nature of particular transactions, 8, 1010
 Necessity that there should be intent by both parties to gamble, 8, 1008
Option Contracts, 8, 1011
 Calls, 8, 1011
 Intention to settle by differences, 8, 1011
 Meaning of the term "option," 8, 1011
 Option, 8, 1004; 23, 725
 Puts, 8, 1011
 Straddles, 8, 1011
 Whether invalid per se, 8, 1011
 Payment of differences, 8, 1005
 Presumption of legality, 8, 1010
 Puts, 8, 1004; 23, 725
 Sales for future delivery, 8, 1004; 9, 927; 23, 741
Short Sales, 8, 1004; 23, 723
 Generally, 23, 723
 In absence of statutory provision, 23, 723
 In England, 23, 723, 724
 Statutes, 23, 724
 Speculation in business, 8, 1005
 Statutory prohibition, 8, 1005
Stock-Jobbing Acts, 23, 737
 American statutes, 23, 737
 Bill or note in the hands of bona fide purchaser, 23, 739
 Bills and notes, 23, 737, 739
 Broker recovering difference between selling and buying price, 23, 739
 Burden of proof, 23, 740
 Enforcement of contract in court, 23, 740
 English statutes, 23, 737
 Examples, 23, 737-741
 In general, 23, 737
 Sale before time of delivery, 23, 740
 Scope of the statute, 23, 737
 Where statute imposes no penalty, 23, 739
 Straddles, 8, 1004; 23, 725
 Uncommunicated intention, 8, 1009
 Validity of sales for future delivery, 8, 1004
Wagering Contracts, 23, 741
 Bona fide contract for future delivery, 23, 741
 Fictitious transaction, 23, 741
Rights of Stock-Brokers, 23, 742
 Advances, 23, 744
 Broker acting in good faith, 23, 745
 Broker considered as principal, 23, 744
 Broker entering into gambling contract with full knowledge, 23, 744
 Commissions, 23, 744
 Dealing with a minor, 23, 744
 Examples, 23, 742-746
 In United States, 23, 742
 Where statute imposes no penalty, 23, 742
 Statutes preventing gambling contracts, 23, 741
 Validity of wagering contracts, 23, 741
 When invalid, 23, 741
 Wagers on rise and fall of prices, 8, 1005
 When void, 8, 1005
 Where there is no bona fide intention to deal, 8, 1006
 Where there is no intention of delivery, 8, 1005
 Whether dealings in stocks and futures is gaming within the criminal statute, 8, 1040
Stakes and Stake-Holders, 8, 999; 23, 18
 Action by loser against winner, 8, 1001
 Claim by winner, 8, 1001
 Responsibility of, 8, 999
 Form of repudiation, 8, 1000
 Interest upon amount staked, 8, 1000
 Liability upon paying to the winner, 8, 999

GAMBLING CONTRACTS—*Cont'd***Stakes and Stake Holders—***Cont'd***Responsibility of—***Cont'd*

Necessity of demand for repayment by depositor, 8, 1000

Recovery of stake after event has been ascertained, 8, 999

Recovery of stake before event has been determined, 8, 999

Repudiation of wager, 8, 999

Repudiation of wager by person for whose benefit it has been made, 8, 1000

Repudiation where number of persons have jointly wagered, 8, 1000

Right of creditor to attach stock, 8, 1000

Right to recover until stake has been paid, 8, 999

Statutory right of action against stake-holder, 8, 1000

Waiver of demand by payment after notice of repudiation, 8, 1000

Statutory provisions, 8, 994

Suppers and dinners, 8, 998

Supplementary Proceedings

Money lost by judgment debtor, 24, 645

Telegraphs and Telephones, 25, 813

Action for refusal to transmit, 25, 814

Bucket shop, 25, 813

Duty of the company, 25, 813

Failure to exercise care in transmitting message, 25, 814

Loss of profits from expected sales, 25, 852

Measure of damages, 25, 814

Messages relating to gambling transactions, 25, 813

Obligations to serve gambling institutions with news, 25, 812

Statutory penalty, 25, 815

What are "gambling transactions," 25, 815

Tontine insurance, 26, 58

Transaction out of jurisdiction where suit was brought, 8, 1020

Usury, 27, 921

Winner, 29, 517

GAME AND GAME LAWS, 8, 1023

See generally, FISHERIES.

Property in game, see ANIMALS.

Buying and selling within prohibited period, 8, 1029, 1031

Decoying and enticing away, 8, 1027

Definition, 8, 1023

Game Laws, 8, 1027

Constitutionality of statute, 8, 1028

"Engine to kill," 6, 644

English law, 8, 1027

Statute in United States, 8, 1027

Under police power, 8, 1028

Interstate Traffic, 8, 1029; 11, 558

In Illinois, 8, 1029

In Massachusetts, 8, 1030

In Michigan, 8, 1031

In New York, 8, 1030

Possession of game within prohibited period, 8, 1029-1031

Prohibiting sales of game within state, 8, 1029

Statute prohibiting transportation of game from one state to another, 8, 1029

Possession of game during prohibited period, 8, 1029-1031

State discriminating against non-residents, 8, 1032

Statute of Ontario, 8, 1031

Statutes

Constitutional provisions requiring that subject shall be expressed in the title, 23, 242

Trespassing in Pursuit of Game, 8, 1025

Acquiescence of owner, 8, 1025

Going upon lands of another, 8, 1025

In United States, 8, 1025

Trespasser ab initio, 8, 1025

Trespasser in pursuit of game, 8, 1025

GAMES, see GAMING.

GAMING, 8, 1033

See DISORDERLY HOUSE; CHEATING; GAMBLING CONTRACTS; GAMING HOUSE.

As to keeping gaming houses, see GAMING IMPLEMENTS.

Apparatus of Gaming

What is, 1, 615

At liquor shop, 8, 1045

At Tavern, 8, 1045

Room attached to saloon, 8, 1046

Room in tavern, 8, 1046

Where no betting, 8, 1046

Bet or wager, 8, 1034

Cards, 2, 731

Common Gamblers, 8, 1052

Indictment against, 8, 1062

Reputation, 8, 1052

Single act, 8, 1052

Specific acts, 8, 1052

Who are, 8, 1052

Common law, 8, 1034

Constitutionality of statute, 8, 1064, 1065

Definition, 8, 1033

Definition of betting, 2, 185

Dice, 5, 661

Each act a separate offense, 8, 1034

Elements, 8, 1034

Evidence, 8, 1063

Confined to evidence of a single offense, 8, 1063

Money seen on table, 8, 1063

Prima facie evidence against defendant, 8, 1063

Proof of precise day, 8, 1063

Statutory provisions, 8, 1064

Uncorroborated testimony of joint offender, 8, 1064

Game, 8, 1034

Of chance, 3, 88

Horse racing, 8, 994

Indictment, 8, 1053

Against common gambler, 8, 1062

- Alleging name of persons playing, 8, 1053
- Alleging that game was played within county, 8, 1057
- Averment of Place, 8, 1059**
 - Alleging public place, 8, 1061
 - Certainty, 8, 1059
 - Charging place in the alternative, 8, 1060
 - Name of owner of house, 8, 1060
 - Particularity of description, 8, 1060
 - Showing that place was within prohibition of statute, 8, 1059
 - Variance between indictment and proof, 8, 1061
- Describing devices, 8, 1054
- Description of Game, 8, 1054**
 - Billiards, 8, 1054
 - Bowls, 8, 1054
 - Cards, 8, 1054, 1056
 - Cock fighting, 8, 1054
 - Disjunctive form, 8, 1055
 - Faro, 8, 1054, 1056
 - Horse race, 8, 1056
 - Indictment for playing one class of games will not support conviction for playing another, 8, 1056
 - In language of statute, 8, 1055
 - Monte, 8, 1054
 - Necessity, 8, 1054
 - Particularity, 8, 1054
 - Poker, 8, 1055, 1056
 - Pool, 8, 1055
 - Rondo, 8, 1055
 - Shooting match, 8, 1055
- Description of Stake or Wager, 8, 1057**
 - Allegation that money was bet where provision shows that wager consisted of other property, 8, 1058
 - Betting on election, 8, 1059
 - Necessity of stating what was bet, 8, 1058
 - Showing person with whom defendant bet, 8, 1057
 - Value of bet, 8, 1058
 - Variance between sum mentioned and sum proved, 8, 1058
- Joint, 8, 1061**
 - Acquittal of one and conviction of another, 8, 1061
 - Necessity of charging that defendants were playing together, 8, 1061
 - Whether two or more may be indicted jointly, 8, 1061
- Laying day of commission of offense, 8, 1055**
 - Tavern or inn, 10, 591
- Information, 8, 1053
- Joinder of offenses, 8, 1062
- Judgment, 8, 1064
- Jurisdiction, 8, 1053
- Municipal corporations, 15, 1181
- Other banking game, 17, 283
- Other device, 17, 283
- Policy playing, 8, 994
- Publicity, 8, 1045
- Public Place, 8, 1047**
 - Meaning of Term, 8, 1047
 - Barber shop, 8, 1050
 - Broker's office, 8, 1049
 - Ferry boat, 8, 1049
 - Horse racing on public road, 8, 1051
 - Infirmity, 8, 1049
 - Jury room, 8, 1049
 - Lawyer's office, 8, 1051
 - Meaning of terms generally, 8, 1047
 - Navigable river, 8, 1051
 - Office of justice of the peace, 8, 1049
 - Outhouse, 8, 1050
 - Path in common use, 8, 1049
 - Physician's office, 8, 1049, 1051
 - Private field, 8, 1049
 - Private room, 8, 1048
 - Railway carriage, 8, 1049
 - Road, 8, 1049
 - Saddler's shop, 8, 1049
 - Steamboat, 8, 1049
 - Store-house, 8, 1050
 - Toll-keeper's house, 8, 1049
- Punishment, 8, 1064**
 - Fine, 8, 1065
 - Imprisonment, 8, 1065
 - Misdemeanor, 8, 1064
- Search warrants, 21, 959
- Set-off, 22, 269
- Statute prohibiting, 8, 994
- Statutes**
 - Constitutional provisions requiring that subject shall be expressed in the title, 23, 243
- Statutory offense, 8, 1034
- Synonymous with gambling, 8, 1033
- The Game, 8, 1034**
 - Baccarat, 8, 1036
 - Backgammon, 8, 1042
 - Bagatelle, 8, 1036
 - Baseball, 8, 1036
 - Betting upon election, 8, 1037
 - Billiards, 8, 1036
 - Bowls, 8, 1036
 - Buying and selling of pools, 8, 1039
 - Cards, 8, 1036
 - Changing name of game, 8, 1036
 - Cock-fighting, 8, 1036
 - Cricket, 8, 1042
 - Dealing in stocks and futures, 8, 1040
 - Dice-throwing, 8, 1036
 - Dominoes, 8, 1037
 - Enterprise, 8, 1038
 - Equality, 8, 1038
 - Fantan, 8, 1041
 - Faro, 8, 1038
 - Foot-ball, 8, 1042
 - Foot-racing, 8, 1038
 - Gambling device, 8, 1036
 - Horse-racing, 8, 1038
 - Keno, 8, 1039
 - Lotto, 8, 1039
 - Must contain elements of chance, 8, 1034
 - Pico, 8, 1039
 - Poker, 8, 1039
 - Pool, 8, 1030

GAMING—Cont'd**The Game—Cont'd**

- Quoits, 8, 1042
- Ramps, 8, 1040
- Rondo, 8, 1040
- Rowing matches, 8, 1042
- Shooting matches, 8, 1040
- Shuffle-board, 8, 1042
- Sleight of hand, 8, 1040
- Ten-pins, 8, 1042
- Thimbles, 8, 1041
- Tossing, 8, 1041
- What are games of chance, 8, 1035
- What games within statute, 8, 1036
- Wrestling matches, 8, 1042

The Wager, 8, 1042

- Amount immaterial, 8, 1043
- Billiards, 8, 1043
- Checks or chips, 8, 1043
- Loser paying for game, 8, 1043
- Necessity of game being finished, 8, 1043
- Necessity that stake be put up, 8, 1043
- Necessity that thing staked have some intrinsic value, 8, 1043
- Party not interested in stake, 8, 1042
- Persons in any way interested in the stake, 8, 1042
- Persons looking on and encouraging game, 8, 1042
- Playing for beer, 8, 1045
- Price of liquor, 8, 1043
- Time and manner of betting, 8, 1042
- Value of thing staked, 8, 1043
- What constitutes a bet or wager, 8, 1042
- When bet is complete, 8, 1042
- Who may bet or wager, 8, 1042

Value, 28, 47**Visiting Gaming Houses, 8, 1052**

- Occasional visit, 8, 1052
- Separate offense, 8, 1052

What Constitutes

- Two elements, 8, 1033
- What is a game of chance, 3, 88

GAMING HOUSE, 8, 1065

See DISORDERLY HOUSE; GAMING.

Burden of Proof, 8, 1092

- When upon defendant, 8, 1093
- When upon the state, 8, 1093

Definition, 8, 1065**Evidence**

- Articles and instruments for carrying on, 8, 1092
- Competency and weight, 8, 1090
- Necessity of direct proof, 8, 1091
- Forfeiture of license, 8, 1094

Gaming Implements**Searches and Seizures**

- Constitutionality of statute authorizing destruction, 8, 1082
- Constitutionality of statutes, 8, 1082
- Constitutional law, 8, 1082
- Destruction of gaming implements, 8, 1082

Liability of property to action for recovery, 8, 1084

Right of officer to hold property, 8, 1084

Seizure of gaming instruments, 8, 1081

Statutes authorizing, 8, 1081

Increased punishment for subsequent offense, 8, 1094

Indictable at common law, 8, 1073

Indictments, 8, 1084, 1090

Allegation of intent, 8, 1091

Alleging by whose permission gaming was done, 8, 1090

Charging Offense, 8, 1084

Examples, 8, 1085

Following statutory form, 8, 1084, 1085

"Kept," 8, 1086

Language of statute, 8, 1086

Names of persons who played, 8, 1086

Negating exceptions, 8, 1086

Sufficiency of allegation, 8, 1086

Surplusage, 8, 1086

Description of Games and Gaming Implements, 8, 1088

Devices not specified in statute, 8, 1088

Following language of statute, 8, 1088

Necessary to see that game was played, 8, 1090

Owner or occupant, 8, 1090

Particularity required, 8, 1088

Specifying amount won or lost, 8, 1089

Specifying games, 8, 1088

Statute prohibiting a certain game and certain class of games, 8, 1089

Where offense is merely keeping of a gaming house or apparatus, 8, 1090

Description of Places or Houses, 8, 1087

Examples, 8, 1087, 1088

Necessity of setting out location particularly, 8, 1087

Showing that offense falls under the statute, 8, 1086

Showing that place be within county, 8, 1087

Infamous crime, 10, 605

Information, 8, 1084

Specifying the amount won or lost, 8, 1089

Jurisdiction, 8, 1084

Keeping gaming implements, 8, 1066, 1073

Libel and slander, 13, 339

License, 13, 538

"Like kind," 13, 662

Meaning of term "gaming devices," 8, 1066

Meaning of term "gaming implements," 8, 1066

Meaning of term "keeping," 8, 1074

Misdemeanor, 8, 1093

Partnership, 17, 892

Penalties and Qui Tam Actions, 8, 1084

Games, 8, 1084

Pool rooms, 8, 1066

Presumption, 8, 1092

As to occupant, 8, 1092

As to owner, 8, 1092

Punishment, 8, 1093

Searches and Seizures, 8, 1081**Gaming Implements**

Seizure of gaming instruments, 8, 1081

Securities against repetition of offense, 8, 1095

Seizure of gaming implements, 8, 1081

Suppression by municipal corporations, 8, 1084

Tending towards public disorder, 8, 1073

Under Statutes, 8, 1074

Clubs, 8, 1078

Dealer of cards, 8, 1077

Games prohibited, 8, 1075

Houses where intoxicating liquor is sold, 8, 1074

In Alabama, 8, 1075

In Arkansas, 8, 1075

In California, 8, 1075

In Colorado, 8, 1076

In District of Columbia, 8, 1076

In Florida, 8, 1075

In Georgia, 8, 1076

In Idaho, 8, 1075

In Illinois, 8, 1076

In Indiana, 8, 1076

In Iowa, 8, 1076

In Kentucky, 8, 1077

In Louisiana, 8, 1078

In Manitoba, 8, 1081

In Maryland, 8, 1078

In Massachusetts, 8, 1078

In Michigan, 8, 1070

In Mississippi, 8, 1079

In Missouri, 8, 1079

In Ohio, 8, 1080

In Oregon, 8, 1080

In New Hampshire, 8, 1080

In New York, 8, 1080

In Rhode Island, 8, 1080

In Tennessee, 8, 1080

In Texas, 8, 1075, 1080

In Virginia, 8, 1081

In Wyoming, 8, 1075

Owner or occupant of premises, 8, 1074

Playing, by minor, 8, 1076

Verdict, 8, 1093

What are, 8, 1066

What Places and Things Are Within Statute, 8, 1066**Bar Room in Which**

Bagatelle is played, 8, 1067

Billiards are played, 8, 1067

Bowls are played, 8, 1067

Dice are thrown, 8, 1067

Dominoes are played, 8, 1067

Pigeon hole is played, 8, 1067

Pool is played, 8, 1067

Billiard room, 8, 1067

Booth at race-track, 8, 1067

Bowling alley, 8, 1067

Club-houses, 8, 1070

Faro room, 8, 1071

Faro table, 8, 1071

Gaming table, 8, 1067

Pack of cards, 8, 1067

Place where cock-fighting is carried on, 8, 1071

Poker, 8, 1072

Table for use of cards, 8, 1067

Tables where games of chance are played, 8, 1071

Temporary structure at race-track, 8, 1072

Various examples, 8, 1066, 1072

When indictable at common law, 8, 1073

GANANCIAL, 8, 1095**GANGWAY, 8, 1095****GARDEN, 8, 1095**

Market garden, 14, 459

Seeds, 8, 1095

GARDENER, 8, 1096**GARNISHMENT, 8, 1096***See* FOREIGN ATTACHMENT; SUMMONS.**Affidavit, 8, 1111**

Amendment, 8, 1112

By whom affidavit should be made, 8, 1113

Clearness of statement, 8, 1114

Conclusiveness of, 8, 1115

Directness of statement, 8, 1114

Garnishee controverting, 8, 1115

Garnishee's indebtedness, 8, 1113

Necessity, 8, 1113, 1114

No other property subject to execution, 8, 1113

Positiveness of statement, 8, 1114

Proceedings invalid without, 8, 1112

Stating causes in disjunctive, 8, 1115

Stating facts and not conclusions of law, 8, 1114

Statutes requiring, 8, 1111

Test as to sufficiency, 8, 1114

Verification of petition, 8, 1111

Waiver, 8, 1112

What fact should be shown, 8, 1113

Where defendant appears, 8, 1112

Whether appearance cures defects, 8, 1112

Whether perjury can be assigned, 8, 1114

Agents, 8, 1158

Aid of Equity in Garnishment, 8, 1103, 1256

Auxiliary proceedings, 8, 1256

Bill to set aside a conveyance of property, 8, 1256

Equitable aid to supply deficiency in statutory proceedings, 8, 1256

Garnishee invoking aid of equity to avoid payment of a judgment incurred through his negligence, 8, 1257

Garnishee putting his property out of reach of legal process, 8, 1257

Suit in equity, 8, 1256

Whether statutory remedy exclusive, 8, 1256

GARNISHMENT—Cont'd

Amendment, 8, 1125

Affidavit, 8, 1112

Answer, 8, 1210

Discretion of court, 8, 1210

Generally permitted, 8, 1210

New matters of defense, 8, 1211

Not a matter of right, 8, 1210

Whether opportunity for examination of garnishee, 8, 1211

Bond, 8, 1115

Officer's Return, 8, 1126

Parol evidence, 8, 1125

Presumption that officer has performed his duty, 8, 1125

Public offices, 8, 1126

Service of garnishment, 8, 1125

Answer. 8, 1206

Admission of indebtedness and statement of matter in avoidance, 8, 1208

Amendments, 8, 1210

Discretion of court, 8, 1210

Generally permitted, 8, 1210

New matters of defense, 8, 1210

Not a matter of right, 8, 1210

Whether opportunity for examination of garnishee, 8, 1211

As evidence, 8, 1233

Burden upon garnishee to clear himself, 8, 1210

By agent or officer of corporation, 8, 1206, 1207

Certainty and sufficiency, 8, 1207

Construed more strongly against garnishee, 8, 1208

Denial of liability to defend in language of statute, 8, 1207

Doubtful and indefinite statements, 8, 1209

Effect of, 8, 1225

As an admission, 8, 1228

As Evidence, 8, 1235

For garnishee, 8, 1235

For plaintiff, 8, 1233

Of trial with claimant, 8, 1242

Where it contains contradictory statements, 8, 1234

Conclusiveness, 8, 1225

Court without jurisdiction, 8, 1228

Denial of indebtedness, 8, 1227

Effect of answer on trial of issue, 8, 1228

Necessity of clear admission of liability, 8, 1226

Necessity of express admission of indebtedness, 8, 1226

Showing liability aliunde, 8, 1226

What proof plaintiff is confined to, 8, 1228

What sufficient to charge garnishee, 8, 1226

Where garnishee's liability determined by, 8, 1225

Where there is doubt as to garnishee's liability, 8, 1227

Whether entitled to force of a bill in chancery, 8, 1228

Evasive, 8, 1208

Facts, not opinion of garnishee, determining liability, 8, 1249

Full and explicit, 8, 1207

Incorporating statements of others in testimony, 8, 1207

Information and belief, 8, 1207

Judgment upon, 8, 1249

No presumption in favor of garnishee, 8, 1210

Of corporation, 8, 1206

Omission of detail, 8, 1209

Perjury, 8, 1207

Refusal to, 8, 1211

Court determining whether question was a proper one, 8, 1211

Discretion of court, 8, 1212

Interrogatory not pertinent, 8, 1212

Liability for judgment, 8, 1211

Particular interrogatory, 8, 1208

What penalties may be imposed, 8, 1211

Whether trial court's decision is reviewable upon appeal, 8, 1211

Under corporate seal, 8, 1206

Whether it must be under oath, 8, 1206

Appeal, 8, 1257

Action of appellate court upon record, 8, 1263

Assignment of errors, 8, 1262

Costs, 8, 1266

Distinct from principal action, 8, 1257

Effect of, 8, 1257

Appeal on principal action, 8, 1257

Effect upon main cases, 8, 1257

Necessity of appeal bond, 8, 1258

Reversal of judgment in main action, 8, 1258

Evidence not before appellate court, 8, 1260

Final order, 8, 1259

From what appeal lies, 8, 1259

Instances of orders from which appeal may be taken, 8, 1260

Matters in discretion of court, 8, 1260

Motion to dismiss, 8, 1260

Necessity of motion to set aside, 8, 1261

Record, 8, 1261, 1264

Amendment, 8, 1264

Bill of exceptions, 8, 1262

Construction in favor of, 8, 1262

Error of law appearing upon, 8, 1261

Errors on face of, 8, 1262

Failure to set out original execution, 8, 1261

Fatal defects, 8, 1261

Stating the answer, 8, 1261

What record must show, 8, 1261

When record sufficient, 8, 1261

Whether answer is a necessary part of, 8, 1262

Right of appeal in general, 8, 1257

What errors will be considered, 8, 1261

When appellate court will change order directly, 8, 1263

- When case sent back for re-trial, 8, 1263
- When the only remedy, 8, 1259
- Whether garnishment is a special proceeding, 8, 1257
- Who May, 8, 1259**
 - Defendant where garnishee alone is affected, 8, 1259
 - Garnishee where principal defendant alone is affected, 8, 1259
 - Separate interest of parties, 8, 1259
 - The defendant, 8, 1259
 - The garnishee, 8, 1259
 - The plaintiff, 8, 1259
- A process, 8, 1100
- As a Defense to Action by Garnishee's Creditor, 8, 1220**
 - Failure to plead, 8, 1222
 - Prior action, 8, 1221
 - Subsequent action, 8, 1220
- As Affected by Assignment, 8, 1222**
 - Duty of garnishee, 8, 1223
 - Notice to garnishee, 8, 1223
- Auxiliary to Principal Case, 8, 1099**
 - Effect of failure of principal case, 8, 1099, 1100
 - Governed by general rules applicable to other suits, 8, 1099
 - Possesses many features of original action, 8, 1099
 - Subject to provisions of statutes limiting jurisdiction of courts, 8, 1100
- Baggage, 8, 1159
- Bill of Exceptions**
 - When necessary, 8, 1262
- Bills and notes*, see *infra*, NEGOTIABLE PAPER.
- Bond, 8, 1115**
 - Action for breach of, 8, 1116
 - Actual damages on, 8, 1116
 - Amendment, 8, 1115
 - Condition of special, 8, 1115
 - Exemplary damages on, 8, 1116
 - Failing to comply with statute, 8, 1115
 - Garnishee's right of action on, 8, 1116
 - Necessity of, 8, 1115
 - Whether garnishee may object to bond where defendant appears, 8, 1115
 - Whether special bond is required, 8, 1115
- Burden of Proof, 8, 1152, 1233**
 - Intervention of third party, 8, 1242
- Certiorari, 8, 1263**
 - Quash proceedings where judgment has been satisfied, 8, 1263
 - When independent of appeal, 8, 1263
 - When writ may be had, 8, 1263
- Checks, 8, 1194**
- Choses in Action in Possession of Bailee, 8, 1153**
 - Check on bank, 8, 1153
 - Notes, drafts, etc., deposited for collection, 8, 1153
 - When bailee subject to, 8, 1154
 - Whether transaction creates a debt between parties, 8, 1153
- Common Carriers**
 - Property in transitu, 8, 1158
 - Where bill of lading has been issued, 8, 1159
- Compulsory assignment, 8, 1101**
- Conflict of Laws, 8, 1254**
 - Binding effect of judgment in another state, 8, 1255
 - Comity, 8, 1254
 - Dependent upon law of forum, 8, 1254
 - Domicile of garnishee, 8, 1255
 - Enforcement of foreign garnishment laws, 8, 1254
 - Extra-territorial force of exemption laws, 8, 1253, 1254
 - Garnishment of wages, 3, 523
 - Judgment of another state must show compliance with statute, 8, 1255
 - Law of domicile, 8, 1255
- Construction of Statute, 8, 1104**
 - Analogous to custom of London, 8, 1105
 - Cases not contemplated, 8, 1105
 - Extending remedy beyond provisions of statute, 8, 1105
 - Derogation of common law, 8, 1104
 - Liberal construction, 8, 1104
 - Retrospective operation, 8, 1104
- Contracts Between Defendant and Garnishee, 8, 1189**
 - Accountability to defendant, 8, 1190
- Contract**
 - Between garnishee and third person, 8, 1190
 - For future delivery, 8, 1189
 - To pay money in another state, 8, 1191
- Credit due, 8, 1189
- Entire contract, 8, 1190
- Garnishment changing nature of contract, 8, 1189
- How liability of garnishee determined, 8, 1190
- Illegal consideration, 8, 1191
- Insurance company having option to rebuild, 8, 1191
- Option to perform contract in two different ways, 8, 1191
- Preexisting contract modifying liability, 8, 1190
- Sale, 8, 1191
- Stipulation where contractor fails to pay his servants, that employer may, 8, 1189
- Void contracts, 8, 1191
- Wages, 8, 1191
- When garnishee may be charged with contract, 8, 1189
- Corporations, 4, 278; 8, 302, 393, 396**
 - Chartered in several states, 4, 284
 - Necessity of, 4, 288
- Costs, 8, 1264**
 - After garnishee is charged or discharged, 8, 1267
 - Against garnishee, 4, 318
 - As between plaintiff and defendant, 8, 1266

GARNISHMENT—Cont'd**Costs—Cont'd**

- Discretion of Court, 8, 1266, 1267
 - Upon jury trial, 8, 1266
- General rule, 8, 1264
- Garnishee bringing action in a higher court, 8, 1265
- Garnishee fails to disclose full amount of indebtedness, 8, 1266
- In case of appeal, 8, 1266
- Incurred by negligence of garnishee, 8, 1265
- Judgment as to cost, 8, 1267
- Liability of intervening claimant, 8, 1266
- Omitted items, 8, 1267
- To whom finally taxed, 8, 1265
- Transactions intended to hinder and delay creditors, 8, 1265
- Travel and attendance, 8, 1267
- When debt of garnishee is sufficient, 8, 1264
- When garnishee charged, 8, 1265
- When garnishee contests, 8, 1265
- When garnishee entitled to judgment against plaintiff, 8, 1264
- When garnishee entitled to reimburse himself out of property of defendant, 8, 1264
- Where garnishee compels a third person to interplead, 8, 1265
- Where judgment is taken upon the answer, 8, 1265
- Whether garnishee can demand his fees in advance, 8, 1265
- Counties, 4, 373
- Credits, 8, 1161
- Default**, 8, 1246
 - Attachment of garnishee's person, 8, 1247
 - Conditional judgment, 8, 1248
 - Effect of, 8, 1247
 - Judgment upon, 8, 1247
 - Necessity of proof of amount claimed before judgment, 8, 1247
 - Necessity of proof of service of process, 8, 1248
 - Omission by assignee to set aside judgment, 8, 1248
 - Process, 8, 1248
 - Scire facias, 8, 1248
 - Setting aside judgment from, 8, 1248
 - When garnishee is in, 8, 1246
 - Where garnishee is considered as a witness, 8, 1247
- Definition, 8, 1097
- Definition of garnishee, 8, 1097
- Demand**, 8, 1149, 1154
 - Enforcible at law, 8, 1148, 1160
 - Must arise ex contractu, 8, 1148
- Demurrer, 8, 1100
- Disclosure of adverse interests, 8, 1222
- Distributive share, 8, 314
- Dividend, 8, 1154
- Effect of**, 8, 1161, 1198
 - Accountability of garnishee to plaintiff, 8, 1200

- Binds debt in hands of garnishee, 8, 1102
 - Contracts previously existing between parties, 8, 1201
 - Creates no specific lien, 8, 1199
 - Defendant's rights merely suspended, 8, 1201
 - Distinguished from attachment, 8, 1198
 - Divesting all defendant's rights against garnishee, 8, 1200
 - Effectual attachment of property, 8, 1198
 - Full lien upon specific property, 8, 1199
 - Interference with garnishee's possession, 8, 1201
 - Lien in case of fraudulent conveyance, 8, 1200
 - Payment by garnishee to defendant, 8, 1200
 - Personal liability of garnishee, 8, 1198
 - Priority where there are several garnishments, 8, 1201
 - Property constructively in custodia legis, 8, 1198
 - When lien attaches, 8, 1200
 - Where garnishee's possession is wrongful, 8, 1202
 - Whether property of garnishee subject to seizure, 8, 1201
- Employee, 6, 637
- Equitable assets, 8, 1256
- Equitable interest, 8, 1185
- Evidence**, see *infra*, ANSWER.
 - What Competent**, 8, 1234
 - Award, 8, 1236
 - Declarations of defendant, 8, 1235
 - Declarations of garnishee, 8, 1234
 - Declarations of third persons, 8, 1235
 - Evidence contradicting answer, 8, 1235
 - Evidence for garnishee, 8, 1235
 - Garnishee witness on his own behalf, 8, 1235
 - In case of fraud, 8, 1234
 - Judgment and proceedings against defendant in principal case, 8, 1234
 - Judgment for defendant before justice of the peace, 8, 1235
 - Preponderance of evidence, 8, 1236
 - Proof of defense not set up in answer, 8, 1235
- Executors and administrators, 8, 314, 1162
- Exemption**, see *infra*, GARNISHEE'S DEFENSE.
 - Collateral impeachment of judgment for failure to disclose, 8, 1253
 - Discovery of, before final judgment by garnishee, 8, 1253
 - Exemption laws of another state, 8, 1253
 - Extra-territorial force of exemption laws of another state, 8, 1254

Garnishee's duty to protect exemption rights of defendant, 8, 1253
 Factorizing, 8, 1098
Foreign Corporations, 8, 302, 393
 Consolidated corporations, 8, 396
 Exemptions, 8, 396
 General rule, 8, 302, 393
 In Alabama, 8, 394
 In Georgia, 8, 395
 In Illinois, 8, 395
 In Iowa, 8, 395
 In Kansas, 8, 395
 In Kentucky, 8, 394
 In Maryland, 8, 394
 In Massachusetts, 8, 393
 In Missouri, 8, 395
 In New Hampshire, 8, 394
 In New York, 8, 393, 394
 In Ohio, 8, 395
 In Pennsylvania, 8, 395
 In Rhode Island, 8, 394
 In Vermont, 8, 395
 In Wisconsin, 8, 395
 National corporations, 8, 396
 Personal property of debtor in hands of foreign corporation, 8, 394
 Pleading, 8, 396
 Practice, 8, 396
 Shares of stock of non-resident, 8, 393
 Under statutes regulating appointment of agents for service of process, 8, 395
 Validity, 8, 393
 When not liable, 8, 302
 Fraudulent transfer, 8, 1149, 1156
Garnishee, see FOREIGN ATTACHMENT.
 Pleadings, see *infra*, ANSWER; ISSUE.
Final Judgments
 Order discharging as final, 12, 68
Garnishee's Defense, 8, 1212
 See *infra*, LIABILITY OF GARNISHEE.
 Agreement after service, 8, 1213
 Any defense against his creditor, 8, 1212
Defendant's Exemption Rights as a Defense, 8, 1223
 Duty of defendant to furnish garnishee with information, 8, 1225
 Duty of garnishee, 8, 1224
 Exemption laws of another state, 8, 1224
 Garnishee ascertaining that property is exempt, 8, 1225
 Garnishee setting up defense, 8, 1223, 1224
 Garnishee's liability as to exempt property, 8, 1223
 Principal not ascertaining his claim to exemption, 8, 1225
 Wages exempt, 8, 1223
 When exemption claimed, 8, 1223
 Disclosure of adverse interests, 8, 1222
 Garnishee entitled to release, 8, 1212
 Liability modified by contract, 8, 1212
 No defense not available against creditor, 8, 1212

Obligation barred by statute of limitation, 8, 1213
 Obligation without consideration, 8, 1213
 Payment after service, 8, 1213
Pendency of Other Proceedings, 8, 1219
 Failure to plead, 8, 1222
 Garnishee charged in a prior proceeding for full amount of debt in his hands, 8, 1220
 Garnishee's duty to protect prior lien, 8, 1220
 Garnishment as a defense to action by garnishee's creditor, 8, 1220
 Garnishee disclosing senior garnishments, 8, 1220
 Judgment against garnishee, 8, 1221
 Lis pendens, 8, 1221
 Prior action by garnishee's creditor, 8, 1221
 Several garnishments, 8, 1219
 Plaintiff can claim no greater rights than defendant, 8, 1212
Proceedings in Principal Case, 8, 1218
 Cannot object to any irregularities, 8, 1219
 Garnishee must inquire as to jurisdiction, 8, 1218
 Invalidity appearing upon face of record, 8, 1218
 Jurisdiction of court being established, 8, 1219
 Valid judgment against defendant necessary, 8, 1218
 Where defendant is personally before court, 8, 1219
 Where judgment might be reversed on error, 8, 1219
 Protecting rights of defendant, 8, 1213
Right of Set-Off, 8, 1213
 Any right which might have been pleaded against defendant, 8, 1213
 Debt due to garnishee and another jointly, 8, 1215
Demand
 In favor of co-partnership, 8, 1215
 In favor of garnishee as administrator, 8, 1215
 Must arise out of contract, 8, 1216
 Must be due garnishee in same capacity, 8, 1215
 Must be mutual, 8, 1215
 Equitable claims, 8, 1214, 1217
 Failure of consideration, 8, 1214
 General right to, 8, 1213
 Indebtedness accruing after garnishment, 8, 1215
 Liability as surety or indorser, 8, 1217
 Necessity that demand be owned and due to garnishee at time of service, 8, 1216
 Pleading defense specially, 8, 1213
 Promissory note, 8, 1214
 Property of which garnishee has mere naked possession, 8, 1217, 1218

GARNISHMENT—Cont'd**Garnishee's Defense—Cont'd*****Right of Set-Off—Cont'd**

Rights of others with whom garnishee is privy, 8, 1214

Set-off of claims against property in garnishee's possession, 8, 1217

Statute of frauds, 8, 1213

General object, 8, 1100

Husband and wife, 8, 319; 9, 799, 800

Interest, 11, 400

Interrogatories, 8, 1204

Cross-examination, 8, 1204

Discretion of court, 8, 1204

General rule as to what questions may be put, 8, 1205

Husband and wife, 8, 1205

Impeaching testimonies, 8, 1204

Indebtedness of other persons to defendant, 8, 1206

Independent transactions, 8, 1205

Liability at time of service, 8, 1205

Liability in another capacity than that in which he was served, 8, 1206

Personal knowledge of facts inquired into, 8, 1206

Privileged communications, 8, 1205

Question tending to charge garnishee with debt, 8, 1204

Question tending to criminate, 8, 1204

Question tending to discovery of fraud on part of garnishee, 8, 1204

Question tending to subject garnishee to a pecuniary loss, 8, 1204

Refusal to Answer, 8, 1211; 11, 535

Court determining whether question was a proper one, 8, 1211

Discretion of court, 8, 1212

Interrogatory not pertinent, 8, 1212

Liability for judgment, 8, 1211

What penalty may be imposed, 8, 1211

Whether trial court's decision is reviewable upon appeal, 8, 1211

Rents and profits, 8, 1206

Scope of, 8, 1204

Title to real estate, 8, 1206

Whether garnishee is a witness, 8, 1204

Whether opportunity to examine garnishee upon amendment, 8, 1211

In What Cases the Process May Issue, 8, 1105*See infra*, UNDER ATTACHMENT; UNDER EXECUTION.

Actions commenced by petition or declaration, 8, 1106

At instance of the state, 8, 1106

At instance of the United States, 8, 1107

Dismissal, 8, 1106

Examples of when it may and when it may not be issued, 8, 1106

Improperly issued, 8, 1106

Only cases within purview of statute, 8, 1105

Restrict operation of such statutes, 8, 1106

Joinder of parties, 8, 1100

Joint Debts and Credits Jointly Owned, 8, 1166

All parties should be garnished, 8, 1166

Credits due judgment debtors, 8, 1169

Garnishee co-partner with defendant, 8, 1168

Individual debt of one of joint creditors, 8, 1168

Interest of co-partners, 8, 1169; 17, 1339

Interest of joint creditors, 8, 1169

Liability to principal not joint, 8, 1167

Non-resident partner, 8, 1167

Partnership debts, 8, 312, 1166, 1163; 17, 1333

Principal defendants, 8, 1168

Where party is not summoned to pay debt, 8, 1166

Judgment, 8, 1242; 12, 91*See* JUDGMENT.*Default, see infra*, DEFAULT.

Against garnishee as barring action by defendant, 12, 94

Collateral Impeachment, 8, 1252

Failure to show intervening rights of other parties, 8, 1252

Showing failure to disclose exemption, 8, 1252

Where garnishee has failed to protect exemption rights of defendant, 8, 1253

Where garnishee has failed to protect rights of other parties, 8, 1253

Defendant showing that his claim is greater than amount of judgment, 12, 94

Discharge of Garnishee, 8, 1249

Abandonment of proceedings by plaintiff, 8, 1250

Death of defendant, 8, 1251

Death of garnishee, 8, 1251

Dissolution of attachment, 8, 1251

Failure to file interrogatories, 8, 1250

Failure to obtain judgment against defendant, 8, 1250

Furnishing bail or bond, 8, 1251

Insolvency of defendant, 8, 1251

Levy of execution upon land, 8, 1250

Necessity of, 8, 1249

Plaintiff's neglect to proceed, 8, 1249

Stipulation between parties, 8, 1251

Undue delay of plaintiff, 8, 1250

Voluntary payment to plaintiff or defendant, 8, 1249

What constitutes sufficient ground for discharge, 8, 1250

Effect of foreign, 8, 1255

Force and Effect, 8, 1251

Bar to suit by defendant, 8, 1251

Garnishee must show valid judgment, 8, 1252

Res adjudicata, 8, 1251

What garnishee may show against defendant, 8, 1251

Whether defendant is concluded, 8, 1251

- Whether garnishee protected where judgment is reversed, 8, 1252
- Whether judgments must be satisfied to operate as a bar, 8, 1252
- Form and Contents of**, 8, 1244
- Excessive judgment, 8, 1244
- Name of defendant against garnishee, 8, 1245
- Of promissory notes, 8, 1244
- Protecting garnishee, 8, 1244
- Showing compliance with statutory requirements, 8, 1245
- Showing service, 8, 1245
- Showing valid judgment against defendant, 8, 1245
- Supra judgment, 8, 1245
- Whether part of judgment in principal case or distinct, 8, 1244
- Garnishee failing to bring assignment to attention of court, 12, 95
- Garnishee must avail himself of proper defense, 12, 95
- Garnishee must take advantage of any defect in judgment, 12, 94
- Garnishee not liable to judgment in some states, 8, 1242
- Garnishment in sister states, 12, 95
- Jurisdiction, when defendant is present, 12, 94
- Order to pay over, 8, 1243
- Other creditors of defendant, 12, 95
- Personal Judgment Against Garnishee**, 8, 1243
- How avoided, 8, 1243
- Guarding garnishee against personal liability, 8, 1243
- Payment into court, 8, 1243
- Scire facias, 8, 1244
- Showing that court had jurisdiction, 12, 94
- Showing that payment was not voluntary, 12, 94
- Upon the Answer**, 8, 1249
- Garnishee discharged if his liability does not clearly appear, 8, 1249
- The facts, not garnishee's opinion, determining liability, 8, 1249
- What judgment depends upon, 8, 1249
- Void and Voidable Proceedings**, 8, 1245
- Effect of, 8, 1245
- Examples, 8, 1245, 1246
- When void, 8, 1245, 1246
- Voluntary payment, 12, 94
- Whether erroneous judgment discharges garnishee, 12, 94
- Whether judgment must have satisfied, 12, 94
- Jurisdiction**
- Subject to provisions limiting jurisdiction of courts generally, 8, 1100
- Justice of the Peace**, 12, 439, 475
- Answer of garnishee, 12, 476
- Appeal, 12, 482
- Compliance with statute, 12, 475
- Failure of garnishee to answer, 12, 476
- Nature, 12, 476
- Order to pay money into court, 12, 476
- Publication of summons, 12, 438
- Legacies, 8, 314
- Liability of Garnishee**, 8, 1147, 1196, 1219
- As a Debtor**, 8, 1160
- Contract to pay in specific article before demand, 8, 1160
- Debt not absolutely due, 8, 1162
- Debt not in existence at time of service of process, 8, 1161
- Demand not enforceable at law, 8, 1160
- Distinguished from liability for goods and chattels, 8, 1160
- Garnishee's right to rely upon his verbal promise, 8, 1165
- Judgment for unliquidated damages, 1163
- Money due from fire insurance company, 8, 1163
- Obligation payable in anything but money, 8, 1160
- Promise to pay debt of another, 8, 1164
- Statute using the words "effects" or "credits," 8, 1160
- Store accounts, 8, 1160
- Torts, 8, 1162
- Unliquidated damages, 8, 1163
- When enforceable at law, 8, 1161
- As Affected by Assignment**, 8, 1179
- Assignee's right as against garnishee, 8, 1183
- Assignment of exempt property, 8, 1179
- Citation of assignee, 8, 1183
- Discharges garnishee, 8, 1179
- Duty of assignee to appear and defend, 8, 1183
- Duty of assignee to furnish competent evidence of assignment, 8, 1183
- Failure to give notice where assignee has an equitable title, 8, 1184
- Failure to give notice where assignee has legal title, 8, 1184
- Fraudulent assignment, 8, 1180
- Garnishee having paid debts equal to value of property in his hands, 8, 1181
- Garnishee's liability where he fails to bring assignment to notice of court, 8, 1183
- Invalid assignment, 8, 1181
- Necessity that assignee be before court, 8, 1181
- Notice before service of process, 8, 1182
- Notice to debtor within a reasonable time, 8, 1182
- Notice to garnishee, 8, 1182
- Priority of assignment in garnishment, 8, 1180
- Suspension of proceedings until assignee is brought in, 8, 1183
- Test as to whether property has been assigned, 8, 1179

- Privity of contract, 8, 1148
- Property in garnishee's possession but under the control of another, 8, 1151
- Property outside of state, 8, 1150
- Recovery of more than was paid upon judgment, 8, 1198
- Rights of attaching creditor no greater than those of defendant, 8, 1149
- To defendant after garnishment, 8, 1197
- What is known by garnishee to be property of defendant, 8, 1151
- Where defendant could not bring action, 8, 1149
- Where defendant is personally before court, 8, 1219
- Where Liability Is Contingent**, 8, 1194
 - Checks, 8, 1194
 - Contingency merely affecting title to property, 8, 1195
 - Debt becoming absolute subsequent to service of process, 8, 1194
 - General rule, 8, 1194
 - Insurance company before proof of loss, 8, 1194
 - Nature of the contingency, 8, 1195
 - Optional rights, 8, 1195
 - Seamen's wages, 8, 1195
 - Showing fulfillment of condition, 8, 1195
 - Subscription to corporate stock, 8, 1194
 - Usurious contract, 8, 1195
 - Whether debt in suit in federal court can be reached in state process, 8, 1170
- Liability to Third Parties**, 8, 1253
 - Collateral attack upon judgment for failure to protect, 8, 1253
 - Garnishee's duty to protect rights of third parties of whose claims he had notice, 8, 1253
 - Knowledge of intervening rights, 8, 1253
 - Notice to come in and defend themselves, 8, 1253
- lien**, 8, 1101; 15, 92
 - Priority of, 8, 1124
- Logs in private boom, 8, 1157
- Matters of purely equitable cognizance, 8, 1103
- Mechanics' liens, 15, 92
- Merger, 15, 342
- Mode of attachment and execution, 8, 1101
- Money due from fire insurance company, 8, 1163
- National banks, 16, 216
- Nature of proceedings in rem, 8, 1103
- Necessary amendments, 8, 1210
- Necessity of judgment against debtor before judgment against garnishee, 8, 327
- Negotiable Paper**, 8, 1172
 - Attachment before maturity, 8, 1173
 - Burden of proof, 8, 1175
 - Citing assignee of note to interplead, 8, 1178
 - Conflict of law, 8, 1173
 - Conflict of opinion, 8, 1172
 - Court ordering an instrument to be placed in custody, 8, 1177
 - Debt still property of payee, 8, 1173
 - General principles, 8, 1173, 1178
 - Judgment of condemnation, 8, 1177
 - Necessity of actual notice of attachment, 8, 1178
 - Necessity of seizure of notes themselves, 8, 1174
 - Negotiable instrument past due, 8, 1176
 - Note not payable within state, 8, 1175
 - Notice from a mere stranger, 8, 1178
 - Notice of attachment to bona fide indorsee, 8, 1178
 - Showing affirmatively that debt is property of payee, 8, 1173
 - Showing affirmatively that debt is still property of defendant, 8, 1175
 - Statutes rendering negotiable instrument liable to attachment, 8, 1172
 - Surrender of the note, 8, 1176
 - Where note has been indorsed to a third person, 8, 1174
 - Where paper is not, strictly speaking, negotiable, 8, 1173
 - Where paper still current, 8, 1172
 - Whether within garnishment statutes, 8, 1172
 - While instrument is current, 8, 1174
- Non-Resident Debtors**, 8, 302, 317
 - Admissions, 8, 316
 - Attaching in garnishee's hands, 8, 316
 - Garnisheeing United States officers, 8, 319
 - General rule, 8, 302
 - Husband garnisheed in suit against his wife, 8, 319
 - Interested garnishee, 8, 318
 - Jurisdiction, 8, 317
 - Nature of possession, 8, 317
 - Property sold to garnishee, 8, 318
 - Rights of garnishee, 8, 318
 - Right to retain property, 8, 317
 - Service, 8, 316
 - Trust funds, 8, 317
- Notice**
 - As to notice of assignment*, see *infra*, ASSIGNMENT.
- Notice to Defendant**, 8, 1126
 - Constructive notice, 8, 1127
 - Defective, 8, 1128
 - Necessity of, 8, 1126
 - Proof of service, 8, 1127
 - Statutory requirements, 8, 1127
 - Validity of attachment, 8, 1127
 - Validity of garnishment without notice, 8, 1127
 - Voluntary appearance, 8, 1128
- Novation**, 16, 869
- Officer of army, 15, 441
- Officer of corporation, 8, 1158
- Partnership**, 8, 312, 1166, 1168; 17, 1333
 - Garnishee copartner with defendant, 8, 1168

GARNISHMENT—Cont'd**Liability of Garnishee—Cont'd****As Affected by Assignment—Cont'd**

- Verbal assignment, 8, 1179
- Waiver of claim by assignee, 8, 1184
- When garnishee not liable, 8, 1181
- When judgment a bar to suit by assignee, 8, 1184
- When judgment not a bar to suit by assignee, 8, 1184
- Where attaching creditor has notice of equitable assignment, 8, 1185
- Where garnishment proceedings have ended, 8, 1181

As Affected by Fraud, 8, 1192

- Bringing in third party, 8, 1194
- Fraud against attaching creditor, 8, 1192
- Fraud against debtor, 8, 1192
- Partnership assets, 8, 1192
- Payment after service, 8, 1194
- Transactions after affidavit is made, 8, 1193
- Void assignment for benefit of creditors, 8, 1192
- Where garnishee sets up title in himself, 8, 1192
- Whether relief is limited to that which debtor might have, 8, 1193

As Affected by Prior Incumbrance or Pledge, 8, 1185

- Advances made upon mortgages, 8, 1187
- Certificate of stock, 8, 1186
- Conversion by mortgagee, 8, 1188
- Estoppel, 8, 1187
- Equitable interest in personal property, 8, 1185
- Fire insurance money, 8, 1186
- Foreclosure, 8, 1188
- Goods in hands of commission merchant, 8, 1186
- Interest of mortgagor, 8, 1185
- Lawful lien, 8, 1188
- Liability for surplus until after lien is paid, 8, 1188
- Mortgagee's interest in land, 8, 1186
- Mortgagor's interest subordinate to prior liens, 8, 1186
- Payment or tender of debt due mortgagee, 8, 1187
- Possession of mortgagee, 8, 1187
- Set-off, 8, 1188
- Statutory provisions, 8, 1186

As to Debts Before Maturity, 8, 1165

- Entry of judgment delayed until debt becomes due, 8, 1166
- Execution of judgment, 8, 1166
- General rule as to debts not due, 8, 1165

As to joint debts and credits owned jointly, see *infra*, JOINT DEBTS AND CREDITS OWNED JOINTLY.**Award made by referee, 8, 1170****Burden of proof, 8, 1152****Capacity in which property is held, 8, 1154****Conclusiveness upon defendant, 8, 1198****Condemnation of property, 8, 1150****Claims arising in tort, 8, 1147****Debts in Suit, 8, 1169**

- Where no stay of proceedings may be had, 8, 1170

Demand, 8, 1149**Demands enforceable at law, 8, 1148****Duty to inquire as to jurisdiction, 8, 1218****Duty to see that there is a valid judgment against defendant, 8, 1218****Equitable claim against garnishee, 8, 1148****For Interest, 8, 1196****Interest by way of damages, 8, 1196****Interest due by contract, 8, 1196****Interest not due by contract, 8, 1196****Pending suit, 8, 1196****Presumption as to use, 8, 1196****Where he assumes position of litigant, 8, 1196****Where he causes delay, 8, 1196****Where garnishee has issued money as his own, 8, 1196****Where money is due at interest, 8, 1196****Where prevented by legal process from discharging debt, 8, 1196****Where served with void process, 8, 1196****For payment of debt pending proceedings, 8, 1197****For payment to defendant, 8, 1200****For what garnishee is liable, 8, 1150****Fraudulent transfer, 8, 1149****Grounds upon which liability is based, 8, 1147****In cases of negotiable paper, see *infra*, NEGOTIABLE PAPER.****In respect to character of property held, 8, 1152****Irregular proceedings, 8, 1197****Judgment****Against garnishee in due process of law, 8, 1197****Discharging garnishee upon ground of non-liability, 8, 1198****To bar recovery of defendant, 8, 1198****Judgment debtor, 8, 1170****Judgment Debts, 8, 1171****After execution, 8, 1171****Where process issues from a different jurisdiction, 8, 1171****Liability existing at time process is served, 8, 1151****Money in possession at time of trial, 8, 1151****Money received before return day, 8, 1151****Money received up to time of answer, 8, 1151****Personal liability, 8, 1103****Possession necessary to charge garnishee, see *infra*, POSSESSION NECESSARY TO CHARGE GARNISHEE.**

GARNISHMENT—Cont'd**Partnership—Cont'd**

Interest of One Partner, 8, 1169; 17, 1339

Examples, 17, 1340

Surviving partner, 17, 1339

Partner as Garnishee, 17, 1333

Amendment, 17, 1334

Answer of one of firm admitting the debt, 17, 1334

Garnishment of one member only, 17, 1333

In states where partner can be sued alone, 17, 1333

Property or money held by partners personally, 17, 1333

Service, 17, 1334

Service upon part of partners, 17, 1335

Pension money, 18, 294

Perjury, 8, 1207

Plaintiff's Right to Oral Examination of Garnishee, 8, 1202

Answer by agent, 8, 1203

Answer by attorney, 8, 1203

Answer by corporations, 8, 1203

Answer by partnership, 8, 1203

In general, 8, 1202

Necessity of personal attendance of garnishee, 8, 1203

Parties jointly liable, 8, 1203

Where written answer is filed, 8, 1203

Where written answer is made by agreement to parties, 8, 1203

Pleas in

Garnishment, 8, 1220, 1222

Possession Necessary to Charge Garnishee, 8, 1156

Actual possession, 8, 1157

Agents or servants, 8, 1158

Constructive possession, 8, 1157

Mere possession, 8, 1156

Necessity of possession at time of service, 8, 1156

Property also under control of a third person, 8, 1151

Test of actual possession, 8, 1157

Priority between several garnishments, 8, 1201, 1219

Proceedings as to Adverse Claimants, 8, 1237

Answer as evidence of trial with claimant, 8, 1242

Appeal, see *infra*, **APPEAL**.

Burden of proof, 8, 1241

Conclusiveness of judgment, 8, 1242

Costs, see *infra*, **COSTS**.

Disclosure of adverse interest suspends judgment until determined, 8, 1237

Effect of assignment, 8, 1237

Effect of judgment, 8, 1242

Failure of claimant to appear, 8, 1238

Garnishee chargeable only in respect to property to which defendant has legal title, 8, 1237

How rights of adverse claims determined, 8, 1238

Other claimant may take advantage of errors in proceedings, 8, 1241

Pleadings and issue on intervenor's claims, 8, 1240

Priority of claim, 8, 1241

Proceedings must be such that it will determine claim of party, 8, 1238

Proceedings to make adverse claimant a party, 8, 1238

Validity of title, 8, 1241

When claimant may intervene, 8, 1239

Proceedings at law, 8, 1202

Proceedings to Obtain Garnishment, see *infra*, **AFFIDAVIT**; **BOND**; **NOTICE TO DEFENDANT**.*Writ and summons*, see *infra*, **WRIT AND SUMMONS**.

Promise to pay a specific article, 8, 1161

Property

In bond in United States warehouse, 8, 1157

In hands of common carrier, 8, 1158

In transitu, 8, 1158

Outside state, 8, 1150

Public Officers, 19, 535

In general, 19, 536

Public corporations, 19, 536

State officers, 19, 536

United States officers, 8, 319

Where liability is personal, 19, 536

Real estate, 8, 1152

Receivers

Property in hands of receiver, 20, 139

Rents and profits, 8, 1155

Res Judicata, 21, 145, 176

Discharge of trustee or garnishee, 21, 176

Examples, 21, 176, 177

In general, 21, 176

Necessity of actual payment, 21, 177

Payment not voluntary, 21, 177

Whether judgment against garnishees merges former indebtedness, 21, 176

Safe deposit companies, 8, 1156

Sale, 8, 1191

Scire facias, 8, 1224

Seamen's wages, 8, 1195

Separate property of married women, 8, 1156

Sequestration, 8, 1101

Service of Process, see *infra*, **WRIT AND PROCESS**.

Shares of stock, 8, 1152

Spendthrift trusts, 8, 1155

tatute of Frauds

Garnishee's right to rely upon his promise to pay debt of another, 8, 1165

Promise to pay one's own debt, 8, 1164

Statutory proceedings, 8, 1098

Stock, 8, 310; 23, 634

In general, 23, 634

In the absence of statutes, 23, 634

Stockholders

To enforce liability of stockholders, 23, 895

Store accounts, 8, 1160

Subscriptions to corporate stock, 8, 1194, 1196

- Suit, whether a, 24, 494
 Surplus money, 8, 1155
The Issue on the Answer, 8, 1228
 See infra, ANSWER, EFFECT OF.
 Amendments to pleading, 8, 1231
 Charging garnishee in another capacity, 8, 1231
 Equitable issue, 8, 1231
 Garnishee's attack upon plaintiff's pleading, 8, 1230
 How issue is raised, 8, 1228
 Issue raised by affidavit, 8, 1229
 Nature of issue, 8, 1231
 Notice of pleadings, 8, 1231
 Proof confined to particular issues, 8, 1230
 Proving liability notwithstanding denial of garnishee, 8, 1231
 Statement of facts upon which plaintiff relies to establish garnishee's liability, 8, 1230
 Truth of answer in Massachusetts, 8, 1232
 What is a reasonable time within which to join issue, 8, 1231
 What plaintiff may allege and prove, 8, 1231
 When issue must be taken, 8, 1231
 When liable, 8, 1228
 Whether general or specific denial is required, 8, 1229
Torts, 8, 1162
Trial, 8, 1232
 Before judgment against defendant, 8, 1233
 Change of venue, 8, 1233
 Docketing, 8, 1232
 In what court must take place, 8, 1233
 Issue tried as in ordinary suits, 8, 1232
 Jury trial, 8, 1232
 Right of garnishee to speedy, 8, 1232
Trust and trustees, 8, 1154; 27, 157
Trustee process, 8, 1097
Under Attachment, 8, 1107
 Absconding debtor, 8, 1109
 Actions arising ex delicto, 8, 1108
 Actions in tort, 8, 1107
 Actions permitted to be commenced by attachment, 8, 1107
 Amendment, 8, 1110
 Compliance with rules of procedure, 8, 1110
 Concealed debtors, 8, 1109
 Creditors, 8, 1108
 Defendant contemplating disposition of his property, 8, 1109, 1110
 Defendant contemplating removal, 8, 1108
 Defendant contemplating removal of property, 8, 1109
 Existence of ground for, 8, 1108
 Non-resident debtor, 8, 1109
 Proof by affidavit, 8, 1107
 Unliquidated damages, 8, 1108
 When applicable only to contract, 8, 1108
Under Execution, 8, 1110
 Equitable owner of judgment, 8, 1111
 In favor of surety, 8, 1111
 Judgments in rem, 8, 1110
 Necessity of judgment, 8, 1110
 Satisfied judgments, 8, 1111
 Statutory requirements, 8, 1111
 Time when judgments for garnishment may be had, 8, 1110
 Where debtor would not be entitled to execution, 8, 1110
 Where no grounds exist for attachment, 8, 1110
United States courts, 27, 604
Unliquidated damages, 8, 1163
Unpaid assessments in corporation, 8, 310
Unpaid subscriptions to corporation, 8, 310
Use of term, 8, 1097
Void and Voidable Proceedings, 8, 1245
 Effect of, 8, 1245
 Examples, 8, 1245, 1246
 When void, 8, 1245, 1246
Wages, 8, 1191
 Exemption, 8, 1223
 When regarded as an equitable action, 8, 1103
 Where party is exempt from garnishment, 8, 1156
Who May Be Charged as Garnishee, 8, 1128
Administrators and Executors, 8, 1138
 Effect of statutes, 8, 1141
 Liability in general, 8, 1138
 Revival of garnishment, 8, 1140
 Shares of distributees, 8, 1139
 Shares of legatees, 8, 1139
 Statutes rendering representatives liable, 8, 1140
 Where intestate could not be charged if living, 8, 1141
 Where probate court has ordered payment of creditor's claim, 8, 1140
 Where trust is created by will, 8, 1141, 1142
 "Any person," 8, 1128
 Assignee for benefit of creditors, 8, 1146
 Assignee in bankruptcy, 8, 1145
Attorneys at Law, 8, 1137
 Demand upon client, 8, 1137
 Privileged, 8, 1137
 Where state has been fully administered, 8, 1140
 Whether exempt as public officer, 8, 1137
 Clerks of court, 8, 1144
 General rule, 8, 1128
 Guardians, 8, 1142
 Indebtedness, 8, 1128
 Justice of the peace, 8, 1144
National and State Governments, 8, 1135
 Not chargeable, 8, 1135
 Reasons for exemption, 8, 1135, 1136
Non-Residents, 8, 1129
 Following the person, 8, 1130

GARNISHMENT—Cont'd**Who May Be Charged as Garnishee—Cont'd****Non-Residents—Cont'd**

Jurisdiction of court, 8, 1129

Persons transiently within jurisdiction, 8, 1130

Property or money within the state, 8, 1130

Service upon non-residents, 8, 1129

When chargeable, 8, 1129

Whether choses in action follow a person, 8, 1129

Whether garnishee is a non-resident, 8, 1130

One of several defendants, 8, 1128

Pari materia, 8, 1131

Persons Holding as Agents of the Law, 8, 1137

General rules, 8, 1137

Money paid into court, 8, 1137

Possession of court, 8, 1137

Possession of officer, 8, 1137

Where there is a personal liability, 8, 1138

Persons not within the statute, 8, 1129

Plaintiff, 8, 1128

Private Corporations, 8, 1130

Express provisions, 8, 1131

Foreign corporations, 8, 1131

General rule, 8, 1131

Grant of charter, 8, 1130, 1131

"Person," 8, 1130

Statute providing for service upon some officer or agent, 8, 1132

Public Corporations

Cities and towns generally exempt, 8, 1133

Counties, 8, 1134

In what states chargeable, 8, 1132

In what states exempt, 8, 1132

School districts, 8, 1135

Townships, 8, 1135

Waiver of the exemption by corporation, 8, 1135

Public officers, 8, 1132, 1136

Receivers, 8, 1145

Sheriffs, 8, 1142

Connecticut, 8, 1143

Generally exempt, 8, 1142

General rule, 8, 1142

Money paid on redemption of land sold on execution, 8, 1144

Money taken from prisoner, 8, 1144

Officer applying money in his hands, 8, 1143

Officer who has received money in satisfaction of an execution, 8, 1143

When chargeable, 8, 1144

Where possession ceases to be official, 8, 1144

Trustees, 8, 1145

Witnesses, 29, 603

Garnishee, 8, 1235

Writ and Summons, 8, 1116

Against partnership, 8, 1117

Amendment, 8, 1118

By whom it must be issued, 8, 1117

Capacity in which it is intended to charge garnishee, 8, 1117

Certified copy of writ of attachment, 8, 1116

Conforming to requirements of statutes, 8, 1117

Description of person to be summoned, 8, 1117

Form of summons to garnishee, 8, 1116

From whence it issues, 8, 1117

How advantage is taken of defects, 8, 1118

Liability of garnishee, 8, 1160

Mere notice, 8, 1116

Place of appearance of garnishee, 8, 1117

Service of, 8, 1118

Defective service cured by appearance, 8, 1120

Effect of, 8, 1118

How service is made, 8, 1121

Jurisdiction of court, 8, 1121

Leaving copy at last place of residence, 8, 1122

Necessity, 8, 1150

Necessity of actual seizure, 8, 1122

No jurisdiction until service, 8, 1119

No valid judgment against garnishee until service, 8, 1119

Officer authorized to levy attachments, 8, 1121

Officer declaring publicly that he has attached goods of defendant, 8, 1122

Priority of lien, 8, 1124

Process, 8, 1116

Purpose, 8, 1118

Reading summons in hearing of garnishee, 8, 1121

Record must show valid service, 8, 1120

Rights and liability fixed from date of service, 8, 1119

Service in absence of statute, 8, 1124

Service must be personal, 8, 1122

Service on corporation, 8, 1123

Service on one member of partnership, 8, 1123

Several persons garnishees, 8, 1122

Statute provides manner of service on corporation, 8, 1123

Voluntary appearance, 8, 1120

Waiver by garnishee, 8, 1120

Waiver, defective service, 8, 1126

Waiver, defects, 8, 1121

What is sufficient levy, 8, 1119

What time it must be made, 8, 1121

When officer authorized to summons garnishee, 8, 1121

Whether garnishee can accept service, 8, 1120

Who may serve summons, 8, 1121

Summons to garnishee is process, 8, 1116

The Return, 8, 1124

Amending return of officer, 8, 1126

- Amendment with leave of court, 8, 1126
- Date and hour of service, 8, 1125
- Effect of return, 8, 1126
- Effect of defective return, 8, 1126
- Evidence of officers' acts, 8, 1124
- Facts, return must show, 8, 1125
- Failing to show a proper service, 8, 1126
- Manner in which service was made, 8, 1125
- Parol evidence contradicting facts in return, 8, 1125
- Questioning return collaterally, 8, 1126
- Recitals, 8, 1124
- Showing upon whom writ has been served, 8, 1124
- Whether there is presumption that officer has performed his duty, 8, 1125
- Time of appearance of garnishee, 8, 1117
- To what counties it may issue, 8, 1117, 1118
- Waiver of defects, 8, 1118
- GAS**, 8, 1268
 - Fittings, 8, 40
 - Manufacture of gas, 14, 259
- GAS COMPANIES**, 8, 1268
 - See NATURAL GAS; PIPE LINES.
 - Gas fixtures*, see FIXTURES.
 - Actions by and Against, 8, 1289
 - Assumpsit, 8, 1289
 - Constitutionality of charters, 8, 1269
 - Constitutionality of statute requiring service at equal rates, 8, 904
 - Contributory Negligence, 7, 521; 8, 1275
 - Duty to give notice where gas is escaping, 8, 1276
 - Entering sewer full of gas, 8, 1275
 - Instances, 8, 1275, 1276
 - Permitting servant to enter room full of gas, 8, 1275
 - Turning on gas in house during repairs, 8, 1275
 - When inferred, 8, 1275
 - Damages for fraudulently taking gas, 8, 1286
 - Definition, 8, 1268
 - Duties, 8, 614
 - Not to disable itself from performance of public duties, 8, 615
 - Duty to Supply Gas, 8, 614; 1269, 1283
 - Arrears due from former occupant, 8, 1285
 - Conflict of opinion, 8, 1283
 - Damages for refusal to furnish gas, 8, 1286
 - Deposits, 8, 1285
 - Non-payment of bill, 8, 1285
 - Reasonable deposits, 8, 1285
 - Refusal to pay former bill, 8, 1285
 - Refusal to pay former bill contracte. on different premises, 8, 1285
 - Repairs, 8, 1285
 - Unreasonable deposits, 8, 1285
 - Where gas companies receive exclusive privilege, 8, 1284
 - Eminent Domain**
 - For the exercise of eminent domain generally, see EMINENT DOMAIN.
 - A public use, 6, 526
 - Use for highways, 6, 557
 - Estoppel, 8, 1282
 - Evidence**, 8, 1287
 - In particular cases, 8, 1287, 1288
 - That illness was due to other causes, 8, 1287
 - Exclusive Privilege**
 - Legislative grant of exclusive privilege to furnish light to a municipality, 8, 1277
 - Municipal corporations, 15, 1055, 1056
 - Power of corporation to grant exclusive use of street, 8, 1277
 - Whether it would deprive city of power to contract for an electric light, 8, 1278
 - Exclusive Rights**, 8, 598
 - Contract of another company, 8, 614
 - Right to relinquish, 8, 614
 - Explosions**, 7, 520
 - Care to be exercised by company, 7, 520
 - Contributory negligence of party injured by gas, 7, 521; 8, 1275
 - Liability for workman's negligence, 7, 521
 - Liability of gas company, 7, 520; 8, 1274
 - Liability of municipality, 7, 521
 - Franchises, 8, 1280
 - Fraudulent taking of gas, 8, 1286
 - Impairment of Obligation of Contracts**
 - Regulating fares, 8, 624
 - Indictment, 8, 1282
 - Injunction**, 8, 1290
 - Taking up streets to lay pipes, 8, 1290
 - Inspection of gas meters, 8, 1283
 - Larceny of gas, 8, 1287; 12, 735
 - Legislative supervision of, 8, 1288
 - Liability for torts of agent, 8, 1274
 - Mandamus, 8, 1289
 - Municipal Corporations**, 8, 1288
 - Contracts for illumination, 15, 1118
 - Contracts of Municipalities**, 8, 1271
 - Generally, 8, 1271, 1272
 - Municipality entering upon the business of furnishing gas, 8, 1272
 - Power to contract for lighting streets, 8, 1271
 - Quality, 8, 1272
 - Control, 8, 1288
 - Gas business, 8, 1288
 - Liability of Municipality Manufacturing Gas**, 8, 1271
 - Gas fixtures, 8, 1273
 - Limitation on, of municipal indebtedness, 15, 1129
 - Right of city to buy gas works, 8, 1288
 - Navigable waters, 16, 267
 - Negligence**, see *infra*, CONTRIBUTORY NEGLIGENCE.
 - Agents, 7, 521; 8, 1274

GAS COMPANIES—Cont'd**Negligence—Cont'd**

- Care to be exercised, 8, 1273
- Explosions, 8, 1275
- Generally, 8, 1273
- In care of machinery, 8, 1273
- Instances, 8, 1273, 1274
- Officers, 8, 1271
- Plaintiff or minor child, 8, 1276
- When a question for jury, 8, 1274

Nuisances, 8, 1280; 16, 974

- Corruption of rivers, 8, 1282
- Corruption of wells, 8, 1281
- Low chimney, 8, 1282
- Responsibility in damages, 8, 1282
- Smoke, 8, 1282
- When a, 8, 1280
- Whether private action will lie, 16, 974

Obstructing highways, 8, 1283**Officers, 8, 1271**

- Authority to waive regulation of company, 8, 1271

Power of state to regulate rates, 8, 614**Quo warranto, 8, 1289****Right to lay gas pipes, 8, 586****Right to lay pipes in street, 6, 557; 8, 1276; 24, 34, 46, 114****Special statute, 8, 1269****Stock, 8, 1271****Streets and Sidewalks, 6, 557; 8, 1276; 18, 458; 24, 34**

- Power of municipality to permit pipes, 24, 46

- Right to lay gas and water pipes, 24, 114

Subrogation, 8, 1290**Taxation, see TAXATION (CORPORATE).**

- Exempt as manufacturing corporation, 25, 175

- Taxation upon the manufacturer, 25, 92

Use of Streets and Highways, 6, 557; 8, 1276; 24, 34, 46, 114**Country highways, 8, 1277****Easements**

- What is an easement, 8, 1281

Exclusive privilege, 8, 1277**Generally, 8, 1276****Necessity of express authority, 8, 1276**

- Power of city council to grant exclusive privileges, 8, 1277

- Power of legislature to grant exclusive privilege, 8, 1277

- Power of municipality under a general grant of power in charter to light streets, 8, 1279

- Whether a franchise, 8, 1280

- Whether license is revocable, 8, 1281

- Whether public or private corporations, 8, 1268

GASOLINE, 8, 1291**Fire Insurance, 7, 1033**

- Temporary use, 7, 1034, 1035

GATES, see PRIVATE WAYS.**GATHER, 8, 1291****GAVELKIND, 27, 704****GELDING, 8, 1292****See HORSES.**

- Whether gelding is included under the term horses, 9, 759

GEM, 8, 1292**GENERAL, 8, 1292****General agent, see AGENCY.****General assignments, see ASSIGNMENTS FOR BENEFIT OF CREDITORS.****General demurrer, see DEMURRER.****General deposit, see DEPOSIT.****General election, see ELECTION.****General issue, see PLEADING.****General legacy, see LEGACIES AND DEVISES.****General retainer, see ATTORNEY AND CLIENT.****General ship, see SHIPS AND SHIPPING.****General statutes, see STATUTES.****General verdict, see VERDICT.****General warranty, see WARRANTY.****General contractor, 29, 855****General engagement, 6, 643****General interest, 8, 1293****General property, 19, 288****General reputation, 3, 114****General supervision, 8, 1293****General tendency, 8, 1293****GENERAL AVERAGE, 8, 1293****See JETTISON.****As to particular average, see MARINE INSURANCE.****Act, 8, 1294****Characteristics, 8, 1295****Common danger, 8, 1295, 1296****Consultation between officers and crew, 8, 1295****Definition, 8, 1294****Entering bay without pilot, 8, 1296****Good faith, 8, 1295****In order to avert a total loss, 8, 1295****Intentional act, 8, 1294, 1296****Jettison from inherent defect, 8, 1296****Motive of sacrifice, 8, 1296****Must be successful, 8, 1295****Necessity, 8, 1295****Of master's presence, 8, 1294****On account of the common adventure, 8, 1294****Only alternative, 8, 1295****Out of the course of his ordinary duty, 8, 1294****Presumption of good faith, 8, 1295****Selection of a lesser peril, 8, 1296****Upon the part of the master, 8, 1294****Vessel unseaworthy when she left port, 8, 1296****Adjustment, 8, 1306****Binding effect of, 8, 1306****"British custom," 2, 570****Effect of adjustment at foreign courts, 8, 1307****Place of adjustment, 8, 1306****Port of destination, 8, 1306****Port of distress, 8, 1306****Time of adjustment, 8, 1306**

- Contribution**, 4, 10; 8, 1305
 Bills of exchange, 8, 1305
 Definition, 8, 1305
 Enforceable in admiralty, 1, 197
 For repairs where goods are saved, 8, 1306
 Freight, 8, 1306
 Goods attached to the person, 8, 1305
 Goods jettisoned, 8, 1306
 Goods on deck, 8, 1305
 Government property, 8, 1305
 Only property saved, 8, 1305
 Provisions for crew and passengers, 8, 1305
 Specie and bank bills, 8, 1305
 Wearing apparel, 8, 1305
 What contributes, 8, 1305
 Where property has been separated from the ship, 8, 1305
Definition, 4, 11; 8, 1293
Enforcement of Claim, 8, 1307
 Bond given for general average, 8, 1307
 Lien terminated by delivery, 8, 1307
 Retention by master, 8, 1307
 What courts have jurisdiction, 8, 1307
Essentials, 4, 11
 "Free from average unless general," 8, 898
 Freight, 8, 1306
 Indiscriminate use of the term, 8, 1294
Jettison, 8, 1297
 Anchors, 8, 1298
 Articles belonging to ship used out of ordinary course, 8, 1299
 Cutting away masts, etc., 8, 1298
 Damages incident to, 8, 1298
Deck Cargo, 2, 235; 8, 1297, 1305
 In the absence of a general custom, 8, 1297
 Where there is a general custom, 8, 1297
 Where the whole cargo belongs to one person, 8, 1298
Definition, 8, 1297
 Entry of water through an aperture made by mast, 8, 1299
 Foundation for general average, 8, 1297
 Freight, 8, 1298
 Goods jettisoned still belong to former owner, 8, 1298
 Loss to ship, 8, 1298
 Perishable articles, 8, 1298
 Ship's tackle, 8, 1298
 Under-deck cargo, 8, 1297
 Unseaworthiness of vessel, 8, 1297, 1298
 Lien, 8, 1307
Losses, 8, 1296, 1299
 Accidentally striking upon a rock, 8, 1301
 Article used out of ordinary course by master and crew, 8, 1299
 Damages incident to jettison, 8, 1298, 1300
 Damage to cargo from other causes, 8, 1300
 Damage to cargo through forced discharge, 8, 1299
Definition, 8, 1296
 Deviation, 8, 1303
 Docking for repairs, 8, 1302
 Embargo, 8, 1302
 Entry of water through aperture made by cutting away mast, 8, 1299
Examples, 8, 1303, 1304
 Of voluntary expenditure, 8, 1301-1303
 Expenditure, 8, 1300
 Expenses arising out of capture, 8, 1302
 Expenses incurred by accidental stranding, 8, 1302
 Expenses occasioned by ordinary decay of vessel, 8, 1303
 Expenses of crew, provisions, etc., where vessel puts into port of distress, 8, 1302
 Fault or vice of cargo itself, 8, 1300
 Goods landed upon beach, 8, 1299
 Goods put upon rafts, 8, 1299
 Gratuitous promise to seamen, 8, 1304
 Hire of anchors and necessary apparatus, 8, 1303
 Hire of extra hands to pump ship, 8, 1303
Jettison, see *infra*, JETTISON.
 Masts, anchors, etc., sacrificed, 8, 1298
 Money raised abroad, 8, 1303
 Owner of the thing sacrificed, himself in fault, 8, 1300
 Pouring water upon cargo to extinguish fire, 8, 1300
 Quarantine dues of a port, 8, 1302
 Ransom paid in good faith, 8, 1302
 Repairs compelling damage to cargo, 8, 1299
 Repairs compelling forced discharge, 8, 1299
 Repairs of vessel at port of refuge, 8, 1299
 Salvage, 8, 1303
 Ship obliged to put into port for repairs, 8, 1302
 Stranding partly voluntary, 8, 1301
 Survivor's bill, 8, 1302
 To ship, 8, 1298
 Voluntary sacrifice of money in behalf of ship and cargo, 8, 1301
Voluntary Stranding, 8, 1300
 Where ship is utterly lost, 8, 1300
 What is a voluntary stranding, 8, 1301
Value of Contributory Interests, 8, 1306
 Freight, 8, 1306
 How ascertained, 8, 1306
 Value of goods sacrificed, 8, 1306
 Value of ship at port of departure, 8, 1306
GENERAL DURESS, see **UNDUE INFLUENCE**.
GENTLE, 8, 1308
GENTLEMAN, 8, 1308

GENUINE, 8, 1308

GEOGRAPHICAL FACTS, see JUDICIAL NOTICE.

GESTATION

Period of, see BASTARDY. 1

GETTING OUT, 8, 1308

GIFTS, 8, 1308

See ADVANCEMENTS; ELECTION; FRAUDULENT CONVEYANCES; FRAUDULENT SALES.*As to executory limitations*, see REMAINDER AND EXECUTORY INTERESTS.*To take effect in future*, see REMAINDERS AND EXECUTORY INTERESTS.

Causa Mortis, 8, 1341, 1345

Savings banks, see *infra*, SAVINGS BANKS; WILLS.

Acceptance, 8, 1351

Collateral inheritance tax, 24, 476

Definition, 8, 1341

Delivery, 8, 1347

Death of donor before third party delivers to donee, 8, 1350

Donor must relinquish possession, 8, 1348

Jewel case, 8, 1348

Key of box, 8, 1348

Necessity, 8, 1347

That donee retain possession until death of donor, 8, 1349

Of a deed of gift, 8, 1350

Of an instrument in writing, 8, 1350

Symbolic, 8, 1348

To agent of giver, 8, 1350

To third person for donee, 8, 1349

To trustee for donee, 8, 1350

What delivery necessary, 8, 1347

Where property is in donee's possession, 8, 1349

Where property is in hands of third party, 8, 1349

Do not pass to personal representative, 7, 252

Effect of execution, 8, 1351

Elements to constitute, 7, 252

Evidence, 8, 1353

Examples, 8, 1353, 1354

What sufficient, 8, 1352

Expectation of Death, 8, 1346

Arising from external or anticipated danger, 8, 1346

Arising from old age, 8, 1346

Necessity of, 8, 1346

Necessity of express qualification, 8, 1346

Presumption as between gift causa mortis and gift inter vivos, 8, 1346

Soldier enlisting in army, 8, 1346

Vague, groundless, and uncertain apprehension, 8, 1346

Whether fear must arise from illness, 8, 1346

Expenses of administration, 8, 1352

Husband and wife, 14, 568, 601

Life insurance policy, 8, 1344; 13, 632

Married Women, 14, 600

See infra, HUSBAND AND WIFE.

Equitable separate estate, 14, 601

General principles, 14, 600

Gift to husband, 14, 501

Personalty, 14, 601

Necessary elements, 8, 1342

Qualified gifts, 8, 1353

Resulting trusts, 8, 1353

Revocation

Death of donee before donor, 8, 1352

Recovery and then death from another cause, 8, 1351

Recovery working revocation, 8, 1351

Right of donor to annul at any time, 8, 1351

Succession taxes, 24, 476

Test of mental capacity, 8, 1309

Validity as to creditors, 8, 1352

What May Be Given, 8, 1342

Bills, bonds, and promissory notes, 8, 1343

Corporeal property, 8, 1342

Debt due donor, 8, 1344

Deed of real property, 8, 1342

Delivery of certificate of stock, 8, 1343

Donor's check, 8, 1344

Donor's promissory notes, 8, 1343

Equitable assignment, 8, 1342

Incorporeal property, 8, 1342

Life insurance policy, 8, 1344; 13, 632

Mortgage, 8, 1343

Whether one may transfer the whole of his property, 8, 1343

Whether real property may be given, 8, 1342

When title passes, 8, 1352

Where assets of estate are not sufficient to pay the debts, 8, 1352

Changes of gifts to advancements, 1, 223

Chattels, title to by, 3, 172

Collateral inheritance tax, 24, 476

Definition, 8, 1309

Donate, 5, 882

Fraudulent

Treating donee as executor de son tort, 7, 184

General taxes, 24, 476

Husband and Wife, 8, 1333; 14, 567

See infra, CAUSA MORTIS; SEPARATE PROPERTY.

Acceptance, 8, 1333; 14, 572

Acceptance by donee, 14, 572

As against creditors, 14, 577, 568

Bank Deposits, 14, 572

Agency of wife, 14, 572

Delivery, 14, 573

Deposits, 14, 572

By husband in name of himself and wife, 14, 572

For support of family, 14, 573

In name of wife alone, 14, 573

Whether a gift, 14, 572, 573

- Delivery**, 8, 1314; 14, 568
 By order, 14, 571
 Declaration in writing, 14, 570
 Effect of promise without delivery, 14, 570
 Estoppel, 14, 570
 Examples, 14, 570
 Instrument under seal, 14, 570
 Must be clearly proved, 14, 570
 Necessity, 14, 570
 Paraphernalia, 14, 570
 Promise to make a gift, 14, 570
 Proof of delivery between husband and wife, 14, 570
 Purchase of property for wife, 14, 570
 Recording instrument of gift, 14, 570
 Revocation of order, 14, 571
 To husband, a delivery to wife, 14, 570
- Donor's Intention**, 14, 568
 Examples, 14, 569
 Gift by wife to husband, 14, 569
 Necessity, 14, 568
 Presumption, 14, 568
 Promissory note payable to wife, 14, 569
 Proof, 14, 568
 Purchaser of property in wife's name, 14, 569
 Rebutting presumption, 14, 569
- Essentials of gifts**, 14, 568
- Examples**, 8, 1333, 1334
- Fairness**, 14, 568
- Instrument under seal**, 14, 570
- Necessity of change of possession**, 8, 1333
 Necessity of clear proof, 8, 1333
 Reasonableness, 14, 568
 Recording instrument of gift, 14, 571
 Validity at law, 8, 1333
 Validity in equity, 8, 1333; 14, 567
 When good in equity, 14, 568
 Wife's gift to husband, 8, 1333
- Infants**
 Void or voidable, 8, 1310; 10, 632
- Inter Vivos**, 8, 1314
- Acceptance**
 Husband and wife, 8, 1333
- Acceptance by Donee**, 8, 1331
 Infant's acceptance, 8, 1332
 Knowledge of the gift, 8, 1332
 Necessity of, 8, 1331
 Presumption, 8, 1331
 Slight evidence is all that is required, 8, 1331
- As Against Creditors**
 Retention of possession, 8, 1317
Between husband and wife, see *infra*, HUSBAND AND WIFE.
Between parent and child, see *infra*, PARENT AND CHILD.
- Choses in action**, 8, 1322
- Declaration of Trust**, 8, 1323
 Court will not compel completion of the trust, 8, 1324
 Donee having no notice of the transaction, 8, 1324
- Donor proposing to make himself trustee**, 8, 1323
 Examples, 8, 1324
 Incomplete transaction, 8, 1323
 Necessity of conveyance, 8, 1323
 Ratification of beneficiary, 8, 1324
 What is necessary to constitute, 8, 1323
 Where some further act is contemplated, 8, 1323
- Deeds of Gift**, 8, 1331
 Deed must be under seal, 8, 1331
 Necessity of delivery of deed, 8, 1331
 Necessity of delivery of property, 8, 1331
 Writing without seal as evidence that gift was intended, 8, 1331
- Definition**, 8, 1313
- Delivery**, 8, 1314; 14, 568
 Actual change of possession, 8, 1314
 Bulky articles, 8, 1315
 Choses in action, 8, 1322
 Constructive delivery, 8, 1320
 Delivery of keys, 8, 1320
 Examples of delivery, 8, 1315, 1317
 Gift to take effect in future, 8, 1315
 Husband and wife, 8, 1333
 Necessity of, 8, 1314
 Necessity that donee retain possession, 8, 1317
 Numerous articles, 8, 1315
 Parting with dominion and control, 8, 1314
 Retention of possession, 8, 1317
- To Third Party for Donee**, 8, 1318
 Death of donor before delivery is made by third party, 8, 1318
 Death of donor where third party is his agent, 8, 1318
 Death of donor where third party is trustee for donee, 8, 1318
 Provision that third party shall pay income from property to donor, 8, 1319
 Provision that third party shall retain possession during life of donor, 8, 1318
 Validity of, 8, 1318
 What delivery sufficient, 8, 1315
 Where property is in possession of donee, 8, 1319
 Whether delivery must be simultaneous with words of gift, 8, 1315
 Words not sufficient, 8, 1314
- Deposit in Savings Bank in Name of Another**, 8, 1325
 Conclusiveness of, 8, 1325
 Examples, 8, 1326-1330
- Effect of**
 As between the parties, 8, 1339
 As to bona fide purchasers, 8, 1340
 Binds legal representative of donee, 8, 1340
 Fact that property has been previously disposed of by will, 8, 1340
 Passing full title and ownership, 8, 1339

GIFTS—Cont'd**Inter Vivos—Cont'd****Effect of—Cont'd**

Power of either donee or donor to revoke, 8, 1340

Property forms no part of decedent's estate, 8, 1340

Subsequent will making a different disposition, 8, 1340

Whether the property is delivered to a trustee, 8, 1340

Equitable assignments, 8, 1322

Essentials, 8, 1313

Forgiveness of Debt, 8, 1321

Balance in books of account, 8, 1322

Giving receipt, 8, 1322

Intention must be accompanied by some act, 8, 1321

Intention to give, 8, 1321

Receipt, 8, 1321

Gift must be completely executed, 8, 1313

Infants, 8, 1310; 10, 632

Interference by equity to perfect a gift, 8, 1314

Life insurance policy, 8, 1330

Married women, 8, 1310

Of check, 8, 1320

Of Choses in Action

Delivery, 8, 1322

Necessity of written assignment, 8, 1322

Of promissory note, 8, 1320

Parol gift of real estate, 8, 1338

Presumption as between gift causa mortis and gift inter vivos, 8, 1346

Promise of mere nudum pactum, 8, 1314

Promissory note intended as a gift, 8, 1314

Proof of Gifts, 8, 1336

Affection of donor for donee, 8, 1336

Declaration of intention, 8, 1337

Delivery and acceptance by itself, 8, 1336

Facts admissible in rebuttal of gift, 8, 1336

Facts admissible in support of gift, 8, 1336

Fact that donee had access to the property and could take it without owner's permission, 8, 1337

Fact that donee has done donor a favor, 8, 1336

Fact that donor stood in loco parentis, 8, 1337

Intention of parties, 8, 1336

Marriage of daughter, 8, 1337

Parol gift of real estate, 8, 1338

Question for the jury, 8, 1336

Relation and circumstances of the parties, 8, 1336

Setting up housekeeping by married daughter, 8, 1337

Weight of evidence, 8, 1338

Writing not under seal, 8, 1331

Qualified or Additional Gifts, 8, 1332

Condition precedent, 8, 1332

Condition that property shall revert upon happening of a certain event, 8, 1332

Condition to pay debts of donor, 8, 1332

Performance before title vests, 8, 1332

Validity, 8, 1332

Revocation, 8, 1340

Revocation of check, 8, 1321

Revocation of promissory note, 8, 1321

Test of mental capacity, 8, 1309

Title to chattels by, 3, 172

To take effect in future, 8, 1315

Validity as Against Creditors, 8, 1341

Necessity that both grantee and grantor participate in the fraud, 8, 1341

Statute of 13 Eliz., 8, 1341

What may be given, 8, 1320

Liability of personal representative to complete gifts, 7, 335

Mental Capacity, 8, 1309

Test of, 8, 1309

Of horses, 9, 770

Parent and Child, 8, 1334, 1336; 17, 332

See **ADVANCEMENTS.**

Constructive delivery, 17, 333

Examples, 8, 1334-1336; 17, 332-336

Gift from child to parent, 8, 1334; 17, 334

Gift from parent to child, 8, 1334; 17, 332

Gifts just after majority, 17, 334

Peace of the family, 17, 335

Presumption as to fraud, 8, 1335

Presumption as to whether it is a gift, advancement, or loan, 8, 1334

Presumption in favor of continued possession of father, 8, 1334

Revocation, 8, 1341

Transfer for support, 17, 333

Transfer of land, 17, 333

Undue influence, 8, 1310; 17, 334

Validity, 17, 332

Power of sale, 18, 943

Satisfaction of a debt by a, 5, 202

Savings Bank**Inter Vivos**

Deposit in savings bank in the name of another, 8, 1325

Deposits

Delivery of pass books, 8, 1324; 21, 729

Examples, 8, 1326-1330

Whether acceptance must be simultaneous with deposit, 8, 1325

Whether deposit in name of another is conclusive evidence of gift, 8, 1325

Mortis Causa, 8, 1345; 21, 738

Book not in possession of donor, 21, 738

Delivery alone, 21, 738

- Delivery of pass book to donee, 21, 738
- Delivery of pass book to third person as trustee, 21, 738
- Examples, 21, 738, 739
- How gift may be made, 21, 738
- In general, 21, 738
- Mere attempt to make gift by word of mouth, 21, 739
- Necessity of assignment of funds in addition to delivery of book, 21, 738
- Whether deposit subject to valid gift, 21, 738
- Separate Property of Married Women**, 22, 36
 - Express provision in the statute, 22, 36
 - Gift by parol, 22, 36
 - Presumption that gift was intended for separate use, 22, 36
 - Scope of the words "gift or grant," 22, 36, 38
- Specific Performance**, 22, 1035
- Parol Gifts of Land**, 22, 986
 - Discretion of court, 22, 989
 - Evidence, 22, 989
 - Examples, 22, 986-989
 - Gift from parent to child, 22, 987
 - In general, 22, 986
 - Partly executed, 22, 986
 - Pecuniary compensation for improvements, 22, 988
 - Promise from parent to child to convey land, 22, 988
 - Remedy of donee, 22, 986, 988
 - Statute of frauds, 22, 986
 - Strict proof of terms of gift, 22, 988, 989
 - Sufficient consideration, 22, 986
- Stock**, 23, 688
 - Examples, 23, 688, 689
 - Formalities, 23, 689
 - Intention must be clear, 23, 688
 - Registration, 23, 689
 - Revoked by donor, 23, 688
 - Validity, 23, 688
- Value Influence**, 8, 1310; 27, 454
- Attorney and Client**, 27, 468
 - Age, position, and intelligence of client, 27, 469
 - General rule, 27, 468
 - Presumed to be voidable, 27, 469
 - Rebutting presumption, 27, 469
 - Whether void, 27, 468
 - Whether voidable, 27, 468
- Between parent and child, 8, 1334, 1310; 17, 334
- Clergymen**, 27, 455
- Clergymen and parishioners**, 27, 476
- Confidential relationship**, 27, 455
- Guardian and ward**, 27, 491, 492
- Husband and Wife**
 - Exerted Upon Wife**, 27, 483
 - At common law, 27, 483
 - Examples, 27, 483, 484
 - Freely, voluntarily, and understandingly, 27, 483
 - Gifts induced by husband in favor of third persons, 27, 483
 - Husband must see that wife understands nature of the act, 27, 483
 - In general, 27, 483
 - In general, 27, 454
 - Nuns to convents, 27, 476
 - Principal and agent, 27, 477-480
 - Trustee of cestui que trust, 27, 463
 - Voidable, 27, 455
 - Whether contract, 8, 1309
 - Whether executed contract, 8, 1309
 - Whether gift of personalty is a conveyance, 4, 134
 - Who can make, 8, 1309
- Wills Distinguished from Gifts Mortis Causa**, 29, 150
 - Delivery, 29, 150
 - Examples, 29, 150, 151
 - Immediate transfer, 29, 150
- GIN**, see INTOXICATING LIQUORS.
- GIN-HOUSE**, 8, 1355
- GIST**, 8, 1355
- GIVE**, 8, 1355
 - Distinguished from sell, 11, 702
 - For giving, 8, 91
 - Give a deed, 8, 1356
 - Give a lease, 8, 1356
 - Give and bequeath, 8, 1356
 - Give credit, 8, 1356
 - Give evidence, 8, 1356
 - Give, grant, and convey, 4, 130
 - Give information, 8, 1356
 - Give in his vote, 8, 1356
 - Giving information, 10, 710
 - Not given, 8, 1356
- GLASS**, 8, 1356
 - Cut glass, 8, 1356
 - Manufacture of glass, 14, 259
- GO**, 8, 1357
 - "Going off large," 8, 1357
- GOING**
 - "Going off large," 12, 902
- GOLD**, 8, 1357
- GOOD**, 8, 1357
 - Distinguished from full, 15, 378
 - Good and convenient, 8, 1358
 - Good and lawful men, 8, 1360
 - Good and merchantable, 8, 1360
 - Good and sufficient deed, 8, 1358
 - Good cattle, 8, 1357
 - Good cause, 3, 45; 8, 1357
 - Good cause of action, 3, 47
 - Good character, 8, 1357
 - Good condition, 8, 1357
 - Good consideration, 8, 1357
 - Good current money, 8, 1358
 - Good drawer, 8, 1359
 - Good habits, 8, 1360
 - Good health, 8, 1360
 - Good note, 8, 1360
 - Good reason, 8, 1360
 - Good security, 8, 1360
 - Good title, 8, 1361
 - Good watch, 8, 1361
- "GOOD FAITH,"** 7, 660; 8, 1361
- See BONA.

GOODS, 8, 1362; 15, 944

See BONA; CHATTELS; EFFECTS.

Goods, wares, and merchandise within the statute of frauds, see FRAUDS, STATUTE OF.

Goods and cargo, 14, 332

Goods and chattels, 3, 183

Goods, chattels, and effects, 6, 187

Goods, merchandise, and effects, 6, 189

Household goods, 9, 782

In contracts, 8, 1365

In criminal statutes, 8, 1363

In deeds, 8, 1362

In insurance policy, 8, 1365

In marine insurance, 8, 1365

In pleading, 8, 1365

In wills, 8, 1362

Manufactured goods, 14, 262

On goods, 17, 186

Personal goods, 18, 407

Whether it includes deeds, 8, 1363

Whether it includes fixtures, 8, 1363

GOOD-WILL, 8, 1366

Assignments, 8, 1367

Barter and sale, 8, 1370

Bequest of, 8, 1370

Conveyance of place where business has been carried on, 17, 1187

Deceased partner's share, 8, 1371

Definition, 8, 1365

Execution, 17, 1185

Forms part of the assets, 8, 1371

Incident of locality and not of merchandise, 8, 1372

Injunction, 8, 1370

Intangible property, 8, 1367

Locality, 8, 1372

Name of trade, 8, 1367

Of an inn or tavern, 8, 1372

Of newspapers, 8, 1372

Of professional men, 8, 1372; 17, 1192

Partitioned, 17, 1185

Partner in old firm permitted to retain good-will, 8, 1371

Partnership, 17, 1184

Agreement Not to Compete, 17, 1193

Acting as agent or manager, 17, 1194

In general, 17, 1193

Injunction, 17, 1195

Remedy for breach, 17, 1195

Time restriction, 17, 1193

Validity, 17, 1193

What is violation, 17, 1194

Assets of partnership, 17, 1185

Competition in business, 17, 1188

Compulsory retirement of partner, 17, 1189

Definition, 17, 1184

Effect of sale, 17, 1188

Infringement of trade name, 17, 1192

Partitioned, 17, 1185

Partner in old firm permitted to retain good will, 8, 1371; 17, 1189

Partnership for term, 8, 1370

Professional Partnership, 17, 1192

Assets, 17, 1193

Exclusiveness, 17, 1192

Injunction against resumption. of business, 17, 1193

Personal representatives of deceased partner, 17, 1193

Sale, 17, 1193

Sale of offices, 17, 1192

Protection and Disposition of, 17, 1186

Conveyance of place of business, 17, 1187

Damages for misappropriation, 17, 1188

Enjoining misappropriation, 17, 1186

Misappropriation as an item in account, 17, 1188

Protection by the court, 17, 1186, 1187

Retention by continuing partner, 17, 1186

Sale at public auction, 17, 1187

Sale by one partner of all his interest, 17, 1187

Upon dissolution, 17, 1186

Valuation, 17, 1187

Receiver continuing business to keep good-will alive, 17, 1303

Sale, 17, 1185

Sale under execution, 17, 1185

Surviving Partner, 17, 1185

Retiring partner, 17, 1186

Right to continue in business, 17, 1186

Sale of good-will, 17, 1186

Whether it goes to surviving partner, 17, 1185

Use of Old Firm Name, 8, 1371; 17, 1189

After sale and disposition of good will, 17, 1190

Firm name that of retiring partner only, 17, 1191

Holding out as successor to old firm, 17, 1190

Holding out that retiring partner is still a member, 17, 1190, 1191

Infringement of trade name, 17, 1192

Name of deceased partner, 17, 1191

Outside purchaser at dissolution sale, 17, 1190

Person's own name, 17, 1190

Purchasing partner, 17, 1190

Sale between partners where no mention is made of good-will, 17, 1191

Where name is derived from person's own name, 17, 1190

Where no disposition is made of good-will, 17, 1189

When depending upon personal skill, 17, 1184

Whether it attaches to stock of goods, 17, 1184

Whether it attaches to the premises, 17, 1184

Partnership for term, 8, 1370

Personal solicitation by vendor of old customers, 8, 1369

Restraint of trade, 9, 888

Restraints upon vendor, 8, 1368

Right of vendor to advertise, 8, 1369
 Right of vendor to set up again in trade, 8, 1368
 Sale, 9, 927; 17, 1185
See generally, ILLEGAL CONTRACTS.
 Upon dissolution of partnership, 8, 1371
 Separation of good-will from lease, 8, 1372
 Subject of sale, 8, 1370
 Use of vendor's name, 8, 1370
 What included under term, 8, 1366
 What vocation may be said to have good-will, 8, 1366
 Where assets are in hands of executors and administrators, 7, 255
 Whether it forms a part of decedent's assets, 8, 1371
GORGE, 8, 1372
See SURFACE WATERS.
GOTTEN, 8, 1375
GOVERNMENT, 8, 1378
See STATES; UNITED STATES.
As to whether government is included in the terms of statute, see STATUTES.
 Bill in equity against, 6, 744
De Facto, 8, 1380
 Whether confederate states were a de facto government, 8, 1380-1386
 Foreign, 8, 1379
 For its government, 8, 1398
 Government clerk, 8, 1399
 Government or other stock, 8, 1399
 Government securities, 8, 1400
 National government, 16, 219
 Town, 8, 1396
GOVERNOR, 8, 1400
Executive functions, see STATUTES.
For the constitutional powers of the executive, see CONSTITUTIONAL LAW.
 Age, 8, 1400
 Appointment of officers, 19, 419
 As criminal, 4, 682
 Chief of Cherokee nation, 8, 1409
 Citizenship, 8, 1400
 Commander-in-chief of army and navy, 8, 1408
 Commission of judge, 12, 17
 Definition, 8, 1400
 Duties, 8, 1404
 Exempt from judicial control, 8, 1405, 1406
 Exempt from judicial process, 8, 1406
 Jurisdiction of state courts over, 12, 255
 Jurisdiction over by consent, 12, 256
Mandamus, 3, 685; 8, 1405; 14, 143; 25, 965
 Conflict of opinion, 8, 1405
 Discretionary powers, 14, 143
 Examples, 14, 143, 144
 In different states, 8, 1406
 Ministerial duties, 14, 143
 Patent, 8, 1405
 To compel issuing of commission, 8, 1405; 12, 17
 To declare person elected, 14, 145

To deposit bill with secretary of state, 14, 145
 To issue commission, 14, 144
 When granted, 14, 143
 When refused, 14, 144
 Not an officer of election, 8, 1408
Opinions of the Justices, 17, 215
 Examples, 17, 215, 217
 In general, 17, 215
 Refusal of the justices to deliver an opinion, 17, 216
 Subjects upon which opinions have been asked, 17, 215, 217
Powers, 8, 1401
As to legislative acts, see STATUTES.
Of respite, see PARDONS.
Of Appointment and Removal, 8, 1402
 In California, 8, 1402
 In Illinois, 8, 1402, 1403
 In Kentucky, 8, 1402
 In Maine, 8, 1403
 In Maryland, 8, 1402
 In Michigan, 8, 1403
 In Missouri, 8, 1403
 In New York, 8, 1402, 1404
 In Ohio, 8, 1403
 In Pennsylvania, 8, 1403
 In Tennessee, 8, 1402
 In Wisconsin, 8, 1403
 To adjourn legislature, 8, 1401
 To employ counsel, 8, 1404
 To offer reward, 8, 1404
 To represent other officers of state, 8, 1404
 To require information from subordinate officers, 8, 1401
 To summon a person, 8, 1404
 Privileged communications, 19, 123
 Qualification, 8, 1400
 Quo warranto, 19, 669
 Re-election, 8, 1400
 Residence, 8, 1400
 Salary, 8, 1408
Statutes
Presentation of bill to governor, see STATUTES.
 Passage over veto, 23, 190
 Subpœna, 24, 173
 Suit in behalf of state, 23, 82
 Term of office, 8, 1400
Territories, 25, 964
 Mandamus, 25, 965
 Power in general, 25, 964
 Power of appointment, 25, 964
 Power of removal, 25, 965
 Power to fill vacancies, 25, 964
 Words descriptio personæ, 8, 1409
GOVERNOR'S VETO, see STATUTES.
GRACE, see DAYS OF GRACE.
GRADE, 8, 1410
See HIGHWAY; STREETS.
 Change grade of street, 8, 1410
 Change of grade, 3, 89
 Grade of crime, 8, 1410
 Grade of highway, 8, 1410
GRADUATE
 Graduate in medicine, 18, 428

GRAIN, 8, 1411; 27, 814

Flaxseed, 8, 1411

Oats, 8, 1411

Peas, 8, 1411

Sugar cane seed, 8, 1411

GRAIN ELEVATORS, see **ELEVATORS**.**GRANARY**, 8, 1412**GRAND BILL OF SALE**See **BILL OF SALE**.**GRANDCHILD**, 8, 1412

Children of a step-child, 8, 1412

Great Grandchildren

Whether included in grandchildren, 3, 1412

Illegitimate child of a daughter, 8, 1412

Whether included in "children," 3, 231

Whether it includes great-grandchildren, 8, 1412

Widow of grandchild, 8, 1412

GRAND JURIES, 9, 1See **JURIES AND JURY TRIALS**.*As to amendment of indictment*, see **INDICTMENT**.*As to statement of name and number of grand jury*, see **INDICTMENT**.

Admissibility of trial of evidence given before grand jury, 4, 849

Arrest of Judgment

Irregularities in summoning or impanelling, 12, 1478

When illegally constituted, 12, 1478

Attendance of prosecuting officer, 9, 15

Change in indictment, 10, 455

Charging, 9, 8

Necessity of, 9, 8

Necessity that all jurors should hear charge, 9, 8

What is proper, 9, 8

Clerk, 9, 17

Competency of juror as witness, 7, 103

Competent as petit jurors, 12, 352

Constitutional Provision, 9, 1

Federal provision applies only to federal offenses, 9, 2

For proceedings, 10, 457

Definition, 9, 1

Discharge and recalling of grand jury, 10, 471

District attorney's relation to, 5, 716

Savesdropping

Listening about grand jury rooms, 6, 153

Excuse, 9, 11

Homicide, 9, 622

Challenging grand juror, 9, 622

Charge dismissed, 9, 623

Incompetent witnesses, 9, 623

Kinship of grand jurymen, 9, 622

Number of jurors, 9, 622

Special impanelling of grand jury, 9, 623

Who allowed in grand jury room, 9, 623

Indictment, 9, 14

Practice as to, 9, 14

Jeopardy, 11, 931

Examination before, 11, 948

Jurisdiction, 9, 14

Co-extensive with that of court, 9, 14

Liability of grand jurors, 9, 18

List of witnesses before grand jury, 9, 15

Misconduct of grand jurors, 9, 18

Mode of Doing Business, 9, 14

By indictment, 9, 14

By presentment, 9, 15

Number, 9, 6; 10, 465, 466

At common law, 9, 6

Concurrence of nine, 9, 7

Concurrence of twelve, 9, 6

Constitutional provisions, 9, 7

Finding must be by concurrence of twelve, 9, 6

Indictment found by grand jury of twenty-four, 9, 6

In Colorado, 9, 7

In Iowa, 9, 7

In Missouri, 9, 7

In Oregon, 9, 7

In Texas, 9, 7

In United States, 9, 6

In United States courts, 9, 7

Territorial courts, 9, 7

Whether more than twenty-three can be sworn, 9, 6

Oath, 9, 7

Affirmation, 9, 8

Correction of mistake, 9, 8

Foreman sworn first, 9, 7

Form of oath must be substantially observed, 9, 7

Form to be administered to foreman, 9, 8

Form to be administered to jury, 9, 8

Necessity of, 9, 7

Presumption, 9, 8

Objection to a portion of grand jury, 4, 783

Objection to grand juror who has expressed an opinion, 4, 783

Objection to summoning and impanelling of grand jury, 4, 782

Only evidence in support of charge heard, 9, 16

Organization of, 10, 465

Drawing, selecting, impanelling, 10, 467

Greater number than authorized by law, 10, 466

Legal drawing, selecting, and impanelling, 10, 467

Less number than authorized by law, 10, 466

Lists, 10, 468

Method of drawing, 10, 467

Number of jurors, 9, 6; 10, 465, 466

Return, 10, 468

Venire, 10, 468

When drawing should be made, 10, 467

Who may draw, 10, 468

Origin, 9, 2

Perjury, 18, 305

Plea in Abatement

To point out specifically wherein grand jury was illegally chosen, 4, 782

Powers and Duties, 9, 13

At common law, 9, 13

Cessation of powers before adjournment of term, 9, 14

How long power lasts, 9, 14

In general, 9, 13

Inquisitorial powers, 9, 13

Inspection of county jail, 9, 13

Misconduct of public officers, 9, 13

Powers continuing until adjournment, 9, 13

Under statutes, 9, 13

United States courts, 9, 13

Power to summon accused, 9, 16

Presentment, 9, 15

Character, 9, 15

Distinguished from indictment, 9, 15

Prevailing practice, 9, 15

Presumption of regularity, 12, 272

Proceedings Before, 9, 15; 10, 468

Accomplice as witness, 10, 470

Advice and direction by court and counsel, 10, 468

Court must be in session, 10, 468

Direction in regard to witnesses, 10, 470

Inquiry into evidence, 10, 469

Necessity and sufficiency of evidence, 10, 469

Necessity of oath of witnesses, 10, 469

Oath of witnesses, 10, 469

Omission of court to instruct grand jury, 10, 468

Witnesses, 10, 469; 29, 607

Witness in open court, 10, 470

Qualification, 9, 9

Age, 9, 9

Alienage, 9, 10, 12; 10, 464

As petit jurors, 12, 326

At common law, 9, 9

Citizenship, 10, 464

Connection by marriage, 9, 12

Effect of incompetency, 10, 464

Effect upon indictment of disqualification, 9, 9

Empannelling as evidence of, 9, 11

Exemption is not a disqualification, 9, 9

Express opinion, 9, 12

Former prosecutor of the defendant, 10, 465

Former service on regular jury, 10, 465

Freeholder, 9, 9; 10, 465

Householders, 10, 465

How Disqualifications May Be Excepted to, 9, 11**Challenge, 9, 11**

In Missouri, 9, 11

Objection after general issue has been pleaded, 9, 12

Plea in abatement, 9, 12

Waiver, 9, 12

When challenge may be made, 4, 781; 9, 11

When objection must be made, 4, 781; 9, 11

Where ground of objection is a matter of record, 9, 12

Whether one disqualified member vitiates whole panel, 9, 13

In Kentucky, 9, 9

In New York, 9, 9

Interest, 9, 12

Interested taxpayer, 10, 464

Loyalty, 9, 10

Member of coroner's jury, 9, 12

Objections to indictment, 9, 9

Officer of the law, 10, 465

Officers of the United States, 9, 9

Party to action, 9, 9

Personal interest or prejudice, 10, 464

Political partisan, 10, 465

Presumption, 9, 11

Quakers, 10, 465

Residence, 9, 12

Resident of county, 9, 9, 10

Statutes of the states, 9, 9

Statutes of the United States, 9, 9

Whether statutory regulations are exclusive of common law, 9, 9

Women, 10, 465

Right of accused to be present, 9, 15

Secrecy to Be Observed by Grand Jurors, 9, 17

As to numbers concurring, 9, 17

At common law, 9, 17

Confirming witnesses, 9, 18

Indictment for perjury, 9, 17

Oath binding to secrecy, 9, 17

Statutes subscribing cases in which grand juror may testify, 9, 18

Testimony as to other facts, 9, 18

To contradict a witness, 9, 18

When juror may be compelled to testify, 9, 17

Secret Sessions, 9, 16

Necessity of, 9, 17

Who permitted to be present, 9, 17

Selecting Foreman, 9, 7

By Whom Selected, 9, 7

In Florida, 9, 7

In Michigan, 9, 7

In South Carolina, 9, 7

In what state selected by grand jury, 9, 7

Selected by court in some states, 9, 7

Selected by court in United States courts, 9, 7

Time when he is selected, 9, 7

Selection and Summoning, 9, 2

At common law, 9, 2

By county court, 9, 2

By sheriff, 9, 2

Challenge, 9, 5

Error, not assumed, 9, 5

Fatal irregularities in selecting juries, 9, 3

How irregularities objected to, 9, 5

In Arizona, 9, 2

In Arkansas, 9, 2

In California, 9, 2

GRAND JURIES—Cont'd**Selection and Summoning—Cont'd**

In Colorado, 9, 2
 In Dakota, 9, 2
 In Florida, 9, 2
 In Georgia, 9, 2
 In Idaho, 9, 2
 In Illinois, 9, 2
 In Indiana, 9, 2
 In Iowa, 9, 3
 In Kansas, 9, 3
 In Kentucky, 9, 2
 In Louisiana, 9, 3
 In Maryland, 9, 3
 In Michigan, 9, 3
 In Minnesota, 9, 2
 In Mississippi, 9, 2
 In Missouri, 9, 3
 In Nebraska, 9, 2
 In Nevada, 9, 3
 In New Jersey, 9, 3
 In New Mexico, 9, 2
 In New York, 9, 2
 In North Carolina, 9, 2
 In Ohio, 9, 3
 In Oregon, 9, 3
 In Pennsylvania, 9, 2
 In South Carolina, 9, 2
 In Tennessee, 9, 3
 In Texas, 9, 2
 In Utah, 9, 3
 In Virginia, 9, 3
 In Washington, 9, 2
 In West Virginia, 9, 3
 In Wisconsin, 9, 2
 In Wyoming, 9, 2
 Irregularity cured by statute, 9, 5
 Motion to quash, 9, 5
 Presumption of regularity, 9, 5
 Selected by county commissioners, 9, 2
 Selected by jury commissioners, 9, 2
 Slight irregularities, 9, 3
 Statutory provisions must be substantially observed, 9, 3
 Supplying deficiency of original panel, 9, 4
 United States grand juries, 9, 4
 Voluntary appearance of juror drawn but not summoned, 9, 3
 Waiver, 9, 5
 When advantage of irregularity must be taken, 9, 5
 Whether common law method excluded by statute, 9, 4
 United States courts, 27, 625

Verdict
 Cure by verdict, 28, 430
 Void acts, 9, 14

When Objection to Competency of Grand Jurors Can Be Made, 4, 781; 9, 11
 Generally, 4, 781
 In Illinois, 4, 782
 In Indiana, 4, 782
 In Massachusetts, 4, 782
 In Ohio, 4, 782
 In Rhode Island, 4, 781

Whether an investigation is a "prosecution," 19, 290

Whether Indictment by Is Necessary

Due process of law, 6, 49

Witness criminating himself, 29, 836

Witnesses, 10, 469; 29, 607

As interpreter before, 11, 525

Impeaching witness by grand juror, 4, 849

In behalf of accused, 9, 15

Swearing, 9, 16

Under trial of court, 9, 16

Where sworn, 9, 16

Who administers oath, 9, 16

Whether statutory oath abrogates common law, 9, 16

GRAND LARCENY

See LARCENY.

GRANDNEPHEW, 16, 486

GRANDNIECE, 16, 486

GRANGES

Partnership, 17, 866

GRANITE, 9, 19; 15, 501

Building, 7, 1005

GRANTOR AND GRANTEE, 9, 19

See DEEDS; FRAUDS, STATUTE OF; POWERS.

As to what are bona fide purchases, see BONA FIDE PURCHASES.

Husband and Wife as Grantee

As to tenancy by entirety, see HUSBAND AND WIFE.

By what law capacity of grantor and grantee governed, 9, 19

Capacity governed by *lex rei sitæ*, 9, 19

Definition of grantee, 9, 19

Definition of grantor, 9, 19

Duress

General rule, 6, 81

Instances, 6, 82, 83

Must be at instigation of grantee, 5, 430

Of husband, 5, 430

Ratification of contract, 5, 430

What amounts to, 5, 430

Grantee dead at time of execution, 13, 39

Grant of land subject to support of grantor, see SUPPORT.

Grantor, 5, 425; 9, 19

Guardian as grantor, 9, 120

Infants, 9, 26, 39; 13, 778

Performance of conditions, 13, 778

Laches of grantors, 12, 566

Legal Capacity of Grantee, 9, 39

See MARRIED WOMEN.

Alien as grantee, see ALIENS.

Corporation as grantee, see CORPORATION.

Deaf and dumb grantor, 9, 24

Deed to a corporation never created, 9, 40

Grantee must be in esse, 9, 40

Husband and wife as grantee, 9, 40

Husband's consent to wife taking, 9, 39

Husband's name inserted as grantee by mistake, 9, 42

Indians, 9, 39

- Infants, 9, 39; 13, 778
 Mental weakness, 9, 22
 Nervous excitement, 9, 23
 Persons non compos mentis, 9, 39
Legal Capacity of Grantor, 9, 20
See MARRIED WOMEN.
Corporations as grantors, see CORPORATIONS.
Partners of firm as grantors, see PARTNERSHIP.
 Disseizee as grantor, 9, 37
Duress, 9, 25
 Arrest, 9, 25
 Duress per minas, 9, 25
 Fear of imprisonment, 9, 25
 Threat of legal proceedings, 9, 25
 Void or voidable, 9, 25
 Estoppel, 9, 37
 Generally, 9, 20
Infants, 9, 26; 13, 778
 Deed
 How avoided, 9, 27
 Whether acquiescence amounts to
 affirmance, 9, 28
 Whether guardian may avoid, 9, 27
 Whether it may be avoided before
 infant is of age, 9, 27
 Whether void or voidable, 9, 26
 Delay, 9, 28
 Grantee, 9, 30
 In Alabama, 9, 29
 In California, 9, 27
 In Delaware, 9, 27
 In Indiana, 9, 29
 In Michigan, 9, 28
 In North Carolina, 9, 28
 Infant must give notice of disaffirm-
 ance, 9, 27
 Married women, 9, 31, 35
 Notice of disaffirmance, 9, 29
 Purchaser with knowledge of infant's
 prior conveyance, 9, 31
 Ratification, 9, 30
 By delivery of deed after maturity,
 9, 31
 By express words, 9, 30
 By omission to disaffirm within a
 reasonable time, 9, 27, 28, 30
 Implied, 9, 30
 Of second sale of minor, 9, 29
 Re-entry by infant, 9, 28
 Restoring consideration, 9, 29
 Sale to third party by infant, 9, 29
 What amounts to an affirmance, 9,
 27, 28
 Where consideration is retained, 9,
 30
 Where consideration is wasted, 9, 30
 Where infant dies before coming of
 age, 9, 27
 Whether retaining and spending
 consideration is an affirmance, 9,
 29
 Insanity, 9, 20
 Before and after conveyance, 9, 23
 Condition of grantor's mind at time
 of conveyance, 9, 22
 Evidence of mental weakness, 9, 22
 Imposition, 9, 23
 Insane person not under guardian-
 ship, 9, 20
 Insane person under guardianship,
 9, 20
 Grossly inadequate consideration, 9,
 23
 Knowledge of insanity, 9, 23
 Mental weakness, 9, 22
 Nervous excitement, 9, 23
 Of a remote period, 9, 23
 Proof of sanity, 9, 23
 Whether void or voidable, 9, 20
 Intoxication, 9, 24
 Connivance on part of grantee to in-
 toxication, 9, 24
 Degree of intoxication, 9, 24
 Equity setting conveyance aside, 9, 24
 Reasoning power must be seriously
 impaired, 9, 24
 Unfair advantage, 9, 24
 When incapable of giving intelligent
 consent, 9, 24
 Joint tenants and tenants in common,
 9, 35
 Statutes providing against conveyance
 of pretended titles, 9, 37
 Undue Influence, 9, 26
 Evidence of undue influence, 9, 26
 Examples, 9, 26
 What will void deed, 9, 26
 Where grantor is of feeble mind, 9,
 26
 Where relation of a trust exists, 9, 26
 Validity of deed as between parties, 9,
 36
 Valid transfer at common law by per-
 son out of possession, 9, 37
Married Women Grantees
 Performance of conditions, 13, 779
Municipal Corporations
 Examples, 15, 1060
 Grants to the people, 15, 1060
 Municipality, 15, 1060
 Persons under disabilities as grantors,
 5, 426
 Validity, 15, 1060
 What necessary to validity, 15, 1060
 Proper parties, 5, 425
Proper Parties as Grantees, 5, 430
 Where grantee in esse, 5, 432
 Who may be, 5, 430
GRANTS, 9, 43; 26, 556
 See PUBLIC LANDS; SPANISH LAND
 GRANTS; STATE LANDS.
 Mexican grants, see SPANISH LAND
 GRANTS.
 Mineral lands, see MINES AND MINING
 CLAIMS.
Construction
 Grants of right of way, 19, 841
 In general, 23, 407, 408
 Language not that of the grantor but
 that of the grantees, 23, 408
 Construction and operation, 9, 45
 Definition, 9, 43

GRANTS—Cont'd**Estoppel**

Recitals, 20, 466

Give, grant, and convey, 4, 130

Grant, bargain, sell, and convey, 4, 130

Kinds of, 9, 44

Office grants, 9, 45

Presumptions, 19, 81

Private, 9, 45

Public grant, 19, 303

Public Land, 9, 46*Taxation, see TAXATION.*

Alteration of grant, 9, 58

Authorizing change of line, 9, 59

Completion of the work, 9, 47

Conditions imposed by state, 9, 48

Conflicting grants, 9, 57

Conflict of Grants with Claims, 9, 57

After the location of railroad, 9, 58

A settler with actual notice, 9, 58

Compromise, 9, 58

Indian title to land, 9, 58

Mere occupation by settler, 9, 57

Occupation before location, 9, 57

Priority, 9, 57

Statute of limitations, 9, 58

Where claim is abandoned, 9, 57

Construction, 9, 45, 46, 56

Cutting timber upon unearned lands,

9, 52

Definition, 9, 46

Enlarging terms of grant, 9, 59

Extension of time, 9, 60

Forfeiture, 9, 59

Government only can take advantage

of, 9, 59

Necessity of act of congress, 9, 59

Provisions in statute, 9, 59

Waiver of forfeiture, 9, 60

When it arises, 9, 59

For what purposes, 9, 47

General nature, 9, 46

Grant by state prior to grant to it by

congress, 9, 48

Grant to company directly, 9, 47

Grant to state, 9, 47

Imposition of new conditions, 9, 58

Indemnity lands, 9, 50

Indian lands, 9, 49, 58

Lieu lands, 9, 50

Location and Vesting of Title, 9, 51

Change of route without consent of

congress, 9, 54

Effect of location, 9, 53

Effect of patent upon title, 9, 56

Effect of withdrawal upon sale and

entry, 9, 54

How location effected, 9, 53

Issuance of patent, 9, 56

Performance of condition, 9, 56

Right of election, 9, 55

Title before location, 9, 53

What is sufficient location or desig-

nation, 9, 53

What title vests in company, 9, 51

When title becomes absolute, 9, 55

When title vests, 9, 51

Whether present title vests before

survey, 9, 52

Withdrawal after general route is

determined, 9, 54

Withdrawal from sale, entry, or pre-

emption upon location, 9, 54

Priority between conflicting grants, 9,

57

Railroads, 19, 336

Acts of congress, 19, 336

Completion of road, 19, 336

Conditions precedent, 19, 336

Conditions subsequent, 19, 337

Congressional grant having the force

of law, 19, 339

Construction of grant, 19, 336

Construction of road, 19, 336

Examples, 19, 336

Examples of construction, 19, 339

General rules of construction, 19, 339

Grants by state in aid of railroad, 19,

339

Indemnity lands, 19, 338

In general, 19, 336

Preëxisting rights, 19, 337

Protection of homestead, and pre-

emption rights, 19, 337

Where lands have already been taken

up, 19, 338

Renewal, 9, 59

State acting as trustee, 9, 47

State conveying to company, 9, 47

State selling land for company's bene-

fit, 9, 47

Substitution of grantee, 9, 60

What Is Granted, 9, 48

Indemnity or lieu lands, 9, 50

Indian lands, 9, 49

Land covered by Spanish grant, 9,

49

Land reserved by implication, 9, 49

Land reserved expressly, 9, 49

Land taken before location of road,

9, 49

Odd sections on either side of road,

9, 48

Right-of-way over public lands, 9, 48

School sections, 9, 49

Second indemnity, 9, 51

Swamp land, 9, 50

Territorial limits, 9, 49

Withdrawal of lands from sale and en-

try, 9, 55

Railroads, see RAILROADS.

Record, 20, 505

School-Land Sections, 26, 119

In Alabama, 26, 119

In Arkansas, 26, 119

In California, 26, 119

In Colorado, 26, 119

In Indiana, 26, 119

In Iowa, 26, 119

In Kansas, 26, 119

In Maine, 26, 119

In Massachusetts, 26, 119

In Michigan, 26, 119

In Minnesota, 26, 119

- In Mississippi, 26, 119
- In Missouri, 26, 119
- In Montana, 26, 119
- In Nebraska, 26, 119
- In Nevada, 26, 119
- In New Hampshire, 26, 119
- In North Dakota, 26, 119
- In Ohio, 26, 119
- In Oregon, 26, 119
- In South Dakota, 26, 119
- In Texas, 26, 119
- In Utah, 26, 120
- In Vermont, 26, 120
- In Wisconsin, 26, 120
- In Wyoming, 26, 120
- State Lands**, 23, 48
 - Congressional grant, 23, 48
 - Grant by private individual to state, 23, 48
 - Grant from the United States, 23, 48
 - Internal improvement acts, 23, 48
 - State acquiring title by, 23, 48
 - Swamp land acts, 28, 48
- Statutes**
 - Strict construction, 23, 398, 407
 - Treaties, 26, 556
- GRASS**, 9, 61
- GRATUITY**, 9, 61
- GRAVE**, see **CEMETERIES**; **DEAD BODY**.
- GRAVEL**
 - Earth and, 6, 139
- GREAT**
 - Great bodily harm, 9, 597
 - Great care, 2, 732
- GREATNEPHEW**, 16, 486
- GREATNIECE**, 16, 486
- GREENBACK**, 9, 61
 - Currency, 4, 957
- GROCERIES**, 9, 62
- GROSS**, 9, 62
 - For gross negligence, see **COMPARATIVE NEGLIGENCE**; **NEGLIGENCE**.
 - Gross misdemeanor, 15, 621
 - In gross, 10, 324
- GROUND**, 9, 62
 - Building ground, 2, 603
 - Ground of action, 9, 62
 - Mining ground, 15, 505
 - Public grounds, 9, 62
 - Sea-grounds, 9, 62
 - Synonymous with land, 9, 62
- GROUND RENTS**, 9, 62
 - Apportionment, 9, 63, 64
 - Cumulative remedies, 9, 63
 - Definition, 9, 62
 - Devise of, 29, 409
 - Division among a number of persons, 9, 63
 - Each party having an estate in fee simple, 9, 63
 - Effect of judicial sale, 9, 63
 - Effect of sale of land, 9, 63
 - Estate of grantor and grantee, 9, 63
 - Form of conveyances, 9, 63
 - In Maryland, 9, 62, 64, 65
 - In Pennsylvania, 9, 62, 63
 - Interest, 11, 387
 - Interest of Landlord
 - Whether real estate, 9, 64
 - Interest of Tenant
 - Whether chattel interest, 9, 64
 - Liens, 9, 63
 - Parties to Actions**
 - Assignment, 17, 532
 - Proviso of re-entry, 9, 63
 - Recovery of possession by reversioner, 9, 65
 - Relation of landlord and tenant, 9, 64
 - Renewal, 9, 65
 - Rent service, 9, 62, 64
 - Right of distress, 9, 63
 - Statutes**, 9, 65
 - Maryland, 9, 65
 - Pennsylvania, 9, 63
 - Statutory prohibition, 9, 63
 - Whether irredeemable, 9, 63, 65
 - Whether it passes to personal representative, 9, 64
 - Whether subject to dower interest, 9, 64
- GROW**
 - Due, 6, 39
- GROWING CROPS**, see **CROPS**.
 - Bills of sale, 8, 866
- GUANO**, see **ILLEGAL SALES**.
- GUARANTEE**
 - "Good note," 8, 1360
 - Synonymous with preferred when applied to stock, 5, 743
 - Who may sue for breach, 17, 521
- GUARANTORS**
 - Subrogation, 24, 232
 - Examples, 24, 232-234
 - Guarantor of promissory note, 24, 232
 - In general, 24, 232
 - Note secured by mortgage, 24, 232
- GUARANTY**, 9, 67
 - See generally, **SURETYSHIP**.
 - See **LETTER OF CREDIT**.
 - As to promises to answer for the debts of another, see **FRAUDS**, **STATUTE OF**.
 - By railroads, 4, 221
 - Consideration**, 9, 68
 - Agreement to supply goods in the future, 9, 70
 - Agreement to withdraw his suit, 9, 70
 - Failure of, 9, 81
 - Forbearance**
 - By creditor, 9, 69
 - Must be for reasonable time, 9, 70
 - To suppress worthless claim, 9, 69
 - When deemed perpetual, 9, 70
 - Future executory consideration, 9, 70
 - Necessity of, 9, 68
 - Past executed consideration, 9, 69
 - What is sufficient, 9, 68
 - Where contract of guaranty is contemporaneous with original obligation, 9, 69
 - Where original debt has already been incurred, 9, 69
 - Continuing and non-continuing guaranties, 3, 822; 9, 77

GUARANTY—Cont'd

Corporations

Guaranty by railroad company to steamboat company that its earnings would amount to so much, 4, 221

Guaranty of a dividend of stock of an elevator company by a railroad company, 4, 221

Covenant upon, seal, 4, 473

Death, 24, 779

Definition, 9, 67

Demand necessary to charge guarantor of bill or note, 5, 528²⁴³

Discharge of Guaranty, 9, 80

Alteration in instrument, 9, 81

By act of God, 9, 84

By change of duties of principal, 9, 84

By discharge of principal, 9, 83

By failure to terminate contract after default, 9, 84

By fulfillment of contract, 9, 82

By giving time, 9, 83

By laches of creditor, 9, 82

By loss through fault of creditor, 9, 82

By material variation of contract with principal, 9, 83

By neglect to sue after request, 9, 84

By payment, 9, 82

By release of co-surety, 9, 83

Failure of consideration, 9, 81

Fraud or duress on part of guarantee, 9, 81

General rule, 9, 80

Mere delay in enforcing payment, 9, 84

Negligent loss of collateral security, 9, 83

Notice of revocation of guaranty, 9, 82

Distinguished from suretyship, 9, 68

Examples, 9, 68

Of continuing guaranties, 9, 77

Of non-continuing guaranties, 9, 77

General principles applicable, 9, 66

Guaranty for the tort of another, 9, 76

Guaranty of such advances as creditor may think fit to make, 3, 848

Joinder of parties, 17, 574

Municipal corporations, 15, 1107

Negotiability

In general, 9, 76

Of the guaranty, 9, 76

When written on the back of a bill or note, 9, 76

Notice of Acceptance, 9, 78

When necessary, 9, 78

Whether an express consideration, 9, 79

Whether guaranty is merely an offer or proposal, 9, 78

Where guaranty is of a debt which is to be subsequently created, 9, 78, 79

Notice of Default, 9, 79

Necessity of, 9, 79

Where contract is a continuing one, 9, 80

Where guaranty is absolute and unconditional, 9, 79

Where liability is dependent upon default of another, 9, 79

Where principal is insolvent, 9, 80

Partnership

Right of partner to bind firm as guarantor, 17, 1021, 1024

Statute of fraud, 17, 1054

Privity, 17, 521

Railroads, 4, 221

Railroad guaranteeing bonds of another company, 13, 812

Railroad Securities, 19, 730

Authority to make contracts of guaranty, 19, 730

Bonds taken and held in usual course of business, 19, 731

Conditions precedent, 19, 731

Examples, 19, 732

Interest, 19, 732

Special or general statutes, 19, 730

When guaranty ultra vires, 19, 731

Whether corporation can lend its credit to another, 19, 730

Revocation, 9, 82

Set-off, 22, 251

Statute of Frauds

As to the promise to answer for the default, etc., of another, see FRAUD, STATUTE OF.

Part performance, 8, 745

Recovery by grantor who has paid on oral guaranty, 8, 659

GUARANTY INSURANCE, 9, 65

See INSURANCE.

See INSURANCE AGENTS.

As to concealment, see INSURANCE.

As to insurable interests, see INSURANCE.

As to policy, see INSURANCE.

As to premium, see INSURANCE.

As to reinsurance, see INSURANCE.

As to remedies, see INSURANCE.

As to reputation, see INSURANCE.

As to waiver estoppel, see INSURANCE.

As to warranty, see INSURANCE.

Assignment, 9, 66

Conditions of recovery, 9, 67

Instances of liability, 9, 66

Renewals, 9, 66

Subrogation, 9, 67

Termination of the insurance, 9, 66

What is, 9, 65

GUARDIAN AND WARD, 9, 85

See ACCOUNT RENDER; APPRENTICE.

See generally, PARENT AND CHILD; TRUSTS AND TRUSTEES.

See JUDICIAL SALES; SURREGATE AND PROBATE COURTS.

As next friend, see INFANTS.

As to investments generally, see INVESTMENTS.

Habitual drunkards, see HABITUAL DRUNKARDS.

Lunatics, see INSANITY.

Spendthrifts, see SPENDTHRIFTS.

Accounts, 7, 442; 9, 142

Account by personal representative of guardian, 9, 146

Allowance for unusual expenses, 9, 145

Annual, 9, 142

Approval of court, 9, 143

Collateral attack upon final, 9, 143

Compensation of Guardian, 9, 146

Forfeiture, 9, 147

In America, 9, 146

In England, 9, 146

Specific charges for special services, 9, 147

Conclusiveness of final, 9, 143

Conclusiveness of periodic, 9, 143

Death of guardian, 9, 146

Direct proceeding to set aside final, 9, 143

Effect of annual, 9, 142

Failure to give notice, 9, 144

Final, 9, 143

Liability of sureties for deficit, 9, 146

Liability to, 9, 114

For property which guardian ought to have received, 9, 114

Limitation of actions, 9, 148

Of different wards, 9, 142

Onus proving correctness of charges, 9, 145

Payment

How made, 9, 145

Periodic accounts prima facie evidence, 9, 143

Private settlements, 9, 151

Reasonable expenses of guardian, 9, 145

Rectification of periodic, 9, 143

Setting aside for defects, 9, 144

Validity of final account made during minority, 9, 144

Ward's right to account, 9, 147

What expenses allowed guardian, 9, 145

What transactions account should include, 9, 143

Within what time defects may be taken advantage of, 9, 144

Whether final settlement has force and effect of a judgment, 9, 144

Whether lapse of time is a bar to accounting, 9, 145

Admission in answer, 10, 689

Advancements by guardian to ward without authority of court, 9, 108

Ancillary Guardians, 9, 123

See infra, FOREIGN GUARDIANS.

Distinct, 9, 125

Guardian of domicile, 9, 125

Order to transfer property to domiciliary guardian, 9, 125

What determines whether appointment is ancillary, 9, 125

Who will be appointed, 9, 125

Answer of infant, 10, 689

Appointment, 2, 466v; 9, 90; 10, 686; 12, 269

See infra, GUARDIAN AD LITEM; TESTAMENTARY GUARDIANS.

Appointment by court, see infra, TESTAMENTARY GUARDIANS.

Before served, 10, 690

By plaintiff, 10, 691

Collateral attack, 9, 95

Conditional upon appointee giving bond, 9, 133

Corporation, 9, 94

Discretion of court, 9, 94

Discretion of court as to confirming infant's choice, 9, 91

Dying requests of parent, 9, 93

Effect of appointment, 9, 94

Executor or administrator, 9, 94

Fact that child inherited property through one line of the family, 9, 93

Father, 9, 91

Father not bound by proceedings to which he is not a party, 9, 91

Guardian estopped to deny validity of appointment, 9, 95

Hearing, 9, 91

Interest of child should be leading consideration, 9, 92

Irregularity as cause for removal, 9, 97

Jurisdiction, 2, 466v; 9, 94

Jurisdiction where infant has no residence in state, 9, 94

Mother, 9, 91

Next of kin, 9, 92

Non-resident, 9, 93

Of some other person than father, 9, 91

Partnership, 9, 94

Petition, 9, 91

Probate of paper binding guardian, 19, 178

Proceedings, 9, 91

Religious faith, 9, 93

Residence at time appointment is to be made, 9, 94

Residence of infant determines jurisdiction, 9, 94

Right of infant over fourteen years of age, 9, 90

Right of nomination, 9, 90

Sale under void appointment, 9, 131

Should appear on record, 10, 687

Surety estopped to deny validity, 9, 140

Validity of letters obtained in wrong jurisdiction, 9, 94

Where mother is a feme covert, 9, 92

Where mother is unfit, 9, 93

Whether infant's nomination supercedes testamentary guardian, 9, 91

Who may appoint, 9, 90

Who may be appointed, 9, 91

Wishes of deceased parent, 9, 93

Arbitration

Submission to, by guardian, 1, 654

Attorney, 10, 688, 692

Bill or note by guardian, 2, 334, 359

Bond, 2, 466v; 9, 133

See infra, SURETYSHIP.

Appointment conditional upon giving bond, 9, 133

GUARDIAN AND WARD—Cont'd**Bond—Cont'd**

- Approval of sureties by court, 9, 133'
- As condition precedent to appointment taking effect, 9, 97
- Construction, 2, 466v
- Containing more than law requires, 9, 134

Discharge of Sureties, 9, 138

- Liability for acts precedent to discharge, 9, 138
- Liability for acts subsequent to discharge, 9, 138
- Liability of new sureties, 9, 138
- Notice to parties interested, 9, 138
- When surety may be discharged, 9, 138
- Whether discharge of surety releases co-surety, 9, 138

Effect on surety of judgment against principal, 12, 99**English procedure, 9, 133****Estoppel of Sureties, 9, 140**

- Denying fact of guardianship, 9, 140
- Denying that appointment is valid, 9, 140
- Denying that bond is valid, 9, 140
- Final settlements, 9, 140
- Private settlement between guardian and ward, 9, 140
- Showing that signature was obtained by fraud, 9, 140
- Sureties not parties to accounting, 9, 140

Exemption from giving by will, 2, 466v**In America, 9, 133****Indemnity and Contribution Between Sureties, 9, 141**

- What security surety may take, 9, 141
- When entitled to contribution, 9, 141
- When entitled to indemnity, 9, 141
- Liability of new sureties, 9, 138

Liability of Sureties, 9, 136, 141

- Limitation of actions, 9, 137
- Limited to guardian's term of office, 9, 137
- Special limitation of actions, 9, 137
- Under void appointment, 9, 122

Upon Additional Bond, 9, 139

- To what extent sureties are liable, 9, 139
- Whether sureties are deemed co-sureties with those on first bond, 9, 139

Upon death of guardian, 9, 146

- Whether statutory limitation to suits against guardian relieves sureties, 9, 137

Whether terminated at expiration of guardianship, 9, 136**Whether terminated by death of surety, 9, 136****Liability upon, 9, 134****Married woman's bond, 9, 92****Necessity of demand upon guardian, 9, 136****Necessity of settlement, 9, 135, 136****Not conforming with statute, 9, 134****Property received from residents of another state, 9, 135****Property, to be paid to ward when he becomes of age, paid to guardian during minority, 9, 135****Release of sureties, 2, 466w****Settlement not necessary where guardian's liability is fixed, 9, 136****Size of penalty, 2, 466w****Special Sale Bond, 9, 128, 129, 141****Liability for failure to carry out specific object of sale, 9, 142****Liability for misuse of funds, 9, 142****Liability of sureties on general bond, 9, 141****Suit before guardian's liability has been ascertained, 9, 135****Suit upon, 9, 135****Void at law but upheld in equity, 9, 134****When required, 9, 133****When suit upon bond may be brought, 9, 135****Whether bond required of natural guardian, 9, 134****Whether defective bond binds obligors, 9, 134****Care to be exercised by guardian, 9, 106****Change of Domicile, 9, 100****From one county to another, 9, 100****From one state to another, 9, 100****Co-defendant, 10, 687****Compensation of Guardian, 3, 379; 9, 146****Forfeiture, 9, 147****Guardian ad litem, 9, 158****In America, 9, 146****In England, 9, 146****Special services, 9, 147****Conflict of Laws****Foreign Guardians****Domicile of orphan, 5, 868****Contracts of Guardian, 9, 112****Examples, 9, 113****Lease for ward, 9, 113****Personal liability of guardian, 9, 112****Power of guardian to bind estate, 9, 112****Custody, 9, 99****Relatives' right of access to infant, 9, 100****Right of mother as against guardian, 9, 99****Where parents are alive, 9, 99****Where parents are both dead, 9, 99****Whether guardian's refusal to surrender child to parent can amount to false imprisonment, 9, 100****Wishes of parents, 9, 99****Wishes of the ward, 9, 100****Deeds of guardian, 9, 120****Definition of guardian, 9, 86****Definition of ward, 9, 86****Different Kinds of Guardians, 9, 86****Guardian ad litem, see *infra*, GUARDIAN AD LITEM.****Judicial guardians, 9, 90**

- Socage guardian, 9, 87
- Testamentary guardians, 9, 88
- Duties of guardian ad litem, 10, 688
- Effect of failure to appoint, 10, 691
- Ejectment by guardian, 6, 243
- Ejectment by ward, 6, 243
- Election, 9, 150**
 - Ratification, 9, 151
 - Resignation of the benefit of contract, 9, 151
 - Right of election of majority, 9, 150
 - Unauthorized transaction, 9, 150
 - What amounts to a ratification, 9, 151
 - Where guardian has purchased with ward's funds, 10, 48
- Embezzlement by guardian, 6, 483
- Eminent Domain**
 - Guardian as party, 6, 609
 - Employment of attorney, 10, 692
- Executors and Administrators, 9, 122**
 - Control of property exempt from administration, 7, 236
 - Land purchased by guardian with ward's funds, 7, 277
 - Maintenance of minor children, 7, 236
- Testamentary Trustees**
 - Distinguished from executors and administrators, 7, 236
 - Whether ex-officio guardians, 7, 238
- Expenses of Guardian, 9, 145**
 - Onus proving correctness of charges, 9, 145
 - Reasonable expenses, 9, 145
 - Services rendered for his private benefit, 9, 145
 - Unusual expenses, 9, 145
- Extent of Guardian's Authority, 9, 123**
 - Beyond state of appointment, 9, 123
- Fact ad litem, 10, 687
- False imprisonment, 9, 100
- Foreclosure of Mortgages**
 - When guardians necessary parties, 8, 220
- Foreign Guardians, 9, 123**
 - Appointed from state of domicile, 3, 656
 - Bonds, 3, 657
 - Conditions to be performed before they will be permitted to sue, 9, 124
 - Domicile of orphan, 5, 868
 - Duty to account for funds received in a foreign state, 3, 657
 - Necessity of ancillary letters, 9, 124
 - Necessity of reappointment in state where real property is situated, 3, 659
 - Power over domicile of ward, 3, 658
 - Power over immovable property of ward, 3, 657, 658
 - Power over personal property of ward, 3, 658
 - Power over person of ward, 3, 657
 - Power over property of ward, 3, 658
 - Suits by, 9, 124
- Fraud, 9, 105
- Fraudulent transfer by guardian, 9, 148
- Garnishment, 8, 1142
- General guardian, 10, 686
- Gift, 8, 1310
- Gift by ward, 9, 153
- Guardian**
 - Accepting his own notes in payment of claim due his ward, 9, 106
 - Acting in his own interest, 9, 105; 10, 74
 - Guardian Ad Litem, 9, 153**
 - Admissions, 5, 496f
 - Application as to land of decedent where heirs or devisees are minors, 5, 295
 - Appointment, 9, 90, 153**
 - After suit has begun, 9, 155
 - By adverse party, 9, 156
 - Irregular appointment, 9, 158
 - Of court over its own motion, 9, 150
 - Of person with adverse interest, 9, 156
 - Without proof of infancy, 9, 156
 - Default, 5, 496f
 - Duty of court to compel answer, 5, 496f
 - Effect of not appointing, 12, 87
 - Failure to Appoint, 9, 158**
 - Collateral attack upon judgment, 9, 158
 - Effect of judgment, 9, 158
 - Irregular or void appointment, 9, 158
 - Proceedings by parties in interest to set aside judgment, 9, 158
 - Statute limiting time within which attack may be made upon judgment, 9, 159
 - Whether judgment is void or voidable, 9, 158
 - Whether judgment will be set aside by direct proceedings, 9, 158
 - Final settlement of estate of decedent, 9, 154
 - Infant defendant, 9, 156
 - Infant plaintiff, 9, 156
 - Infants suing or sued for divorce, 5, 767
 - Insane persons, 11, 129
 - Interrogatories, 11, 532
 - Liability for costs, 4, 318
 - Motion of plaintiff, 9, 155
 - Motions, 15, 890
 - Necessary Parties**
 - Where there is no service of process upon infant heirs, 5, 296
 - Necessity of guardian ad litem, 9, 154
 - Power of court to appoint, 9, 153
 - Record, 9, 155
 - Rights and Duties, 9, 156**
 - Binding infant by collateral agreement, 9, 157
 - Compensation, 9, 158
 - Decree upon answer alone, 9, 157
 - Defending infant's interest, 9, 157
 - Employment of counsel, 9, 157

GUARDIAN AND WARD—Cont'd**Guardian—Cont'd****Guardian Ad Litem—Cont'd****Rights and Duties—Cont'd**

Filing answer, 9, 156

Judgment by consent, 9, 157

Judgment by default, 9, 157

Necessity of full proof of facts alleged, 9, 157

Waiver of ward's rights, 9, 157

When authority terminates, 9, 156

Whether a party to the action, 9, 156

Whether ward bound by admissions, 9, 157

Trusts and Trustees

Removal of trustees, 27, 89

Vacation of judgment for want of, 12, 127

When guardian may be appointed, 9, 155

When required to give security for costs, 4, 325

Whether general guardian may appear, 9, 154

Whether guardian may waive service of process, 9, 155

Whether infant can appear by attorney, 9, 154

Whether infant can appear in person, 9, 154

Whether minor may waive service of process, 9, 155

Also trustee, 7, 236

Dealing with Estate for His Own Benefit

Constructive trust, 10, 74

Duty to Collect Assets, 9, 108

Collection of debts, 9, 109

Collection of pension and bounty, 9, 109

Loss by receiving Confederate money, 9, 109

Permitting administrator to hold ward's estate, 9, 108

What may be accepted in payment, 9, 109

Liability for interest, 5, 528z³¹

Liability for notes received among assets on ward's estate, 9, 107

Liability for unauthorized acts, 9, 107

Of Lunatics

Insanity, 11, 120

Purchasing ward's property, 1, 375

Seeking personal advantage at expense of ward, 9, 105

Guardian and Executor or Administrator, 7, 236, 277; 9, 122

Presumption as to holding as guardian, 9, 123

When liability as guardian begins, 9, 122

Habeas Corpus

Application by guardian, 9, 177

Right of guardianship cannot be tried, 9, 200

To try rights of guardianships, 9, 165

Infant coming of age pending suit, 10, 685, 691

Infant's privilege to avoid contract, 10, 638

Interest, 9, 119

Lending money of ward without approval of court, 11, 401

On funds improperly retained by guardian, 11, 398

When allowed, 9, 119

When compound interest allowed, 9, 119

Intoxicating Liquors

Guardian's consent to sell ward, 11, 700

Inventory, 9, 142

By whom made, 9, 142

Conclusiveness, 9, 142

Failure to file cause for removal, 9, 97

Investments, 9, 117

Approval of court, 9, 117

Confederate securities, 9, 118

Duty to invest, 9, 117

Good faith required, 9, 118

Indorsed notes, 9, 118

Liability for compound interest, 9, 119

Liability for interest, 9, 119

Liability where approval of court is obtained, 9, 117

Limited by statute, 9, 118

Loans on credit of individual, 9, 118

Loans on doubtful security, 9, 118

Loans on good collateral security, 9, 118

Profits, 9, 119

Public securities, 9, 118

Real securities, 9, 118

Stock in railway companies, etc., 9, 118

What securities preferred, 8, 118

What time allowed for making investment, 9, 119

Joinder, 11, 1015v**Joint Guardians, 9, 121**

One qualifying without other, 9, 121

Receipt of one receipt of all, 9, 121

Separate and joint liabilities, 9, 121

Where survivor continues in office, 9, 121

Whether they may act separately, 9, 121

Judgment by default, 10, 688**Judicial guardians, 9, 90****Lease, 12, 998**

Covenant, 12, 999

Death of ward, 12, 999

Guardian's duty, 12, 998

Leases to guardian, 12, 999

Natural guardian, 12, 999

Of conveyance in favor of guardian, 9, 153

Responsibility of guardian for rent, 12, 998, 999

Termination of, 12, 999

Termination of guardian's authority, 12, 999

To whom rent payable, 12, 999

- Legislative intervention, 9, 126
- Liability for costs, 10, 692
- Liability of guardian to be bound by covenants in deed, 9, 120
- Liability of judge ordering security, 12, 37
- Liability of retiring guardian, 9, 122
- Liability to Account, 9, 114**
 - For property received, 9, 114
 - For property which guardian ought to have received, 9, 114
- Libel and slander, 13, 416
- Life Insurance**
 - Proof of death, 13, 658
- Limitation of Actions, 9, 137; 13, 687**
 - Guardian ad litem, 9, 159
- Loaning Money of Ward Without Approval of Court**
 - Interest, 11, 401
- Mandamus, 14, 165**
- Marriage, 14, 489**
- Marriage of female guardian, 9, 98**
- Marriage of female ward, 9, 95**
- Married Women, 14, 681, 682**
 - As to estate or principal, 14, 684
 - As to personal rights and obligations of wife, 14, 683
 - As to third parties, 14, 684
 - As to wife's coverture, 14, 683
 - Compensation, 14, 684
 - Effect of coverture, 14, 683
- Husband's Consent, 14, 683**
 - At common law, 14, 683
 - Examples, 14, 683
 - Necessity, 14, 683
- Husband's liability, 14, 684**
- Husband's rights and obligations, 14, 684**
- Personal liability, 14, 684**
- Mechanics' Liens, 15, 60**
 - Ratification, 15, 60
 - Whether guardian can create lien, 15, 60
- Mingling ward's funds with his own, 9, 117**
- Mistake of guardian, 15, 642**
- Mortgages, 9, 113**
 - Guardian selling his estate upon breach of mortgage, 9, 113
 - Guardian using personal estate to pay interest on mortgage, 9, 114
 - Guardian using personal estate to redeem, 9, 114
 - Power of guardian to discharge, 9, 120
 - Power to mortgage, 9, 116
 - Redemption, 20, 617
- Natural Guardian, 9, 86**
 - At common law, 9, 86
 - Bond, 9, 134
 - Control of property, 9, 86
 - Definition, 9, 86
 - Illegitimate children, 9, 87
 - In the United States, 9, 86
 - Parent, 17, 384
 - Power to lease land, 9, 86
 - Power to receive legacies, 9, 86
 - Who entitled to, 9, 86
- Nearest relative of infant, 10, 687**
- Necessaries, 9, 104**
- Negligence, 9, 106**
- Notice of sale to parties interested, 9, 128**
- Orders to court as to education, 6, 161**
- Partnership, 17, 921**
- Party to suit, 10, 688; 17, 632**
- Personal Estate**
 - Investments, see infra, INVESTMENTS.*
 - Guardian's duty to keep separate from his own, 9, 117
 - Power to convert, 9, 113
 - Power to dispose of, 9, 113
 - Power to sell, 9, 120
 - Stock purchased in guardian's own name, 9, 117
- Power of guardian to bind ward as an apprentice, 9, 104**
- Power of Guardian to Convert Estate, 9, 113**
 - Mortgage, 9, 113
 - Necessity of sanction of court, 9, 113
 - Redeeming estate from foreclosure, 9, 113
 - Using personal estate to pay interest on mortgage, 9, 113
 - Where court orders sale, 9, 113
- Power of guardian to expel objectionable persons from ward's premises, 9, 105**
- Power of legislature to authorize guardian to sell real estate of his ward, 3, 632**
- Presumption of fraud as to dealings between guardian and ward, 8, 648**
- Private settlements, 9, 151**
- Probate of paper binding guardian, 19, 178**
- Profits, 9, 119**
 - Accrue to ward's estate, 9, 105
- Property of Ward**
 - Father's right, 17, 384, 385
- Public Officers**
 - Whether guardian is a public officer, 19, 388
- Purchase by guardian with ward's funds, 10, 41**
- Purchase of estate by guardian, 9, 106**
- Purchase of stock by guardian in his own name, 9, 117**
- Quasi Guardians, 9, 121**
 - Liability of sureties under void appointment, 9, 122
 - Person taking possession of infant's property, 9, 121
 - Retiring guardian, 9, 122
 - Void appointment, 9, 121
 - When it arises, 9, 121
- Ratification**
 - By ward, 9, 151
- Real Estate, 9, 115**
 - See infra, SALE OF WARD'S REAL ESTATE.*
 - Advances for improvements, 9, 116
 - Assignment of dower, 9, 115
 - Cutting timber, 9, 115
 - Duty to collect rents, 9, 115
 - Grant of easement, 9, 115
 - Improvement which court would have authorized, 9, 116

GUARDIAN AND WARD—Cont'd**Real Estate—Cont'd**

- Lease for term greater than guardian's term, 9, 115
- Mechanic's lien, 9, 116
- Permanent improvements, 9, 115
- Power to lease ward's lands, 9, 115
- Power to mortgage, 9, 116
- Power to sell, 9, 113
- Repairs, 9, 116

Regarded as officer of the court, 10, 687

Release from ward, 9, 152

Removal, 9, 96

- Authority of court, 9, 96
- Causes, 9, 97
- Discretion of court, 9, 98
- Effect of failure to file bond, 9, 99
- Examples of unfitness for office, 9, 97
- Failure to file inventory, 9, 97
- From state, 9, 98
- Insolvency, 9, 97
- Irregularity in appointment, 9, 97
- Marriage of female guardian, 9, 98
- Misappropriation, 9, 97
- Misconduct in office, 9, 97
- Necessity of decree of removal, 9, 99
- Notice to guardian, 9, 96
- Proceedings, 9, 96
- Statutes permitting removal of testamentary guardian, 9, 98
- Termination of relationship by, 9, 96
- Testamentary guardians, 9, 98
- Unfitness for office, 9, 97

Rent, 12, 999

Resignation, 9, 95, 96

Res Judicata

Privity between guardian and ward, 21, 145

Surety on guardian's bond, 21, 167

Responsibility, 10, 689

Resulting trusts, 9, 148; 10, 41

Rights and liabilities of ward, 9, 147

Sale of Ward's Real Estate, 9, 113, 126

- American statutes, 9, 127
- Application of proceeds, 9, 130
- Authority of successor of guardian who sold property, 9, 130
- Chancery rules, 9, 126
- Collateral attack upon sale, 9, 132
- Confirmation of sale, 9, 131
- Confirmation of sale curing defects, 9, 131
- Defective service of notice, 9, 128
- Discretionary power of courts, 9, 127
- Erroneous description of property, 9, 129
- Inadequacy of price, 9, 130
- Jurisdiction of court, 9, 128
- Legislative act confirming sale, 9, 126
- Minor statutory regulations, 9, 129
- Necessity of auction sale, 9, 130
- Necessity of leave of court, 9, 130
- Notice to parties interested, 9, 128; 12, 213

Power of chancery courts in the United States, 9, 126

Power of court of chancery in England, 9, 126

Private sale, 9, 130

Proceeds of sale, 9, 133

Purchaser's bill to rescind, 9, 132

Rescission by purchaser, 9, 132

Sale for cash does not authorize acceptance of note, 9, 130

Sale for more profitable investment, 9, 127

Sale for support of ward, 9, 127

Sale made at different time than that stated in license, 9, 127

Sales under statute, 9, 127

Sale under void appointment, 9, 131

Slight irregularities in procedure, 9, 127

Special sale bond, 9, 128

Statute of limitations barring suits to rescind, 9, 132

Strict compliance with statute, 9, 127

What guardian may be authorized to sell, 9, 127

When court obtains jurisdiction, 9, 128

When title passes, 9, 132

Who may take advantage of defect of procedure, 9, 132

Sales

Guardian purchasing at sale, 27, 208

Notice, 9, 128; 12, 213

Seduction of ward, 9, 104

Service must be strictly complied with, 10, 689

Services of Ward, 9, 104

Guardians right to, in general, 9, 104

Where guardian stands in loco parentis, 9, 104

Set-Off

In suits by and against guardian, 22, 332

Mutuality, 22, 332

Socage Guardian, 9, 87

Control of property and person, 9, 87

Interest in property of ward, 9, 87

Obsolete, 9, 87

When guardianship ceases, 9, 87

Who entitled to, 9, 87

Stock, 23, 682

Distinguished from other trustees, 23, 682

Examples, 23, 682, 683

In general, 23, 682

Purchasers from, 23, 682

Streets and Sidewalks

Dedication, 24, 8

Submission of infant, 10, 689

Submission to arbitration, 10, 689

Subrogation, 24, 218

Suits by and Against Guardian, 9, 109

Authority to compromise suits, 9, 110

Authority to institute suits, 9, 109

Compromise of an unjust claim, 9, 110

Foreign guardians, 9, 124

In Whose Name Suit Should Be Brought, 9, 110

For labor of ward, 9, 110

Vol. I.

- For trespass, 9, 111
- Notes payable to himself as guardian, 9, 111
- Suit in guardian's name, 9, 110
- Suit in ward's name, 9, 110
- To recover distributive share of ward, 9, 110
- When guardian should be sued personally, 9, 112
- When suit should be brought against ward, 9, 112
- Where debt or contract is a result of guardian's mismanagement, 9, 111
- Where the injury is to guardian's possession, 9, 111
- Reimbursements for expenses incurred in suit, 9, 110
- Release of a debt due ward, 9, 110
- Support and Education**, 9, 102; 17, 358
 - Ability of father, 17, 358
 - Allowance beyond income of estate, 9, 102; 17, 362
 - Allowance from special fund, 17, 360
 - Allowance greater than income where court would have allowed it if applied to, 9, 102, 103
 - Allowance to mother, 17, 361
 - Applying income to support of child, 17, 359
 - Child's circumstances and fortune, 17, 359
 - Divorce, 17, 361, 362
 - Expenses of past maintainance, 17, 359
 - Father's right to reimbursement, 17, 358
 - Guardian's judgment as to necessities, 9, 104
 - How guardian charged with necessities, 9, 104
 - Liability of guardian limited to extent of ward's estate, 9, 104
 - Personal agreement of guardian, 9, 103
 - Sanction of court, 9, 102; 17, 359
 - Special necessity for expenditures beyond income, 9, 103
 - When expenditures beyond income will be allowed, 9, 102
 - Where son is apprenticed, 17, 359
- Suretyship**, 24, 869
 - See infra*, **BOND**.
 - Accounting, 24, 870
 - Act outside of official duty, 24, 870
 - Conditional suretyship, 24, 871
 - Examples, 24, 869-871
 - In general, 24, 869
 - Liability of surety in general, 24, 869
 - Misappropriation of funds, 24, 869
 - Money received before bond was executed, 24, 871
 - Negligence or misconduct, 24, 869
 - Profits made by guardian, 24, 869
 - Signature of co-surety, 24, 871
- Surrogates' courts**, 24, 985
- Taxation**
 - Place of taxation, 25, 154
 - Redemption, 25, 413
- Tax titles**, 25, 712
- I-D—48**
- Termination by removal*, *see infra*, **REMOVAL**.
- Term of Office**, 9, 95
 - Effect of marriage of female ward, 9, 95
 - How limited, 9, 95
 - Husband of female ward succeeds to guardian's rights, 8, 95
 - Resignation, 9, 96
 - Terminated by marriage of female ward, 9, 95
 - Terminated by ward becoming of age, 9, 95
- Testamentary Guardians**
 - Adopted child, 9, 89
 - Appointment by implication, 9, 89
 - Appointment of widow until marriage, 9, 89
 - Duration, 9, 89
 - Executors and administrators, 9, 89
 - Instances of appointments, 9, 89
 - Necessity of letters from a court, 9, 89
 - Only applies to intestate's own children, 9, 88
 - Personal trust not assignable, 9, 89
 - Power of father to appoint, 9, 88
 - Power of grandfather to appoint, 9, 88
 - Removal, 9, 98
 - Statutes, 9, 88
- Transactions After Expiration of Guardianship**, 9, 151
 - Gifts in favor of guardian, 9, 153
 - Leases or conveyances in favor of guardian, 9, 153
 - Private settlement, 9, 151
 - Purchase by guardian, 9, 153
 - Reasonable intendments in favor of ward, 9, 152
 - Settlement in good faith, 9, 152
 - Validity of release by ward, 9, 152
 - Ward's right to set aside lease, 9, 153
 - When private settlements to be set aside, 9, 151
- Trusts and trustees**, 27, 37
- Undertakings on appeal**, 27, 446
- Undue Influence**, 27, 491
 - Examination of accounts, 27, 492
 - Gifts, 27, 492
 - Gifts from ward to guardian, 27, 491
 - Illegally appointed guardian, 27, 492
 - In general, 27, 491
 - Leases, 27, 492
 - Length of time after termination of guardianship, 27, 491, 492
 - Rebuttal of presumption, 27, 492
 - Receipts, 27, 492
 - Releases, 27, 492
 - Sales, 27, 492
 - Settlements, 27, 492
 - Transactions closely scrutinized, 27, 491
- Vagrancy**
 - Notice to guardian, 28, 43
- Vendor and purchaser**, 28, 90
- Vendor's lien**, 28, 168
- Waiver of service**, 10, 689
- Ward becoming of age**, 9, 95

GUARDIAN AND WARD—Cont'd

Ward's right to disaffirm purchase by guardian, 8, 106

Ward's Right to Follow Property

In general, 9, 148

Recovery of personal property fraudulently conveyed, 9, 149

Remedy against guardian and recovery at the same time, 9, 150

Right to follow when in hands of a third person, 9, 148

Right to follow wherever traceable, 9, 148

Who may be, 10, 686

GUEST, 9, 159; 13, 1001

As to the creation of the relation of host and guest, see **INNS AND INNKEEPERS**.

Boarder, 9, 159

Contract to board, 9, 160

Definition, 9, 159

Distinction between guest and boarder, 2, 437; 9, 160; 11, 18

Inns and Innkeepers, 11, 19

Distinction Between Guests and Boarders, 2, 437; 9, 160; 11, 18

Contract for definite stay, 11, 18

Length of stay immaterial, 11, 19

Question of fact, 11, 19

Entering refreshment rooms, 11, 20

Hiring rooms for immoral purposes, 11, 22

Leaving Horse at Inn, 9, 160; 11, 23

Conflict of opinion, 11, 24

Horse left during visit to wife, 11, 26

Insufficiency of traveler leaving horse, 11, 26

Other acts beside leaving horse, 11, 27

Stallion standing at inn, 11, 22, 27

Status of party never stopping at inn, 11, 26

Travelers as distinguished from residents, 11, 25

Limits of doctrine, 11, 20

Lodger, 11, 19

Mere visitor, 11, 20

Necessity of personal presence of guest, 11, 23

Object of stay, 11, 22

Party attending ball at inn, 9, 160; 11, 21

Party obtaining slight entertainment, 11, 19

Party purchasing liquor, 11, 13, 20

Party taking room for showing and selling goods, 11, 22

Showing and selling goods, 11, 22, 23

Transient visitor or caller, 9, 160; 11, 20

Unlawful purpose, 11, 22

Leaving baggage, 9, 160

Leaving horse at inn, 9, 160; 11, 23

Neighbor or friend accepting invitation, 9, 159

Person attending ball given at hotel, 9, 160; 11, 21

Person seeking temporary refreshment, 9, 159

Presumption as to continuance of relation of guest, 9, 160

Property in possession of agent, 9, 160

Property in possession of member of family, 9, 160

Property in possession of wife, 9, 160

Status as a traveler, 9, 159

Test, 9, 159

Transient accommodation, 9, 160; 11, 20

What constitutes a guest, 9, 160

Who Are, 9, 159; 11, 12

Definitions of "guest," 11, 13

Fixing price or length of stay, 11, 13

Illustrations, 11, 13

Leaving horse, 11, 12

Necessity of assent of innkeeper, 11, 14

Purchaser of liquor on Sunday, 11, 13

Restriction of Term "Guests" to Travelers, 11, 15

Nature of restriction, 11, 15

Neighbor, 11, 16

Scope of restriction, 11, 16

Townsmen, 11, 16

Wayfarer, 11, 16

Scope of term "guests," 11, 13

Situation of parties and circumstances of case, 11, 14

GUNPOWDER, see EXPLOSIONS.**Municipal Corporations**

Keeping gunpowder, 15, 1190

Nuisances, 16, 955

Police power, 18, 756

HABEAS CORPUS, 9, 161; 10, 699

See **EXTRADITION.**

Affidavits, 9, 198

Admissibility and value of affidavit as evidence, 9, 199

Contradicting return, 9, 198

Must state facts, 9, 198

Properly authenticated, 9, 198

To fortify return, 9, 197, 198

When it may be used, 9, 198

Amendment of writ, 9, 184

Appeals, 9, 237

Examples, 9, 239

In state courts, 9, 166

Statutory provisions, 9, 238

Supreme court of the United States, 9, 166, 168, 235

United States Courts, 9, 171

Classes of cases in which appeals may be had, 9, 171

From the circuit to the supreme court, 9, 172

From the district to the circuit court, 9, 171

From territorial to United States supreme court, 9, 173

Upon territorial courts and the United States supreme court, 9, 168

When appeal lies in state courts, 9, 166

Whether it lies from judgment in, 9, 237

- Appearance**, 9, 202
 Of party to whom writ is directed, 9, 185
- Application**, 9, 176, 179
As to requisites of petition, see *infra*, PETITION.
See RES ADJUDICATA.
 Against inclinations of child, 9, 247
 Mere moral restraint insufficient, 9, 178
 Necessity of actual imprisonment, 9, 178
 Penalty for refusing writ, 9, 183
 Second application, 9, 237, 239
 Time at which writ may be obtained, 9, 178
- To Whom Application Should Be Made**, 9, 180
 Judge nearest the residence of applicant, 9, 180
 Judge within the county, 9, 180
 Local court or judge, 9, 180
 The supreme court, 9, 180
 When application made to trial judge, 9, 180
- When it must be granted, 9, 181
 When refused, 9, 181
- Who May Make**, 9, 176, 243
 Application by another than the person detained, 9, 176
 Civil process, 9, 176
 Criminal process, 9, 176
 General rule, 9, 176
 Guardian for ward, 9, 177
 Husband for wife, 9, 176
 Master for apprentice, 1, 639*b*; 9, 176, 177; 17, 348
 Necessity of personal application, 9, 176
 Parent against wishes of child, 9, 177
 Parent for child, 9, 176
 Party under coercion, 9, 176
 Public prosecutor, 9, 178
 Wife for husband, 9, 176
- Apprentices**, 1, 639*b*; 9, 177; 17, 348
- Attachment**, 9, 185
- Attacking Judgments**, see *infra*, CONTEMPT; SUMMARY CONVICTIONS.
- Judgments of Courts of General Jurisdiction**, 9, 224
Conflict of state and federal jurisdiction, see *infra*, JURISDICTION.
 Concurrent sentences, 9, 232
 Court commissioners, 9, 234
 Courts-martial, 9, 233
 Cumulative sentences, 9, 232
 Erroneous judgment, 9, 225
 Erroneous sentences, 9, 230
- Errors and Irregularities**, 9, 227
 Illustrations, 9, 228
 Whether they may be examined into, 9, 228
- Examples of erroneous sentences, 9, 230
- Excessive sentences, 9, 231
- Immigration commissioners, 9, 234
- Insufficiency of indictment or information, 9, 229
- Jurisdiction**, 9, 224
 Of person and subject-matter, 9, 224
 To render particular judgment, 9, 225
- Mittimus, 9, 233
- Modifying judgments, 9, 232
- Necessity of indictment, 9, 230
- Reasons for the judgment, 9, 228
- Recitals in judgment, 9, 233
- Record of court which pronounced judgment, 9, 228
- Retrying issues of fact, 9, 228
- Reviewing evidence, 9, 227
- Sentence by court or judge de facto, 9, 236
- Sentences in violation of federal law, 9, 235
- Three elements of jurisdiction, 9, 224
- Two or more counts in indictment, 9, 229
- Unconstitutional laws, 9, 226
- Unconstitutional ordinances, 9, 226
- Unity of punishment, 9, 231
- Void judgment or sentence, 9, 225
- Want of jurisdiction, 9, 224, 225
- Where constitutionality of statute can be examined, 9, 226
- Where elements of jurisdiction are lacking, 9, 225
- Whether erroneous sentences may be examined, 9, 230
- Judgments of Inferior Courts**, 9, 220
- Bail**, 9, 204
See BAIL.
 After conviction, 9, 212
 After indictment, 9, 195, 206
 Appeal, 9, 211
 Arrest on bench warrant, 9, 210
 Bailable offenses, 9, 204
 Bail for capital offenses, 9, 204
- Before Indictment**, 9, 204
 Appeals, 9, 205
 Discretion of court, 9, 204
 Evidence to determine whether criminal act has been committed, 9, 206
 Excessive bail, 9, 205
 Guilt of prisoner, 9, 205
 No discharge after bail, 9, 206
 Reduction of bail by habeas corpus proceedings, 9, 205
 Rules for bail, 9, 206
 When granted, 9, 205
- Burden of proof on application for habeas corpus**, 9, 209
- Capital cases, 9, 207
- Certiorari, 9, 211
- Continuance, 9, 201
- Delay in being brought to trial, 9, 207
- Disagreement of jury, 9, 208
- Discretion of court, 9, 204, 206
- Evidence, 9, 209
- Excepted crimes, 9, 204

HABEAS CORPUS—Cont'd**Bail—Cont'd**

- Excessive Bail, 9, 204, 205, 207, 211
 - Review in Arkansas, 9, 211
- Extrinsic evidence in habeas corpus proceedings, 9, 209
- Hearing application, 9, 210
- Homicide, 9, 6; 7
- Increasing and reducing bail, 9, 210
- Inquiry into indictment, 9, 209
- Insane prisoner, 9, 211
- New trial, 9, 208
- On perfect warrant, 9, 203
- Pecuniary circumstances of accused, 9, 207
- Petition to reduce bail, 9, 179
- Power to bail, 9, 204
- Practice on appeal, 9, 210
- Presumptions**, 9, 207
 - In favor of court below, 9, 211
 - Of guilt from indictment, 9, 207
 - Review in Alabama, 9, 211
 - Review in Indiana, 9, 211
 - Rules to determine bail, 9, 206
 - Sickness of prisoner, 9, 208
 - Special and extraordinary circumstances, 9, 207
 - Term, 9, 210
 - When bail may be had, 9, 211
 - When bail may not be had, 9, 211
 - When entitled to bail in capital cases, 9, 207
 - When matter of right, 9, 204
 - When proof is evident or presumption great, 9, 207
 - Whether indictment may be reviewed, 9, 209
 - Writ of error, 9, 211
- Certiorari as an ancillary process, 3, 67; 9, 184
- Chinese, 9, 169, 945
- Civil proceedings, 9, 167
- Conflict of laws, 3, 525
- Contempt**, 9, 203, 214
 - Acts not constituting contempt, 9, 218
 - Attacking decrees, 9, 216
 - Attacking judgments, 9, 216
 - Attacking orders, 9, 216
 - Attack on commitment, 9, 219
 - Classification of contempt, 9, 214
 - Commitment by legislative body, 9, 217
 - Commitment for indefinite time, 9, 218
 - Commitment for longer time than fixed by statute, 9, 217
 - Conflict of authority, state and federal, 9, 218
 - Cost, 9, 219
 - Court without authority, 9, 218
 - Criminal, 9, 214
 - Definition, 9, 214
 - Disobedience to subpoena, 9, 216
 - Due process of law, 9, 218
 - English rules, 9, 217
 - Failure to set forth facts from which contempt arose, 9, 219
 - Fine**, 9, 219
 - Judgment in criminal cases, 9, 215

- Illustrations, 9, 216
- Inferior courts, 9, 215
- Inherent power of courts, 9, 215
- Judgments of superior and inferior courts, 9, 217
- Jurisdiction, 9, 215, 220
- Legislative bodies, 9, 218
- Legislative contempts, 9, 215
- Modifying judgment, 9, 217
- Notary public, 9, 215
- Of legislature, 9, 214
- Of public wrong, 9, 215
- Orders**
 - In alimony, 9, 216
 - In supplementary proceedings, 9, 216
 - Which court had no authority to make, 9, 216
- Power of courts to punish for contempt, 9, 215
- Power of legislature, 9, 215
- Prisoner must have notice of order, 9, 217
- Publications during trial, 9, 219
- Record, 9, 220
- Review of evidence, 9, 220
- Specific criminal offense, 9, 215
- Statement of facts in order of commitment, 9, 219
- Statutory contempt, 9, 214
- Twice in jeopardy, 9, 217
- Unconstitutional law, 9, 217
- Void orders, 9, 217
- What must be set out to warrant commitment, 9, 219
- What will be examined into, 9, 215
- When prisoner liable to discharge, 9, 216
- Costs**, 9, 184
 - Different hearings, 9, 184
 - Liability of officer making arrest, 9, 184
 - Proceedings for custody of minor, 9, 184
- Court a judge of law and fact, 9, 203
- Court commissioner, 9, 184
- Custody of Children**
 - See generally*, DIVORCE; GUARDIAN AND WARD; PARENT AND CHILD.
 - Appeal, 17, 370
 - Discretion of court, 9, 245; 17, 370
 - Jurisdiction of United States circuit court, 9, 171
 - Jurisdiction of United States district court, 9, 171
 - Refusal of court to decide as to custody, 17, 370
 - Res adjudicata, 9, 238; 17, 370
 - To recover custody, 17, 370
- Custody of Legitimate Children**, 9, 240, 248
 - After divorce suit, 5, 836
 - American Doctrine**, 9, 242
 - Advice of court as to choice by infant, 9, 246
 - Applicability of English decisions, 9, 242

- Application**
 Against child's consent, 9, 242
 By unauthorized person, 9, 242
 For writ, 9, 242
 Should state locality of confinement, 9, 242
 Child's attachments, 9, 246
 Contract for surrender of custody, 9, 245
 Court's discretion, 9, 245; 17, 370
 Court will not allow child to depart in injurious custody, 9, 247
 Demand for child, 9, 242
 Disposition by court, 9, 242
 Disposition of child, 9, 245
 Divorce, 9, 247
 Equitable jurisdiction, 9, 247
 Immorality of father, 9, 243
 Incompetency of father, 9, 243
 Infant sickly or delicate, 9, 244
 Intemperance of father, 9, 243
 Interest of child, 9, 245, 246
 Interest of child paramount consideration, 9, 243
 Mental capacity and not age criterion, 9, 246
 Modification of common law, 9, 243
 Mother's rights, 9, 244
 Person in loco parentis, 9, 245
 Protection of child while returning, 9, 247
 Removal of formal objection to father's custody, 9, 243
 Rights of father, 9, 243
 Scope of writ, 9, 242
 Surrender of custody by parent, 9, 244
 What amounts to illegal restraint, 9, 242
 When court will regard wishes of child, 9, 246
 Where child is at years of discretion, 9, 242, 246
 Whether father can divest himself of custody by agreement with mother, 9, 245
 Whether father's right is paramount to mother's, 9, 243
 Who authorized to make application, 9, 242
 Application against wishes of child, 9, 177
 Application by parent, 9, 176
English Doctrine, 9, 240
 Disposition of child upon habeas corpus, 9, 241
 Equity jurisdiction, 9, 241
 Exercise of choice by child, 9, 241
 Father's abuse of right, 9, 240
 Father's right at common law, 9, 240
 Immorality of father, 9, 240
 Persons in loco parentis, 9, 240
 Profligacy of father, 9, 240
 Statutory modifications, 9, 241
 Surrender of custody by parent, 9, 240
 When child is of sufficient discretion to choose for itself, 9, 241
 When entitled to habeas corpus, 9, 240
 Whether father's right is absolute, 9, 241
 Father's right as against third party, 9, 248
 Illustrations, 9, 248
 Jurisdiction of United States courts, 9, 171
 Mother's right, 9, 248
 Res adjudicata, 9, 238
 Respective rights of parents, 9, 248
 Where child has discretion to choose for itself, 9, 248
 Custody of prisoner, 9, 200
 Definition, 9, 163
 Direction of writ, 9, 184
 Discharge from illegal arrest by, 1, 728
 Discharge from the army by, 15, 407
 Discharge of enlisted men, 15, 441
 Discretion of judge, 9, 180
Effect of Discharge, 9, 203
 Conclusiveness, 9, 203
 New warrant, 9, 203
 Retrial on the same charge, 9, 203
 Where warrant is defective, 9, 203
Enlistment
 Discharge, 15, 407
 Authority of the courts, 15, 407
 Jurisdiction of state courts, 15, 407
 Minors, 15, 402
 Errors and irregularities of law, 9, 164
Error, Writ of
 Statutory provisions, 9, 237
 Whether it lies from a judgment in statutory provisions, 9, 237
Evidence, 9, 195
See infra, WITNESSES.
Affidavits, see *infra*, AFFIDAVIT.
 Commenting on testimony, 9, 198
 Comment without testimony, 9, 197
 Competency, 9, 197
 Competency of oral testimony, 9, 195
 Contradicting return, 9, 198
 Contradiction of record by oral testimony, 9, 196
 Of service, 9, 198
 On second application, 9, 196
 Oral testimony, 9, 195
 Postponement for further testimony, 9, 197
 Probable cause of guilt, 9, 196
 Several indictments on the same evidence, 9, 197
 Statement of, in petition, 9, 196
 Sufficiency of evidence before committing magistrate, 9, 196
 Traversing return by oral testimony, 9, 196
 Weighing evidence, 9, 196
Extent of Inquiry on Return, 9, 190
 Admission to bail, 9, 195
After Indictment and Before Conviction, 9, 195
 Recommitment of prisoner where indictment is bad, 9, 202

HABEAS CORPUS—Cont'd**Extent of Inquiry on Return—Cont'd**

- Commitment by United States commissioner, 9, 192
- Errors and irregularities of law, 9, 164
- Guilt or innocence, 9, 194
- How far inquiry can go, 9, 195
- In State Courts Before Indictment, 9, 193**
 - Evidence before committing magistrate, 9, 194
 - Examination, 9, 195
 - Examples, 9, 193
 - Full inquiry into proceedings and evidence, 9, 194
 - Guilt or innocence, 9, 194
 - Jurisdiction of committing magistrate, 9, 193
 - Practice not uniform, 9, 193
 - Preliminary examination, 9, 195
 - Revisal of committing magistrate's proceedings, 9, 194
 - Waiver of preliminary examination, 9, 195

In United States Courts, 9, 190

- Commitment, 9, 191
- Commitment not sufficient to give United States supreme court jurisdiction, 9, 192
- Conflict of jurisdiction, 9, 191
- Inquiry behind commitment, 9, 192
- Inquiry into commitment, 9, 192
- Jurisdiction, 9, 190
- Necessity of technical commitment, 9, 191
- Regularity of warrant of arrest, 9, 192
- United States supreme court, 9, 192
- Where one is held without any process or warrant, 9, 192
- Sufficiency of evidence, 9, 196
- Sufficiency of indictment or information, 9, 195

Extradition, 9, 249

- International, 9, 249**
 - Arrest procured by fraud, 9, 249
 - Arrest procured by trick, 9, 249
 - Authentication, 9, 250
 - Concurrent jurisdiction of federal and state courts, 9, 252
 - Extradition for one crime; trial for another, 9, 249
 - Extradition papers, 9, 250
 - Illegal extradition, 9, 249
 - Jurisdiction of district court of United States, 9, 250
 - Necessity of president's mandate, 9, 249
 - President's discretion, 9, 249
 - Prisoner forcibly brought within jurisdiction, 9, 249
 - Reviewing decisions of United States commissioners, 9, 250
 - Review of president's action, 7, 630
 - Sufficiency, 9, 250
 - Sufficiency of complaint, 9, 250
 - Sufficiency of warrant, 9, 251

Whether court will look behind president's warrant, 9, 249

Interstate, 9, 252

Extradition for one crime; trial for another, 9, 252

Extradition Papers, 9, 254

- Authentication, 9, 254
- Charge of crime, 9, 256
- Miscellaneous matters, 9, 256
- Sufficiency, 9, 254
- Sufficiency of indictments, 9, 255
- Warrants, 9, 254

Fugitive from justice, 9, 252

Illegal extradition, 9, 252

Inquiry into guilt or innocence, 9, 254

Inquiry into legality of arrest, 9, 253

Judicial review of executive decisions, 9, 253

Jurisdiction, 9, 252

Jurisdiction of federal courts, 9, 252

Jurisdiction of state courts, 9, 252

Miscellaneous questions of practice, 9, 256

Necessity of warrant by local magistrate, 9, 253

Validity of arrest, 9, 253

False imprisonment, 7, 694

Fees, 9, 184

Final judgment, 12, 69

Guardian's letters, 9, 179

Guilt or Innocence, 9, 194

After indictment, 9, 195

Before indictment, 9, 194

Habeas Corpus ad Testificandum, 24, 172

Examples, 24, 172, 173

In general, 24, 172

Judge at chambers, 24, 173

Parties, 24, 173

Persons in military or naval service, 24, 172

To whom applied, 24, 173

When writ may be granted, 24, 172

Husband and wife, 9, 814

In Civil Cases, 9, 163

Whether it can issue, 9, 163

Whether it issues as a matter of course, 9, 164

Infants, see *infra*, CUSTODY OF CHILD.

Enlistment of minors, 15, 402

Insanity, 11, 114

Insurance, 9, 184

Issues of Law and Fact, 9, 199

How issues of fact formed, 9, 199

Where facts are not controverted, 9, 199

Where material allegations are controverted, 9, 199

Judgment of de facto judge, 12, 24

Jurisdiction**Conflict Between State and Federal**

Courts, 9, 173, 191, 234

Burden of proof, 9, 175

Contempt, 9, 175, 217

Custody in violation of federal authority, 9, 174

Discretion of United States court, 9, 173

- Federal courts determine their own jurisdiction, 9, 191
- Federal officer imprisoned, 9, 175
- Federal question, 9, 175
- Imprisonment by state for crime committed in exclusive jurisdiction of United States, 9, 175
- Imprisonment under void state law, 9, 175
- Imprisonment without "due process of law," 9, 174
- Offense exclusively cognizable by state laws, 9, 235
- Party imprisoned in one jurisdiction, 9, 191
- Power of state to discharge from custody of United States, 9, 173
- Power of United States courts to discharge from state custody, 9, 173
- Refusal by United States supreme court to entertain writ until case is heard by state court, 9, 173
- Refusal by United States supreme court where application might have been made to circuit court, 9, 173
- Release by federal court, 9, 234
- Sentences in violation of federal laws, 9, 235
- State custody in violation of the United States, 9, 173
- Statute violating federal law, 9, 234
- Various questions as to conflict of jurisdiction, 9, 174
- When federal court will not grant the writ, 9, 174
- Of Federal Courts, 9, 166**
 - Appellate jurisdiction, 9, 166, 168
 - Discharge of prisoner by supreme court, 9, 167
 - Examples, 9, 167
 - In case of ambassadors, 9, 166
 - Issuance and refusal of the writ, 9, 167
 - Justice of the supreme court, 9, 167
 - Original jurisdiction, 9, 166
 - Person imprisoned under sentence of United States district court, 9, 166
 - Review on writ of error, by supreme court, 9, 167
 - United States supreme courts, 9, 166
 - Where lower federal court has no authority to hold prisoner under sentence, 9, 166
 - Where writ might have been issued by circuit court, 9, 167
 - Whether a civil proceeding, 9, 167
- Of State Courts, 9, 165**
 - Appeal lies when, 9, 166
 - Appeals, 9, 166
 - Examples in which writ was refused, 9, 165
 - Examples of when writ will issue, 9, 165
 - Issuance of the writ, 9, 165
 - When writ will be refused, 9, 165
- Of the United States Circuit Court**
 - Chinese, 9, 169
 - Custody of children, 9, 171
 - Decision simply erroneous, 9, 171
 - Detention of emigrants, 9, 170
 - Examples in which writ has issued, 9, 171
 - Examples of refusal of writ, 9, 171
 - Minors enlisted, 9, 170
 - Passing counterfeit money, 9, 170
 - Removal from a state court, 9, 169
 - Violation of federal laws, 9, 170
- Of United States Courts**
 - Appeal, 9, 171
 - Classes of cases in which appeals may be had, 9, 171
 - From circuit to the supreme court, 9, 172
 - From district to the circuit court, 9, 171
 - From territorial to United States courts, 9, 173
 - Inquiry into jurisdiction, 9, 190
- Of United States District Court, 9, 168**
 - Chinese, 9, 169
 - Custody of children, 9, 171
 - Decisions simply erroneous, 9, 171
 - Detention of emigrants, 9, 170
 - Examples in which writ has issued, 9, 171
 - Examples of refusal of writ, 9, 171
 - Extradition, 9, 250
 - Minors enlisted, 9, 170
 - Passing counterfeit money, 9, 170
 - Violation of federal laws, 9, 170
- Of United States Supreme Court, 6, 839;**
 - 9, 191, 235; 27, 639
 - Appellate jurisdiction, 9, 192
 - Commitment, 9, 191
 - Extradition, 9, 250
 - In what cases court will take jurisdiction, 9, 192
 - Necessity of decision of a lower court, 9, 192
 - Where application might be made to circuit court, 9, 173
- Of United States territorial courts, 9, 168**
 - Summary proceedings, 9, 213
- Jurisdictional fact, 9, 202
- Jury trial, 9, 200, 203
- Mandamus, 9, 182**
 - To compel issuance of writ, 9, 182
 - To compel judicial officer to hear evidence, 9, 183
 - To compel vacating of an order discharging prisoner, 9, 183
 - When it will not lie, 9, 183
- Miscellaneous matters and practice, 9, 202
- Misdemeanor**
 - Justice of the peace, 12, 412
- Mittimus, 15, 696
- Mode of trial, 9, 200
- Nature of the writ, 9, 163
- Necessity of motion, 9, 164
- Object, 9, 163**
 - Not to retry cases, 9, 164
- Ordinances, 17, 269

HABEAS CORPUS—Cont'd

Parent and Child, 17, 370

See infra, CUSTODY OF CHILDREN.

Penalty for refusing writ, 9, 183

Person privileged from arrest, 7, 694

Petition, 9, 178

Allegation of unlawful restraint of liberty, 9, 179

Conclusions of law, 9, 178

Exemptions from benefit of writ, 9, 179

Guardian's letters, 9, 179

Locality of the confinement, 9, 180

Name of person imprisoned, 9, 178

Petition for custody of children, 9, 179

Prima facie case, 9, 181

Process upon which imprisonment was made, 9, 179

Reduction of bail, 9, 179

Requisites, 9, 178

Rules of pleading, 9, 178

Showing illegality of imprisonment, 9, 178

Statement of evidence, 9, 196

Verification, 9, 182

Want of probable cause, 9, 179

Warrant of commitment, 9, 179

When application will be refused, 9, 179

Practice and pleading, 9, 199

Preliminary examination, 9, 195; 12, 419

Privilege

Of one discharged from arrest, 1, 724

Probable Cause, 9, 180

Discretion of judge, 9, 180

Must be shown, 9, 180

Petition, 9, 179

Petition stating evidence, 9, 196

Refusal for want of, 9, 181

Process of commitment, 9, 179

Question of identity, 9, 200

Refusal to allow Chinese to land, 1, 457

Re-hearing, 9, 202

Res Adjudicata, 9, 237; 17, 370

Application to two or more courts, 9, 237

Custody of children, 9, 238

Effect of decision in one state in another, 9, 239

Second application, 9, 237, 239

Statutory provisions, 9, 238

Whether decision of court is final, 9, 237

Writ of error, 9, 237

Return, 9, 184

Affidavits to fortify, 9, 187, 197, 198

Ambiguous, 9, 187

Amendment of, 9, 187

Authority for detention, 9, 186

Before return day, 9, 185

By parol evidence, 9, 196

Cause of arrest, 9, 190

Cause of detention, 9, 189

Certainty, 9, 186

Conclusiveness of, 9, 187, 190

Construction of, 9, 186

Contempt of court, 8, 188

Contradicting, 9, 198

By affidavit, 9, 198

In general, 9, 198

Copy of minutes of court, 9, 186

Demand for child, 9, 188

Direction, 9, 184

Discharge upon, 9, 185

Dismissal upon, 9, 184, 187

Documents referred to, 9, 188

Enforcement by attachment, 9, 185

Evidence given in prisoner's absence, 9, 188

Hearing, 9, 185

Mittimus, 9, 186

Necessity of, 9, 184

Party held by officer of the United States, 9, 189

Reasonable time for preparation of, 9, 185

Receiving, 9, 185

Signature, 9, 184

Statement of

Cause of arrest, 9, 190

Cause of detention, 9, 189

Sufficiency of, 9, 190

Sufficient reasons for non-production, 9, 189

Uncertain, 9, 186

Verification, 9, 185

Warrant of commitment, 9, 186, 188

What return should deny, 9, 186

What sufficient to authorize detention, 9, 186

When attachment will be awarded, 9, 186

When return insufficient, 9, 186

Where custody is denied, 9, 186

Who must make, 9, 184

Review by, 9, 164

Right of guardianship, 9, 200

Rights of property, 9, 200

Service of writ, 9, 184

Speedy trial, 9, 203

Substitution for

Bill of certiorari, 9, 227

Quo warranto, 9, 236

Sufficiency of complaint, 9, 202

Suit, whether a, 24, 495

Summary character of the writ, 9, 163

Summary Convictions, 9, 212

Constitutionality, 9, 212, 213

Construction, 9, 213

Summary Proceedings, 9, 213

Collateral attack for error, 9, 213

Commitment of witness, 9, 214

Conviction without authority of law, 9, 213

Errors and irregularities, 9, 213

Jurisdiction, 9, 213

Presumption as to lawfulness of conviction, 9, 213

Recitals in commitment, 9, 313

Statutory, 9, 213

Want of jurisdiction, 9, 213

What are, 9, 212

What is sufficient commitment, 9, 214

Whether facts necessary to conviction must be recited, 9, 213
 Supersedeas, 24, 584
Supreme Court
 Habeas Corpus, 6, 839
 Of United States, 6, 839; 9, 191, 235; 27, 639
 Surety to keep the peace, 12, 421
 Surrogate's courts, 24, 991
 Suspension by executive, 3, 688
 Time of hearing, 9, 202
 Title to office, 9, 200
 To inquire into jurisdiction, 12, 312
 Trial of property rights, 9, 164
 Trial of rights of guardianship, 9, 165
 Trying election cases, 6, 393
 Venue, 28, 220
 Verification of publication, 9, 182
 Waiver of incompetency of judge, 9, 203
Warrant of Arrest
 Appeal where perfect warrant, 9, 202
 Discharge of perfect warrant, 9, 202
 New warrant, 9, 203
Recommitment Where Defective, 9, 201
 Defective warrants, 9, 201
 Examination of witnesses de novo, 9, 201
 Informal warrant, 9, 201
 Power of court to recommit, 9, 201
 Prisoner guilty of different offence, 9, 201
 Void warrant, 9, 201
 When validity may be examined into, 9, 201
 Where court has not power of committing magistrate, 9, 201
 Where indictment is pronounced bad, 9, 202
 Warrant of commitment, 9, 179, 186
 What reviewable upon, 9, 164
 When granted, 9, 181
 When refused, 9, 181
 Whether a cause, 9, 164
 Whether allowance is a ministerial or judicial act, 9, 163
 Whether a suit, 9, 164
 Whether civil proceedings, 9, 164
 Whether it can be used as a quo warranto, 9, 165
 Whether it may be used as a substitute for appeal, 9, 164
Witnesses, 9, 197
 Competency of officers, 9, 197
 Escape before hearing, 9, 197
 Examination of, 9, 198
 For purpose of impeachment of witnesses, 9, 197
 Right to be confronted with, 9, 197
HABERE FACIAS POSSESSIONEM, see EXECUTION.
HABERE FACIAS SEISINAM, see EXECUTION.
HABITABLE, 9, 257
HABITABLE REPAIR, 9, 257
HABITATION, 9, 258; 16, 148
HABITS, see USAGES AND CUSTOMS.
 Good habits, 8, 1360

HABITS OF INTEMPERANCE, 9, 258
HABITUAL
 Residence, 5, 863
HABITUAL DRUNKENNESS, 6, 34; 9, 258
 See CIVIL DAMAGE ACT; DRUNKENNESS.
 As a crime, 9, 258
 Bill or note of, 2, 346
 Capacity to be executor or administrator, 7, 176
 Cause for divorce, 5, 806
 Civil damage acts, 3, 259
 Deed, 5, 426
 Definition, 5, 160, 807; 11, 705, 706
Evidence of Habitual Drunkenness, 11, 706
 In civil damage act, 3, 271
Foreclosure of Mortgages
 When necessary parties, 8, 217
 Inquisition, finding one habitual drunkard, 2, 346
 Mortgages, 15, 743
Sale of Liquor, 9, 259; 11, 705
 See INTOXICATING LIQUORS.
 By agents, 11, 720
 Effect of want of knowledge, 11, 707
 Evidence to show habitual drunkenness, 11, 706
 Joint sale to intoxicated and third persons, 11, 708
 Notice to dealer of intemperate habits of purchaser, 11, 705
 Penalties, 11, 705
 "Sober and temperate," 11, 705
 Statutes forbidding, 11, 705
 Sufficiency of notice, 11, 707
 Treating, 11, 701, 702
 What constitutes the offense, 11, 705
 What is a drunkard, 11, 706
 When want of knowledge no defense, 11, 706
 Who are persons of intemperate habits, 11, 705
 Under statutes authorizing appointment of committee for habitual drunkenness, 9, 259
 Under statutes forbidding the sale of liquor to habitual drunkards, 9, 259; 11, 705
 What constitutes, 5, 807; 11, 706
HACKMEN
 Police power, 18, 752
HACKNEY COACH, 9, 260
HAIR, 9, 260
 Identity, 15, 232
 Manufacture of hair, 14, 260
HALF, 9, 260
 Half a month, 9, 261
 Half a year, 9, 261
HALF BLOOD, 9, 261
 Incest, 10, 337
HAM, 9, 261
HAND, 9, 261
 Death by own hand, see LIFE INSURANCE.
 Die by his own hand, see LIFE INSURANCE.

HAND—Cont'd

- Hands of justice, 12, 389
- Logs on hand, 9, 261
- Money on hand, 9, 262; 15, 710
- Notes of hand, 9, 262
- On hand, 17, 186
- Stock on hand, 9, 262; 23, 900
- Under their hands, 9, 262
- With a strong hand, 29, 519

HAND-BILLS

- As advertisements and as notices, 1, 306

HANDICRAFTSMAN, 1, 776**HANDWRITING, 7, 490; 9, 263**

See FORGERY.

See generally, EXPERT AND OPINION EVIDENCE.

See MARK; SIGNATURE.

As to subscribing witnesses, see WILLS.

Asking party to write his name on witness stand, 9, 208

Bank notes, 9, 275

Cipher, 9, 264

Comparison of, 7, 81, 376; 9, 279; 11, 509

See *infra*, STANDARD.

Circuit district court of the United States, 9, 289

Conflicting decisions, 9, 281

Court of claims, 9, 289

Definition, 9, 279

Distinguished from quasi comparisons, 3, 377

Doctrine in England and America, 3, 377

English common law decisions, 9, 281

English ecclesiastical courts, 9, 280

English statute, 9, 283

French law, 9, 280

History, 9, 279

In Alabama, 9, 288

In Arkansas, 9, 288

In California, 9, 283

In Colorado, 9, 288

In Connecticut, 9, 283

In Delaware, 9, 288

In Georgia, 9, 286

In Illinois, 9, 288

In Indiana, 9, 284

In Iowa, 9, 286

In Kansas, 9, 283

In Kentucky, 9, 288

In Louisiana, 9, 286

In Maine, 9, 283

In Maryland, 9, 288

In Massachusetts, 9, 283

In Michigan, 9, 284

In Minnesota, 9, 284

In Mississippi, 9, 283

In Missouri, 9, 284

In Montana, 9, 288

In Nebraska, 9, 288

In New Hampshire, 9, 283

In New Jersey, 9, 287

In New Mexico, 9, 288

In New York, 9, 287

In North Carolina, 9, 285

In Ohio, 9, 283

In Pennsylvania, 9, 290

In Rhode Island, 9, 291

In South Carolina, 9, 291

In Tennessee, 9, 288

In Texas, 9, 285

In Utah, 9, 285

In Vermont, 9, 283

In Virginia, 9, 283

In West Virginia, 9, 285

In Wisconsin, 9, 288

In supreme court of United States, 9, 289

In United States courts, 9, 288

Objection to comparison of handwriting, 9, 281

Printed matter, 3, 376

Proof of Identity

Homicide, 9, 709

Roman law, 9, 280

To prove age of writings, 9, 299

When made by appellate court, 9, 300

Competency of Witness

Inability to Read or Write, 9, 277

Knowledge required in order to testify, 9, 271, 277, 298

Inquiry into extent of witness' knowledge, 9, 276

Interest in cause, 9, 277

Necessity of statement of acquaintance with party's handwriting, 9, 276

Necessity of stating source of knowledge, 9, 275, 276

Presumption that knowledge is admitted, 9, 276

Rejection of witness, 9, 276

Testimony, 9, 275

Weight of testimony, 9, 275

When knowledge was acquired, 9, 277

Witness who swears that he knows party's handwriting, 9, 275

Corroboration of witness, 9, 278

Cross-examination of witness as to source of knowledge, 9, 276

Definition, 9, 264

Evidence insufficient, 9, 276

Expert evidence as to, 7, 513

Experts, 9, 291

See *infra*, COMPARISON OF HANDWRITING.

Age of writing, 9, 293, 295

Characteristics of handwriting, 9, 294

Conveyancers, 9, 293

Necessity of professional expert, 9, 293

Proof of experience, 9, 293

Proof that witness is an, 9, 293

Testing accuracy of expert, 9, 296

To What Expert May Testify, 9, 294

Age of writing, 9, 293, 295

Alterations, 9, 294

Characteristics of handwriting, 9, 294

Inferences deduced from facts of case, 9, 295

Natural or feigned writings, 9, 294

Reasons for his opinion, 9, 295

Result of examination with magnifying glass, 9, 295

- Standard of comparison, 9, 295
 Whether paper was or was not written by same hand, 9, 294
 Whether paper was written at same time, 9, 294
 Whether paper was written with same pen and ink, 9, 294
 Whether writing was made by a pen, 9, 295
 Value of expert testimony for jury, 9, 300
Who Is an, 9, 291
 Attorneys at law, 9, 292
 Bank officers, 9, 292
 Bookkeeper, 9, 293
 Business man, 9, 293
 County officials, 9, 293
 Generally, 9, 291
 Photographer, 9, 293
 Treasurer and clerk of railroad, 9, 293
 Writing teacher, 9, 293
 How opinion formed, 9, 277, 278
 Justice of the peace, 9, 274
 Notary public, 9, 274
 Opinion and belief, 9, 277
 Opinion as to, 7, 81
 Opinion of experts, 11, 509
 Photographs, 18, 425
 Principles applicable equally in civil and criminal cases, 9, 265
 Privileged communications, 19, 141
Production of Papers, 9, 266
 General rule, 9, 266
 Lost and destroyed papers, 9, 266
 Public records, 9, 266
Proof of Genuineness, 9, 267, 298
 Acknowledgments, 9, 267
 Answers to letters, 9, 268
 Attested instrument, 1, 942
 Business entries, 9, 267
 By testimony of witnesses who saw writing done, 9, 268
By Witnesses Personally Acquainted with Party's Handwriting, 9, 269
 Administrator of decedent, 9, 274
 Attorney and client, 9, 274
 By witnesses having personal relation with writer, 9, 273
By Witness Who Had Seen Papers Acknowledged by Party, 9, 272
 Acknowledgment in court room at trial, 9, 273
 Evidence to show acknowledgment, 9, 273
 Express acknowledgment, 9, 273
 Papers which party is estopped to deny, 9, 272
 Where witness held party under obligations, 9, 272
 By witness who has corresponded with party, 9, 271
 Cashier of bank, 9, 273
 Clerks of writer, 9, 273
 Familiarity with parties signing them, 9, 269
 Familiarity with signature, 9, 269
 Firm's signature, 9, 269
 Generally, 9, 271
 Members of the same family, 9, 273, 274
 Necessity that writer should have knowledge of his letters, 9, 272
 Number of times witness has seen party write, 9, 270
 Party writing before witness in order to render him competent, 9, 271, 277, 298
 When witness saw party write, 9, 271
 When writer holds an official position, 9, 274
 Where witness got party to write to obtain a specimen of his handwriting, 9, 271
 Witness having seen party write only once, 9, 270
 Witness having seen party write surname, 9, 270
 Witness who has seen party write, 9, 270
 By writer himself, 9, 268
 By writer's admissions, 9, 268
 Deeds and other papers made evidence by statute, 9, 267
Denial of Alleged Writer, 9, 268
 Showing mistake in admission of genuineness, 9, 269
 Denial of execution, 9, 268
 In ancient documents, 1, 568
 In criminal cases, 4, 853
 When not allowed, 9, 267
 When not necessary, 9, 267
When Writer Holds an Official Position, 9, 274
 Clerk in land office, 9, 274
 Druggist's certificate, 9, 274
 Justice of the peace, 9, 274
 Notary public, 9, 274
 Revenue collector, 9, 275
 Surveyors, 9, 274
 Where genuineness is not denied, 9, 267
 Where paper is required to be identified by official seal, 9, 267
 Writer's alleged inability to write, 9, 269
Questions of Law and Fact
 Standard of comparison, 9, 298
 Value of expert testimony, 9, 300
 Refreshing memory by reference to other papers, 9, 278
 Rejection of witness by court, 9, 276
 Setting aside verdict of court, 9, 300
Standard of Comparison, 9, 296
 Expert testimony as to whether it was forged, 9, 295
 Forgery cases, 9, 297
 Letter press copies, 9, 296
 Papers of record in the case, 9, 297
 Photographic copies, 9, 296
 Production in court, 9, 296
Proof of Genuineness, 9, 267, 298
 In New Hampshire, 9, 299
 In Ohio, 9, 299
 In Pennsylvania, 9, 299

HANDWRITING—*Cont'd***Standard of Comparison**—*Cont'd***Proof of Genuineness**—*Cont'd*

Necessity of proof, 9, 298

Question for judge, 9, 298

Signatures of public officers, 9, 297

What are proper standards, 9, 296

Where objections to standard must be taken, 9, 297

Writing by witnesses on stand, 9, 271, 277, 298

Surveyors, 9, 274

Testing witness' knowledge by showing him other papers, 9, 278

To prove identity, 9, 301

Weight of witness' testimony, 9, 276

Writing done in a disguised hand, 9, 264

HAPPEN, 9, 301

When vacancies happen, in constitution, 9, 301

HARBOR, 9, 302See **PORT**, 18, 838

Harbor and port, 9, 302

Harbor of Boston, 2, 482

Taxation

Taxation for the construction of, 25, 91

HARBORING SERVANT, 14, 801**HARMLESS**Save *harmless*, see **INDEMNITY CONTRACTS**.**HARMONY**, 9, 304**HARVEST**, 9, 304**HARVESTER**

Warranty, 28, 792

HAT

Hat trimmings, 26, 710

HAUL, 9, 304**HAVE**, 9, 304

Die without having issue, 9, 305

Equivalent to having, 13, 2

Have and keep, 9, 305

Having and holding, 9, 304

HAVEN, 9, 306See **PORT**.**HAWKERS AND PEDDLERS**, 9, 307See *generally*, **COMMERCIAL TRAVELERS**.

Burden of proof, 9, 317

Defenses, 9, 317

Effect of failure to procure licenses, 9, 316

Indictment, 9, 316

Averments, 9, 316

Facts that constitute hawking and peddling, 9, 316

Interstate commerce, 11, 548

License, 9, 308

See *generally*, **TAXATION**, *sub-head*, **OCCUPATION TAXES**.

Amount of license fee, 9, 310

Constitutionality of statutes, 9, 311

Construction of statutes, 9, 311

Effect of failure to procure, 9, 316

Hawking in different places, 9, 310

Municipal Corporations, 9, 313

Authority to regulate, 9, 314.

Delegation of power by municipality, 9, 313

Discrimination against products of another state, 9, 313

Discrimination against residents of another state, 9, 315

Extent of power delegated to municipality, 9, 314

Necessity of charter power, 9, 313

Ordinances requiring an unreasonable fee, 9, 315

Validity of ordinances, 9, 315

When power to license, 9, 314

Patented articles, 9, 311

Penalties, 9, 309

Selling articles not enumerated in, 9, 310

Statute in Missouri, 9, 309

Statute in New York, 9, 309

Statute in Ohio, 9, 309

Statute in Tennessee, 9, 311

Uniformity necessary, 9, 311

Whether transferable, 9, 309

Ordinances, 17, 251

Police powers, 18, 758

Prohibited by Municipality

Markets, 14, 464

Prosecution for violation of license law, 9, 316

Restrictions, 9, 308

Validity of sale where there is no license, 9, 316

What Constitutes Hawking and Peddling, 9, 312

Manner of carrying goods, 9, 312

Offer to sell, 9, 312

Selling from missionary basket, 9, 313

Selling goods by sample, 9, 312

Single act, 9, 312

Who Are, 9, 307

Agent of manufacturer, 9, 308

Bartering merchandise, 9, 308

Distinguished from drummers, 9, 308

Distinguished from manufacturer, 9, 308

Person transferring merchandise from place to place, 9, 307

Sale of corn by sample, 9, 307

Soliciting orders, 9, 307

HAY

Manufacture of hay, 14, 260

HAZARDOUS, 9, 317**HE**, 9, 317, 415**HEAD**, 9, 318

Head of corporation, 9, 318

Head of family, 19, 312

See **HOMESTEAD**.**Exemption from Execution**, 7, 131

Illustrations, 7, 132

Public lands, 19, 316

HEALTH, 9, 318See **ADULTERATION**; **BOARD OF HEALTH**.See *generally*, **DRAINS AND SEWERS**; **HOSPITALS**; **PHYSICIANS AND SURGEONS**.See **NUISANCES**.See **QUARANTINE**.

- As to a warranty of health in policy, see*
LIFE INSURANCE.
- As to the abatement of nuisances, see*
NUISANCES.
- Unskillful treatment on the part of*
physician or surgeon, see MALPRAC-
TICE.
- Cemeteries, 9, 323; 18, 749
- Communicating contagious diseases, 9,
319
- Criminal conspiracy to endanger public
health, 4, 604
- Definition, 9, 319
- Depositing noxious matter on another's
land, 9, 319
- Drains and sewers, 9, 321; 10, 275; 18, 750
- Dwellings and lodging houses, 9, 322
- Factories, workshops, and mines, 9, 322
- Good health, 8, 1360
- Infringement of rights, 9, 319
- Interstate commerce, 11, 558
- Liability of county for the health of pris-
oners, 19, 86
- Liability of person creating a stagnant
pool, 4, 978
- Mills, 15, 485
- Municipal Corporations**
- Infectious diseases, 15, 1174
- Keeping cows and hogs, 15, 1174
- Slaughter houses, 15, 1174
- Nuisances in offensive trades, 9, 322
- Ordinances**, 17, 248
- Reasonable ordinances, 17, 248
- Police Power**, 18, 748
- License for physician, see* PHYSICIANS
 AND SURGEONS.
- Oleomargarine, see* OLEOMARGARINE.
- Cemeteries, 18, 749
- Drainage, 18, 750
- Examples, 18, 749
- In general, 18, 748
- Obnoxious professions, 18, 750
- Pollution of water, 18, 749
- Preservation of public health, 18, 750
- Removal of dead bodies, 18, 750
- Slaughtering of cattle, 18, 748
- Watered milk, 18, 749
- Water supply, 18, 749
- Polluting water, 9, 319; 18, 749
- Private rights as to, 9, 319
- Protection of rights, 9, 319
- Providing pure water, 9, 322
- Public parks, 9, 323
- Rights and powers of the community, 9,
 321
- Scavenging and street cleaning, 9, 321
- Slaughter houses, 9, 323; 15, 11, 74; 18,
 748
- Statutes regulating, 9, 321
- Trespass on the case, 26, 702
- HEALTHY**, 9, 324
- HEAR**, 9, 324
- HEARING**, 9, 324
- HEARSAY EVIDENCE**, 9, 325
- See* ADMISSION; CONFESSIONS; DEC-
 LARATIONS; DYING DECLARATIONS;
 PEDIGREE; RES GESTÆ.
- Admission of third party that he com-
mitted a crime as evidence for one ac-
cused of such crime, 3, 484
- Age, 9, 329, 330
- As explaining conduct, 9, 331
- Birth, 9, 329
- See* PEDIGREE.
- Corroboration, 9, 331
- Death, 9, 329
- Declarations made by party in his own
favor, 9, 326
- Definition, 9, 325
- Election cases, 6, 368, 427, 433
- Elevated railroads, 23, 1069
- Evidence in Former Proceedings**, 9, 332
- Absence of witness, 9, 334
- Admissions to avoid continuance, 9,
 336
- Affidavits, 9, 334
- Between what parties admissible, 9,
 332
- By whom former testimony may be
 proved, 9, 336
- Coroner's inquest, 9, 335
- Criminal cases, 9, 333, 335
- Deposition, 9, 333
- Failure to cross-examine, 9, 335
- General rule as to admissibility, 9, 332
- Issues different, 9, 332
- Judge's notes of testimony, 9, 336, 337
- Minutes of the former proceedings, 9,
 336
- Oral or written, 9, 332
- Preliminary examination, 9, 332
- Proof by committing magistrate, 9,
 336
- Proof by interpreter, 9, 336
- Proof of testimony by means of bill of
 exceptions, 9, 337
- Right of cross-examination on former
 trial, 9, 335
- Short-hand reporter's notes, 9, 336
- Substance of the testimony, 9, 337
- Testimony before arbitrators, 9, 332
- Testimony of accused to contradict his
 witnesses, 9, 335
- To contradict testimony in latter ac-
 tion, 9, 334
- To what objections evidence open, 9,
 335
- What witness must remember of
 former trial, 9, 337, 338
- When relevant, 7, 75
- Where council agree upon testimony,
 9, 336
- Where witness is dead, 9, 333
- Where witness is insane, 9, 333
- Where witness is sick and unable to
 attend, 9, 333
- Whether precise words of witness must
 be proved, 9, 337
- Witness absent from jurisdiction, 9,
 333
- Witness detained by adverse party, 9,
 333
- Witness disqualified since former pro-
 ceeding, 9, 334

HEARSAY EVIDENCE—Cont'd

- Generally Inadmissible**, 7, 65
- Illustrations, 7, 65
- General Reputation**, 9, 329
 - Examples, 9, 329, 330
 - General rule, 9, 329
 - Insolvency, 9, 329
 - Nationality of a party, 9, 331
 - Ownership of property, 9, 330
 - To show knowledge of a fact in a certain party, 9, 331
- General rule as to admissibility, 9, 326
- Homicide, 9, 723
- Illustrations, 9, 326
- Inadmissible to show bona fides, 9, 328
- Insanity, 9, 328
- Insolvency, 9, 329
- Intent, 9, 331
- Judgment, 12, 149e
- Ownership and value, 9, 329
- Place of birth, 9, 329
- Residence, 9, 329
- Surveys, 24, 1021
- To fix date, 9, 330
- Trespass, 26, 660
- When no better evidence exists, 9, 326

HEAT

- In bill of lading, 2, 237

HEAT OF PASSION, 9, 356**HEIFER**, 4, 571; 9, 356**HEIR**, 9, 357; 11, 374; 16, 62; 29, 348,

437

See **ISSUE**; **SUCCESSION**.

Construed to mean children, 22, 514

Executors and Administrators

- Whether necessary or proper, 17, 650
- Families or heirs, 16, 48

Forever

- Not equivalent to, 8, 442

Heir apparent, 9, 357

Heir at Law, 11, 373

- Distinguished from next of kin, 16, 705

Heirs of the body, 17, 35

Legal heirs, 11, 374; 13, 221

Male heirs, 14, 5

Mutual insurance, 16, 51

Natural heirs, 16, 223

- Necessity of the word in estates conveying fee simple, 6, 876

- When "family" means heir at law, 7, 807

- When issue equivalent to, 11, 877

HEIRLOOMS, 3, 165; 9, 357

- Executors and administrators, 7, 251

HELP, 9, 358

- Necessary help, 16, 371

HEMP

- Manufacture of hemp, 14, 260

HENCEFORWARD, 9, 358**HER**, 9, 358**HERBAGE**, 9, 358**HEREAFTER**, 9, 358, 359; 23, 327**HEREBY**, 9, 359**HEREDITAMENTS**, 9, 359; 19, 1032; 29,

403

See **EASEMENTS**.

Incorporeal hereditaments, *see* **INCORPOREAL HEREDITAMENTS**.

Corporeal and incorporeal, 9, 359

Definition, 9, 359

Examples, 9, 359

Mixed and personal, 9, 360

HEREIN, 9, 360**HEREINAFTER**, 9, 360**HEREINBEFORE**, 9, 360**HERETOFORE**, 9, 361; 23, 327**HIGH**, 9, 361

- High crimes and misdemeanors, 9, 361

- High water mark, 29, 25

HIGHEST, 9, 362

- Highest bidder, 25, 396

HIGH SCHOOL, 9, 361

- See generally*, **SCHOOLS**.

HIGH SEAS, 9, 361

- See* **INTERNATIONAL LAW**; **NAVIGABLE WATERS**.

- Whether it includes haven, 9, 306

HIGHWAY, 9, 362

- See* **BOUNDARIES**; **CROSSINGS**; **DEDICATION**; **LAWS OF THE ROAD**; **NAVIGABLE WATERS**; **OBSTRUCTING HIGHWAYS**.

- See generally*, **PRIVATE WAYS**.

- See* **RAILROADS**; **ROBBERY**; **STREET RAILWAYS**; **STREETS AND SIDEWALKS**; **TURNPIKES**.

- As to railroads in streets*, *see* **STREETS AND SIDEWALKS**.

- Covenant against incumbrances*, *see* **REAL COVENANTS**.

- Railroads in streets and highways*, *see* **STREET RAILWAYS**.

- Abandonment, 9, 375

- Abatement of nuisances, 9, 414

- Abutting Owner's Liability**, 9, 395

- Over municipality, 9, 396

- Action for damages for obstructing, 9, 414

- Action for injury to highways, 26, 163

Actions for Injuries on**Evidence**

- Condition of highway at a short distance from accident, 7, 60

- Evidence that other horses were frightened by same obstacle, 7, 60

- Survival, 7, 266

Adverse Possession

- Gaining title to highways by, 1, 297

- Altering highways, 1, 523; 9, 369; 12, 965

Amendment of Petition, 9, 372

- Effect of want of notice, 9, 372

- Necessity of, 9, 372

- Notice to agent, 9, 373

- Notice to non-resident, 9, 373

- Notice to occupant, 9, 373

- Notice to owner, 9, 373

- Personal notice, 9, 372

- Presumption of notice, 9, 373

- Appointment of overseer, 26, 122

- Appointment of surveyor, 26, 122

- As boundaries, 2, 500, 507

- Barriers**, 9, 380
 Character of traveler's horse, 9, 383
 Duty to protect, 9, 381
 Excavation beyond highway, 9, 382
 Railings, 9, 381
 Railings at areas, 9, 383
 Bridges as, 2, 541
 Cattle wrongfully on, 7, 893
Certiorari
 To commissioners opening, 3, 65
 Changing into turnpike roads, 6, 557
 Coasting, 9, 395
 Collision of one team with another at highway crossings, 4, 951
 Constitutionality of private highway bills, 3, 697
 Construction of statute, 10, 263
Contract to Indemnify Municipality Against Expense, 10, 408
 Indemnity for refusal to perform road labor, 10, 409
 Validity, 10, 408
 Whether laying out highways is invalid, 10, 409
Contributory Negligence, 9, 396
 Applicability of the doctrine, 9, 396
Children Playing in Street, 9, 400
 Proof that child was not guilty of negligence, 9, 401
 Right of child to use of street, 9, 400
 Right to use of street merely for play, 9, 400
 Very young child unattended, 9, 401
 Choice between various dangers, 9, 397
 Defective eyesight, 9, 398
 Deliberately incurred risk, 9, 396
 Deviation, 9, 399
 Imputable negligence, 9, 398
 Instances of contributory negligence of passenger, 9, 397
 Knowledge of danger, 9, 397, 398
 Negligence of driver when he is not a servant of passenger, 9, 398
 Persons using highway not bound to anticipate danger, 9, 399
 Recovery where danger is known, 9, 398
 Right of city to debar public from using streets, 9, 398
 County commissioners' powers, 4, 385
Crossings
 Eminent domain, 6, 554
Dedication, 9, 369
See DEDICATION.
 Definition, 9, 369
 Defective, 5, 513
Definition, 9, 362
 What included in the term "highway," 24, 3
 Description of, 10, 267
Discontinuance
 Right to use of private way, 19, 102
 Disqualification of commissioners, 12, 45
 Disqualification of tax payer, 12, 45
 Distinguished from private way, 9, 362
Duty of Municipal Corporation, 9, 378
 Duty of lighting streets, 9, 380
 Duty to keep streets unobstructed, 9, 379
 Liability for defect in plan, 9, 380
 Ordinary care required, 9, 379
 Perishable nature of materials employed, 9, 380
 To keep highway safe for travel, 9, 378
 Easements presumed from unity of grant, 19, 54
 Ejectment by holder of fee, 6, 241
 Ejectment for fee, 6, 233
Eminent Domain
As to the exercise of eminent domain, see generally, EMINENT DOMAIN.
 Encroachment upon, and nuisance, 1, 297
Establishment, 10, 268
 Evidence, 10, 268
 Evidence to show what is a highway, 9, 363
Expert and Opinion Evidence, 7, 511
 Abandonment, 7, 511
 Condition of highway, 7, 511
 Defective highway, 7, 511
 Public utility, 7, 511
Falling Substances Causing Injury, 9, 384
 Awnings, 9, 384
 Liability of municipality, 9, 384
 Whether such injuries come within the words "defective highway," 9, 384
Fee, 9, 374
 Abandonment of public easement, 9, 375
 Abutting owners, 9, 375
 Adjacent owner, 9, 375
 At common law, 9, 374
 In general, 9, 374
 Presumption as to fee to middle of road, 9, 375
Rights of Owner, 9, 375
 Carry pipes beneath, 9, 375
 To mine under highway, 9, 375
 To sell land, 9, 375
 Trespass of cutting trees, 9, 375
 Statutory dedication, 9, 374
Frightening Horses, 9, 386; 14, 811
 Horse frightened by something for which corporation is not liable, 9, 387
 Horses not under control, 9, 388
 Liability of city, 9, 386
 Loss of momentary control by driver, 9, 387
 Objects calculated to frighten horses, 9, 386
 Shying at defects, 9, 388
 Timid or vicious horses, 9, 387
Gas Companies
As to use of highways by, see GAS COMPANIES.
 Obstructing, 8, 1283
"Grades," 8, 1410
 Abutter's right to damages, 10, 264
Grants, 9, 369
See DEED; GRANT.
Gravel, Rail, and Plank Road, 10, 265
 Expense of making, 10, 266
 Form and substance of petition, 10, 266

HIGHWAY—Cont'd**Gravel, Rail, and Plank Road—Cont'd**

Petition for, 10, 265

Subject of petition, 10, 266

Ice and Snow, 9, 388

Accidents caused by, 9, 388

Liability of city, 9, 388

Mere slipperiness, 9, 389

Unreasonable accumulation of ice and snow, 9, 389

Where sufficient time has not elapsed to remove snow, 9, 389

Impassable, 26, 592

Improvements, 10, 263

Indictment

Failure to repair, 4, 267, 269, 683; 16, 963, 964

Necessity of notice, 4, 269

Obstructing highways, 4, 269; 16, 963

Injunctions, 10, 980

Compliance with statutory requirements, 10, 981

Encroachment upon street, 10, 983

Erecting building in public street, 10, 982

Obstructions in alley or street, 10, 982

Railroads, 10, 977

Remedy at law, 10, 981

Road for benefit of single individual, 10, 981

Unauthorized opening of road, 10, 980

Injuries by Defective

Insufficiency of highway must be efficient cause of injury, 5, 9

Instruction, examples of, 11, 268, 270, 272

Kinds, 9, 363

Cul de sac, 9, 364

Driftways, 9, 364

Footways, 9, 364

Laying out and Altering, 1, 523; 12, 965*See* EMINENT DOMAIN.

In general, 9, 369

Jurisdiction, 9, 379

By consent, 9, 369

Notice, 9, 372

Effect of want of notice, 9, 372

Necessity of, 9, 372

Personal notice, 9, 372

Presumption of, 9, 373

To agent, 9, 373

To non-resident, 9, 373

To occupant, 9, 373

To owner, 9, 373

Petition, 9, 370

Amendment of, 9, 372

Averments, 9, 371

Description of proposed road, 9, 370

Necessity of, 9, 370

Signatures of property owners, 9, 370, 371

Strict compliance with statutory requirements, 9, 369

Liability**For Acts of Others, 9, 392**

Acts of disorderly persons, 9, 394, 395

Acts of private persons, 9, 392

Coasting, 9, 395

For acts of licensees, 9, 393

Where city has adopted an ordinance against improper use of streets, 9, 395

For Defective Highway, 9, 376*See infra*, BARRIERS; CONTRIBUTORY NEGLIGENCE; DUTY OF CORPORATION; FALLING SUBSTANCES CAUSING DEATH; ICE AND SNOW; LIABILITY FOR ACTS OF OTHERS; NOTICE; WHAT PART OF HIGHWAY MUST BE REPAIRED.*Negligence of contractors, see infra*, NEGLIGENCE OF CONTRACTORS.

Abutting owners, 9, 395

Distinction as to state agency, 9, 377

Existence of liability, 9, 376

Liability at common law for quasi corporations, 9, 376

Liability of counties, 9, 376

Liability of quasi corporation, 9, 376

Liability of townships, 9, 376

Municipal corporations, 9, 376

Where highway is rendered unsafe by act of corporation, 9, 378

Whether abutting owner's liability or municipality's, 9, 396

Of county officers, 19, 515

Of Towns and Townships, 26, 184

In Arkansas, 26, 184

In Colorado, 26, 184

In Connecticut, 26, 184

In Georgia, 26, 185

In Illinois, 26, 185, 203

In Indiana, 26, 185, 203

In Iowa, 26, 186, 203

In Kansas, 26, 186

In Kentucky, 26, 187

In Maine, 26, 187, 202

In Massachusetts, 26, 188, 202

In Michigan, 26, 191, 203

In Minnesota, 26, 192

In Mississippi, 26, 203

In Missouri, 26, 201

In New Hampshire, 26, 192, 202

In New Jersey, 26, 193

In New York, 26, 194, 204

In Ohio, 26, 206

In Pennsylvania, 26, 196, 204

In Rhode Island, 26, 197, 202

In Vermont, 26, 198, 201

In Wisconsin, 26, 199, 203

"Safe and convenient," 26, 188, 190, 201, 202

Local assessments, 25, 515**Mandamus, 14, 204**

Allowance of fees, 14, 206

Compelling board to proceed, 14, 211

Discretion of officer, 14, 211

Obstruction in streets and highways, 14, 206

Remedy at law for obstructions, 14, 206

Scope of the writ, 14, 211

To compel commissioners to open road, 14, 204

- When the Writ Lies**, 14, 209
 To commissioners, 14, 204
 To compel to levy taxes, 14, 209
 To compel to open road, 14, 209
 When writ not allowed for obstructions, 14, 206
Master and Servant, 14, 810
 Incompetency of driver, 14, 811, 812
 Injury by frightened horse, 14, 811
 Injury to horses, 14, 810
 Negligent driving, 14, 810
 Servant driving his master's team for his own purposes, 14, 812
 Team intrusted to servant, 14, 812
 Materials for highways, 10, 264
 Minerals, 15, 506
 Mines and mining claims, 15, 585
Municipal Corporations, 9, 376; 15, 1006
 Legislative control, 15, 990
Negligence of Contractors, 9, 390
 Independent contractors, 9, 391
 Liability of city, 9, 390
 Liability of contractor, 9, 390
 Openings uncovered, 9, 390
Notice, 9, 372, 401; 10, 264
 Effect of want of, 9, 372
 Examples of, 9, 401-408
 Expressly required by statute, 9, 404
 Express notice, 9, 402
 How express notice is given, 9, 403
 Implied, 9, 403, 405
Necessity of, 9, 372, 401
 Actual knowledge, 9, 402
 Notoriety and continuance of defect, 9, 402
 Personal, 9, 372
 Presumption of, 9, 373
 Question for the jury, 9, 406
 Sidewalk dangerously built, 9, 405
 Sufficient time for repair, 9, 401
 Time within which notice is presumed, 9, 405
 To agent, 9, 373
 To citizen, 9, 404
 To member of town council, 9, 403
 To non-resident, 9, 373
 To occupant, 9, 373
 To owner, 9, 373
 What circumstances amount to, 9, 403
 What is evidence of, 9, 406
 What is meant by, 9, 402
 Where notice will be presumed, 9, 405
 Who are proper officers, 9, 403
Nuisances, see NUISANCES.
Obstructing highways, see NUISANCES.
Openings Uncovered, 9, 390
 See infra, BARRIERS.
 Overhanging eaves, 26, 592
Overseer
 Obstructing justice, 17, 15
 Overseer of roads as servant, 14, 750
Ownership of Soil
 Presumptions, 19, 54
 Pasturing cattle on, 7, 893
 Petition, 10, 263
 Petition for repairing, 10, 263
 Pipe lines, 18, 459
 Police power, 18, 757
 Power, 10, 263
Prescription, 9, 366; 19, 25
 Adverse use, 9, 367
 Claim of right, 9, 368
 Element of time, 9, 367
 Interruptions, 9, 368
 Length of time necessary, 9, 366, 368
 Necessity that use be continuous, 9, 368
 Permissive use, 9, 367
 Road must be well defined, 9, 368
 Statute of limitations, 9, 367
 Vacant land, 9, 367
 Private ways, 19, 102
Questions of Law and Fact
 Contributory negligence, 9, 397
 Notice of defect, 9, 406
 "Repairs," 20, 1040
Res Judicata
 Abating nuisances, 21, 230
 Right to drive cattle on, 7, 893
 Right to lay over railroad track, 9, 412
 Road, 21, 413
Road Districts, 26, 122
 In Alabama, 26, 122
 In Connecticut, 26, 122
 In Iowa, 26, 122
 In Maine, 26, 122
 In Massachusetts, 26, 122
 In New Hampshire, 26, 122
 In New Jersey, 26, 122
 In New York, 26, 122
 In North Carolina, 26, 122
 In Ohio, 26, 122
 In Pennsylvania, 26, 122
 In Rhode Island, 26, 123
 In Tennessee, 26, 122
 In Vermont, 26, 123
 In Wisconsin, 26, 123
 "Safe and convenient," 26, 188, 190, 201, 202
Statutes
 Constitutional Provisions Requiring that Subject Shall Be Expressed in Title, 23, 255
 Examples, 23, 253-255
 In general, 23, 255
 Insufficient title, 23, 257
 Sufficient titles, 23, 256
 Constitutional provisions that statutes shall contain no more than one subject, 23, 275
Statutory Private Ways, 19, 118
 Application, 19, 119
 Character, 19, 118
 Condemnation, 19, 118
 Damages, 19, 120
 Establishment, 19, 118
 Formalities required for laying out, 19, 119
 In general, 19, 118
Notice, 19, 120
 Assessment of damages, 19, 120
 In general, 19, 120
 Time of notice, 19, 120

HIGHWAY—Cont'd**Statutory Private Ways—Cont'd**

- Petition, 19, 119
 - Description, 19, 119
 - In general, 19, 119
 - Necessary, 19, 119
 - Validity, 19, 119
 - Writing, 19, 119
- Strict compliance with statute, 19, 119

Surface Waters, 24, 949

- Duty of commissioners, 24, 949
- In general, 24, 949
- In Illinois, 24, 950
- Obligation of adjacent landowners, 24, 949
- Overflowing land of private individual, 24, 949

- Right of adjacent owner to construct embankment, 24, 949

Surveys, 24, 1017**Taxation**

- Taxation to support, 25, 90

Telegraphs and Telephones, 25, 752

- Delegation of power to municipal corporations, 25, 752
- Implied right, 25, 752
- Liability for cutting trees, 25, 755
- Measure of damages to abutting owners, 25, 755
- Necessity of express grant, 25, 752
- Power of legislature, 25, 752
- Public nuisance, 25, 755
- Remedy of abutting owner, 25, 755
- Right of city to authorize occupation of streets, 25, 753
- Right to construct lines, 25, 752
- Whether telegraph line imposes additional burden on the fee, 25, 753

Trains frightening horses upon, 4, 927**Trees**

- Ownership, 26, 560
 - Fee in soil remaining in original owner, 26, 560
- Injunction, 26, 562
- Law passed for protection of trees, 26, 562
- Liable in trespass to owner, 26, 561
- Mandamus, 26, 563
- Municipal control, 26, 563
- Obstructions, 26, 561
- Right of owner of fee, 26, 560
- Right to plant trees in highways, 26, 560
- Right to timber, 26, 560

Trespass, 26, 591

- Doors, 26, 592
- Examples of trespass on highways, 26, 591
- Impassable highway, 26, 592
- In general, 26, 591
- Meaning of the term "highway", 26, 591
- Overhanging eaves, 26, 592
- Right of owner of adjoining property, 26, 591
- Windows, 26, 592

What Part of Highway Must Be Repaired,

- 9, 385
- City's acts to induce travel, 9, 386
- Inducing public to travel on highway not laid out, 9, 386
- Liability where defective portion is permitted to be used, 9, 385
- Part in actual use, 9, 385
- "Traveled path," 9, 385
- Width to be kept in repair, 9, 385

When a Private Way Becomes Public, 19, 106

- Acceptance, 19, 107
- Dedication, 19, 106
- In England, 19, 106
- In the United States, 19, 106
- Necessity of dedication, 19, 106, 107
- Usage, 19, 107
- When public highways become public streets, 10, 265

HINDER

- Delay and defraud, 5, 519

HIRE, 9, 415

- For hire or gain, 8, 91
- Hiring and employing distinguished, 9, 415

HIS, 9, 317, 415

- In insurance policy, 9, 318

HISSING

- Theaters, 25, 1052

HISTORICAL FACTS, see JUDICIAL NOTICE.**HISTORIES**

- Admissibility in evidence, 2, 4671

HITHERTO, 9, 417**HOARDING, 9, 417****HOCUSSED, 9, 417****HOGS, 9, 417****HOLD, 9, 418**

- Having and holding, 9, 304

HOLDER, 2, 316; 9, 418

- Original holder, 17, 275

HOLDING, 9, 419**HOLDING OUT**

- As to what constitutes a partnership, see PARTNERSHIP.

HOLIDAY, 9, 419

- See **BILLS AND NOTES; DAY; DEMAND; SUNDAY.**

- Bills and notes, 5, 5282⁶⁴

Bill When Presented On**Questions of Law and Fact**

- Reasonable time to present bill or note, 5, 5282⁶⁹

- Delivery of goods by carrier upon, 2, 898

- Fast day, 9, 420

- Jewish Sabbath, 9, 420

Public**Continuances**

- Asked for, on ground of public holiday, 3, 813

- Sheriff's sales, 22, 592

HOMAGE, 9, 420**HOME, 9, 420**

- Home farm, 9, 421

- Home port, see **PORT.**

HOME PORT, 9, 422; 22, 714

HOMESTALL, 9, 422

HOMESTEAD, 9, 423

See DYING DECLARATION; PUBLIC LANDS.

As to acquirement of public lands under the homestead laws of the United States, see PUBLIC LANDS.

Abandonment and Forfeiture, 9, 487; 7, 140

Abandonment, see infra, ALIENATION.

Abandonment by wife, 9, 500

Action and intent, 9, 493

Children reaching maturity, 9, 490

Forfeiture, 9, 495

Forfeiture by wife, 9, 498

Fraudulent transfer, 9, 497

Husband's removal, 9, 498

In Alabama, 9, 487

In Arkansas, 9, 489

In California, 9, 489

In Georgia, 9, 490

In Idaho, 9, 491

In Illinois, 9, 491

In Indiana, 9, 491

In Iowa, 9, 493

In Massachusetts, 9, 495

In Michigan, 9, 496

In Minnesota, 9, 496

In Mississippi, 9, 496

In Missouri, 9, 496

In Nebraska, 9, 497

In New Hampshire, 9, 498

In New York, 9, 498

In Ohio, 9, 526

In Tennessee, 9, 499

In Texas, 9, 499, 500

Leasing a part, 9, 498

Loss of family, 9, 492

Non-occupancy, 9, 495

Occupancy, 9, 492

Questions of law and fact, 19, 657

Record of abandonment, 9, 489

Removal, 9, 495

Removal to another state, 9, 494, 501

Sale and removal, 9, 492

Sale by widow, 9, 488

Sale of undivided interest, 9, 490

Temporary abandonment, 9, 494

Temporary absence, 9, 490, 491, 497

Temporary non-occupancy, 9, 501

Temporary removal, 9, 489

Waiver, 9, 491

Waiver in writing, 9, 493

Waiver of exemption, 9, 487

Whether mortgage is an abandonment,

9, 490

Alienation, 7, 140, 141; 9, 475

After abandonment, 9, 479

Duress, 9, 480

Fraud, 9, 480

Fraudulent conveyance, 9, 486

Generally, 9, 475

In Alabama, 9, 476

In California, 9, 477

In Georgia, 9, 477

In Illinois, 9, 478

In Iowa, 9, 479

In Kansas, 9, 480

In Kentucky, 9, 481

In Massachusetts, 9, 482

In Michigan, 9, 482

In Mississippi, 9, 483

In Missouri, 9, 483

In Nebraska, 9, 483

In Nevada, 9, 483

In New Hampshire, 9, 483

In North Carolina, 9, 483

In Tennessee, 9, 484

In Texas, 9, 484

In Vermont, 9, 486

Joinder of husband and wife, 9, 477,

479, 482

Joint act of sale, 9, 486

Mortgage for purpose of building, 9, 481

Necessity of express release, 9, 479

Power of attorney, 9, 477

Purchase-money, mortgage, 9, 486;

19, 580

Sale after abandonment, 9, 486

Sale by husband alone, in Massachu-

setts, 9, 482

Sale by husband in bad faith, 9, 484

Unmarried man, 9, 485

Void conveyance, 9, 479

Waiver, 9, 478

Wife's signature, 9, 476, 480, 482

Application for

In Georgia, 9, 506

Attachment, 9, 518

Attachment lien, 9, 512

Beneficiaries; Who May Claim Homestead

Protection, 9, 448

Claim after forced sale, 9, 456

Effect of loss of family by death, 9, 453

Effect of remarriage, 9, 455

Family, 9, 449

Within Homestead Law, 9, 449, 458,

464

As to what constitutes family in

homestead laws, see FAMILY.

Guardians and trustees, 9, 450

Heads of families, 9, 449

In Idaho, 9, 451

In Illinois, 9, 451

Occupant, 9, 452

Relatives, 9, 449

Unmarried man, 9, 450

What family necessary, 9, 450

What is a family, 9, 449

Widow with dependent children,

9, 450

Wife, 9, 451

Wife as head of family, 9, 450

Generally, 9, 449

In Michigan, 9, 454

In Nevada, 9, 455

In New York, 9, 455

In Ohio, 9, 455

Mortgage, 9, 453

Owners, 9, 453

Right of claimant without a family, 9,

454

Sole occupant, 9, 454

HOMESTEAD—Cont'd

Bought from proceeds of sale of former one, 9, 459

Business done upon place, 7, 139

But one tract of land, 7, 138

By what law determined, 9, 519

Carving from larger estate, 9, 438

City lots, 9, 440

Claim after forced sale, 9, 456

Common or joint tenant, 9, 458

Community Property

Selection from, 9, 430

Constitutionality and Construction, 9, 519

In Alabama, 9, 519

In Arkansas, 9, 521

In California, 9, 522

In Florida, 9, 522

In Georgia, 9, 522

In Kansas, 9, 523

In Louisiana, 9, 524

In Michigan, 9, 525

In Minnesota, 9, 524

In Missouri, 9, 525

In Nebraska, 9, 525

In Nevada, 9, 526

In North Carolina, 9, 526

In Ohio, 9, 526

In South Carolina, 9, 527

In Texas, 9, 527

In Virginia, 9, 528

In West Virginia, 9, 528

In Wisconsin, 9, 528

Conveyance by Widow

In Missouri, 9, 525

Crops on homestead lands, 7, 139

Declaration, 9, 428, 434

Actual residence, 9, 429

After attachment, 9, 428

After brief residence, 9, 429

By married woman, 9, 428

Estimate of value, 9, 428

Formality, 9, 425

Generally, 9, 425

In Nevada, 9, 442, 443

Residence, 9, 429

Residence before declaration, 9, 428

Rights of husband and wife, 9, 429

Statement of facts, 9, 430

What declaration must contain, 9, 428

Dedication, 9, 425

Definition, 7, 138; 9, 424

Of dwelling house, 6, 102

Descent of, 9, 432

Enforcement of the right, 9, 502

Equitable estate, 7, 140

Establishing on two premises, 9, 426, 436

Estates in co-tenancy, 11, 1089

Exemption

In Pennsylvania, 9, 514

Strict constructions, 23, 399

Family, 9, 449

In Vermont, 9, 464

Wife and family not living with owner, 9, 458

"Forced sale," 8, 100

Foreclosure of Mortgage

Surplus money, 24, 961

Foreign attachment, 8, 316

Fraudulent conveyances, 8, 758; 9, 508

How Far Homesteads Are Protected from

Debts, 9, 464

Antecedent debts, 9, 469

Exceptional debts, 9, 471

Exemption from sale for taxes, 9, 467

From what homesteads are exempt, 9, 470

Generally, 9, 464

Homestead made during litigation, 9, 465

In Alabama, 9, 465

In California, 9, 465

In Florida, 9, 466

In Georgia, 9, 466

In Idaho, 9, 467

In Illinois, 9, 467

In Indiana, 9, 467

In Iowa, 9, 468

In Kentucky, 9, 469

In Louisiana, 9, 469

In Maine, 9, 470

In Massachusetts, 9, 470

In Michigan, 9, 470

In Minnesota, 9, 470

In Missouri, 9, 470

In Nevada, 9, 471

In New Hampshire, 9, 471

In North Carolina, 9, 471

In Ohio, 9, 472

In Pennsylvania, 9, 472

In South Carolina, 9, 472

In Tennessee, 9, 473

In Texas, 9, 473

In Vermont, 9, 473

In Virginia, 9, 474

In West Virginia, 9, 474

In Wisconsin, 9, 474

Indebtedness for purchase-money, 9, 467

Indebtedness for tort, 9, 465

Liability after conveyance, 9, 470

Pre-existing debt, 9, 470, 473

Pre-existing loans, 9, 473

Proceeds of, 9, 468

Husband and wife joining in deed, 7, 141

In Alabama, 9, 426, 457, 458, 476, 487, 502, 519, 520

In Arkansas, 9, 427, 458, 489, 521

In California, 9, 428, 429, 458, 477, 489, 504, 522

In Colorado, 9, 432, 458, 505

In Florida, 9, 432, 433, 466, 522

In Georgia, 9, 433, 459, 466, 477, 490, 522

Application for homestead, 9, 433

Assignment of homestead, 9, 434

In Idaho, 9, 434, 451, 467, 491

In Illinois, 9, 435, 451, 458, 459, 478, 491, 508, 509

In Indiana, 9, 435, 434, 467, 490

In Iowa, 9, 436, 460, 468, 479, 493, 511

In Kansas, 9, 437, 461, 480, 511, 523

In Kentucky, 9, 438, 469, 481

In Louisiana, 9, 469, 524

- In Massachusetts, 9, 438, 461, 470, 481, 482, 495, 511
- In Michigan, 9, 439, 454, 461, 470, 482, 496, 511, 525
- In Minnesota, 9, 440, 470, 496, 512, 524
- In Mississippi, 9, 440, 461, 462, 483, 496
- Character of estate to be exempt, 9, 440
- Title**
 - Life estate, 9, 440
- In Missouri, 9, 441, 470, 483, 496, 512, 525
- In Nebraska, 9, 441, 462, 483, 497, 512, 525
- In Nevada, 9, 442, 443, 455, 470, 483, 526
- In New Hampshire, 9, 442, 462, 471, 498
- In New York, 9, 443, 455, 462, 498, 513
- In North Carolina, 9, 443, 471, 483, 526
- In Ohio, 9, 444, 455, 462, 471, 526
- In Pennsylvania, 9, 444, 472, 514
- In South Carolina, 9, 444, 462, 472, 514, 527
- In Tennessee, 9, 462, 473, 484, 499
- In Texas, 9, 445, 462, 472, 473, 484, 499, 515, 527
- In Vermont, 9, 447, 464, 473, 486, 518
- In Virginia, 9, 448, 474, 528
- In West Virginia, 9, 474, 528
- In Wisconsin, 9, 464, 474, 519, 528
- Indians, 10, 447
- Injunction, 10, 809
- Inscription on deed, 9, 432
- Insolvency of estate, 9, 502
- Insurance money due on homestead, 7, 141
- Intent, 9, 518
- Intent to claim, 9, 445
- Joint tenants and tenants in common, 9, 458
- Judgment Lien**
 - Conveyance, 12, 108
 - Conveyance as waiver, 12, 109
 - Examples, 12, 109
 - In general, 12, 108
 - Relinquishment and conveyance not simultaneous, 12, 109
 - Subsequent occupation of premises as homestead, 12, 109
- Leasehold property, 7, 140
- Marshaling assets, 14, 688
- Mechanics' Liens**, 15, 22, 61
- Parties to actions, 15, 168
- Mere temporary absence, 7, 140
- Mixed Use**
 - Place of business, 9, 463
 - Place of business and dwelling, 9, 458
 - Storehouse and residence on same lot, 9, 462
- Mortgages**, 9, 453, 469
 - See infra*, ALIENATION; PURCHASE-MONEY MORTGAGES.
- Nature of debtor's interest or estate, 7, 140
- Not an estate in land, 7, 139
- Not existing at time specific lien attaches, 7, 139
- Occupancy, 9, 518
- "Occupied," 17, 33
- Partition**, 9, 517; 17, 691
 - Heirs at law, 17, 691
 - Whether subject to partition, 17, 691
 - Widow and minor children, 17, 691
- Partnership**, 17, 981
- Place of residence as distinguished from place of business, 7, 138
- Priority**
 - Homestead right as to mortgages, 10, 384
- Proceeds against excess of homestead value, 9, 513
- Purchase-Money Mortgages**, 9, 486; 19, 580
 - As against mortgagee, 19, 580
 - In general, 19, 580
 - Priority as against third persons, 19, 580
 - Priority in general, 19, 580
 - Statutes, 19, 590
- Purchase of outstanding title, 9, 509
- Quantity and Value of Real Estate Exempt**, 9, 430, 457
 - Claim for two tracts in Alabama, 9, 457
 - Extent in case of life-tenancy, 9, 461
 - Generally, 9, 457
 - In Alabama, 9, 457
 - In Arkansas, 9, 458
 - In California, 9, 429, 458
 - In Colorado, 9, 458
 - In Georgia, 9, 459
 - In Idaho, 9, 459
 - In Illinois, 9, 458
 - In Iowa, 9, 460
 - In Kansas, 9, 461
 - In Massachusetts, 9, 461
 - In Michigan, 9, 461
 - In Mississippi, 9, 461
 - In New York, 9, 462
 - In Ohio, 9, 462
 - In South Carolina, 9, 462
 - In Tennessee, 9, 462
 - In Texas, 9, 462
 - In Vermont, 9, 464
 - In Wisconsin, 8, 464
 - Increased value beyond limit, 9, 463
 - Rural or urban property, 9, 463
 - When estate exceeds homestead limitation, 9, 434
 - Widow's right, 9, 457
- Questions of law and fact, 19, 657
- Recording**
 - Deed, 9, 448
 - In Iowa, 9, 436
 - Relation, 20, 737
- Re-Marriage**, 9, 509
 - Effect of, 9, 455
- Rented property, 7, 139
- Residence**, 9, 449
 - Actual occupancy as a family home, 9, 436
 - Actual occupancy in Iowa, 9, 460
 - Circumstances as to occupancy in Vermont, 9, 447
 - Effect of continuous residence in Illinois, 9, 459
 - In California, 9, 428
 - In Florida, 9, 432

HOMESTEAD—Cont'd**Residence—Cont'd**

- In Massachusetts, 9, 438
- In Michigan, 9, 439, 454
- In Minnesota, 9, 440
- In Missouri, 9, 441
- In Nebraska, 9, 441
- In Nevada, 9, 442
- In Texas, 9, 445
- In Vermont, 9, 447
- Intent to occupy, 9, 436
- Occupancy after execution, 9, 438
- Occupancy in Kansas, 9, 437
- Occupancy in Kentucky, 9, 438
- When occupancy should begin, 9, 441
- Right of claimant without a family, 9, 454

- Right of way, 19, 846
- Right prior to building a home, 9, 454
- Rights of Husband, Wife, and Children, 9, 427**

- Abandonment by widow of allowance 9, 515

- Claiming the right, 9, 427
- Co-parties, 9, 431
- Creation of homestead by widow, 9, 427

- Decedent's minor child, 9, 502
- Dower in homestead, 9, 435
- During husband's life, 9, 427
- Homestead after divorce, 9, 431
- In Alabama, 9, 502, 520
- In Colorado, 9, 505
- In Massachusetts, 9, 511
- In Nevada, 9, 443
- In New Hampshire, 9, 442
- Joint tenancy of husband and wife, 9, 430

- Landlord's widow, 9, 428
- Orphan minors, 9, 427
- Property of deceased wife, 9, 437
- Rights of widow, in Illinois, 9, 509
- Widow's and children's rights in Michigan, 9, 439
- Widow's right in Massachusetts, 9, 439
- Widow's right in Texas, 9, 515

- Widow's right relative to trust deed, 9, 515

- Wife's estate in homestead, 9, 431
- Wife's interest during husband's lifetime, 9, 431

- Wife's rights after sale under mortgage, 9, 505

- Rural and urban property, 9, 463

- Secret trust, 9, 517

- Selection, 9, 426, 428, 434**

- By wife, 9, 435
- From community property, 9, 430
- From separate property, 9, 430
- In Indiana, 9, 435
- In Iowa, 9, 436
- In Massachusetts, 9, 439
- In New Hampshire, 9, 442
- In New York, 9, 443
- In North Carolina, 9, 443
- In Pennsylvania, 9, 444

- In South Carolina, 9, 444

- In Virginia, 9, 448

- Sheriff's Sales, 22, 578, 663**
- Directory statute, 22, 578
- Examples, 22, 578
- Mandatory statutes, 22, 578
- Sheriff's failure to lay off homestead, 22, 578
- Statutes, 22, 578, 579
- Waiver, 22, 579

- States in which they exist, 7, 131

Subrogation

- Of junior mortgagee to waiver of homestead in senior mortgage, 24, 273

- Statute making it a misdemeanor for administrator to sell homestead, 24, 268

- Surplus money, 24, 961

- Tenancy for life, 12, 680

- Tenancy in Common, 9, 507, 509, 511**

- In Arkansas, 9, 521

- Tenant in common, 9, 456

- Territory incorporated into municipality, 15, 1018

Title, 9, 426

- Equitable, 9, 426
- Estate for life, 9, 436
- In Iowa, 9, 436
- In Massachusetts, 9, 438
- In North Carolina, 9, 443
- In Pennsylvania, 9, 444
- Lease, 9, 444
- Legal, 9, 426
- Legal or equitable, 9, 443
- Life estate in Mississippi, 9, 440
- Lot held by different title, 9, 426

- Town lots, 9, 436

Trust Deed

- In West Virginia, 9, 528

- Trust estate, 9, 515

Two Different Tracts

- In Alabama, 9, 458

- In Illinois, 9, 459

- Undivided interests in land, 7, 140

- Used for illegal calling, 9, 446

- Usury, 27, 945

- Vendor's lien, 28, 167

- Waiver, 28, 575**

- See infra*, ABANDONMENT AND FORFEITURE; ALIENATION.

- By acts, 28, 578

- By alienation of property, 28, 577

- By failure to act, 28, 578

- Examples, 28, 575-580

- In general, 28, 575

- In mortgage, 28, 578

- Prospective waiver, 28, 575

- Selection, 28, 580

- Waiver as to one creditor waiver as to all, 28, 576

- What debtor's interest must be, 9, 425

- Whether the mortgage of a homestead is a conveyance within statute, 4, 134-136

HOMESTEAD LAWS, see HOMESTEAD; PUBLIC LANDS.

HOMICIDE, 9, 529

See ASSAULT; BLOOD STAINS; CHARACTER (IN EVIDENCE); CONFESSIONS; DYING DECLARATIONS; MANSLAUGHTER; MURDER; POISON AND POISONING; RES GESTÆ; SELF-DEFENSE; SUICIDE.

Murder, see MURDER.

Abandonment of children, 1, 3

Abortion ensuing from, 1, 29

Absence of defendant's counsel, 9, 658

Accessories

Whether mere knowledge of offense constitutes one an accessory, 4, 655

Accident and mistake, 9, 612

Acts, Threats, and Declarations of Co-Conspirators, 9, 700

See generally, CRIMINAL CONSPIRACY.

Admissibility of evidence, 9, 701

Confession by co-defendant, 9, 702

Declarations made after the homicide, 9, 702

Declarations made before the homicide, 9, 700

Declarations not in furtherance of conspiracy, 9, 701

Declarations that are merely narrative, 9, 701

What declarations admissible, 9, 701

Adjourned term, 9, 656

Adultery with slayer's wife, 9, 611

Appeal and Error, 9, 753

Erroneous admission or rejection of testimony, 9, 755

Errors not excepted to below, 9, 754

Harmless errors, 9, 755

New trial where verdict is against weight of evidence, 9, 755

Presumption that error was prejudicial to accused, 9, 755

Record and case in appellate court, 9, 754

Sufficiency and weight of evidence, 9, 755

What questions will be considered, 9, 754

When allowed, 9, 753

Argument of Counsel, 9, 739

Examples, 9, 740

Limiting defendant's time for argument, 9, 740

Misconduct of state's attorney, 9, 739

Opening statements of state's attorney, 9, 739

Order of argument, 9, 741

Prejudice of defendant, 9, 739

Prosecuting attorney, 9, 739

When objection must be made, 9, 740

Arraignment, 9, 651

Defendant must answer for himself, 9, 651

Motion to withdraw plea of not guilty, 9, 651

Necessity, 9, 651

Waiver, 9, 651

Attempt to commit murder in territory under the exclusive jurisdiction of United States, 4, 662

Ball, 9, 645

Affidavits of defendant, 9, 648

After conviction, 9, 648

Appeal, 9, 648

At common law, 9, 645

Burden of proof, 9, 648

Defendant suffering from dangerous disease, 9, 647

Delay in bringing prisoner to trial, 9, 647

Discretion of court, 9, 645

Discretion of judge, 9, 647

Habeas corpus, 9, 647

Indictable for capital crimes, 9, 647

What appellate court will consider, 9, 648

What defendant must show, 9, 648

When person indictable for homicide bailable, 9, 646

Where offense is capital, 9, 646

Whether indictment raises presumption of guilt, 9, 647

Blow Struck in One County, Death in Another

See JURISDICTION.

Burden of Proof, 9, 725

As to corpus delicti, 9, 725

As to malice, 9, 725

As to sanity, 9, 727

Presumption of Sanity, 9, 727

Where defendant is a deaf mute, 9, 728

When upon defendant, 9, 726

By an officer resisted in the execution of his duty, 9, 538

By child, 1, 328, 329

Cannibalism among shipwrecked persons, 9, 611

Change of Venue, 9, 649

Affidavit, 9, 649

Counter affidavits by prosecution, 9, 649

Discretion of court, 9, 649

Filing original indictment, in new jurisdiction, 9, 650

Local prejudice, 9, 649

Transcript of indictment, 9, 650

What affidavit must contain, 9, 649

When place of trial changes manner of rights, 9, 649

Character

Of deceased, 4, 862

Character (in Evidence)

Prisoner's general reputation for peace and good order, 3, 111

Rebutting evidence of bad character, 3, 112

To aid jury in ascertaining grade of crime, 3, 111

Violent character of the deceased, 3, 111

Circumstantial Evidence, 9, 733

Instances of circumstantial evidence, 9, 734, 735

HOMICIDE—Cont'd**Circumstantial Evidence—Cont'd****Motive, 9, 737**

Each fact must be proved, 9, 737

Sufficiency of, 9, 734

When circumstantial evidence insufficient, 9, 736

Compulsion, 9, 613**Confession**

Corpus delicti, 9, 729

Consent**Person**

No right to consent to infliction of death, 3, 666

Continuance, 9, 654

Adjourned term, 9, 656

Defendant unable to obtain counsel, 9, 656

Materiality of evidence, 9, 655

Prosecution admits truth of facts to which absent witnesses are expected to testify, 9, 654

Surprise, 9, 655

To Procure Witnesses, 9, 654

For purpose of change of venue, 9, 654

Where it is improbable that witness will ever attend, 9, 655

Witnesses have not been summoned, 9, 655

Conviction of a Degree, or for an Offense**Lower than that Charged, 9, 642**

Indictment for murder; conviction of assault with intent to kill, 9, 643

Indictment for murder; conviction of involuntary manslaughter, 9, 643

Indictment for murder; conviction of voluntary manslaughter, 9, 642

Indictment for murder in the first degree; conviction of murder in the second degree, 9, 642

Corpus Delicti, 4, 309

Burden of proof, 9, 725

Evidence to Prove, 9, 672

Facts tending to establish, 9, 671

Showing deceased was alive after the crime, 9, 672

Showing health of deceased, 9, 672

Suicidal disposition of deceased, 9, 672

Of what it consists, 9, 671

Order of proof, 9, 671

Proof of, necessary for conviction, 9, 671

Counsel, 9, 650

For prosecution, 9, 650

Right of accused, 9, 651

Right to prosecute, 9, 650

Death of child by abortion, 1, 31**Defense, 9, 593***See SELF-DEFENSE.**See infra, JUSTIFIABLE HOMICIDE.**Drunkness as a defense, see infra, DRUNKENNESS.**Insanity, see infra, INSANITY AS A**DEFENSE.*

Accident and mistake, 9, 612

Adultery with slayer's wife, 9, 611

Compulsion, 9, 613

Existence of war, 9, 612

Homicide from necessity, 9, 611

Homicide in defense of others, 9, 605

Homicide in making arrest, 9, 608

In defense of a woman's chastity, 9, 610

Killing of officer dispersing public meeting, 9, 610

Of Others, 9, 605

Danger must be apparent, 9, 605

What relationship necessary, 9, 605

When excusable, 9, 605

Where party was in the wrong, 9, 606

Of Property, 9, 606

Force in ejecting trespasser, 9, 606

Killing trespasser who resists, 9, 606

Of habitation, 9, 606

To prevent a trespass, 9, 606

To prevent commission of a felony, 9, 606

Reward offered for death, 9, 610

Definition, 9, 532**Definition of killing, 9, 533****Deliberate, 5, 520****Descent and Distribution**

Murderer taking estate of person murdered, 24, 362

Disagreement and retrial, 9, 748**Drunkness, 4, 807; 9, 615**

Aggravation of homicide, 9, 618

No excuse for homicide, 4, 708

*Drunkness as excuse for homicide, see CRIMINAL LAW.***Duress**

While under, 9, 613

Evidence, 9, 669*See CONFESSIONS; DECLARATIONS; DYING DECLARATIONS; RES GESTÆ.**See infra, WITNESSES.*

Acts of deceased not forming part of res gestæ, 9, 676

Acts of Defendant Before Homicide, 9, 688

Acts unconnected with homicide, 9, 689

Carrying deadly weapons, 9, 689

Immaterial accident, 9, 689

In general, 9, 688

Maltreatment of deceased, 9, 689

Menaces towards deceased, 9, 689

Other Crimes, 9, 690

Crimes connected, 9, 690

Crimes unconnected with the homicide, 9, 690

Two persons killed as part of same plan, 9, 690

Two persons killed at the same time, 9, 690

To establish intention, 9, 688

To establish motive, 9, 688

Whether acts of violence, 9, 689

Acts, Threats, and Declarations of Third Parties, 9, 702

After the homicide, 9, 704

- Before the Homicide, 9, 702**
 - Conspiracy against defendant, 9, 703
 - Enmity of third persons toward the deceased, 9, 703
 - Forming part of *res gestæ*, 9, 702, 705
 - Generally inadmissible, 9, 703, 704
 - Threats of third persons, 9, 703
 - Cries or exclamations of bystanders, 9, 704
- Business and social relations, 9, 707
- Character, Disposition, and Habits of Deceased, 9, 682**
 - Evidence of reputation, 9, 694
 - How proved, 9, 684
 - Isolated facts, 9, 685
 - Only admissible where question of self-defense is raised, 9, 684
 - Proof by defense, 9, 683
 - Proof by prosecution, 9, 682
 - Reputation as violent man, 9, 683
 - Specific acts of violence, 9, 685
- Character of defendant, 9, 685
- Circumstantial Evidence**
 - Alibi, 9, 731
 - Corpus delicti, 9, 728
 - Venue, 9, 729
- Comparison of handwriting, 9, 709
- Comparison of Tracks and Footprints, 9, 709**
 - Competency, 9, 709
 - Constitutionality of requiring defendant to make tracks, 9, 709
 - Horses' tracks, 9, 709
- Conduct and Appearance of Defendant, 9, 691**
 - Action showing conclusiveness, 9, 691
 - Action showing fear, 6, 691
 - Admissibility of evidence as to, 9, 691
 - Lack of concern for death, 9, 691
 - Silence when charge is a crime, 9, 691
- Defendant's affidavit for continuance, 9, 711
- Defendant's Guilt Upon Whole Evidence, 9, 733**
 - Circumstantial evidence, 9, 734
- Direct Evidence, 9, 733**
 - Corroboration, 9, 733
 - Function of jury, 9, 733
- Determining Competency of Evidence, 9, 670**
 - Dying declarations, 9, 670
 - Requiring jury to retire, 9, 671
- Expert and Opinion Evidence, 9, 718**
 - Blood spots, 9, 721
 - Experiments, 9, 722
 - Hypothetical case, 9, 720
 - Infanticide, 9, 719
 - Insanity, 9, 720
 - Manner of homicide and means employed, 9, 718
 - Medical and scientific books and writings, 9, 722
 - Nature of the injury, 9, 718
 - Non-experts, 9, 720
 - Opinion formed from observation, 9, 720
 - Opinion of non-expert upon sanity, 9, 722
 - Photograph of deceased, 9, 721
 - Poisoning, 9, 719
 - Resemblances, 9, 721
 - Showing death by non-professional witness, 9, 720
 - Who are experts, 9, 718
- Flight or Escape, 9, 692**
 - Admissibility of evidence as to, 9, 692
 - Defendant's right to explain his flight, 9, 692
 - Proof of escape or attempts to escape, 9, 692
 - Whether defendant may prove his refusal to fly, 9, 692
- Given at coroner's inquest, 9, 710
- Given at former trial, 9, 711
- Given at Preliminary Examination, 9, 710**
 - Cross-examination as to statements made, 9, 710
 - Defendant's evidence, 9, 710
 - Evidence given by witness, 9, 710
- Hearsay evidence, 9, 723
- Insanity, 9, 716
- Legal process being served by deceased when killed, 9, 711
- Motive, 9, 711**
 - Avarice, 9, 713
 - Former crime of which deceased was the prosecutor, 9, 712
 - Immunity from prosecution for offense charged, 9, 711
 - Improper devotion to or criminal intimacy with a female, 9, 714
 - Jealousy, 9, 716
 - Marital infidelity, 9, 715
 - Possession of money, 9, 714
 - Prevention of testimony by deceased, 9, 712
 - Promotion of plans of secret criminal organizations, 9, 713
 - Revenge, 9, 716
 - Wife murder, 9, 715
- Order of Proof, 9, 671**
 - Conspiracy, 9, 671
 - Discretion of court, 9, 671
 - Showing corpus delicti first, 9, 671
- Physical superiority of defendant, 9, 699
- Previous Quarreling or Ill-Feeling, 9, 705**
 - Self-defense, 9, 707
- Shown by Defense, 9, 707**
 - Length of time, 9, 707
 - Malice, 9, 707
- Shown by Prosecution, 9, 705**
 - Admissibility, 9, 705
 - Beating and maltreatment by sea captain, 9, 706
 - Length of time, 9, 705
 - Tending to show malice, 9, 705

HOMICIDE—*Cont'd***Evidence**—*Cont'd***Previous Quarreling or Ill-Feeling**—*Cont'd***Shown by Prosecution**—*Cont'd*

Trial of man for murdering his wife, 9, 705

Proof as to the Weapon, 9, 708

Dynamite bomb, 9, 708

Range of gun, 9, 708

Shown to be made by certain kind of weapon, 9, 708

Size of shot, 9, 708

Trial of weapon, 9, 709

Sufficiency and Weight, 9, 728

See infra, REASONABLE DOUBT.

Accomplice's testimony, 9, 730

Alibi, 9, 731

Confession, 9, 730

Corpus Delicti, 9, 728

Circumstantial evidence, 9, 728

Confession of defendant alone, 9, 729

Finding dead body of person murdered, 9, 729

Necessity of direct proof, 9, 728

Proved beyond a reasonable doubt, 9, 728

Insanity, 9, 731

Established by preponderance of evidence, 9, 732

Proof by defense beyond reasonable doubt, 9, 732

Reasonable doubt as to sanity, 9, 732

What evidence sufficient to show, 9, 733

Self-defense, 9, 731

Venue, 9, 729

Things in Evidence, 9, 724

Clothing of deceased, 9, 724

Clothing of defendant, 9, 725

Diagram of the premises, 9, 724

General rule, 9, 724

Photograph of deceased, 9, 724

Photograph of wound, 9, 724

Property belonging to defendant found near place of homicide, 9, 725

Weapons, 9, 725

Threats by deceased, *see infra*, THREATS.

Threats of defendant, *see infra*, THREATS.

To Prove Corpus Delicti, 9, 672

Facts tending to establish, 9, 671

Showing deceased was alive after crime, 9, 672

Showing health of deceased, 9, 672

Suicidal disposition of deceased, 9, 672

Excusable, 9, 539

Homicide in self-defense, *see* SELF-DEFENSE.

Distinction between justifiable and excusable homicide, 9, 539

Homicide by Misadventure, 9, 540

What is, 9, 549

Where the act is unlawful, 9, 612

Existence of war, 9, 612

From necessity, 9, 611

Grand Jury, 9, 622

See generally, GRAND JURY.

Challenging grand juror, 9, 622

Charge dismissed, 9, 623

Incompetent witnesses, 9, 623

Kinship of, 9, 622

Number of jurors, 9, 622

Special impanelling of, 9, 623

Who allowed in grand jury room, 9, 623

"Heat of passion," 9, 356

Identity

See IDENTITY.

Comparison of handwriting, 9, 709

Illustrations, 9, 533

In defense of a woman's chastity, 9, 610

Indictment and Information, 9, 622

See generally, INDICTMENT; INFORMATION.

Conviction of a degree, or for an offense lower than that charged, *see infra*, CONVICTION OF A DEGREE OR FOR AN OFFENSE LOWER THAN THAT CHARGED.

Averment of Death, 9, 638

Necessity of, 9, 638

What sufficient, 9, 638

Averment of defendant's sanity, 9, 640

Caption, 9, 624

Charging the Offense, 9, 624

As to the common law, 9, 625

Averment of malice aforethought, 9, 626

Averment of material facts, 9, 624

Averment that act was unlawful, 9, 626

Form of indictment, 9, 625

General rule, 9, 624

Indictment not specifying degree, 9, 625

In the language of the statute, 9, 626

Irrelevant words, 9, 625

Necessity of the word murder, 9, 624

Necessity of the word unlawful, 9, 626

Particularity at common law, 9, 625

Prosecutions by information, 9, 625

Specification of the degree, 9, 625

Statement of facts sufficient to show unlawfulness, 9, 626

Conclusion, 9, 641

Against the peace of the state, 9, 641

Contrary to form of statute, 9, 641

Contrary to the forms of the statute, 9, 641

Defendant's list, 9, 669

Description of Deceased, 9, 638

Christian name, 9, 639

General rule, 9, 640

Idem sonans, 9, 639

Middle name, 9, 639

Name by which deceased was usually known, 9, 638

- Name unknown to jury, 9, 640
 Necessity of allegation that deceased was a human being and a reasonable creature, 9, 638
 Necessity of allegation that deceased was "in the peace of the state," 9, 638
 Necessity that proof conform to averment, 9, 639
Description of Wounds, 9, 634
 Conformance with proof of description, 9, 635
 Dimension of wound, 9, 635
 Where blow was inflicted, 9, 634
 For murder and conviction of a lower degree of homicide, 4, 649
Joinder of Counts, 9, 641
 Different modes of committing one offense, 9, 641
 Different offenses, 9, 642
 Necessity of election, 9, 641, 642
 Principals and accessories, 9, 642
Joint, 9, 645
 Conviction of one and acquittal of another, 9, 645
 Conviction of one of one degree, and of another of another degree, 9, 645
 When permissible, 9, 645
 Killing while committing another offense, 9, 630
 Matters pertaining to the finding of the indictment, 9, 622
Means and Manner of the Homicide, 9, 631
 Averment of mortal injury, 9, 631
 Averment that injury caused death, 9, 631
 Conformance of proof with indictment, 9, 633
 Description of wounds, 9, 634
 Disease which would have caused death, 9, 634
 Instrument or means used, 9, 631
 Necessity of averment of deadly weapon, 9, 633
 Poison, 9, 633
 Stock or bludgeon, 9, 633
 Surgical operation, 9, 634
 Terms in the allegation that the injury caused death, 9, 631
 Weapons unknown to jury, 9, 633
 More than one homicide by the same act, 9, 641
 Necessity of mentioning a disease which would have caused death, 9, 634
 Necessity of reference to the felony, 9, 630
 Of accessories and co-conspirators, 9, 644
Place of Death, 9, 638
 Necessity of showing, 9, 638
 Variance, 9, 639
 What sufficient, 9, 638
Signature and Indorsement, 9, 645
 "A true bill," 9, 645
 How omission is taken advantage of, 9, 645
 Necessity, 9, 645
 Statutes, 9, 645
Specifying the Degree, 9, 630
 Necessity, 9, 630
 Whether error was set out, 9, 630
 Surgical operation, 9, 634
 The grand jury, 9, 623
Time, 9, 635
 Averment that deceased instantly died, 9, 636
 Averment that deceased was killed upon a particular day, 9, 636
 Clerical error, 9, 635
 For act causing death, 9, 635
 Necessity of allegation of date of death, 9, 636
 Necessity of allegation of time, 9, 635
 Of the death, 9, 636
 Sufficient averment, 9, 636
 Variance in proof, 9, 636
 Whether proof must conform to averment, 9, 635
 Verdict of assault, 15, 364
Infanticide, 9, 532; 15, 221
 Burden of proof, 15, 225
 Child must be wholly delivered, 15, 221
 Compression of the umbilical cord, 15, 225
 Dead-born child, 15, 222
 Debility, 15, 226
 Definition, 15, 221
 Evidence, 15, 228
 Examples, 15, 226
 Fractures, 15, 226
 Hemorrhage, 15, 226
 Hydrostatic test, 15, 223
 Independent circulation, 15, 222
 Live child, 15, 222
 Medical evidence, 15, 222
 Neglect causing death, 15, 226
 Protracted delivery, 15, 226
 The respiratory organs, 15, 223
 The umbilical cord, 15, 222
 In perpetration of a felony which would not have been murder at common law, 9, 560
 Insanity as a defense, 9, 613
Instructions, 9, 741
 Sufficiency and Correctness as to Form, 9, 744
 Circumstances of the case, 9, 744
 Clearness of instructions, 9, 745
 Discretion of court, 9, 744
 Form of verdict—on trial for murder, 9, 747
 Misleading Instructions
 Instances, 9, 746
 Written instructions, 9, 747
What Questions Must Be Submitted by the Instructions, 9, 741
 Competency and weight of evidence, 9, 743
 Degrees of murder, 9, 741

HOMICIDE—Cont'd**Instructions—Cont'd****What Questions Must Be Submitted by the Instructions—Cont'd**

- Different grades of homicide, 9, 741
- Excuse or justification, 9, 743
- Failure to instruct as to manslaughter, 9, 742
- Form of verdict, 9, 744
- Generally, 9, 741
- Involuntary manslaughter, 9, 742
- Law defining offense, 9, 741
- Law relating to self-defense, 9, 743
- Punishment, 9, 744
- Repetition, 9, 744
- Verdict, 9, 744
- When defendant entitled to have law of manslaughter given, 9, 742
- Where evidence shows that homicide was not less than murder in the first degree, 9, 741
- Where there is no evidence tending to show self-defense, 9, 743
- Whether there should be a reversal of the instructions as to murder in the second degree, 9, 742

Intent, 4, 859

Intent, Charging, 9, 624

- Averment of intent to kill not sufficient in charging murder, 9, 627
- Averment that the homicide was felonious, 9, 629
- Averment that the homicide was unlawful, 9, 629

Feloniously When Manslaughter Is Charged, 9, 629**Premeditation and Deliberation, 9, 629**

Necessity in indictment for murder, 9, 629

Predicated directly of the killing, 9, 630

Whether the conclusion applies to omission of the premise, 9, 630

Malice aforethought when manslaughter is charged, 9, 629

"Maliciously" and "malice aforethought," 9, 628

Necessity of allegation of malice aforethought, 9, 627

Necessity of averment of intent to kill, 9, 627

Simple averment of intent to kill, 9, 627

When averment of intent to kill unnecessary, 9, 627

Whether averment must be in words of statute, 9, 627

Willfully, feloniously, and with malice aforethought, 9, 627

Intentions

Homicide in resisting arrest, 9, 609

Involuntary

- Attributed malice, 4, 676
- Criminal negligence, 4, 678
- Discharging firearms at night, 4, 679
- Permitting an animal of vicious propensities to go at large, 4, 679

Physician causing death by gross ignorance, 4, 679

Recklessly shooting into a crowd, 4, 678

Jurisdiction, 9, 619

As to person, 9, 621

As to place, 9, 619

As to the court, 9, 621

At common law, 9, 620

Death taking place in county other than that in which the injury was inflicted, 4, 737; 9, 620

Of the Federal Courts, 9, 620

Homicide in territory exclusively under jurisdiction of federal government, 9, 620

Homicide on the high seas, 9, 620

Of the state courts, 9, 619

Where blow is struck in one county and victim dies in another, 3, 538; 4, 786

Wounds inflicted without the state causing death within the state, 9, 619

Jury, 9, 658

See generally, JURY AND JURY TRIAL.

Challenge, 9, 660

Actual bias, 9, 661

Expression of opinion, 9, 661

For cause, 9, 660

Former statements, 9, 661

Ignorance of relationship, 9, 661

Implied bias, 9, 660

Opinion as to defendant's guilt or innocence, 9, 661

Opinion not positive, 9, 661

Peremptory challenge, 9, 663

Prejudice against anarchism, 9, 662

Prejudice against circumstantial evidence, 9, 662

Relationship to deceased, 9, 660

Relationship to defendant, 9, 660

Scruples Against Capital Punishment, 9, 661

Indictment for manslaughter, 9, 661

Where juror states that he can try the case impartially, 9, 661

Where juror can give an impartial verdict notwithstanding all he has read and heard, 9, 661

Defendant's List, 9, 660

List of talesman, 9, 660

Object of the right, 9, 660

Right to list of jurors summoned, 9, 660

Sufficiency of list, 9, 660

Discharge of jurors, 9, 663

Drawing, Summoning, and Impaneling, 9, 658

Presumption of regularity, 9, 658

Same in homicide as in other trials, 9, 658

Special care in homicide cases, 9, 658

Special venire in capital cases, 9, 658

Summoning talesman, 9, 659

- When talesman should be summoned, 9, 659
- Misconduct by or relating to jury after retiring**, 9, 667
- Misconduct by or Relating to Jury During Trial**, 9, 666
- Communicating with judge out of court, 9, 668, 669
- Communications concerning trial, 9, 666
- Consulting law books, 9, 668
- Consulting officer concerning the case, 9, 667
- Consulting records of other trials, 9, 668
- Counsel influencing jury, 9, 667
- Discretion of court, 9, 667
- Duty of officer in charge, 9, 666
- Examination of things not in evidence, 9, 668
- Jury should be in charge of officer for capital case, 9, 666
- Officer allowing jury to exercise unusual privilege, 9, 666
- Officer interested in witness, 9, 666
- View of places, 9, 668
- Waiver of irregularities, 9, 667
- Oath of juror**, 9, 664
- Qualification of Jurors**, 9, 659
- Good and lawful men, 9, 659
- Grand jurors, 9, 659
- Person peremptorily challenged upon former trial, 9, 660
- Qualified electors of the county, 9, 659
- Same in homicide as in other cases, 9, 659
- Separation After Retiring**, 9, 665
- Exception, 9, 665
- Whether error, 9, 665
- Separation during trial, 9, 664
- Justifiable**, 1, 746; 9, 537, 609
- See infra*, DEFENSE.
- Classes, 9, 537
- Definition, 9, 537
- Distinction between justifiable and excusable homicide, 9, 539
- Execution of criminal, 9, 538
- Homicide by Officer Resisted in Execution of His Duty**, 9, 608
- Arrest for misdemeanor, 9, 608
- Civil arrest, 9, 608
- Slayer must show that felony was actually committed, 9, 608
- When justifiable, 9, 608
- Killing to prevent escape after felony, 4, 706
- Of person resisting arrest, 1, 745
- Killing officer dispersing public meeting, 9, 610
- Kinds of, 9, 537
- Libel and slander, 13, 339
- Limitation of Prosecution**, 9, 618
- At common law, 9, 618
- Manslaughter, 9, 618
- Murder, 9, 618
- Malice, *see* MALICE; MURDER.
- Aforethought, meaning of, 1, 321
- Manslaughter*, *see* MANSLAUGHTER.
- Merger, 15, 363
- Motive, 15, 936
- See* EVIDENCE.
- Mutual combat, 4, 675; 16, 15
- New Trial**, 9, 751
- At what time motion for new trial should be made, 9, 753
- By what judge motion should be heard, 9, 753
- Evidence which might have been discovered by due diligence, 9, 752
- Grounds for, 9, 751
- Newly discovered evidence, 9, 752
- Newly discovered evidence which is merely cumulative, 9, 752
- Proceedings on motion, 9, 753
- Rule same as in other cases, 9, 752
- Surprise, 9, 752
- What application must show, 9, 753
- Obstructing Justice**, 17, 20
- Death resulting from, 17, 20
- Examples, 17, 21
- In general, 17, 20
- Place of Act Causing Death**, 9, 637
- Averment that the act took place within county, 9, 637
- Statement of precise locality, 9, 637
- Under federal statutes, 9, 637
- Where injury was inflicted in one county and death ensued in another, 9, 637
- Plea of Former Jeopardy**, 9, 652
- See generally*, JEOPARDY.
- Acquittal of killing one where two persons are killed, 9, 653
- Conviction of assault and battery, 9, 653
- Conviction of lower degree of offense, 9, 652
- Conviction of manslaughter, 9, 653
- Discharge of jury before verdict, 9, 653
- General rule, 9, 652
- Lack of jurisdiction, 9, 653
- Special plea, 9, 653
- Plea of Guilty**, 9, 651
- Degree of guilt, 9, 652
- Discretion of court as to withdrawal, 9, 651
- Rights of plea, 9, 652
- Whether degree fixed by court or jury, 9, 652
- Plea of insanity**, 9, 652
- Plea of Not Guilty**
- Duty of court, 9, 652
- Motion to withdraw, 9, 651
- Where defendant stands mute, 9, 652
- Poison, 15, 250
- Polling the jury, 9, 751
- Preliminary Examination**, 9, 622
- By justice of the peace, 9, 623
- Right to immediate examination, 9, 622
- When commitment should be made, 9, 622
- Who conducts, 9, 623

HOMICIDE—*Cont'd*

- Presence of Defendant**, 9, 657
 - Appeal, 9, 656
 - Necessity, 9, 657
 - Presence must appear from the record, 9, 657
 - Presumption of presence, 9, 657
 - Waiver of the right, 9, 657
- Presumption of malice**, 4, 682
- Provocation**, 4, 676
- Provoking Assault**, 4, 676
 - With no intent to kill, 4, 675
- Provoking Quarrel**
 - Locus penitentie, 4, 677
- Punishment**, 9, 756
- Railroads**
 - Indictment for Negligently Causing**
 - Death, 19, 926
 - Burden of proof, 19, 926
 - Examples, 19, 926, 927
 - Massachusetts statute, 19, 927
 - Statutes providing for indictment, 19, 926
- Reasonable Doubt**, 9, 738
 - See* REASONABLE DOUBT.
 - Corpus delicti, 9, 729
 - Necessity of definition, 9, 738
 - Necessity of proof beyond reasonable doubt, 9, 737
 - Sanity, 9, 731
 - Self-defense, 9, 731
 - Venue, 9, 730
 - What is meant by the term reasonable doubt, 9, 737
- Recovery in Civil Action**
 - At common law, 15, 359
 - Reward offered for death, 9, 610
 - Seeking a quarrel, 4, 976
- Sentence**, 9, 751
 - See* SENTENCE.
 - Anything to say, 9, 751
 - Effect of judge omitting to ask prisoner whether he has anything to say, 9, 751
 - Rule same as in other felonies, 9, 751
 - Suspension by reason of insanity, 9, 751
- Service of indictment on defendant**, 9, 653
- Shooting at a mark**, 9, 588; 22, 777
- Signs of Death**, 15, 258
 - Cadaveric lividity, 15, 260
 - Cadaveric rigidity, 15, 259
 - Cessation of circulation, 15, 258
 - Cessation of respiration, 15, 258
 - Filmy aspect of the eyes, 15, 258
 - Loss of animal heat, 15, 258
 - Mummification, 15, 261
 - Pallor of the body, 15, 258
 - Putrefaction, 15, 260
 - Saponification, 15, 260
- Solicitation to commit murder**, 4, 670
- Substituting poison for medicine**, 9, 533
- Succession**
 - Murderer taking estate of person murdered, 24, 362

Suicide

- Accidental killing of another, 24, 491
- Two persons mutually agreeing to kill each other, 24, 492
- "The Mignonette case," 9, 611
- Threats**
 - By deceased, 9, 672; 25, 1066
 - Dying declarations, 6, 124
 - Forcing deceased to do something which causes his death, 9, 536
 - Of deceased, 4, 866
 - Of defendant, 9, 686
 - Of third person, 4, 866
- Throwing passengers overboard**, 9, 611
- Time Required**, 9, 654
 - See infra*, CONTINUANCE.
 - Reasonable time to prepare for defense, 9, 654
 - Speedy trial, 9, 654
 - Time to procure witnesses, 9, 654
 - Witness to procure change of venue, 9, 654
- To prevent a crime**, 9, 538, 593
- Trespass**, 9, 606
 - Killing trespasser who resists, 9, 606
- Trial of Joint Defendants**, 9, 656
 - Discretion of court, 9, 656
 - Right to demand a separate trial, 9, 656
 - Waiver of separate trial, 9, 656
- Verdict**, 9, 748
 - Assessing the punishment, 9, 749
 - Errors in spelling, 9, 750
 - Form, 9, 748
 - Naming defendant, 9, 750
 - Polling the jury, 9, 751
 - Recommendation of mercy, 9, 750
 - Specifically acquitting of higher or lower degree, 9, 749
 - Specifying degree of guilt, 9, 748
 - Specifying the count sustained, 9, 750
 - Statement that defendant is found guilty in manner and form as charged in indictment, 9, 748
 - Time and manner of rendition, 9, 748
- View of the premises**, 9, 725
- What Constitutes**, 9, 533
 - Death accelerated by accused, 9, 535
 - Death caused by act of third party, 9, 536
 - Death caused by false testimony, 9, 537
 - Death must occur from act of defendant, 9, 534
 - Erroneous medical treatment, 9, 535
 - Inciting a madman, 9, 534
 - Knowingly letting loose a dangerous beast, 9, 534
 - Shooting from one jurisdiction into another, 9, 534
 - Surgical treatment, 9, 535
 - Time within which death must occur, 9, 536
 - Where the jury is not definite, 9, 536
 - Whether act of defendant must be sole and immediate cause, 9, 534
 - Within what time death must occur, 9, 534

- Witnesses, 9, 669**
 Discontinuance of prosecution of one defendant who testifies against the others, 9, 670
 Evidence tending to criminate, 9, 670
 General rules, 9, 669
 Husband and wife, 9, 670
Impeaching Evidence, 9, 723
Impeaching dying declarations, see DYING DECLARATIONS.
 Especial interest in the prosecution for defense, 9, 724
 General rule as to, 9, 723
 Proof of complicity in homicide, 9, 724
 Proof of former acts or statements, 9, 723
 List of, 9, 660, 663
 Number of witnesses to same point, 9, 669
 Persons jointly indicted, 9, 670
 Separation of, 9, 669
 State evidence, 9, 669
 Who is a competent, 9, 669
HOMOLOGATE, 9, 757
HOMOLOGATION, 9, 757
HONOR, 9, 757
See BILLS AND NOTES.
 Acceptance for, 9, 757
HONORARY, 9, 758
 Honorary offices, 19, 393
HOCK, 9, 758
HORIZONTAL, 15, 506
HORSEMANSHIP, 9, 758
HORSE RACING, see GAMBLING CONTRACTS; GAMING.
 Sunday, 24, 539
HORSE RAILWAYS, see STREET RAILWAYS.
HORSES, 9, 759
See IMPOUNDING; LIVERY STABLE KEEPERS.
Cruelty to horses, see generally, CRUELTY TO ANIMALS.
Leaving horse at inn, see INNS AND INNKEEPERS.
Stray and runaway horses, see generally, ANIMALS.
Trespassing horses, see generally, ANIMALS.
 Agister's lien, 9, 770
 Auctioneer as agent for both parties, 9, 760
 Auctioneer's liability for negligence, 9, 760
 Auctions, 9, 760
 Bailee using horse for other purpose than that for which it was hired, 1, 591
Borrowing Horses, 9, 768
 Care required of borrower, 2, 54; 9, 768
 Negligence of borrower, 9, 768
 Permitting servant to ride horse, 9, 769
 Care required from one hiring a horse, 1, 590; 2, 54
 Caveat emptor, 9, 766
 Contributory negligence in driving, 9, 397
 Conversion by bailee, 1, 574
Crazy Horses
 Killed by railroad, 7, 928
 Death of hired animal, 10, 182
 Definition, 9, 759; 12, 812
Degree of Care Required
 Of borrower, 2, 54; 9, 768
 Of hirer, 1, 590; 2, 54
 Distinguished from gelding, 8, 1292
Duties and Liabilities of Bailees
 Care required from one hiring a horse, 1, 590; 2, 54
 Injury to horse while driving further than agreed, 1, 591
 Exemption from execution, 9, 760
False Pretenses
 Blindness of horses, 7, 729
 Representation as to soundness, 7, 729
False Tokens
 Selling blind horse, 7, 795
Frightening Horses, 9, 386, 771
 At crossings, 4, 937
 Evidence that other horses were frightened by same obstacle in highway, 7, 60
 Examples of liability of towns for, 26, 200, 204
 Horse not under control, 9, 387
Liability of Municipality, 9, 386; 24, 97
 Defects in streets, 24, 97
 Duty of city, 24, 97
 Horse of ordinary gentleness, 24, 97
 In general, 24, 97
 Injury without fault or negligence of driver, 24, 97
 Object in street calculated to frighten horse, 24, 97
 Questions of law and fact, 24, 98
 Runaway horse coming in contact with defect in street, 24, 98
 Object in street calculated to frighten horse, 9, 386
 On highway by giving signal at railroad crossing, 4, 927
 Questions of law and fact, 24, 98
Street Railways, 23, 1031
 Examples, 23, 1031, 1032
 In general, 23, 1031
 Sounding gong, 23, 1032
 When liable, 23, 1031
 When not liable, 23, 1031
 Vicious or timid horse, 9, 387
 Gifts of, 9, 770
Hiring, 1, 589; 9, 767
 Competency of horse to perform journey, 9, 767
 Expenses incurred during journey, 9, 767
 Hirer's liability, 9, 767
 Infants, 10, 669
 Keeping horse beyond stipulated time, 9, 767
 Owner's liability, 9, 768
 Using differently from agreement, 9, 767

HORSES—Cont'd

- Hostlers, 9, 760
- Included in term "cattle," 3, 43
- Includes gelding, 9, 759
- Includes mares, 9, 759
- Includes mules and asses, 9, 759
- Inns and Innkeepers**
 - Horse found dead in stall, 11, 65
- Killing**
 - Libel and slander, 13, 340
- Larceny**
 - Indictment, 12, 812
- Liability of bailee for injuries received while driving beyond distance agreed, 1, 591
- Liability of owners for injuries by runaway, 1, 588
- Liability in Tort**
 - For misuse of horse hired on Sunday 2, 51
- Liens, 9, 769**
 - Agister's lien, 9, 770
 - Auctioneer's lien, 9, 769
 - Farrier's lien, 9, 770
 - Horsebreaker's lien, 9, 770
 - Keeper's lien, 9, 769
 - Livery-stable keeper's lien, 9, 770
 - Seller's lien for price, 9, 769
 - Trainer's lien, 9, 770
- Master and Servant, 14, 810**
 - Incompetency of driver, 14, 811, 812
 - Injury by frightened horse, 14, 811
 - Injury to horses, 14, 810
 - Negligent driving, 14, 810
 - Servant driving his master's team for his own purposes, 14, 812
 - Team entrusted to servant, 14, 812
- Questions of Law and Fact**
 - Frightening horses, 24, 98
- Repository's implied authority to sell, 9, 760
- Right to increase of, 9, 760
- Sale of, 9, 766
- Sale-stables, 9, 760
- Soundness, 9, 761; 28, 805**
 - Age, 28, 806
 - A question for jury, 9, 762
 - Blindness, 28, 806
 - Bone spavin, 28, 807
 - Cough, 28, 807
 - Defective formation, 28, 807
 - Evidence of unsoundness must refer to date of warranty, 28, 806
 - Examples, 18, 805-808
 - Incipient disease, 28, 806
 - Infant's representation, 10, 669
 - In general, 28, 805
 - Roaring, 28, 807
 - Short-sightedness, 28, 807
 - Slight disorders, 28, 805
 - Stumbling, shying, plunging, 28, 807
 - Whistling, 28, 808
- Sunday, 1, 591**
 - Horses Hired on Sunday, 24, 553**
 - Contract of hiring, 24, 553
 - Examples, 24, 553, 554

- Horses injured by over-driving, 24, 553
- Recovering for tort, 24, 553
- Sunday dealing, 9, 770
- Unsoundness or Vice, see *infra*, WARRANTY.**
- What Constitutes, 9, 762**
 - Abrasions, 9, 762
 - A star-gazer and ewe-necked horse, 9, 765
 - Asthma, 9, 762
 - Backing and gibbing, 9, 762
 - Bald places, 9, 763
 - Balky horse, 9, 762
 - Bandages and bar-shoes, 9, 763
 - Bastard stranglers or vices, 9, 763
 - Bearing rein, 9, 763
 - Bent before, 9, 763
 - Biting, 9, 762
 - Bleeding, 9, 763
 - Blemishes, 9, 763
 - Blindness, 9, 762
 - Blood and bog spavin, 9, 762
 - Bone spavin, 9, 762
 - Broken-backed, 9, 763
 - Broken knees, 9, 763
 - Broken wind, 9, 763
 - Bronchitis, 9, 763
 - Canker and capped hocks, 9, 763
 - Cataract, 9, 762
 - Chest-founder and anticor, 9, 763
 - Chinked in the chine, 9, 763
 - Clicking, 9, 763
 - Cloudiness of eye or opacity of lens, 9, 762
 - Contraction, 9, 763
 - Corns, 9, 763
 - Coughs and colds, 9, 763
 - Crib-biting, 9, 763
 - Curb—curby hocks, 9, 763
 - Cutting, 9, 763
 - Diseased horses, 9, 766
 - Dishing, 9, 764
 - Dropsy, 9, 764
 - Enlargements, 9, 764
 - False quarter, fever or inflammation in feet, or acute founder, farcy, or water farcy, 9, 764
 - Gibbing, 9, 764
 - Glanders, 9, 764
 - Glaucoma, 9, 764
 - Grease, grogginess, grunting, and gutta-serena, 9, 764
 - Harness, quiet in, 9, 764
 - Heels, humors, 9, 764
 - Hereditary diseases, 9, 764
 - Kicking, 9, 764
 - Kidney-dropping, 9, 764
 - Lameness, 9, 764
 - Laminilis, 9, 764
 - Lampas, 9, 764
 - Legs, 9, 764
 - Liver, 9, 764
 - Lungs, 9, 764
 - Mallenders and sallenders, and mange, 9, 764
 - Nasal gleet, 9, 765

Navicular joint disease, 9, 764
 Nerved horse, 9, 765
 Not lying down, 9, 765
 Ossification of the cartilages, 9, 765
 Overreaching, 9, 765
 Paralysis, 9, 765
 Pigeon-toed, 9, 765
 Poll-evil, pumice soles, and parotid gland, 9, 765
 Quidding, 9, 765
 Quittor, 9, 765
 Rat-tails, 9, 765
 Rearing, 9, 765
 Rheumatism, 9, 765
 Roach or high-back, 9, 762
 Roaring, rumbling, 9, 765
 Rolling, 9, 765
 Running away or bolting, 9, 765
 Saddle-back, cradle-back, hollow-back, low-back, 9, 762
 Saddle-galls, 9, 765
 Sallenders and scab, 9, 765
 Sand-crack, 9, 765
 Shying, 9, 765
 Speedy-cut, 9, 765
 Splint, 9, 765
 Sprain, 9, 765
 String-halt, 9, 765
 Thickening of the back sinews, 9, 765
 Thick urine, 9, 765
 Thinness of sole, 9, 765
 Thoroughpin, 9, 766
 Thrush, 9, 766
 Tripping, 9, 766
 Vicious to clean or shoe, 9, 766
 Wartles, 9, 766
 Warts, 9, 766
 Washby, 9, 766
 Weak-foot, 9, 766
 Weaving, 9, 766
 Wheezing and whistling, 9, 766
 Wind-galls, 9, 766
 Wind sucking, 9, 766
 Wolf's tooth, 9, 766
 Yellows, 9, 766
 Vice, 9, 762
Warranty, 9, 766; 28, 771
See infra, UNSOUNDNESS OR VICE.
Breach, 28, 805
 Age, 28, 806
 Blindness, 28, 806
 Bone-spavin, 28, 807
 Cough, 28, 807
 Defective formation, 28, 807
 Evidence of unsoundness must refer to date of warranty, 28, 805
 Examples, 28, 805-808
 Incipient disease, 28, 806
 In general, 28, 805
 Roaring, 28, 807
 Short-sightedness, 28, 807
 Slight disorders, 28, 805
 Stumbling, shying, plunging, 28, 807
 Whistling, 28, 808
 Construction of warranty, 28, 792
 Examples, 28, 771, 772

General and express, 9, 766
 In general, 28, 771
 Limited, 9, 767
 Measure of damages, 28, 842
 Necessity of particular form of words, 9, 766
 Of title, 9, 766
 Patent defects, 9, 767
 Pedigree, 9, 767
 Purchase without inspection, 9, 767
 Right of horse-dealer to warrant, 28, 781
 Rule of caveat emptor, 9, 766
 Special, 9, 767
 Suspected defects, 9, 767
 Warranty on delivery after sale, 28, 782
 What is a, 9, 766
HOSPITAL, 9, 771
See BOARD OF HEALTH.
See generally, HEALTH.
 Authority of those conducting hospital must be shown, 9, 775
 Board of health, 9, 775
 Definition, 9, 771
 Exemption from taxation, 9, 772
 Establishment, 9, 771
 Liability for damages for refusal to admit qualified applicant, 9, 774
 Negligence of superintendent, 9, 773
 Nuisance, 9, 774
 Relation of municipal corporations to hospitals, 9, 774
 Right to remove physician, 9, 772
 Torts of, 9, 772
HOSTILE POSSESSION, *see* ADVERSE POSSESSION.
HOTCHPOT, 9, 775
See ADVANCEMENTS.
 Bringing advancements to children for benefit of widow, 1, 221
 Collatio bonorum, 3, 311
 Collation, 3, 311
 Definition, 9, 775
 Effect of refusal to bring property into, 1, 223
 In American law, 9, 775
 Partition, 17, 753
 Relinquishment of donee's title, 1, 223
HOTEL, 9, 776; 11, 5
See INNS AND INNKEEPERS.
 Family hotel, 9, 777
 Hotel bill, 9, 777
 In America, 9, 777
 Lodging house, 9, 777
 New England law, 9, 776
 Synonymous use of the terms "inn," "tavern," and "hotel," 11, 6
HOUSE, 2, 677; 9, 777
See BAWDY HOUSE; DISORDERLY HOUSE.
See DWELLING.
 Gaming houses, *see* GAMING IMPLEMENTS.
 Of ill-fame, *see* DISORDERLY HOUSE.
 Trespass, *see* TRESPASS.
 As a branch of the legislature, 9, 781

HOUSE—*Cont'd*

- Breaking into, to arrest in civil cases, 1, 722
- Compared with message, 9, 781
- Counting house, 9, 779
- Distinguished from dwelling house, 9, 778
- Dwelling House**, 2, 677; 9, 778
 - Where house is divided, 2, 678
- Eating house, 9, 779
- Election laws, 9, 778
- Forcing Entrance**
 - To effect criminal arrest, 1, 746
- House and lot, 9, 779
- House in sense of a branch of legislature, 2, 514
- House of entertainment, 9, 780
- House of religious worship, 9, 781
- Houses, buildings, and other property, 9, 779
- House, store, and shop, 9, 779
- Mansion House**
 - Definition of, 2, 671
 - Meaning of, in law of arson, 1, 758
- Message, 15, 386
- My house, 16, 110
- Opera house, 17, 213
- Out-house, 9, 779; 17, 291, 292
- Part of a building, 9, 778
- Private house, 19, 95
- Public house, 19, 95, 305
- School house, 9, 780
- Store house, 9, 780
- Tenement house, 9, 780
- Town house, 9, 780
- What it includes in law of arson, 1, 764
- What passes by in wills, 9, 781
- What synonymous with dwelling house, 9, 778
- HOUSE-BREAKING**, see **BURGLARY**.
- What are implements of, 2, 695
- HOUSEHOLD**, 9, 782
 - Household effects, 6, 185; 9, 782
 - Household Furniture**, 9, 782
 - Exemption from execution, 7, 137
 - Household goods, 9, 782
- HOUSEHOLDER**, 9, 783
 - Exemption from Execution**, 7, 131
 - Illustrations, 7, 132
 - Who has election laws, 6, 272
- HOUSE OF ILL-FAME**, 9, 784
 - See **DISORDERLY HOUSE**.
 - Boat as, 2, 440
 - Municipal corporations, 15, 1181
 - Nuisance, 10, 834
 - Working contracts, 29, 955
- HOUSE OF REFUGE AND CORRECTION**, 9, 784
 - Apprenticing inmate, 9, 787
 - Constitutionality of statutes, 9, 785
 - Definition, 9, 785
 - Dependent child, 9, 786
 - Destitute child, 9, 785
 - Discharge, 9, 788
 - Duty to furnish maintenance, 9, 787
 - Jail as, 10, 198
 - Jails and houses of correction, 9, 785, 787
 - Maintenance, 9, 786

- Misdemeanor, 9, 785, 786
- New York code, 9, 786
- Official commitment, 9, 786
- Parent and Child**, 17, 400
 - Commitment an advantage to infant, 17, 404, 405
 - Consent of parent to commitment, 17, 405
 - Construction of statutes, 17, 400
 - Examples, 17, 400-405
 - For the benefit of the infant, 17, 404
 - Informalities in commitment, 17, 404
 - In general, 17, 400
 - Notice to parents, 9, 785
 - Question for the legislature, 17, 403
 - Rights of child, 17, 404
 - Rights of parents, 17, 401
 - Rights of state, 17, 401
 - Right to trial by jury, 17, 401
 - Statutes, 17, 400; 18, 814
 - Where child has committed no crime, 17, 401
- Poor and Poor Laws**
 - Liability of town for paupers supported by, 18, 814
 - Rules and regulations, 9, 787
 - Whether statutes are penal, 9, 785
 - Who may be committed, 9, 785
- HOW**, 9, 788
- HUE AND CRY**
 - By whom raised, 1, 748
 - Definition of, 1, 748
 - Liability of person wantonly raising, 1, 750
- HUSBAND**, 9, 788
 - Devise to husband, 9, 798
 - Ship's husband, 9, 788
- HUSBAND AND WIFE**, 9, 789
 - See **ALIMONY**; **BREACH OF PROMISE**; **CIVIL DAMAGE ACT**; **COMMUNITY PROPERTY**; **CRIMINAL CONVERSATION**; **CURTESY**; **DIVORCE**; **DOWER**; **FRAUDULENT CONVEYANCES**; **MARRIAGE**; **MARRIAGE SETTLEMENTS**; **MARRIED WOMEN**; **NULLITY SUITS**; **SEPARATE PROPERTY OF MARRIED WOMEN**; **SEPARATION**.
 - As to suits of married women*, see **MARRIED WOMEN**.
 - Contracts in evasion of marriage rights*, see **MARRIAGE**.
 - Fraudulent conveyances*, see **MARRIAGE SETTLEMENTS**.
 - Nullity of marriage*, see **NULLITY OF MARRIAGE**.
 - Actions by Husband**
 - Injury to wife personally, 5, 44; 16, 470
 - Loss of wife's services, 16, 469
 - Statutory alterations, 16, 470
 - Administration**, 19, 188
 - Absolute divorce, 19, 189
 - Agreement during lifetime, 19, 189, 190
 - At common law, 19, 188
 - Husband who has deserted his wife, 19, 188

- Knowledge of marriage, 19, 189
 Settlement, 19, 189, 190
 Statute in England, 19, 188
 Statutes in United States, 19, 188
 When husband may be excluded, 19, 188
 Whether entitled, 19, 188
Widow, 19, 190
 Antenuptial agreement, 19, 192
 Discretion of courts, 19, 190
 Divorce, 19, 192
 Nature of the statutes, 19, 190
 Non-resident widow, 19, 191
 Preferred to other kindred, 19, 191
 Where there is no valid marriage, 19, 192
 Whether preferred to next of kin, 19, 190
 Widow's right, 19, 190
Admissions, 9, 351; 14, 527
 Admission in wife's favor, 9, 352
 Admission of husband in derogation of his own title, 9, 352
 Admission of husband regarding wife's separate estate, 9, 352
 How fact of agency must be established, 9, 352
 Where husband acts as wife's agent, 9, 352
 Where wife has authority as husband's agent, 9, 351
 Where wife sues in her own right, 9, 351
 Wife's admissions not competent, 9, 351
Advancements, 10, 19; 14, 581
 Creditor, 14, 581, 582
 Legal wife, 10, 20
 Purchase by husband in name of wife and stranger, 10, 21
 Purchase with property of wife, title in husband, 10, 21
 Rebutting presumption of advancement, 14, 581
 What sufficient rebuttal, 14, 581
 Where husband buys with his own money in his wife's name, 14, 581
 Adverse possession between, 1, 250
Agency, 9, 837; 14, 575
 See infra, MECHANICS' LIEN.
 Agency in law and fact, 9, 837
Agency of Husband for Wife, 1, 335; 9, 837
 Agency a question of fact, 9, 838
 Agency at law, 9, 838
 Agency in fact, 9, 839
 Appointment by conduct, 9, 838
 Attempt to evade creditors, 9, 839
 Authority by conduct, 9, 838
 Authority by parol, 9, 838
 Cohabitation as ratification, 9, 840
 Contract as to services, 9, 839
 Estoppel for denying authority, 9, 840
 Extent of authority, 9, 837
 His authority, 9, 837
 Husband acting as agent for wife without compensation, 5, 185
 Husband carrying on wife's business, 5, 185
 Husband dealing with property, 9, 838
 Husband holding property wrongfully, 9, 838
 Notice in respect to wife's separate property, 9, 838
 Payment for services, 9, 839
 Personal liability where he exceeds authority, 9, 839
 Power of attorney, 9, 837, 838
 Purposes of agency, 9, 838
 Revocation, 9, 837
 Scope of authority, 9, 839
 Wife entitled to benefits, 9, 838
 Wife responsible for liabilities, 9, 838
Agency of Wife for Husband, 9, 837, 839
 Appointment, 9, 839, 840
 At law, 9, 839
 Husband absent from home, 9, 840
 Presumption of agency, 9, 840
 Private directions as limitation upon authority, 9, 840
 Ratification, 9, 839
 Wife testifying, 9, 840
Apparent or Pretended, 14, 576
 Apportionment in equity, 14, 578
 Claims of creditors, 14, 576
 Conducting business as his own, 14, 576, 577
 Examples, 14, 576, 577
 Fortune amassed by efforts of husband, 14, 578
 Fraud, 14, 579
 Fraud of creditors, 14, 576-578
 Illustrations, 14, 579
 Question of law or fact, 14, 579
 Remedy of creditors, 14, 578
 Statutes, 14, 579
 Where wife cannot trade alone, 14, 578
 Where wife has no power to trade, 14, 578
 Whether business is husband's or wife's, 14, 579
 Wife's rights, 14, 578
 Legality of agency, 9, 837
 Unity of husband and wife, 9, 836
 Wife as husband's agent, 1, 334
Answering jointly in equity, 1, 609
Antenuptial agreement, *curtesy* barred by, 4, 966
Attorney to confess judgment, 28, 696
Bank Deposits, 14, 572
 Agency of wife, 14, 572
 Delivery, 14, 573
 Deposit by husband in name of himself and wife, 14, 572
 Deposit for support of family, 14, 573
 Deposit in name of wife alone, 14, 573
 Deposits, 14, 572
 Whether a gift, 14, 572, 573
Bills and Notes, 2, 350; 14, 585
 Bill or note by husband to wife, 2, 350
 Bill or note by wife to husband, 2, 350

HUSBAND AND WIFE—Cont'd

Burial of wife, 2, 703; 5, 116
 Chastisement of wife by husband, 1, 796;
 9, 815

Conjugal right and liabilities as to children, see PARENT AND CHILD.

Conjugal Rights, 9, 809

Definition, 9, 809

Love and honor, 9, 809

Of Cohabitation and Intercourse, 9, 809

Denial of, does not justify separation, 9, 811

Denial of, is not cruelty, 9, 811

Denial of, is not desertion, 9, 811

Excessive indulgence is cruelty, 9, 812

Forfeiture, 9, 811

Mutual rights, 9, 810

Presumption, 9, 810

Right to enter family residence, 9, 810

Sexual intercourse, 9, 811

Sexual intercourse implied, 9, 811

Specific performance, 9, 810

Suits for damages, 9, 811

Suspension during divorce proceedings, 9, 811

Waiver, 9, 811

Conjugal Right to Fix Matrimonial Home and Regulate Household, 9, 812

Husband's domicile, see DOMICILE.

Wife's domicile, see DOMICILE.

Effect of antenuptial contract, 9, 812

Husband as head of family, 9, 812

Husband changing family residence, 9, 812

Husband fixing family residence, 9, 812

Husband's right to remove wife from among her relatives, 9, 813

Husband's right to say who shall visit home, although belonging to wife, 9, 813

Where husband is insane, 9, 813

Wife's duty to live where husband directs, 9, 812

Wife's right to live with husband, 9, 812

Conjugal right to marriage name, 9, 813

Conspiracy by, 4, 588; 9, 828; 14, 649

Construction of statutes, 23, 390

Contracts, see MARRIED WOMEN.

Effect of Husband Joining in Wife's Contract, 14, 621

Adjudication of bankruptcy, 14, 621

As contract of husband alone, 14, 621

Independent of statute, 14, 621

Separate property, 14, 621

Statutes, 14, 621

Wife's Liability for Antenuptial Contracts, 9, 821

Bankruptcy of husband, 9, 822

Death of husband, 9, 821

Effect of agreement between husband and wife, 9, 822

Liability after absolute divorce, 9, 822

Liability of wife's administrator, 9, 822

Statute of limitations, 9, 822

Contracts Between Husband and Wife, 9, 791

See MARRIAGE SETTLEMENTS.

As to married women's acts, see MARRIED WOMEN.

Release of Dower

To husband, see DOWER.

Antenuptial contracts, 9, 795

Contract to pay for husband's services, 14, 575

Implied Contracts

Pay for husband's services, 14, 575

In Equity, 9, 792

Equitable separate property, see SEPARATE PROPERTY OF MARRIED WOMEN.

Contracts which have been recognized, 9, 793

Personal obligations, 9, 792

Power executed by wife in favor of husband, 9, 791

Statute excepting certain specified contracts, 9, 793

Statutes affecting, 9, 793

Statutes specifying certain contracts, 9, 793

Transfer through third party, 9, 791

Validity at common law, 9, 791

Where one of several obligors marries one of several obligees, 9, 795

Wife dealing with husband in her representative capacity, 9, 791

Costs, 4, 319; 14, 652

Husband's liability for cost of wife's suit at common law, 4, 319

In suits between husband and wife, 4, 319

Where wife is unsuccessful in a suit against her husband, 4, 319

Where wife's suit is alone, 4, 319

Criminal Law, see *infra*, INTOXICATING LIQUORS.

Acquittal of one and conviction of other upon joint indictment, 4, 703

Arson, 9, 796

Disorderly house, 4, 697, 699; 5, 696

Larceny, 4, 699, 700, 702; 14, 649

Liability of husband, 4, 700; 9, 826, 828

Liability of Wife, 4, 697; 9, 826; 14, 649; 19, 31

Absence of husband, 8, 828; 14, 649

Acts Done in the Presence of Husband, 4, 697; 9, 826; 14, 649; 19, 31

Assault, 1, 800

General doctrine, 4, 701

Larceny, 4, 699, 700

Living apart from husband, 6, 99

Misdemeanors, 4, 698

Murder, 4, 698

Perjury, 4, 699

Presumption, 4, 697, 698; 14, 649

- Proof of guilt, 14, 649
 Uttering base coin, 4, 698, 700
When Wife is in the Presence of Her Husband, 4, 697, 698; 9, 827; 19, 31
 Actual presence, 4, 697; 19, 31
 Constructive presence, 19, 31
 Deliberate act of wife, 9, 827
 Disorderly house, 4, 697, 699; 5, 696
 Effect of married women's statutes, 9, 827
 Husband aiding and abetting, 9, 828
 Husband and wife jointly liable, 4, 702; 9, 826
 Husband liable as principal, 9, 826
 Husband's liability as accessory, 9, 826
 Proximity of husband, 4, 698
 Where husband is not present but act is done under his coercion, 4, 697
 Where offense is of such a character that she could have committed it alone, 4, 700
 Aiding husband to escape, 14, 649
 Arson, 9, 796
 Assault, 1, 800; 9, 796; 14, 647
 Coercion of husband, 14, 649
 Conspiracy, 4, 588; 9, 828; 14, 649
 Crime covered by statute, 14, 649
 Crime malum in se, 14, 649
 Crimes between, 9, 796, 826
 Criminal act committed without husband's knowledge, 9, 828
 Larceny, 9, 796; 14, 649
 Larceny by adulterer, 9, 796
 Statutes, 9, 799
 Wife's liability for crime committed jointly with her husband, 4, 702, 703
 Wife's liability for crimes of husband, 9, 826
 Crops, 4, 901
Deed, 14, 567
 For deeds of wife, see DEEDS.
Deed from Husband to Wife, 9, 33
 Advance by husband to wife, 9, 35
 At common law, 9, 33
 Certificate of acknowledgment, 9, 34
 In equity, 9, 34
 When grant sustained in equity, 9, 35
 Defense of each other, 1, 799
 Desertion of wife, 28, 40
 Detinue, 5, 655
 Distraint for rent, 5, 707
Duress
 Mortgage executed by wife by reason of threats against her husband, 6, 93
Of Husband
 Avoiding deed, 5, 430
 Of wife, 6, 93
 Threats against husband, 6, 91
 Dying declarations, 6, 134
Earnings of Wife, 14, 574, 667, 668, 773; 22, 29
 See infra, HUSBAND'S RIGHT TO WIFE'S SERVICES.
 As to statutes, see SEPARATE PROPERTY OF MARRIED WOMEN.
 Partnership between husband and wife, see MARRIED WOMEN.
 Abandonment of services as against creditors, 14, 575
 Agency, 14, 575
 Antenuptial agreement that wife is to have her earnings, 14, 671
 Assent of husband, 22, 29
 Burden upon wife to prove gift, 22, 29
 Contract to pay for husband's services, 14, 575
 Defrauding creditors, 22, 29
 Effect of agreement, 22, 31
 General rule, 14, 575
 Gift of accumulations, 14, 575
 Husband and wife in business together, 14, 575
 Husband giving wife earnings, 22, 29
Implied Contracts, 14, 575
 That wife shall pay for husband's services, 14, 575
 Right to, by husband, 14, 574
 Settlements, 22, 29
 Ejectment, 6, 245e
 Elopement, 6, 447
 Escape, 14, 649
Estates by Entirety, 9, 40, 851; 11, 1060, 1069
 Chattels real, 9, 851
 Construction of married women's acts, 23, 391
 Conveyance to husband and wife and third party, 6, 894
Divorce
 Effect of, 9, 851
 Effect of married women's inheritance by statute, 9, 851
 Effect of statutes providing that an estate granted by devise to two or more persons shall be a tenancy in common, 9, 40
 How created, 6, 894
 How it may be created, 9, 851
 Husband's control, 6, 894
 In Arkansas, 9, 41
 In Connecticut, 9, 41
 In Indiana, 9, 41
 In Kentucky, 9, 41
 In Maine, 9, 41
 In Maryland, 9, 41
 In Massachusetts, 9, 41; 11, 1060
 In Michigan, 9, 41
 In Mississippi, 9, 41
 In Missouri, 9, 41
 In New Hampshire, 9, 41
 In New Jersey, 9, 41
 In New York, 9, 40
 In North Carolina, 9, 41
 In Pennsylvania, 9, 41
 In Tennessee, 9, 41
 In Vermont, 9, 41

HUSBAND AND WIFE—Cont'd**Estates by Entirety—Cont'd**

- In Virginia, 9, 41
- In Wisconsin, 9, 41
- Nature of the estate, 9, 850
- Partition, 17, 692
- Per my et per tout, 9, 850
- Personalty, 9, 850
- Statutory changes, 6, 895; 9, 851; 11, 1060, 1061; 23, 391
- Survivorship, 6, 894

Estates of Husband and Wife in Property of Both, 9, 849

- Marriage of two tenants in common, 9, 849

Exoneration, 14, 587**Forcible entry and detainer, 8, 137****Foreign Attachment**

- Husband garnished in suit against his wife, 8, 319

General effect of marriage upon property of the parties, 9, 840**Gifts, 8, 1333; 14, 567**

- Acceptance, 8, 1333; 14, 572
- As against creditors, 14, 567, 568

Bank Deposits, 14, 572

- Delivery, 14, 573
- Deposit by husband in name of himself and wife, 14, 572
- Deposit for support of family, 14, 573
- Deposit in name of wife alone, 14, 573
- Deposits, 14, 572
- Whether a gift, 14, 572, 573

Delivery, 14, 568

- By order, 14, 571
- Declaration in writing, 14, 570
- Effect of promise without delivery, 14, 570
- Estoppel, 14, 570
- Examples, 14, 570
- Instrument under seal, 14, 570
- Must be clearly proved, 14, 570
- Necessity, 8, 1333; 14, 570
- Paraphernalia, 14, 570
- Promise to make a gift, 14, 570
- Proof of delivery between husband and wife, 14, 570
- Purchase of property for wife, 14, 570
- Recording instrument of gift, 14, 570
- Revocation of order, 14, 571
- To husband a delivery to wife, 14, 570

Donor's Intention, 14, 568

- Examples, 14, 569
- Gift by wife to husband, 14, 569
- Necessity, 14, 568
- Presumption, 14, 568
- Promissory note payable to wife, 14, 569
- Proof, 14, 568
- Purchase of property in wife's name, 14, 569
- Rebutting presumption, 14, 569

Essentials of, 14, 568**Examples, 8, 1333, 1334****Fairness, 14, 568****Gifts causa mortis, 14, 568****Necessity of charge of possession, 8, 1333; 14, 570****Necessity of clear proof, 8, 1333****Reasonableness, 14, 568****Recording instrument of, 14, 571****Validity at law, 8, 1333****Validity in equity, 8, 1333; 14, 567, 569****Wife's gift to husband, 8, 1333; 14, 569****Habeas Corpus****Application by husband, 9, 176****Application by wife, 9, 176****Husband's estate in his own property, 9, 841****Husband's Estate in Wife's Chattels Real, 9, 843****At common law, 9, 843****Power to will, 9, 843****Survivorship, 9, 843****Husband's Estate in Wife's Choses in Action, 9, 845****After reduction, 9, 845****Assignment of personal property, 9, 846****Death of either party, 9, 846****Effect of statute, 9, 844****Reduction a question of intent, 9, 846****Reduction into possession, 9, 845****Reduction into possession under statute, 9, 844****Survival of wife, 9, 846****When reduction may be made, 9, 846****Whether choses pass under assignment of personal property, 9, 846****Husband's Estate in Wife's Personalty in Possession, 3, 171; 9, 843****Under the statutes, see SEPARATE PROPERTY OF MARRIED WOMEN.****At common law, 9, 843****Effect of statute, 9, 844****Effect of statute on existing rights, 9, 844****Husband holding separate personalty, 9, 845****In equity, 9, 844****Personalty in possession of wife, 9, 844****Reduction of personalty in possession, see *infra*, HUSBAND'S ESTATE IN WIFE'S CHOSES IN ACTION.****Wife's personalty in possession of agent, 9, 845****Husband's Estate in Wife's Realty, 9, 841****See *infra*, HUSBAND'S ESTATE IN WIFE'S CHATTELS REAL.*****Curtsey initiate*, see CURTESY.****Emblements, 9, 843****Estate per autre vie, 9, 843****Estates for life, 9, 842****Estates in severalty, 9, 842****Estates of inheritance, 9, 841****Husband's interest where liable for his debts, 9, 842**

- Joined in ejectment, 9, 842
- Joint estates, 9, 842
- Life estate, 9, 843
- Rents and profits, 9, 841
- Statutes, 9, 842
- Husband's Interest in Wife's Property**
 - Nullity of marriage, 14, 537
 - Whether vested rights, 3, 759
 - Wife's property in representative's capacity, 7, 234
- Husband's liability for wife's ante-nuptial contracts, 9, 822
- Husband's Liability for Wife's Debts**
 - Debts Contracted Before Marriage
 - Liability after death of wife, 7, 335
 - Infant husband, 10, 661
 - Representative of husband, 7, 335
- Husband's Right to Wife's Services, 9, 817**
 - See *infra*, EARNINGS.
 - At Common Law, 9, 817
 - Forfeiture by desertion, 9, 818
 - Personal representative's rights, 9, 818
 - Release by wife, 9, 817
 - Suit for, 9, 817
 - Where earnings have been invested, 9, 818
 - Effect of Statutes, 9, 819
 - Gift to husband, 9, 820
 - Husband as garnishee, 9, 819
 - Husband's creditors' rights, 9, 820
 - Prospective construction, 9, 820
 - Provision that earnings shall be separate property, 9, 819
 - Services rendered to husband, 9, 820
 - Suit for earnings, 9, 819
 - When statutes do not especially refer to earnings, 9, 819
 - Wife's right to contract for her services, 9, 819
- In Equity, 9, 818**
 - Antenuptial and postnuptial settlements, 9, 818
 - Gift to wife in fraud of creditors, 9, 818
 - Husband's waiver of right, 9, 818
 - Prima facie belonging to wife, 9, 819
- Imprisonment for Debt**
 - Wife's tort, 10, 224
- Improvements, 14, 579**
 - Creditors, 14, 579
 - Fixtures, 14, 580
 - Liability for, 14, 580
 - Reimbursement for, 14, 580
 - Where land of one is liable for improvements placed upon the other 14, 579
- Indictment**
 - Jointly for crime, 4, 703
 - Insanity of husband, 9, 815
 - Insulting words addressed to wife as justification of assault, 1, 800
- Insurable Interests, 11, 319**
 - Of husband in wife's property, 11, 316
- Insurance of life for benefit of spouse, 14, 582
- Intoxicating Liquors, 11, 720**
 - Husband's knowledge and consent, 11, 721
 - Husband's liability for sale by wife, 11, 720
 - Liability of wife, 11, 722
 - Married women carrying on separate business, 11, 722
 - Sale without license, 11, 721
 - Wife delivering liquor sold by husband, 11, 722
 - Wife owning property, 11, 721
- Joinder, 11, 1015^s**
 - Actions against husband and wife, 11, 1015^u
 - Cause of action accruing in representative capacity, 11, 1015^s
 - Cause of action accruing to husband alone, 11, 1015^s
- Statutory Modifications, 11, 1015^t**
 - In England, 11, 1015^t
 - In Indiana, 11, 1015^u
 - In Iowa, 11, 1015^t
 - In Louisiana, 11, 1015^t
 - In Maryland, 11, 1015^t
 - In Missouri, 11, 1015^u
 - In Wisconsin, 11, 1015^u
 - Personal judgment against wife, 11, 1015^u
 - Suits for injuries to spouse, 5, 44; 9, 833; 11, 1015^s
- Joint Action by Husband and Wife for Injury to Wife**
 - Measure of damages, 5, 44
- Joint tenancy, 11, 1069
- Joint Tenants and Tenants in Common**
 - Adverse possession, 11, 1121
- Judgment by confession, 12, 149^s
- Laches, 12, 553
- See MARRIED WOMEN.
- Larceny, 4, 702; 12, 649, 774**
 - By Wife, of Husband's Goods, 4, 702
 - In concurrence with her adultery, 4, 702
 - Indictment, 12, 803
 - Of wife's clothes by adulterer, 3, 286
- Letters, 13, 265
- Liability for Wife's Support, 9, 815; 18, 812**
 - See *infra*, SUITS FOR MAINTENANCE.
 - Necessaries, see *infra*, NECESSARIES.
 - Abandonment of husband, 9, 816
 - Charging wife's estate, 9, 815
 - Duty of husband to support parents of wife, 18, 812
 - Duty of husband to support wife, 9, 815; 18, 812
 - Effect of married women's acts, 9, 816
 - Joint liability of husband and wife, 9, 817
- Separation, 9, 816; 22, 78**
 - Alimony, 22, 78
 - Bona fide offer to return, 22, 83
 - Borrowing money, 22, 80
- Compulsory Statutes, 22, 85**
 - Generally, 22, 85
 - In Alabama, 22, 86

HUSBAND AND WIFE—Cont'd**Liability for Wife's Support—Cont'd****Separation—Cont'd****Compulsory Statutes—Cont'd**

In California, 22, 86
 In Colorado, 22, 87
 In Connecticut, 22, 87
 In Dakotas, 22, 87
 In Delaware, 22, 87
 In England, 22, 86
 In Georgia, 22, 87
 In Indiana, 22, 87
 In Iowa, 22, 87
 In Kansas, 22, 88
 In Kentucky, 22, 88
 In Louisiana, 22, 88
 In Maine, 22, 88
 In Maryland, 22, 88
 In Massachusetts, 22, 85
 In Michigan, 22, 88
 In Minnesota, 22, 88
 In Mississippi, 22, 88
 In Missouri, 22, 88
 In Nebraska, 22, 88
 In New Hampshire, 22, 88
 In New Jersey, 22, 89
 In New Mexico, 22, 89
 In New York, 22, 89
 In North Carolina, 22, 89
 In Ohio, 22, 89
 In Oklahoma, 22, 89
 In Pennsylvania, 22, 90
 In Rhode Island, 22, 90
 In South Carolina, 22, 90
 In Tennessee, 22, 90
 In Texas, 22, 90
 In Vermont, 22, 90
 In Virginia, 22, 91
 In Washington, 22, 91
 In West Virginia, 22, 91
 In Wisconsin, 22, 91
 In Wyoming, 22, 91
 Debts incurred by wife, 22, 79
 Expenses in legal proceedings, 22, 82
 Express prohibition, 22, 81
 Funeral expenses, 22, 82
 General notification not to give wife credit, 22, 81
 Husband's knowledge of goods supplied, 22, 80
 In general, 22, 78
 Insanity, 22, 85
 Medical attendance, 22, 79
 Necessaries, 22, 79
 Necessaries furnished at peril of tradesman, 22, 81
 Necessaries where husband was wrongdoer, 22, 82
 Pauper, 22, 85
 Presumption of agency, 22, 79
 Putting wife elsewhere than in her own home, 22, 82
 Sævitia, 22, 83
 Separation not mutually voluntary, 22, 79
 Separation with sufficient allowance, 22, 80

Statute law, 22, 78

What are necessities, 22, 79, 80

Where husband has made no stipulation for wife's support, 22, 78

Where plaintiff knows that husband has discarded wife for adultery, 22, 84

Wife living in open adultery, 22, 84

Wife pleading husband's credit, 22, 78

Wife's adultery, 22, 84

Wife's bigamy, 22, 84

Where husband is an infant, 9, 815

Where wife has sufficient means of her own, 9, 816

Where wife has waived or forfeited her rights, 9, 816

Wife's liability, 9, 817

Liability of Husband on Wife's Contracts, 9, 821

Antenuptial contracts, 9, 821

Death of husband, 9, 821

Husband's liability ceases with cover-
 ture, 9, 821

Suit against husband and wife jointly, 9, 821

Where wife dies after judgment, 9, 821

Liability of profits, when husband carries on wife's business, to husband's debts, 5, 186

Libel and Slander, 13, 450

Costs, 13, 503

Criminal liability, 13, 451

Defamation of wife, 13, 447

Examples, 13, 450, 451

Liability of husband, 13, 450

Liability of wife, 13, 450, 451

Publication, 13, 377

Special damages, 13, 447

Special damage to husband, 13, 447, 450

Who must sue, 13, 450

Wife suing the husband, 13, 450

Words actionable per se, 13, 450

Words not actionable per se, 13, 450

Limitation of Actions, 13, 687, 707, 711

New promise, 14, 618

Waiver, 13, 707

Maintenance, see *infra*, LIABILITY FOR WIFE'S SUPPORT.

Malicious prosecution, 14, 37

"Man and wife," 14, 86

Mechanics' Lien, 15, 12, 65, 117

Agency implied, 15, 65

Agent of wife, 15, 65

Claims, 15, 17

Consent to charge with lien, 15, 15

Contract of husband, 15, 12

Contract of married women, 15, 12

Enforcement, 15, 117

Holding out that husband owns prop-
 erty, 15, 14

Husband acting as wife's agent, 15, 15, 65

Husband and wife as joint tenants, 15, 16

- Husband's request with wife's knowledge, 15, 13
 In general, 15, 12-15
 Intention of married women, 15, 12
 Joint contracts, 15, 16
 Lease for years, 15, 16
 Liability to sub-contractors, 15, 17
 Parties to action, 15, 167
 Pleading, 15, 117
 Power to subject property to lien, 15, 70
 Recovery against husband, 15, 14
 Rents and profits, 15, 17
 Requisites appearing upon its face, 15, 17
 Setting forth coverture, 15, 17
 Showing coverture, 15, 117
 When improvements must appear necessary, 15, 16
 Merger, 15, 330
Mingling of Husband's and Wife's Property,
 14, 573
 Where wife's money ascertainable, 14, 573
 Where wife's property is not ascertainable, 14, 574
 Wife as cestui que trust, 14, 574
 Wife's separate estate, 14, 574
Mortgages
 By wife for husband's debts, 14, 584, 585
 Murder, wife as accessory, 9, 577
Necessaries, see infra, SUBROGATION; SUITS FOR NECESSARIES.
As to husband's liability in case of separation between husband and wife, see infra, LIABILITY FOR WIFE'S SUPPORT.
Family Expenses
 Liability of husband, 14, 625
 Liability of separate estate, 14, 625, 626
 Liability of wife, 14, 625
 Forfeiture of the right, 9, 831
 Husband's duty to reimburse, 9, 830
 Implied contracts, 14, 621
 Liability due to marriage, 9, 830
 Newspaper advertisement, 9, 830
 Prohibiting wife from pledging, 9, 830
 Special notice that husband will not be responsible, 9, 831
 Waiver of the right, 9, 831
What Are, 9, 831
 Clothing, 9, 831
 Food, 9, 831
 Funeral expenses, 9, 832
 Furniture, 9, 831
 Legal services, 9, 831
 Lodging, 9, 831
 Medical services, 9, 831 ✓
 Where wife has sufficient means of her own, 9, 831
 Wife's right to pledge husband's credit, 9, 830 ✓
Next of Kin
 Whether husband and wife are next of kin, 16, 604
 Notice, 16, 806
Partition, 17, 702
 By agreement of parties, 17, 665
 Dower, 17, 676
Parties Defendant
 Holders of Particular Estates in Interest, 17, 720
 Husband of co-tenant, 17, 722
 Husband of deceased co-tenant, 17, 722
 Wife claiming homestead, 17, 722
 Pin money, 9, 847; 22, 3
Poor and Poor Laws
 Removal, 18, 805
 Confinement of husband in jail, 18, 806
 Examples, 18, 805, 806
 Husband's place of residence, 18, 805
 In general, 18, 806
 Liability of married women to be removed, 18, 805
 Where husband has abandoned his wife, 18, 806
 Widow, 18, 806
 Settlement, 18, 794
 After divorce, 18, 796
 Desertion of wife, 18, 796
 Divorce a mensa et thoro, 18, 796
 Generally, 18, 794
 Husband's settlement, 18, 795
 Legality of marriage, 18, 795
 Marriage in order to change settlement, 18, 795
 Separate settlement, 18, 796
 Statutes, 18, 795
 Void marriage, 18, 795
 Where husband has no settlement, 18, 796
 Wife's settlement, 18, 794
Possession Between, 9, 800
 Fraudulent possession, 9, 804
How Delivery May Be Made Between Husband and Wife, 9, 804
 Actual delivery, 9, 804
 Ornaments, 9, 804
 Personal effects, 9, 804
 Proof of delivery, 9, 804
 What is meant by delivery, 9, 804
 Presumption as to ownership of property, 9, 801
Property in Possession of Husband and Wife, 9, 801
 Adverse possession, 9, 803
 As against husband's creditors, 9, 802
 As to real estate, 9, 802
 At common law, 9, 801
 Burden of proof, 9, 802
 Possession of husband, 9, 801
 Possession of wife, 9, 801
 Rebutting presumption, 9, 801
 Where wife has bought property in her own name, 9, 801
 Wife's ownership inferred from circumstances, 9, 802
Powers
 Execution of, 18, 928, 951
 Acknowledgment, 18, 952

HUSBAND AND WIFE—Cont'd**Powers—Cont'd****Execution of—Cont'd**

- Appointment of husband, 18, 951
- Beneficial power, 18, 951
- Concurrence of husband, 18, 951
- During her marriage, 18, 952
- Estate in fee, 18, 952
- Examples, 18, 951, 952
- Grant or devise, 18, 952
- Infant wife, 18, 951
- In general, 18, 950, 951
- New York statute, 18, 951

Married woman as appointee, 18, 973

Privileged Communications

As to husband and wife testifying, see infra, WITNESSES.

At common law, 19, 152

Conversation in the presence of third persons, 19, 154

Death, 19, 153

Divorce, 19, 153

Examples, 19, 154

Generally, 19, 152

In England, 19, 153

In United States, 19, 153

Not of a strictly confidential nature, 19, 152

Private conversation, 19, 153

Scope of the privilege, 19, 152

Statutes permitting husband and wife to testify, 19, 152

Third person hearing conversation, 19, 154

Where the interests of strangers are involved, 19, 153

Probate and Letters of Administration

Administrator with will annexed, 19, 211

Appointment of administrators de bonis non, 19, 215

Death of husband pending settlement of wife's estate, 19, 214

Recapitulation of wife, 19, 1094

Receiving Stolen Property, 14, 649; 20, 443; 446, 449

Examples, 20, 449

In general, 20, 449

Joint indictment and conviction, 20, 449

Property stolen with knowledge of the wife, 20, 449

Whether wife may be convicted, 20, 449

Wife receiving from any one but her husband, 20, 449

Recovery by husband for injuries to himself and wife in the same action, 5, 45

"Relation," 20, 738

Rescission

Contract entered into by reason of duress, 21, 43

Undue influence, 21, 36

Res Judicata

Whether husband or wife not made party is barred from subsequent action, 21, 152

Restraint of Wife, 9, 814

To prevent elopement, 9, 814

To prevent squandering money, 9, 814

To prevent wife's going into lewd company, 9, 814

Unreasonable or arbitrary confinement, 9, 814

Where wife is an infant, 9, 814

Resulting Trusts, 10, 44; 14, 580

When Husband Buys with Wife's Money

In His Own Name, 14, 580, 581

Bona fide assignee of husband, 14, 581

Burden of proof, 14, 581

Different intention on wife's part, 14, 580

Enforcement, 14, 582

General rule, 14, 580

Husband's creditors, 14, 581

Purchase by married woman in her own name, 14, 582

Purchase with money of both in the name of one, 14, 582

Wife's knowledge and consent, 14, 581

Service of Process, 22, 157

Acknowledgment of service, 22, 173

Separate property rights of wife, 22, 157

Service upon husband alone, 22, 157

Set-Off, 22, 315

Action against husband, set-off of debt due wife, 22, 316

Action against husband to set off a debt due him in right of wife, 22, 315

Action by husband to set off debt due from wife before marriage, 22, 316

Action by widow upon her choses in action not reduced in possession, 22, 317

Action to recover claims owned by wife, set-off of claims due by husband, 22, 318

Action upon a note made payable to a married woman, 22, 317

Claim for damages resulting from tortious act of plaintiff's wife, 22, 316

Examples, 22, 315-320

In action by husband and wife for leg-
acy to debtor's wife, 22, 316

In general, 22, 315

Mutuality in general, 22, 315-319

Of debt due by husband and wife jointly, 22, 318

Of wife's debts not reduced to possession by husband, 22, 316

Suit by husband and wife for debt due jointly, 22, 319

Suit by wife to enforce demand due as her separate property, 22, 319

Where husband and wife are joined, set-off of debt due by husband, 22, 318

Where husband joined only as a technical party, 22, 319

Wife as executrix or administratrix, 22, 319

Settlement, see *infra*, POOR AND POOR LAWS.

Ship's husband, 3, 668

Subpoena

Subpoena in equity, 24, 186

Subrogation

Necessaries, 24, 286

At law, 24, 289

Conflict of authority, 24, 286-289

Distinction between money advanced to buy necessities, and furnishing necessities, 24, 289

Examples, 24, 288-290

In equity, 24, 289

In general, 24, 286

Whether one who advances money to wife for necessities is a volunteer, 24, 286

Whether one who advances money to wife is entitled to subrogation, 24, 286

Wife as Surety, 24, 228

Examples, 24, 228, 229

In general, 24, 228, 229

Unincumbered estate, 24, 228, 229

Wife joining in mortgage, 24, 228

Wife relinquishing dower, 24, 228

Wife's right to subrogation, 24, 228

Suits, 9, 828

See MARRIED WOMEN.

Between

At common law, 9, 798

Detinue, 9, 800

Garnishment, 9, 799, 800

In Equity, 9, 798

Confession of judgment by husband in favor of wife, 9, 798

Wife represented by next friend, 9, 798

Replevin, 9, 800

Representatives, 9, 800

Statutes authorizing married women to sue and be sued as if unmarried, 9, 799

Statutes authorizing suits for protection of property, 9, 799

Statutes expressly authorizing, 9, 799

Trover, 9, 800

Under statutes, 9, 799

When marriage to be dissolved, 9, 800

Whether statutory remedy precedes equitable remedy, 9, 800

By Husband for Personal Injury to Wife

Attendance, nursing, etc., 5, 45

Loss of services and society, 5, 45

For criminal conversation, see CRIMINAL CONVERSATION.

For divorce, see DIVORCE.

For Enticing and Harboring, 9, 833

See SEDUCTION.

Harboring of wife, 9, 833

Husband showing demand and refusal, 9, 834

Husband's right of action, 9, 833

Liability of parent, 9, 833

Motives for harboring, 9, 834

Necessity

Of demand, 5, 528

Parent, 9, 834

For Injury to Spouse, 9, 832

Civil damage act, see CIVIL DAMAGE ACT.

Enticing husband away, see *infra*, SUITS FOR ENTICING AND HARBORING.

Action by husband in right of wife, 9, 832

Husband's rights, 9, 832

Joinder of husband's action in his own behalf with action for wife, 9, 833

Wife's rights, 9, 832

For Maintenance, 9, 816, 829

Courts of equity, 9, 829

Procedure, 9, 830

Special suits, 9, 829

What necessary to sustain action, 9, 830

When suit must be instituted, 9, 830

For Necessaries, 9, 830

See *infra*, NECESSARIES.

For protection, 9, 832

For restitution of conjugal rights, 9, 828

Joinder of wife, 9, 828

Supplementary Proceedings

Examination of wife of judgment debtor, 24, 609

Support, see *infra*, LIABILITY FOR WIFE'S SUPPORT.

Suretyship, 15, 743

Extension of time, 15, 743

Mortgage as surety, 15, 743

Mortgage on property of husband and wife, 15, 743

Wife as husband's surety, 15, 743

Taxation

Redemption, 25, 414

Tax titles, 25, 712

Telegraphs and Telephones

Right to sue company, 25, 829

Tenacity by entirety, see *infra*, ESTATES BY ENTIRETIES.

Torts, 9, 795; 14, 647

Antenuptial, 14, 647

Against man she marries, 14, 647

In general, 14, 647

Liability, 14, 647

Assault and battery, 9, 795

Connected with Contract, 14, 649

Example, 14, 649

Liability for, 14, 649

Destruction of married women's property, 9, 796

Husband's Liability for Wife's Antenuptial Torts, 9, 823

Acts of wife in representative capacity, 9, 823

At common law, 9, 823

Effect of married women's acts, 9, 822, 823

Misappropriation of money, 9, 823

To what extent liable 9, 823

HUSBAND AND WIFE—Cont'd**Torts—Cont'd****Husband's Liability for Wife's Post-nuptial Torts, 9, 823**

Liability for conversion, 9, 826

Provision that husband shall not be liable for his wife's debts, 9, 826

Statute in Illinois, 9, 826

Statute in Kansas, 9, 826

Statutory Abolition, 9, 825

Effect of married women's acts generally, 9, 825

Husband's liability as master, 9, 825

Torts as to wife's separate property, 9, 826

Torts of insane wife, 9, 826

Whether They Are Liable Alone or Jointly, 9, 824

In what cases his wife cannot be sued, 9, 825

In what cases husband cannot be sued alone, 9, 825

Tort committed in his presence, 9, 824

Tort committed in his presence against his will, 9, 824

Tort committed in his presence where wife appears to act deliberately, 9, 824

Tort committed out of his presence without his consent, 9, 824

Tort committed out of husband's presence and without his direction, 9, 824

Where they are living apart, 9, 823

Wife's executor de son tort, 9, 824

Wife's representative acts, 9, 823

Wrong of hers based upon invalid contract, 9, 823

In equity, 9, 795

Marriage extinguishes, 9, 795

Marriage operates as a discharge, 9, 795

Postnuptial, 14, 647

Act of agent, 14, 647

Assault and battery, 14, 647

Coercion of husband, 14, 647

Committed in presence of husband, 43, 647

Conversion, 14, 647

False and fraudulent representations, 14, 647

Liability in general, 14, 647

Slander, 14, 647

Trespass, 14, 647

Recent Cases Under Statutes in Various States on Married Women's Torts, 14, 648

In Connecticut, 14, 648

In Florida, 14, 648

In Indiana, 14, 648

In Massachusetts, 14, 648

In Michigan, 14, 648

In New Jersey, 14, 648

In New York, 14, 648

In Pennsylvania, 14, 648

In Vermont, 14, 649

In Virginia, 14, 649

Separate property of married women, 9, 796

Slander, 9, 795

Suits under statute, 9, 796

Whether right arises upon dissolution of marriage, 9, 795

Undue Influence, 8, 650; 27, 480*See* MARRIAGE SETTLEMENTS.

Exerted upon husband, 27, 484

Exerted Upon Wife

Contracts, 27, 480

Acknowledgment of conveyance, 27, 482

Actual undue influence, 27, 481

At common law, 27, 481

In general, 27, 480

Operating for the benefit of husband, 27, 482

Presumption of undue influence, 27, 482

Ratification, 27, 482

Under modern statutes, 27, 481

Gifts, 27, 483

At common law, 27, 483

Examples, 27, 483, 484

Freely, voluntarily, and understandingly, 27, 483

Husband must see that wife understands nature of the act, 27, 483

Induced by husband in favor of third persons, 27, 483

In general, 27, 483

Similar Relations

Illegal sexual relations, 27, 484, 485

Wills, 27, 512

Burden of proof, 27, 513

Difficulties in general, 27, 512

Examples, 27, 513, 514

Free agency gone, 27, 514

General principles prevail, 27, 512

Influence of husband over wife, 27, 514

In general, 27, 512

Persuasion and importunity, 27, 513

Presumption arising from relationship, 27, 513

Wife's influence over husband, 27, 513

United States courts, 27, 616

Unite in giving a bill or note, 2, 348

Unity of, 9, 789

Abolition of fiction, 9, 790.

Fiction

At common law, 9, 789

In civil law, 9, 790

One could not act for the other, 9, 790

Vagrancy, 28, 40

Voluntary conveyance to wife when a resulting trust arises, 10, 56

Warranty, 28, 781

When jointly liable for crime, 4, 702

Wife as Surety for Husband, 14, 584

Assignments of personality, 14, 585

- Capacity limited by statute, 14, 585
- Capacity under general powers, 14, 584
- Contract otherwise binding, 14, 586
- Implied suretyship, 14, 586
- In absence of statutory prohibition, 14, 584
- Incidents of Her Suretyship**, 14, 587
 - After husband's death, 14, 587, 588 ✓
 - Discharge, 14, 588
 - Examples, 14, 588, 589
 - Exoneration, 14, 587
 - Extension of time, 14, 588
 - Reimbursements *pari passu* with other creditors, 14, 587
 - Release of other sureties, 14, 588
 - Same as other sureties, 14, 587
- In general, 14, 584
- Mortgages by wife, 14, 584
- Promissory note by wife, 14, 585
- Showing that debt was really wife's, ✓ 14, 587
- Statute forbidding contract between husband and wife, 14, 586
- Wife's duty to live with husband, 5, 802
- Wife's equity to a settlement, 9, 847
- Wife's Estate in Her Husband's Personalty**, 9, 849
 - See* DOWER ✓
 - After death*, *see* SUCCESSION.
 - During his life, 9, 849
- Wife's Estate in Her Own Property**, *see* *infra*, HUSBAND'S ESTATE IN HIS WIFE'S PROPERTY.
- See* SEPARATE ESTATES OF MARRIED WOMEN.
- Wills Between**, 9, 797
 - As attesting witnesses, 29, 236
- Witnesses**
 - At Common Law**, 29, 623, 628, 630
 - Adultery, 29, 628
 - Agency, 29, 640
 - Competency in general, 29, 640
 - Proof of agency, 29, 641
 - Statutes, 29, 640
 - Wife acting in her husband's presence, 29, 641
 - Wife keeping husband's books, 29, 642
 - Assignment of interests, 29, 636
 - Baggage, 29, 643
 - Civil actions, 29, 623
 - Collateral proceedings, 29, 632
 - Conversations between husband and wife, 29, 624
 - Crimes**, 4, 869; 29, 637
 - Adultery, 29, 638
 - Assault and battery, 29, 637
 - Bigamy, 29, 638
 - Competency in general, 29, 637
 - Husband the injured party, 29, 637
 - Indecent assault, 29, 639
 - Outrage upon the feelings of the wife, 29, 638
 - Wife as injured party, 29, 637
 - Criminal actions**, 29, 623
 - Criminal conspiracy**, 29, 631
 - Criminal conversation**, 29, 628
 - Effect of Divorce or the Death of One Spouse**, 29, 628
 - Confidential relationship, 29, 628
 - Divorce a vinculo, 29, 628
 - Enticing away, 29, 626
 - For and against defendants, 29, 630
 - Ground of incompetency, 29, 623
 - In general, 29, 623
 - Nominal parties, 29, 625
 - Non-access, 29, 627
 - Not parties of record, 29, 624
 - Release of interests, 29, 636
 - When incompetent, 29, 624
 - Where the Marriage Is Void**, 29, 633
 - Abduction, 29, 634
 - Bigamy, 29, 634
 - Competency in general, 29, 633
 - Persons cohabiting as husband and wife, 29, 633
 - Wife's separate estate, 29, 626
 - Wife suing as feme sole, 29, 625
 - Competency as witnesses in criminal cases, 4, 869
- Statutes**
 - Statutes Removing Disqualification of Interest**, 29, 643
 - Action for personal injury to wife, 29, 644
 - Action in which both are parties, 29, 643
 - Death of husband before the action, 29, 645
 - Divorce suits, 29, 646
 - Husband the real party in interest, 29, 645
 - Opposing parties, 29, 646
 - Whether they render parties competent, 29, 643, 660
 - Under statutes expressly removing the disability, 29, 646
 - Transactions of Deceased Persons**, 29, 707
 - In general, 29, 707
 - Where witness has no personal interest, 29, 708
 - United States courts, 27, 616
- HUSBANDRY**, 9, 851
 - Implements of, 9, 851
 - Servant in husbandry, 9, 851
- HYDROGRAPHY**
 - Surveys, 24, 1023
- HYPOTHECARY**
 - Debt, 5, 165
- HYPOTHECATION**, 9, 852
 - See* BOTTOMRY; CHATTEL MORTGAGES; MARITIME LIENS; RESPONDENTIA BONDS.
- ICE AND ICE COMPANIES**, 9, 852
 - See* STREET RAILWAYS; STREETS.
 - Ice on streets*, *see* STREETS AND SIDE-WALKS.
 - Dams, 15, 496
 - Definition of ice, 9, 853
 - Eminent domain, 9, 862

ICE AND ICE COMPANIES—Cont'd

- Gatherer in Public Waters, 9, 861
 - Duties and liabilities, 9, 861
 - Right to take ice, 9, 861
 - Trespass for disturbing, 9, 861
- Indictable offense to remove, 9, 853
- Kind of Property in Ice, 9, 853
 - When cut and removed, 9, 856
 - When personal property, 9, 857
 - Whether real property, 9, 853
- Larceny, 12, 785
- Manufacture of ice, 14, 260
- Manufacturing corporations, 14, 270
- Measure of damages for cutting and removing, 9, 862
- Owner of easement in water, 9, 862
- Personal property, 9, 856
- Property in, 1, 51
- Right of owner to bed of stream, 3, 166
- Right of travel over, 9, 861
- Rights in and to, 9, 857
 - Gatherer in Public Waters, 9, 861
 - Duties and liabilities, 9, 861
 - Right to take ice, 9, 861
 - Trespass for disturbing, 9, 861
 - Mill owner destroying the ice, 9, 860
 - Rights of owners of land bordering upon navigable streams, 9, 857
 - Upon artificial ponds, 9, 860
 - Upon canals, 9, 859
 - Upon mill ponds, 9, 860
 - Upon navigable waters, 9, 857
 - Upon private ponds, 9, 859
 - Upon private waters, 9, 853-855
 - Upon public ponds, 9, 859
 - Upon unnavigable streams, 9, 858
 - Where body of navigable water belongs to riparian owner, 9, 858
- Right to cut ice on navigable lake, 12, 626
- Right to take ice on dam, 4, 974
- Towage, 26, 88

IDEM SONANS, 23, 2

- See NAME.
- Definition, 16, 122
- Demurrer, 16, 126
- Examples of cases not held, 23, 4, 5
- Examples of names which have been held idem sonans, 16, 123; 23, 2
- Examples of names which have not been held idem sonans, 16, 125
- How question determined, 16, 126
- Instances, 16, 123
- Judicial notice, 16, 126
- Names beginning with different letter, 16, 127
- Names in indictment, 4, 769
- Names on ballots, 16, 128
- Plea in abatement, 16, 126
- Question of law or fact, 16, 126
- Statement of rule, 16, 122

IDENTITY, 15, 229

- See ACCESSION.
- Survivorship, see SURVIVORSHIP.
- Bones, 15, 232
- Death, 15, 231

- Definition, 9, 863
- Deformities, scars, etc., 15, 230
- Direct evidence of witnesses, 15, 229
- Disputed or doubtful, 9, 868
- Dress, 15, 230
- Evidence of, in criminal trials, 9, 869
- Extradition, 9, 255
- Habeas corpus, 9, 200
- Hair, 15, 232
- Handwriting to prove, 9, 301
- Identification by voice, 9, 868
- Inspection, 9, 868
- Name, 16, 119
 - Idem sonans, 16, 120
 - Identity of person, 16, 119
 - In general, 16, 119, 120
 - Obligor and obligee, 16, 121
 - Presumption, 16, 119
 - Proof of identity, 16, 120
 - Surname, 16, 121
- Of Name Raises Presumption of Identity of Person, 9, 863
 - Family name, 9, 866
 - In actions, 9, 864
 - Initials, 9, 866
 - In title to land, 9, 865
 - In written instruments, 9, 865
 - Several persons of the same name in a particular locality, 9, 863
 - Two persons of the same name—presumption as to elder, 9, 866
- Of the Dead, 15, 231
 - Age of person, 15, 232
 - Bones, 15, 231
 - Hair, 15, 231
 - Hands, 15, 231
 - Mutilated body, 15, 231
 - Sex, 15, 232
 - Stature, 15, 233
 - Teeth, 15, 231
- Of the Living, 15, 229
 - Deformities, scars, etc., 15, 230
 - Dress, 15, 230
 - Peculiar marks, 15, 231
 - Photographs, 15, 231
 - Size, 15, 231
 - Voice, 15, 230, 231
- Of things, 9, 870
- Peculiar marks, 15, 231
- Photographs, 9, 868; 15, 231; 18, 424
- Proof of, 9, 866
 - Child in evidence to identify putative father, see BASTARDY.
 - Concurrence of several characteristics, 9, 866
 - Court cannot presume identity of person, 9, 867
 - Parish register, 9, 867
 - Question of law and fact, 9, 867
 - What may be shown, 9, 866
- Question for jury, 9, 867
- Records of birth, marriage, and death, 9, 868
- Sex, 15, 233
- Size, 15, 230
- Stature, 15, 233
- Voice, 15, 230, 231

IDIOCY, see **INSANITY**.

IDIOT, see **INSANITY**.

IF, 29, 103

IGNOMINY, 9, 870

IGNORANCE, 9, 870

See **MISTAKE**.

Construed in statute, 9, 871

Illegal contracts, 9, 881

Of Fact, 9, 871

As defense to crime, 4, 687-689

Contract voidable, 9, 871

Definition, 9, 871

In equity, 9, 873

Means of knowledge, 9, 872

Money paid, 9, 872

Statute of limitations, 9, 871

Of Law, 9, 873

See **MISTAKE**.

As defense to crime, 4, 688-690

By an attorney, 9, 873

Civil jurisdiction, 9, 875

Criminal jurisdiction, 9, 875

Deceit, 5, 326

Foundation of the rule, 9, 875

In general, 9, 873

Laws of foreign countries, 9, 874

Penal statutes, 9, 875

Private rights, 9, 874

Quasi criminal liability, 9, 875

Relief in Equity, 9, 876

Exceptions to the principle, 9, 876

Full knowledge of facts, 9, 877

General rule, 9, 876

Where payment was equitable, 9, 878

The Roman law, 9, 874

Payment equitable though not enforceable at law, 9, 878

ILL, 9, 878

ILLEGAL, 9, 879

ILLEGAL CONTRACTS, 9, 879

See **BRIBERY**; **CHAMPERTY AND MAINTENANCE**; **COMPOUNDING OFFENSES**; **FORESTALLING THE MARKET**; **GAMBLING CONTRACTS**; **ILLEGAL SALES**; **INTOXICATING LIQUORS**; **LICENSES**; **LOTTERIES**; **RESTRAINT OF TRADE**; **REWARDS**; **TRADE COMBINATIONS AND CORPORATE TRUSTS**; **SUNDAY**.

Agent's duty in regard to his principal's property, 1, 370

Agreement

Illegal by its connection with unlawful purposes, 3, 888

Not to bid at public auction, 8, 646

Specifying competition in bids, 29, 868

Which is partly legal and partly illegal, 3, 887

Assumpsit

To recover money paid under rescinded contract, 1, 887

Bills and Notes 4, 657

Given in restraint of trade, 2, 367

In consideration of gambling, 2, 368

In consideration of marriage, 2, 367; 4, 960

In contravention of statute, 2, 368, 369

Bonds, 2, 463

Condition of a bond unlawful, 3, 889

Given for money won at play, 2, 454

Given in consideration of future fornication, 2, 454

Given in consideration of past fornication, 2, 454

Given in restraint of trade, 2, 455

Given to public officers, 2, 454

Bribing public officer, 2, 454, 531

Broker's illegal contract, 2, 573

Broker's right to commissions when employed in illegal transactions, 2, 590

Building Contracts

In violation of law, 29, 955

Burden of proof, 2, 650

Choses in Action

Illegal assignment of, 3, 237

Combination in Restraint of Trade, 9, 895

Auctions, 9, 897

Character of combination, 9, 895

Combination to affect prices, 9, 895

Combination to put stock up or down, 9, 896

Corners, 9, 896

Differences, 9, 897

General rule, 9, 895

Margins, 9, 897

Stocks, 9, 896

Compounding a Felony, 2, 366; 3, 401, 402, 879; 4, 657-659; 7, 711

Agreement to use influence, 4, 658

Composition of private misdemeanor, 2, 667

Compromising bastardy suit, 4, 658

Note after conviction on suggestion by court, 4, 657

Permitting reference, 4, 658

Power of individuals to compromise offenses, 4, 658

Speaking to prosecutor, 4, 658

Confederate Money, 15, 706

Burden of proof that bank notes were issued to aid in rebellion, 15, 707

Considered as foreign currency, 15, 706

Contract payable in dollars, 15, 706

Duress, 15, 707

Fraud, 15, 707

Payment to co-executor, 15, 706

Right of agent, 15, 706

Sale of lands, 15, 707

Transactions generally sustained, 15, 707

Unwillingness to receive currency, 15, 707

Validity of contract, 15, 706

Whether federal question is necessarily involved, 15, 707

Conflict of Laws

Contracts which are immoral, 3, 558

Consideration

Mortgages, 15, 762

Effect, 15, 762

Examples, 15, 762

Executor to evade payment of taxes, 15, 762

Void as against public policy, 15, 762

ILLEGAL CONTRACTS—Cont'd

Consideration—Cont'd

Suretyship, 24, 733

Which is partly legal and partly illegal, 3, 886

Construction, 9, 881

Constructive Trusts

To seduce from official duty, 9, 908

Contemplating injury to third persons, 3, 870

Contracts Against Public Policy, 3, 875

Contracts payable in confederate money, see **MONEY**.

See *infra*, **CONFEDERATE MONEY**.

Agreement for collusive conduct of a divorce suit, 3, 880

Agreements to pay for services in procuring discharge from army, 3, 877

An agreement to contravene laws of a foreign country, 3, 876

Contract affecting full and impartial course of justice in civil courts, 3, 879

Contract by a railroad company not to establish a station, 3, 878

Contract that one may adopt and ratify his forged signature, 3, 880

Contract to pay for services in procuring a contract from the government, 3, 878

Sale of a public office, 3, 878

To abandon proceedings for establishment of a public highway, 3, 881

Trading with an enemy, 3, 875

Contracts in Consideration of Marriage, 2, 367; 4, 960

Specific performance, 22, 1016

Contracts in Fraud of Marriage, 3, 879

Husband's antenuptial conveyance, 5, 912

Contracts Relative to Future Damages

Carriers exempting themselves for liability in carrying goods, 9, 913

General principle as to party exempting himself by contract for liability as to future damages, 9, 913

Contracts to defraud, 9, 883

Contracts to defraud government, 9, 883

Contracts to do inhibited business, void, 9, 882

Contracts to impose upon public, 9, 883

Contracts to sell but not deliver, 9, 896

Contracts to violate a statute, 9, 883

Contracts under seal, 3, 828

Contrary to statute, 3, 872

Corporation partnerships, 9, 912

Definition, 9, 880

Divorce, 9, 920

Effect of repeal, new law, and new contract, 9, 881

Effort of father to relieve himself of children, 9, 921

Elections, 6, 445

See *infra*, **PUBLIC OFFICERS**.

Contract to pair off, 6, 445

Contract to use money unlawfully, 6, 445

Disguised wagers, 6, 446

Wagers, 6, 446

What contracts are void, 6, 445

Executed illegal contract, 9, 882

False Pretenses

Compounding offenses, 7, 711

Representations inducing a party to enter into a transaction which would have been illegal, 7, 710

Foreign contract valid where made, but invalid where sought to be enforced, 3, 506

Fraudulent Conveyances

Illegal consideration, 3, 760

Future illicit cohabitation as a consideration, 2, 454; 3, 874

Garnishment, 8, 1191

General rule as to validity, 11, 510

Good inseparable from bad in illegal contracts, 9, 881

If illegal where made, illegal everywhere, 3, 553

Ignorance no excuse, 9, 881

Illegality as a defense to foreclosure of mortgage proceedings, 8, 230

Illegal objects, in general, 9, 882

Illicit cohabitation as consideration, 2, 454; 3, 828, 874; 9, 222

Immoral consideration, 3, 874, 875

Immoral Contracts, 9, 921

Agreement upon separation, 3, 875

Contracts to induce illicit intercourse, 9, 922

Future illicit cohabitation, 2, 454; 3, 874; 9, 222, 922

Object to induce immorality, 9, 921

Promise of marriage, 9, 921

Rent of house for immoral purpose, 9, 922

Imposition of a penalty upon a transaction as a prohibition, 3, 872

Indemnity against expense of highways, 10, 408

Indemnity Contracts, 3, 878; 10, 405

A policy of reinsurance, 10, 407

Assault, 10, 405

Breach of trust, 10, 407

Fraud, 10, 407

Guarantee policy, 10, 407

Statutory prohibitions, 10, 406

Support of pauper, 10, 407

When the act is not known to be unlawful, 10, 406

Indemnity for trespass, 10, 407

Insurance against drafts, 15, 406

Intent of parties, 9, 881

License, 13, 516

Lobbying Contracts, 3, 878; 9, 898

Agreements to control government actions, 9, 900

Agreement to convey land, 9, 900

Agreement with an agent, 1, 370

Circumstances of sale, 9, 900

Compensation dependent on success, 9, 902

- Contingent consideration for lobbying, 9, 902
- Contingent Fees**
 - Distinction between contingent fee and interest of attorney in judgment itself, 9, 906
 - Held lawful, 9, 906
 - Held unlawful, 9, 906
 - Privilege awarded by corporations, 9, 907
 - Town paying lobbyist, 9, 907
- Evil tendency, 9, 899
- General rule, 9, 900
- Legal Services Before a Legislative Body,** 9, 904
 - Contingent fee, 9, 906
 - Distinction between right and wrong services, 9, 905
 - Influence, 9, 905
 - Rule as to proper services, 9, 904
 - What are legal professional services before legislative bodies, 9, 904
- Legal Services, Contingent Fee**
 - Contingent fee held lawful, 9, 906
 - Contingent fee held unlawful, 9, 906
 - Distinction between contingent fee and interest of attorney in judgment itself, 9, 906
 - Privilege awarded by corporation, 9, 907
 - Town paying lobbyist, 9, 907
- Log rolling, 9, 901, 903
- Mere persuasion, 9, 899
- Nullity of contract to control legislation, 9, 898
- Pay for influence, 9, 899
- Personal solicitation, 9, 898
- Presumptive Guilt and Illegality,** 9, 902
 - Burden of proof, 9, 903
 - Effect of statute implication, 9, 902
 - Interested claimants, 9, 903
 - Personal claim, 9, 903
 - Professional services, 9, 904
 - Statute implication, 9, 902
- Marine Insurance,** 14, 374
 - Custom acts, 14, 374
 - Examples, 14, 374, 375
 - Intention to violate the law, 14, 374
 - Voyage forbidden by law of underwriter's company, 14, 374
 - What avoids the policy, 14, 374
- Marriage brokerage, 2, 598; 8, 646; 9, 919
- Master and Servant,** 14, 785
 - Immoral contracts, 14, 787
 - Labor on house to be used for gambling, 14, 786
 - Labor on object of illegal character, 14, 786
 - Law governing contracts, 14, 786
 - One of several considerations illegal, 14, 786
 - Requirement of licenses, 14, 785
- Money loaned to be used in an unlawful manner, 3, 888
- Mortgage given to compound a felony void, 4, 657
- Mortgages, 15, 762
- No compensation can be recovered for illegal service, 1, 397
- Note given to satisfy prosecution, 4, 657
- Obstruction of Justice,** 9, 907
 - Absolutely inhibited by statute, 9, 909
 - Causing officers to violate duty, 9, 908
 - Contract to avoid bankruptcy law, 9, 909
 - Contract to violate statute, 9, 909
 - Contract violating spirit of statute, 9, 910
 - Exceptance to civil proceedings, 9, 908
- Party to Illegal Contract,** 9, 910
 - Agreement to pay for creditors, 9, 912
 - Conspiracy by agent and another to defraud principal, 9, 912
 - Conspiring together with object of defrauding creditors, 9, 911
 - Contract to sell for purpose of defrauding creditors, 9, 911
 - Knowledge of vendor as to illegal purpose of purchaser, 9, 910
 - Obtaining goods under false pretenses, 9, 911
 - Purchaser innocent but seller guilty, 9, 911
 - When one of parties has unlawful purpose in view, 9, 910
- Question of penalty, 9, 909
- Transfer of government contracts, 9, 909
- Whether illegality depends upon penalty, 9, 909
- Whether legislative act can cure illegality, 9, 910
- Pardon**
 - Contract to procure, 17, 331
- Parent and Child**
 - Contracts Transferring Parental Right,** 17, 373
 - Agreement with the mother, 17, 374
 - Contracts against public policy, 17, 373
 - Court refusing to restore custody to parent, 17, 374
 - Examples, 17, 373-378
 - Interest of child, 17, 374
 - Interference by court, 17, 373
 - Mother transferring her rights to the father, 17, 374
 - Parent losing control through no fault of his own, 17, 378
 - Parent's right, 17, 373
 - Relinquishment of right, 17, 375
 - When contract will be enforced, 17, 375-378
 - Whether breach of contract is actionable, 17, 374
 - Whether contract bars parent from regaining custody, 17, 373
- Parol evidence, 17, 438
- Partnership,** 17, 891
 - Accounting and settlement, 17, 894
 - Account of profits realized from illegal business, 3, 869
 - Acts contrary to public policy, 17, 891, 892

ILLEGAL CONTRACTS—Cont'd

Partnership—Cont'd

Balance due, 17, 894
 Disqualification of a member, 17, 891
 Executorship, 17, 894
 Express promise to pay balance, 17, 894
 Gambling establishment, 17, 892
 In general, 17, 891
 Liability, 17, 1065
 Liability of third persons, 17, 891
 Partly legal and partly illegal, 17, 893, 894
 Presumption, 17, 891
 Public officers, 17, 890, 894
 Recovery back of unexpended balance, 17, 894

Reinvestment of profits, 17, 894
 Restraint of trade, 17, 892
 Rights of partners to assets, 17, 892
 Rights of third parties, 17, 891, 893

Sale of Good Will with Agreement Not to

Compete, 17, 1193
 Acting as agent or manager, 17, 1194
 In general, 17, 1193
 Injunction, 17, 1195
 Remedy for breach, 17, 1195
 Time restriction, 17, 1193
 Validity, 17, 1193
 What is violation, 17, 1194

Stifling competition, 17, 892
 Subsequent enterprises, 17, 894
 Trusts, 17, 894
 Whether courts will lend their aid, 17, 893, 894

Whether object must be legal, 17, 891
Past illicit cohabitation as a consideration, 3, 874

Pleading

Plea that a bond was given in consideration of agreement to compound an offense, 3, 404

Powers, 18, 914

Prohibited marriages, 3, 873

Public lands, 19, 329

Public Officers, 2, 466*t*, 466*z*; 3, 877; 9, 914; 19, 505

Contracts Affecting Compensation of

Public Officers, 2, 534; 9, 914
 Agreements that fees shall be divided between officer and his deputy, 9, 915
 Appointment of office, 9, 915
 Consular influence, 9, 915
 Contract delegation of official duty, 9, 914
 Contracts to accept less fee, 9, 914
 Contract to pay for personal influence, 9, 915
 Officer's fees, 9, 914
 Official favoritism, 9, 915

Contracts to Secure Election or Appointment, 19, 445

See infra, **ELECTIONS**.

Action upon contracts, 19, 447
 Agreements to aid in procuring appointment, 19, 446

Agreement to appoint, 19, 446
 Agreement to procure appointment, 19, 446

At common law, 19, 445
 Consideration contingent upon success, 19, 446

Contracts based upon sales, 19, 447
 Contracts in which sale is a consideration, 19, 447

In absence of statute, 19, 445
 Officer making a deputation, 19, 448
 Officer promising fees to deputy, 19, 448

Promises to use personal influence, 19, 446

Recovery of money paid or services rendered, 19, 447

Right of appointing officer to barter or sell, 19, 445, 446

Services devoted to advertising, 19, 448

Validity, 19, 445

Where no improper means are used, 19, 446, 447

Examples, 19, 445-448

In general, 19, 445

Neglect of duty, 2, 366

Sale as a criminal offense, 19, 505

To obtain public office, 2, 366

Public policy explained, 9, 880

Railroads

Contract to exclude other railroads, 19, 858

Location, 19, 837

Renting building with knowledge that it is to be used for unlawful purposes, 3, 888

Repeal of statute which invalidated contract, 2, 369

Rescission, 21, 41

Illegality in one of the parties only, 21, 41

In general, 21, 41

Of contract of sale or lease where vendor discovers that property is to be used for illegal purposes, 3, 888

One party less guilty than the other, 21, 41

Sale, 21, 55

When equity will grant relief, 21, 41

Restraint of Marriage, 8, 646; 9, 918; 14, 473

Annuity as, 1, 596

Conditions, 14, 474

Conditions against particular marriage, 14, 476

Conditions in deed, 13, 778

Conditions in general, 14, 476

Conditions subsequent, 14, 476

Conditions subsequent as to person, 14, 477

Conditions in Wills, 29, 476

As to Personal Property, 29, 477

Conditions Precedent, 29, 479

Consent to marriage, 29, 479

Marriage with a particular person, 29, 479

- Not to marry under a certain age, 29, 479
- Conditions subsequent, 29, 477
- Examples, 29, 477-481
- General restraint, 29, 477
- Marriage at a particular age, 29, 478
- Marriage with a particular person, 29, 478
- Marriage without consent, 29, 478
- Necessity of a gift over, 29, 478
- Partial restraint, 29, 478
- As to Real Property**, 29, 476
 - Examples, 29, 476, 477
 - General restraint, 29, 477
 - Reasonable restraint, 29, 476
- Legacies charged on land, 29, 481
- Legacies charged on proceeds of converted land, 29, 481
- Performance**, 29, 482
 - Consent of several persons, 29, 482
 - Consent of survivors, 29, 482, 483
 - Second marriage, 29, 483
 - Subsequent approbation, 29, 483
 - Testator's consent, 29, 483
- Restraints upon second marriage of widows and widowers, 29, 481
- Restriction in the form of a limitation, 29, 480
- Waiver, 29, 482
- Effect, 14, 474
- First or second marriage, 14, 478
- Illegality of marriage, 14, 476
- Limitations, 14, 474
- Limitations as distinguished from condition, 14, 475
- Man or woman, 14, 478
- Provision to provide for grantee until marriage, 14, 477
- Validity, 14, 474
- Validity of condition precedent, 14, 477
- Restraint of Trade**, see **RESTRAINT OF TRADE**.
- Partnership, 17, 892
- Sale of Good Will with Agreement Not to Compete**, 17, 1193
 - Action as agent or manager, 17, 1194
 - In general, 17, 1193
 - Injunction, 17, 1195
 - Remedy for breach, 17, 1195
 - Time restriction, 17, 1193
 - Validity, 17, 1193
 - What is violation, 17, 1194
- Specific performance, 22, 1015
- Revenue laws, 21, 337
- Rewards, 21, 403
- Sale in a state where it is lawful when vendor knows that goods are to be resold in a state where it is unlawful, 3, 888
- Sale of goods to another whom vendor knows intends to devote them to an illegal object, 3, 887
- Sale of private personal influence, 9, 916
- Securities for payment of money under, 3, 889
- Set-Off**, 22, 269
 - Demand partly legal and partly illegal, 22, 269
- Specific Performance**
 - Breach of trust, 22, 1016
 - Champertous agreements, 22, 1014
 - Enforcement in equity, 22, 1014
 - Examples, 22, 1014
 - In consideration of marriage, 22, 1016
 - Public policy, 22, 1015
 - Restraint of trade, 22, 1015
 - Stock in national bank, 22, 1016
 - Ultra vires, 22, 1014
 - Unlawful contracts, 22, 1016
 - Usurious agreements, 22, 1014
 - Void contract, 22, 1014
- Stations (Railroad)**, 23, 120
 - Contracts designed to influence location of stations, 23, 120
 - Contracts providing that no other station shall be located near, 23, 120
 - Contracts with officer of railroad, 23, 120
 - Examples, 23, 120, 121
 - In general, 23, 120
- Statutes imposing penalty, 3, 272
- Subject-matter of contract forbidden by positive law, 3, 869
- Subsequent statute validating, 3, 761
- Suppression of Evidence**, 24, 707
 - Contract to keep witness out of the way, 24, 709
 - In general, 24, 707-709
 - Validity, 24, 707
 - Withdrawing prosecution for perjury, 24, 708
- Telegraphs and Telephones**
 - Immoral Messages**, 25, 812
 - Duty of the company, 25, 812
 - Gambling transactions, 25, 812, 813
 - Indecent telegraph or telephone messages, 25, 813
 - In general, 25, 812
 - Ultra vires, 27, 376, 383
 - Violation of legal ethics, 9, 884
- Voting Contract**, 9, 916
 - Vote of stock*, see **STOCK HOLDERS**.
 - Agreement to pair off, 9, 916
 - Examples, 9, 917
 - Sale of personal influence, 9, 916
- Wagering Contracts**
 - Broker's Right to Compensation**
 - Selling stocks upon margins, 2, 573
 - What is forbidden to be done directly cannot be done indirectly, 3, 872
 - What law governs where contract is forbidden by both law of contract and law of place of performance, 3, 547
 - When immediate object of agreement is unlawful, 3, 887
 - Where intention of parties is unlawful but immediate object or consideration of agreement is not so, 3, 887
 - Where statute forbids an agreement but directs that it shall not be void, 3, 873

ILLEGAL CONTRACTS—*Cont'd*

- Whether Contracts, 3, 873
- Contract of bargain and sale where there is no intention of a delivery of property, 3, 873
- Generally, 3, 873
- Stock Gambling, 3, 873
- See GAMBLING CONTRACTS; STOCK BROKERS; STOCK EXCHANGE.
- Where either party intends bona fide to perform the agreement, 3, 874
- Which invite the commission of a crime, 3, 870
- With alien enemies, 2, 365

ILLEGAL IMPRISONMENT, see ARREST; FALSE IMPRISONMENT; HABEAS CORPUS; IMPRISONMENT.

ILLEGALLY, 27, 696

ILLEGAL SALES, 9, 923

- See GAMBLING CONTRACTS; INTOXICATING LIQUORS; SUNDAY.
- Effect of illegality in sales, 9, 923
- Furtherance of Buyer's Unlawful Purpose, 9, 923
- Insufficiency of mere knowledge, 9, 924
- Restriction upon requirement of more than knowledge, 9, 924
- In general, 9, 923
- Sale for unlawful use in another state, 9, 924
- Sale in violation of statutes, 9, 928
- Sale of fertilizer, 9, 930
- Sales Against Public Policy, 9, 926
- Contract to purchase soldiers' land scrip, 9, 926
- Gold sales, 9, 926
- Stock sales, 9, 926

Sales Illegal at Common Law, 9, 926

- Dangerous articles, 9, 926
- Immoral objects, 9, 926
- In general, 9, 826
- Sales for purposes adverse to the government, 9, 926
- Various classes, 9, 926
- Seller's knowledge of buyer's unlawful purpose, 9, 924
- Trading with the enemy, 11, 361
- Want of Knowledge
- Furtherance of buyer's unlawful purpose, 9, 924

ILLEGITIMACY

- Mistake, 15, 679

ILLEGITIMATE CHILDREN, 9, 930

- See BASTARDY; LEGITIMACY.

ILL FAME, see DISORDERLY HOUSE.

ILLICIT INTERCOURSE, see LEWD AND LASCIVIOUS COHABITATION AND CONDUCT.

ILLNESS

- Severe illness, 22, 492

IMBECILE, see INSANE.

IMBECILITY, 9, 931

- Corporeal imbecility, 4, 183; 9, 931

IMITATION

- Obvious imitation, 17, 27

IMMATERIAL AVERMENT, 9, 931

IMMEDIATE, 26, 700

- Distinguished from consequential, 26, 700
- Immediate danger, 9, 933
- Immediate delivery, 9, 933
- Immediate descendants, 9, 935
- Immediate descent, 9, 935
- Immediate notice, 9, 933
- Immediate payment, 9, 933
- Immediate pursuit, 9, 933
- In insurance policy, 7, 1049

IMMEDIATELY, 9, 931; 21, 534

- Immediately after judgment, 9, 932
- Immediately apprehended, 9, 932
- Immediately entered judgment, 12, 466
- Immediately joining owners, 9, 934
- In insurance policies, 7, 1049
- Judgment rendered immediately, 12, 468

IMMIGRANTS

- Commissioner's fees, 9, 937
- Constitutionality of the head money provision, 9, 937
- Habeas corpus, 9, 937
- Immigrant fund, 9, 937
- State commissioners, 9, 937

IMMIGRATION, 9, 936

- Aliens Under Contract to Labor, 9, 938
- Amended statute, 9, 939
- Domestic servants, 9, 940
- Exceptions, 9, 939
- Penalty, 9, 938
- Power of commissioners and collectors, 9, 940
- Statutory inhibition, 9, 938
- Chinese laborers, 9, 941
- Congress's power over, 3, 703
- Constitutional rights, 9, 936
- Definition, 9, 936
- Duty on passengers, 9, 936
- Regulation of, 9, 936
- Return of convicts, 9, 936
- Statutory provisions, 9, 936

IMMINENT

- Imminent danger, 9, 596

IMMORAL CONTRACTS, see ILLEGAL CONTRACTS.

IMMUNITIES, 3, 253

IMPAIRING CONTRACTS, see CONSTITUTIONAL LAW.

IMPANEL, 9, 950

IMPARLANCE, see PLEADING.

IMPEACH, 9, 951

IMPEACHMENT, 9, 951

- Witnesses, see WITNESSES.
- By what authority to impeach, 9, 955
- By Whom, 9, 958
- Definition, 9, 951
- Design of impeachment in United States, 9, 954
- "High crimes and misdemeanors," 9, 361
- How and in What Manner Tried, 9, 956
- In England, 9, 956
- Trial of Warren Hastings, 9, 957
- Trial of Wm. Blunt, senator, 9, 957

Impeachment

Of Andrew Johnson, 9, 954
What impeachable in England, 9, 952

In England, 9, 952

Judge, 9, 959; 12, 32

Of judges for abuse of power of punishing for contempt, 3, 801

Proceedings, 9, 952, 956

Sentence of, 9, 959

Sentence of court of, 9, 959

What Crimes Are Punishable by, 9, 952

Design of impeachment in United States, 9, 954

High crimes and misdemeanors, 9, 952

Impeachment in England, 9, 953

Impeachment of Andrew Johnson, 9, 954

Particeps criminis in treason, 9, 952

Rebellion, 9, 952

Treason, 9, 952

When convicted for high crimes and misdemeanors, 9, 952

What Is Required to Impeach, 9, 958

Constitution of United States, 9, 958

Whether a crime impeachable must violate a positive law, 9, 958

IMPEDE, 9, 959

IMPEDIMENT, 9, 959

Manifest impediment, 14, 251

IMPERTINENCE, see SCANDAL AND IMPERTINENCE.

Necessity of answering scandalous allegations, 1, 600

IMPLEAD, 9, 960

IMPLEMENTS, 9, 960

Gaming implements, see GAMING HOUSES.

Exemption from execution, 7, 136

Farming implements and utensils, 7, 812

Impliments of husbandry, 9, 851

IMPLICATION

Necessary implication, 16, 373

IMPLIED CONTRACT, see CONTRACTS.

Master and Servant, 14, 767

Acceptance of services, 14, 770

Compulsory service, 14, 770

Generally, 14, 767

Gratuitous services, 14, 768

Members of a Family, 14, 768

Brother and sister, 14, 769

Grandparents and grandchildren, 14, 768

In general, 14, 768

Stepchildren, 14, 768

Stepfather, 14, 769

Stepmother, 14, 768

Presumption, 14, 768

Services with a view to a legacy, 14, 770

Termination of contract and continuation in service, 14, 770

Unsolicited services, 14, 770

IMPLIED COVENANTS, 9, 960; 12, 686
See DEEDS; LEASES; REAL COVENANTS.

Annuities, 9, 966

Breach and remedy, 9, 968

Definition, 9, 960

Distinguished from expressed, 9, 960

Effect and Duration, 9, 966

Estoppel, 9, 967

Modified by express covenants, 9, 967

Exchanges

Warranty and condition of re-entry, 9, 965

History, 9, 961

In exchanges, 9, 965

Landlord, 9, 968

Landlord and Tenant

Examples, 12, 686

In general, 12, 686

Repairs, 12, 688

Leases, 9, 964

See LEASES.

Assignment of, 9, 965

Lease by parol, 9, 964

Power to demise, 9, 964

Premises fit for occupancy, 9, 964

Quiet enjoyment, 9, 964

Rent, 9, 964

Scope, 9, 964

To use in tenant-like manner, 9, 965

Partition, 9, 966

Real Covenants

Estoppel, 19, 1024

Tenant, 9, 968

What Covenants Are Implied and When, 9, 962

Implied covenants of power, 9, 964

In deeds of conveyance, 9, 962

In executory agreements to convey, 9, 963

In United States, 9, 962

Under and subject to, 9, 963

IMPLIED TRUSTS, 1, 1; 27, 6

See generally, TRUSTS AND TRUSTEES.

Constructive Trusts, 10, 4

Constructive trusts of first class, 10, 61

Laches, 10, 84

Limitation, 10, 84

Constructive Trusts of First Class, see also *infra*, RESULTING TRUSTS OF SECOND CLASS.

Actual fraud, 10, 61

Arising from Conveyance or Devise Obtained by Fraud, 10, 63

Deed obtained by fraud, 10, 63

Devise obtained by fraud, 10, 65

False assertion made ignorantly, 10, 66

General rule, 10, 63

Legacy obtained by fraud, 10, 64

Other examples, 10, 65

Setting aside deed, 10, 66

Trusts must arise from fraud, 10, 66

Wills or deed fraudulently destroyed, 10, 65

Arising from Fraudulent Representation of Purchaser that He Is Purchasing for Another, 10, 66

Competition is prevented by fraudulent agreement, 10, 68

IMPLIED TRUSTS—Cont'd**Constructive Trusts of First Class—Cont'd****Arising from Fraudulent Representation of Purchaser that He Is Purchasing for Another—Cont'd**

Fraudulently keeping parties from attending sale, 10, 68

Fraudulent misrepresentations, 10, 69

General rule, 10, 66

Mortgagee's sale, 10, 68

Necessity of fraud, 10, 69

Necessity of fraud in transactions, 10, 67

Secures property at lower cost, 10, 66

Arising from Keeping Back Valuable Information, 10, 69

Fiduciary relation, 10, 69

General rule, 10, 69

Where there is no fiduciary relation, 10, 69

Arising from Wrongful Appropriation or Conveyance Into Different Form of the Property of Another, 10, 62

Property sold to bona fide purchaser, 10, 63

Where direct fiduciary relation must exist, 10, 63

Legal title obtained by fraud, 10, 61

When they arise, 10, 61

Wrongful conversion of trust funds into other property, 10, 62

Constructive Trusts of the Second Class, 10, 70

Actual fraud not necessary, 10, 70

Arising from Acquisition of Trust Property by a Purchaser with a Notice, or a Volunteer, 10, 70

See also *infra*, **RESULTING TRUSTS OF SECOND CLASS.**

Cestui que trust following property, 10, 72

Consideration, 10, 72

Constructive notice, 10, 70

Implied trust, 10, 70

Personal property, 10, 71

Real property, 10, 70

Trustee, 10, 73

When property has passed to bona fide holder, 10, 73

Where property is come into the hands of heir, devisee, or legatee, 10, 72

Arising from constructive fraud, 10, 70

Arising from Wrongful Acquisition of Trust Property by Trustee or Other Fiduciary, 10, 73

Administrators, 10, 74

Agents, 10, 75

Attorney and client, 10, 74

Directors, 10, 76

Election, 10, 78

Executors, 10, 74

Fiduciaries in general, 10, 76

Fiduciary takes advantage of relation and acquires title to property, 10, 73

General rule, 10, 73

Guardians, 10, 74

Husband as agent for wife, 10, 76

Parol evidence to establish, 10, 78

Persons to whom the rule extends, 10, 74

Promoters of corporations, 10, 76

Trustee, 10, 74

Trustee accepts gift from beneficiary, 10, 79

Trustee buying from fiduciary, 10, 79

Trustee makes profit out of trust estate, 10, 78

Trustee takes up incumbrances on estate, 10, 79

Where no trust is raised, 10, 78

Where there is no confidential relation, 10, 78

Distinguished from constructive trust of first class, 10, 70

Constructive Trusts of Third Class

As to what constitutes mistake, see MISTAKE.

Exception to rule, 10, 83

From the Renewal of Leases by Fiduciary, 10, 80

General rule, 10, 80

Purchase by trustee, 10, 83

Parol evidence, 10, 84

Purchase by trustee, 10, 83

Right of attorney of law to purchase land, who has been consulted professionally respecting the title, 10, 83

When They Arise, 10, 79

Conveyance made through mistake, 10, 80

Definition, 10, 79

Necessity of presence of fraud, 10, 79

Definition, 6, 715; 10, 2

Constructive trusts, 10, 4

Of constructive trusts, 3, 764; 6, 715

Resulting trusts, 10, 4

Destruction of will by administrator, 13, 142

Division, 10, 2

Frauds, statute of, 27, 50

Illegality

Aliens, 10, 55

Involuntary trusts, 10, 4

Limitation of Actions, 13, 684; 27, 101

General rule does not apply, 13, 684

Instances, 13, 685

Lost wills, 13, 1142

Parol Evidence

See *infra*, **RESULTING TRUSTS OF FIRST CLASS.**

Constructive trusts, 10, 78, 84

Resulting Trusts of Fourth Class, 10, 59

When there is no payment of purchase-money by cestui que trust, 10, 30

To Establish Trust, 17, 446

Active or express trusts, 17, 446

- Admissibility of evidence, 17, 446
- After grantee's death, 17, 446
- Constructive trusts, 10, 78, 84
- Perpetuities, 18, 354
- Purchase by persons in fiduciary capacity, see infra, RESULTING TRUSTS OF SECOND CLASS.*
- Resulting Trusts, 10, 4**
 - Definition, 6, 715; 10, 4
 - Election**
 - Election by wife, 10, 48
 - Guardian and ward, 9, 148
 - Husband and Wife, 14, 580**
 - When Husband Buys with His Own Money in His Wife's Name, 14, 581
 - Enforcement, 14, 582
 - Purchase by married woman in her own name, 14, 582
 - Purchase with money of both in name of one, 14, 582
 - When Husband Buys with Wife's Money in His Own Name, 10, 44; 14, 580
 - Bona fide assignee of husband, 14, 581
 - Burden of proof, 14, 581
 - Different intention on wife's part, 14, 580
 - General rule, 14, 580
 - Husband's creditors, 14, 581
 - Wife's knowledge and consent, 14, 581
 - Patent law, 18, 137
 - Railroads, 19, 850
- Resulting Trusts of First Class, 10, 5**
 - See ADVANCEMENTS; EQUITABLE CONVERSION AND RECONVERSION.*
 - Advancements, 10, 18**
 - Burden of proof, 10, 24
 - Character impressed by original transaction, 10, 24
 - Extension of doctrine, 10, 21
 - Extent of trusts when transaction is in fraud of creditors, 10, 23
 - Father purchasing property in name of son and daughter, 10, 21
 - General rule, 10, 18
 - Illegitimate children, 10, 19
 - Land purchased with community property, 10, 20
 - Legal wife, 10, 20
 - Payment of part of purchase-money, 10, 18
 - Presumption of advancement may be rebutted, 10, 24
 - Purchase**
 - By any one standing in loco parentis, 10, 22
 - By brother in name of another brother, 10, 22
 - By father in name of son-in-law, 10, 21
 - By grandfather in name of grandchild, 10, 22
 - By husband in name of wife and stranger, 10, 21
 - By son in name of father, 10, 19
 - By uncle in name of nephew, 10, 22
 - Of father in name of son and stranger, 10, 21
 - Of husband in name of wife, 10, 19
 - With property of wife, title in husband, 10, 21
 - Slaves, 10, 23
 - Stocks, 10, 22
 - Transaction will not be construed as advancement if in fraud of creditors, 10, 23
 - What evidence admissible to rebut presumption, 10, 25
 - What evidence sufficient to rebut the presumption, 10, 24
 - When doctrine extends to personal property, 10, 22
 - When father takes title in name of child, 10, 18
 - When title is taken in name of daughter, 10, 19
 - When title is taken in name of several children, 10, 19
 - Where son is a minor, 10, 18
 - Where title is taken in name of son and stranger, 10, 19
 - Where trust will arise between husband and wife, 10, 20
- Agent paying out of own funds, 10, 11
- Application of funds to satisfy unpaid purchase-money, 10, 9
- Burden of proof, 10, 29
- By Part Payment of Purchase-Money, 10, 15**
 - General rule, 10, 15
 - Joint purchase, title made out to one, 10, 15
 - The doctrine as to aliquot part in Maine, 10, 17
 - The doctrine as to aliquot part in Ohio, 10, 17
 - Where amount paid is uncertain, 10, 18
 - Whether payment must be made in aliquot part, 10, 16
- Consideration**
 - Anything of value as, 10, 10
 - Land as, 10, 10
 - Necessity that consideration should move directly from the cestui qui trust, 10, 11
 - Services as, 10, 9
 - Source of, 10, 11
 - What consideration will raise, 10, 9
- Effects of laches, 10, 34
- Evidence, 10, 29**
 - Character of, 10, 29
 - Clear, full, and satisfactory evidence required, 10, 29
 - Declaration of persons paying purchase-money, 10, 30
 - Declaration or admission of nominal grantee, 10, 30
 - Facts from which the law will imply a trust, 10, 31

IMPLIED TRUSTS—Cont'd**Resulting Trusts of First Class—Cont'd****Evidence—Cont'd**

Proof that nominal purchaser had not the means to make purchase, 10, 31

What evidence admissible, 10, 30

What evidence inadmissible, 10, 31

What evidence is insufficient, 10, 32

What evidence is sufficient, 10, 32

What must be in evidence, 10, 30

Foundation of, 10, 11

Intention of parties, 10, 12

Mere violation of parol agreement, 10, 12

Parol Evidence Admissible to Establish or Rebut, 10, 26, 27

After death of nominal purchaser, 10, 28, 29

Answer of trustee, 10, 28

Contrary to consideration clause in deed, 10, 27, 28

Contrary to express trust declared in deed, 10, 29

Parol evidence, resulting trust, 10, 26

Rebuttal as to part, 10, 28

What is sufficient to rebut, 10, 28

Where there is no payment of purchase-money by cestui que trust, 10, 30

Presumption as to amounts paid being equal, 10, 18

Presumption as to the intention of parties, 10, 11

Purchase-money must actually have been paid, 10, 8

Purchase-money must be paid as part of original transaction, 10, 8

Purchase of stock, 10, 15

Recital in a deed that the purchase-money was paid by grantee, 10, 14

Time at which purchase-money must have been paid, 10, 8

Title in one, purchase-money paid by another, 10, 5

To what property applicable, 10, 14

What Evidence Sufficient

Parol evidence, 10, 28

What necessary to establish, 10, 8

What Will Not Raise Such a Trust, 10, 12

Advance of money to purchaser after purchase is completed, 10, 12

Declaration of intention, 10, 12

Fraudulent purpose, 10, 14

Instances, 10, 13

Intention of parties, 10, 12-14

Intention to evade the law, 10, 14

Intention to evade the law against aliens, 10, 14

Loan of money to make purchase, 10, 12

Mere violation of parol agreement, 10, 32

Parol agreement, 10, 12

Parol agreement that another should be interested in purchase, 10, 12

Parol agreement to buy at sheriff's sale and reconvey, 10, 12

Parol agreement to buy land on joint account, 10, 12

Parol agreement to hold land in trust, 10, 12

Payment when it is not the intention of either party that trust should arise, 10, 13

Transactions subsequent to time of conveyance, 10, 12

Use limited to grantee in a deed, 10, 14

Voluntary conveyance, 10, 12

Where funds cannot be traced distinctly to the land, 10, 12

Whether applicable to claim of property, 10, 15

Whether applicable to perishable property, 10, 15

Whether applicable to personal property, 10, 14

Whether Within Statute of Fraud, 10, 25

In Alabama, 10, 25

In Arkansas, 10, 25

In Colorado, 10, 25

In England, 10, 25

In Florida, 10, 25

In Georgia, 10, 25

In Idaho, 10, 25

In Illinois, 10, 25

In Indiana, 10, 25

In Iowa, 10, 25

In Kansas, 10, 25

In Maine, 10, 25

In Massachusetts, 10, 25

In Michigan, 10, 25

In Minnesota, 10, 25

In Mississippi, 10, 25

In Missouri, 10, 25

In Nebraska, 10, 25

In New Hampshire, 10, 25

In New Jersey, 10, 25

In New York, 10, 26

In Pennsylvania, 10, 26

In South Carolina, 10, 26

In Utah, 10, 25

In Vermont, 10, 26

In Wisconsin, 10, 26

Statute exemption, 10, 25

Statute existence merely declaratory, 10, 26

Resulting Trusts of Second Class, 10, 35

See also infra, CONSTRUCTIVE TRUSTS OF SECOND CLASS.

Application of rule to personal property, 10, 37

Bona fide purchaser without notice, 10, 50

Cestui que trust rights, 10, 45

Election, 10, 37-47

By ward upon attaining age, 10, 48

Purchase by fiduciary with trust funds, 10, 37-47

Time within which election may be made, 10, 48

- Evidence**, 10, 49
 Admission of nominal purchaser, 10, 49
 Certainty and clearness required, 10, 49
 Circumstantial evidence, 10, 50
 Means of nominal purchaser, 10, 50
 Recitals in deed, 10, 49
 Following trust funds, 10, 47
 General rule, 10, 35
 Lapse of time, 10, 50
 No imputation of fraud, 10, 37
 Notice, 10, 50
 Purchase by fiduciary with trust funds, 10, 35
 Time of payment, 10, 48
 Trustee incurring expenses about trust estate, 10, 51
 When the purchase is partly with trust funds, 10, 35
- Who Is Fiduciary Within the Rule**
 Administrators, 10, 40
 Agents, 10, 43
 Assignee with funds of his assignor, 10, 47
 Attorneys, 10, 43
 Committee or trustee of lunatic, 10, 42
 Directors of corporations, 10, 47
 Executors, 10, 39
 Father purchasing with funds of child, 10, 44
 Guardians, 10, 41
 Husband purchasing with wife's savings, 10, 44
 Husband purchasing with wife's separate property, 10, 44; 14, 580
 Mixing trust funds, 10, 39
 Mother purchasing with funds of child, 10, 44
 Partners, 10, 40
 Purchase made by trustee, 10, 37
 Purchase party with trust funds, 10, 39
 Resulting trusts do not arise when there is no fiduciary relation, 10, 38
 Stewards, 10, 44
 What is the fiduciary relation, 10, 38
 Where no trust results between husband and wife, 10, 46
- Resulting Trusts of Third Class**, 10, 51
 Declaration upon a particular trust which is not declared, 10, 52
 To whom the trusts result, 10, 54
 Trusts which are illegal, 10, 54
 Trusts which cannot be carried into effect, 10, 53, 54
 Trusts which have limitation, 10, 54
 Upon trusts to be granted hereafter and where no such declaration is made, 10, 53
 What is a sufficient declaration, 10, 52
 What the class includes, 10, 51, 52
 Where no trust is declared upon residue, 10, 53
- Where trust has failed, 10, 53
 Where trust is uncertain or indefinite, 10, 53
- Resulting Trusts of Fourth Class**, 10, 56
See FRAUDULENT CONVEYANCES; VOLUNTARY CONVEYANCES.
 Distinction between executory contracts and conveyances, 10, 57
 Evidence, 10, 59
 Failure of consideration, 10, 57
 Fraudulent trust good between parties, 10, 58
 Parol evidence to raise resulting trust, 10, 59
Secret Trusts, *see* SECRET TRUSTS.
 What requisite to establish, 10, 59
 Voluntary conveyance for illegal or fraudulent purposes, 10, 57
 Voluntary conveyance of husband to wife, 10, 56
 Want of consideration, 10, 56
 What the class embraces, 10, 56
 Where trusts will not be declared, 10, 57
 Whether trusts result merely from want of consideration, 10, 56
- Statute of frauds, 10, 25; 27, 50
- Statutory Provisions**, 10, 60
 Generally, 10, 60
 In California, 10, 60
 In Georgia, 10, 60
 In Indiana, 10, 60
- Title in one purchase-money paid by another*, *see infra*, RESULTING TRUSTS OF FIRST CLASS.
Voluntary conveyance, *see infra*, RESULTING TRUSTS OF FOURTH CLASS.
Where trusts fail, *see infra*, RESULTING TRUSTS OF THIRD CLASS.
- IMPLIED WARRANTY**, 10, 85
See HORSES; WARRANTY.
 Accounts, 10, 162
 Action for breach, 10, 173
Articles of Food, Provisions, etc., 10, 133, 152
 Civil liability for exposing unwholesome provisions for sale, 10, 159
 Criminal liability for exposing unsound goods for sale, 10, 159
 Damages for unwholesomeness, 10, 157, 158
 Dealer or middleman, 10, 157
 Food for animals, 10, 154-156
 Implied warranty in sale of, 10, 152
 In England, 10, 152
 In United States, 10, 153
 Liability of statute in England, 10, 153
 Presumption of knowledge of defects, 10, 158
 Purchasing food to be sold again, 10, 157
 Warranty of fitness or wholesomeness, 10, 154
 Where same warranty as to other articles applies, 10, 157
 Where vendor is not regular dealer, 10, 157

IMPLIED WARRANTY—Cont'd**Articles of Food, Provisions, etc.—Cont'd**

Whether articles of food are exceptions to general rule, 10, 153

Whether vendor is ignorant of unfitness, 10, 156

Assignment of patents, 18, 134

Assumpsit, 10, 173

As to existence of subject-matter of sale, 10, 116

Bank bills, 10, 164

Bills and notes, 10, 162

Bonds, 10, 164

Breach of condition precedent, 10, 104, 105

Building Contracts

Specifications, 29, 872

Bill of quantities, 29, 873

Conflict of authority, 29, 872

Defects in plans, 29, 873

Examples, 29, 872-875

In general, 29, 872

Representations, 29, 873

Burden of Proof

Fraud, 10, 134, 135

By Agent, 10, 96

Agent within scope of authority, 10, 96

Customary warranty by special agent, 10, 98

General agent, 10, 96

General authority to sell including authority to warrant, 10, 98

General rule, 10, 96

Sales by samples, 10, 97

Special agent expressly forbidden to warrant, 10, 100

Special agent with limited powers, 10, 96

Unusual or extraordinary warranty, 10, 101

Where custom is not to warrant, 10, 100

With secret instructions, 10, 97

Caveat Emptor, 10, 86

See FRAUD AND DECEIT.

After condition precedent has been complied with, 10, 104

Caveat venditor limitations, 10, 88

Collateral undertaking, 10, 86

Condition precedent, 10, 101

Limitations, 10, 89

Modification of definition, 10, 174

Official and judicial sales, 10, 111

Opposed to caveat venditor, 10, 88

Rule defined, 10, 86

Title, 10, 89

What the rule implies, 10, 86

When property sold is to be of a certain kind or species, 10, 102

Caveat Venditor, 10, 88

As to warranty of quality, 10, 90

Opposed to caveat emptor, 10, 88

Rule of Roman law, 10, 88

Sound price warranty of sound article, 10, 90

Title, 10, 89

Choses in action, 10, 162

Condition of implied warranties, 10, 117

Condition precedent, see *infra*, IDENTITY OF QUALITY, KIND, OR SPECIES.

Damages for Fraud, 10, 170

Breach of warranty in mitigation of damages, 10, 172

Difference between contract and market value, 10, 170

Examples, 10, 171

Failure of title, 10, 170

Failure to deliver, 10, 170

Prospective profits, 10, 172

Purchase price and interest, 10, 170

Remedies general, 10, 170

Special damage, 10, 171

Special price of article to vendee, 10, 171

Value of property at time vendee is deprived of possession, 10, 170

When goods are proved utterly worthless, 10, 171

Where article has been used in good faith, 10, 172

Where warranty of quality arises, 10, 172

Definition, 10, 85

Distinguished from Condition Precedent,

10, 101

Exceptions as to subject-matter of sale, 10, 116

Does a sound price imply sound quality, 10, 133

Drugs, 10, 159

Caveat emptor has no application, 10, 159

Examples, 10, 162-165

Executory and Executed Contracts, 10, 104

Acceptance as a waiver, 10, 105

As Effecting Implied Warranty**Of Quality**

Executory contracts, 10, 137

Fraud, 10, 137

Breach of a condition precedent resulting in raising an implied warranty, 10, 105

Definition of contract executed, 10, 104

Definition of contract executory, 10, 104

Executed sale, 10, 104

Executory sale, 10, 104

How effecting implied warranty, 10, 104

Ignorance of defects at time contract was executed, 10, 107

Implied warranty may exist in both kinds of contracts, 10, 107

Implied warranty of quality in executory contract, 10, 106

Quality, no implied warranty in executed contracts, 10, 107

Seller's failure to comply with a condition precedent, 10, 104

Warranty of fitness for particular purpose, 10, 149

- Whether there is implied warranty in executory contracts, 10, 126
- Express and implied warranty co-existing, 10, 151; 28, 742
- Express warranty excluding, 10, 109; 28, 742
- Express warranty of quality does not exclude implied warranty of title, 28, 743
- Fitness for Particular Purpose**, 10, 141, 143
- Article made in accordance with instructions of vendee, 10, 145
- Contract for manufactured articles, 10, 143
- Distinction between manufacturer and middleman, 10, 143
- Executed contract of sale, 10, 143
- Executed sale by manufacturer, 10, 144
- Latent Defects**, 10, 147; 12, 926
- Inherent in raw materials used, 10, 147
- Resulting from work of others, 10, 147
- Sales by samples, 10, 150
- Vendee not manufacturer and ignorant of defect, 10, 148
- Manufacturer selling his raw material to another manufacturer, 10, 146
- Manufacturer's warranty to middleman, 10, 144
- Middleman in America, 10, 149
- Middleman in England, 10, 149
- Sale by sample, 10, 167
- Sale of food intended for market, 10, 157
- Selection of specific article, 10, 146
- That manufacturer furnish goods of his own make, 10, 150
- When express warranty of quality is given, 10, 151
- Where different article is ordered for particular purpose, 10, 146
- Fraud and Deceit**, 10, 111
- Burden of proof, 10, 134, 135
- Deceit to put purchaser off guard, 10, 112
- Disguise, 10, 112
- Effect upon waiver, 10, 108, 109
- Estoppel, 10, 115
- Executed contracts, 10, 137
- False representations, 10, 112
- How far persons bound to communicate facts, 10, 113
- Necessity of intention to deceive, 10, 114
- Necessity of suggestio falsi, 10, 112
- Scienter, 10, 114
- Sound price on unsound article, 10, 134
- Suppression of truth, 10, 112
- Vendor offering goods for sale which do not belong to him, 10, 111
- When raise implied warranties, 10, 111
- Where duty to speak is raised, 10, 113
- General principles, 10, 115
- General summary, 10, 173
- Genuineness**, 10, 162
- Accounts, 10, 162
- Bank bills, 10, 164
- Bills and notes, 10, 162
- Bonds, 10, 164
- Choses in action, 10, 162
- Examples, 10, 162-165
- In general, 10, 162
- Money, 10, 164
- Shares of stock, 10, 165
- Trade-marks, 10, 165
- Horses*, see HORSES.
- Identity of Quality, Kind, or Species**, 10, 102, 160
- Acceptance when conditions precedent have not been complied with, 10, 160
- As to quantity, 10, 161
- Right to reject on failure to comply with condition precedent, 10, 160
- Judicial sale, 10, 111
- Latent Defects**, 10, 147; 12, 926
- Evidence concerning fraud, 12, 932
- Exceptions to general doctrine, 12, 927
- Executory contracts, 12, 929
- Fitness for particular purpose, 10, 167
- Fraudulent concealment of latent defects, 12, 931
- In general, 12, 926
- Manufacturer's warranty against, 12, 927
- Patent defects, 12, 929
- Remedy on divergence from description, 12, 930
- Sales by samples, 10, 150, 167
- Scienter, 12, 926
- Warranty by dealer, 12, 927
- Warranty of fitness as related to that against latent defects, 12, 928
- Lodgings and apartments, 13, 1012
- Logs and lumber, 13, 1027
- Manufacturer**
- Whether liable, 17, 519
- Marine Insurance**
- Diligence of carrier, 14, 372
- Goods, 14, 371
- Papers, 14, 371
- Seaworthiness**, 14, 366
- At beginning of voyage, 14, 369
- Burden of proof, 14, 371
- Effect of breach, 14, 366
- Failure to take pilot, 14, 371
- Neglect of master or crew, 14, 370
- Presumption, 14, 371
- Seaworthiness unknown, 14, 367
- Subsequent unseaworthiness, 14, 369, 370
- Time policy, 14, 367
- Vessel improperly built, 14, 368
- Vessel in harbor, 14, 368
- Vessel overloaded, 14, 238
- Voyage in different stages, 14, 368
- Voyage policy, 14, 368
- What the warranty requires, 14, 368
- When underwriters have approved vessel, 14, 367
- Where statute requires pilot, 14, 371

IMPLIED WARRANTY—Cont'd**"Merchantable,"** 15, 306

Absence of express warranty, 15, 308

Effect of express warranty, 15, 309

When warranty is implied, 10, 138, 139, 141; 15, 308

Mines and mining claims, 15, 579, 600

Modification of old rules, 10, 173

Money, 10, 164

More or less, 15, 719

Not Exception to Caveat Emptor, 10, 91

Extension of doctrine, 10, 94

Implied warranty not founded upon maxim of vendor, 10, 93, 94

Of Quality, 10, 127*See infra*, **FITNESS FOR PARTICULAR PURPOSE; ARTICLES OF FOOD, ETC.**

Articles of food, 10, 133, 152

Distinction between articles of food and other articles, 10, 133

Distinction from conditions precedent, 10, 103

Executed and Executory Contracts as Effecting

Executory contracts, 10, 106, 137

Fraud, 10, 137

Expression of opinion, 10, 124, 132

General rule, 10, 124

Goods in possession of vendee, 10, 130

Goods present in view of parties, 10, 129

Illustrations of general rule, 10, 127-133

In executory contracts, 10, 106, 137

Instances, 10, 128

In title, 10, 127

Measure of damages for fraud, 10, 170

Property sold shall be of a certain kind, 10, 102

Question of law and fact, 10, 127

Representations as to quality, 10, 132

Rule of caveat emptor, 10, 127

Sale of realty, 10, 115

Sale on inspection, 10, 129

Soundness, 10, 127

Stock, 10, 128

Usage and custom, 10, 130

Vendee buying at his own risk, 10, 130

Visible defects, 10, 130

Waiver of implied warranty, 10, 108

When it is understood that goods are unsound, 10, 130

Words of praise or commendation, 10, 132

Of Title, 10, 115, 117, 172

Affirmation about titles as warranties, 10, 124

Affirmation of, Question for Jury

When, 10, 125

Affirmation of, question for the court, 10, 125

Breach, 10, 125

Chattels pawned, 10, 126

Incorporeal chattels, 10, 126

In executory contracts, 10, 126

In Kentucky, 10, 125

In Missouri, 10, 126

In Tennessee, 10, 126

Patents, 10, 126

Sale under mortgage, 10, 126

When statute of limitation begins to run, 10, 125

Where breach occurs where vendor had no title, 10, 125

Whether vendee must have ousted, 10, 125

By civil law, 10, 117

By common law, 10, 117

Civil and common law compared, 10, 89

Civil law rule, 10, 122

Exchange of property, 10, 123

Expression of opinion, 10, 124

General rule, 10, 123

Illustrative cases, 10, 122-124

Measure of damages for fraud, 10, 170

Money, 10, 124

Possession, 10, 122

Property in Canada, 10, 122

Property of vendor in America, 10, 120

Property of vendor in England, 10, 120

Rule in America, 10, 119, 120

Rule in Canada, 10, 122

Rule in England, 10, 119, 120

Rule of title, 10, 117

When breach arises, 10, 172

Where vendee may have action for breach, 10, 173

Whether description is necessary, 10, 174

Whether there is warranty where the vendor is not in possession, 10, 121

Of Value

Condition precedent, 10, 138

Implied Warranty as to Merchantability

15, 308

Buyer specifies article he is to have, 10, 141

General rule, 10, 139

Merchantability, 10, 142

Notice to vendor, 10, 142

Particular quality of fineness, 10, 141

Purchase for particular use, 10, 141

Saleable articles, 10, 140

Saleable in a particular market, 10, 141

Sale by Sample, 10, 142, 166

In Pennsylvania, 10, 142

To what time warranty is limited, 10, 142

Waiver of implied warranty of merchantability, 10, 142

Whether express warranty of one quality excludes this warranty, 10, 142

Sale by Description, 10, 138

Implied warranty of merchantability, 10, 138, 139

Special implied warranty of quality, 10, 139

That property is of kind and quality described, 10, 139

Physicians and surgeons, 14, 80

Principles of, 10, 91

Quantity, 10, 161

Amount represented by vendor, 10, 161

Estimate of both parties having equal knowledge, 10, 162

Mere expression of opinion as to, 10, 161

Offering a less, than contracted for, 10, 161

Where lot of other goods not ordered are shipped with quantity ordered, 10, 161

Question of Law and Fact, 10, 115

Whether representation amounts to warranty, 10, 132

Sale

Conditions Precedent Distinguished from, 10, 101

Condition relates to kind of thing sold and implied warranty to quality, 10, 104

Confusion produced by confounding condition precedent with implied warranty, 10, 103

Definition of condition precedent, 10, 101

Sale of chattels as being of a particular kind or description, 10, 102

Whether condition precedent and implied warranty can exist at same time, 10, 104

Executors and administrators, 10, 111

Upon inspection, 10, 136

Saleable in particular market, 10, 141

Sale by Sample

Acceptance, 10, 169

Obtained by fraud, 10, 169, 170

Action for breach of warranty, 10, 169

Custom and usage, 10, 168

Implied warranty that goods conform to sample, 10, 165

Latent Defects, 10, 150, 167

When goods are sold for particular purpose, 10, 167

Question of law or fact, 10, 168

Right of inspection by vendee, 10, 169

Right to reject goods, 10, 169

Rule as to implied warranty in Pa., 10, 165

Sale by agent, 10, 97

Sale by average sample, 10, 168

Sample shown but sale by bulk, 10, 168

Usages and customs, 10, 168

When bulk has been examined, 10, 167

Where goods are sold by manufacturer, 10, 167

Whether There Was

Question for jury, 10, 168

Whether warranty of merchantability, 10, 142, 167

Second hand chattels, 10, 135

Shares of stock, 10, 165

Sheriff's sale, 10, 111

Ships, 22, 738, 741

Soundness, 10, 127

See HORSES.

When executed by warranty of title, 10, 130

Stock-brokers, 23, 717

Subject-matter of sale, 10, 116

Suppression of truth, 10, 112

Trade-marks, 10, 165

Usages and Customs, 10, 116; 27, 792

Effect on implied warranty, 10, 116

Examples, 27, 792-795

Illegal usage, 10, 116

Whether usage can create warranty, 27, 792

Waiver of

Acceptance of goods, 10, 105

Evidence of fraud, 10, 108

Implied waiver, 10, 108

Implied warranty of merchantability, 10, 142

When acceptance and user imply a waiver, 10, 108

When Express Warranty Excludes Implied, 10, 109; 28, 742

Express warranty of quality and implied warranty of title, 10, 109

Implied warranty of quality and express warranty of title, 10, 109

Of fitness for particular purpose, 10, 151

Parol evidence, 10, 109

Warranty by manufacturer, 10, 142

Warranty of quality, 10, 109

Warranty of title, 10, 109

Where written contract is silent upon quality of warranty, 10, 109, 110

Written contract, 10, 109

Whether forms part of the contract, 10, 86

IMPORT, 10, 175

See TAXATION.

IMPORTATION, 10, 175

IMPORTER, 10, 175

IMPOSE, 10, 175

IMPOSITION, 10, 176

IMPOSSIBILITY, see CONTRACT.

IMPOSSIBLE CONTRACTS, 3, 897, 908; 10, 176

Absolute undertakings, 3, 900

Agreement to build a house which subsequent events make impossible, 3, 901; 10, 179

Arrest, 3, 900

Caused by party, 3, 903

Condition possible at date of instrument which subsequently becomes impossible by act of God, 3, 899

Created by one party, 3, 907

Created by temporary change in law, 3, 899

Definition, 10, 176

Destruction of Subject-Matter, 3, 901

Mines becoming exhausted, 3, 902

Difficulties and inconveniences short of, 3, 901

Duty imposed by law, 3, 901

Effect of change in law, 3, 898

Impossibility arising from nature of contract, 10, 176

Impossible conditions, 13, 778

IMPOSSIBLE CONTRACTS—*Cont'd*

Intervening Impossibility, 10, 178

Contract for service, see MASTER AND SERVANT.

Covenant to repair house, see GENERAL LANDLORD AND TENANT.

Building contract prevented by fire, 3, 901; 10, 179

Building contract prevented by latent softness of soil, 10, 179

Contract

For repairs on building discharged by fire, 10, 180

For service, 10, 181

For tuition, 10, 181

Of affreightment, 10, 180

Of sale, 10, 179

To build prevented by latent softness of soil, 10, 179

To erect building on or before certain date, 10, 179

Covenant to repair house, 10, 178

Death of animal hired, 10, 182

Failure to deliver, 10, 179

General Rule, 10, 178

Where impossibility arises from act of one party, 10, 183

Impossible from act of party, 10, 183

Impossible from statutory enactment, 10, 182

Liability where party is prevented from performing his duty, 10, 178

Performance dependent on existence of person or thing, 10, 181

Sale of specific chattel, 10, 181

Ships prevented from discharging on account of ice, 10, 180

Sickness of performer, 10, 181

Whether obligor is discharged by act of obligee, 10, 183-185

Whether party can avoid liability of own act, 10, 183

Known to both parties, 3, 887

Known to one party, 3, 898

Legal impossibility, 3, 879; 10, 176

Non-existence of subject-matter, 3, 897

Performance in fraud only possible, 10, 177

Subsequent, 3, 900

To erect building by specified time prevented by fire, 10, 179

Vessel detained by an embargo, 3, 899

Where contract by reasonable construction is still capable of being substantially performed, 3, 901

Where contract depends on personal capacity of parties, 3, 902

Where contract is impossible from nature, 10, 176

Where it is out of power of obligor, 10, 176

Where party has option to perform contract in one of two ways and one of them becomes impossible, 3, 903

IMPOST

Taxation distinguished from, 25, 15

IMPOTENCY, 15, 218

See NULLITY SUITS.

IMPOUND, 10, 186

Definition of pound, 10, 187

IMPOUNDING, 10, 186

Compliance with statutory provisions, 1, 588

Constitutionality of, 10, 187

Definition, 10, 187

Executors and administrators, 7, 319

Fines imposed upon owners, 1, 589

Impounder's duty to feed cattle, 10, 195

Liabilities of impounder, 10, 195

Literal compliance with statute, 10, 194

Non-resident owner, 10, 195

Notice, 10, 196

As to sale of cattle impounded, 1, 589; 10, 196

Pound breach, 10, 197

Purchase of stock at sale, 10, 196

Rescue, 10, 197

What notice sufficient, 10, 196

Whether sale without notice is constitutional, 10, 187

Payment of legal costs, 10, 195

Power of legislature, 10, 187

Power of municipality to impound, 1, 588

Replevy of Impounded Animals, 10, 194, 20, 1073

Examples, 20, 1073, 1074

Irregular proceedings, 20, 1073

Proceedings not in accordance with statutes, 20, 1073

Tender, 20, 1074

When replevin may be maintained, 20, 1073

Rescue and pound breach, 10, 197

Right of impounder, 10, 195

Right of impounder to use force, 10, 195

Right of owner, 10, 194

Sale of Impounded Animals, 1, 588

Necessity of notice, 1, 589; 10, 196

Statute, 10, 187

Conflict of authority as to whether a sale of stock without notice is constitutional, 10, 187, 192

Distinction between animals on private premises and on public highway, 10, 189

Due process of law, 10, 187

Municipal corporations, 10, 192

Municipal ordinances must be strictly pursued, 10, 192

Police power, 10, 188

Stock exempt from execution, 10, 196

Trover by owner, 10, 194

What Stock May Be Impounded, 10, 192

Animals running at large with knowledge of owner, 10, 192

Animals upon property of person who impounds them, 10, 194

Animals upon public highway, 10, 193, 194

Animals upon uninclosed commons, 10, 194

Where animals run at large, 10, 192

- Where there is no public pound, 10, 195
 Whether common law in force in the
 United States, 10, 187
- IMPRESSING**, 10, 197
- IMPRIMIS**, 8, 22
- IMPRISONMENT**, 10, 197
- See* ARREST; CONVICTION; EXECUTION;
 FALSE IMPRISONMENT; HABEAS
 CORPUS; HOUSE OF CORRECTION;
 IMPRISONMENT FOR DEBT; PRISONS.
- Action for injuries, 10, 231
- Confined within jail limits, 10, 187
- Constitutional Provisions**
- Cases of Fraud**, 10, 213
- Assault and battery, 10, 214
- Breach of promise accompanied by
 seduction, 10, 215
- Breach of promise to marry, 10, 214
- Fraud in avoiding payment, 10, 214
- Fraudulent representations, 10, 214
- Delivering up of debtor's property,
 10, 213
- Exceptions in case of fraud, 10, 213
- General nature, 10, 212
- Convicts of United States court, 10, 198
- Day on which person is sentenced reck-
 oned as part of his term, 10, 199
- Definition, 10, 197
- Discharge**, 10, 200
- By expiration of term of sentence, 10,
 200
- Commutation of sentence, 10, 200
- In general, 10, 200
- Record of good behavior, 10, 200
- When Denied**, 10, 203, 205
- Imperfection in mittimus, 10, 204
- Pardon by governor when prisoner
 is to stand committed until sentence
 is complied with, 10, 203
- Warrant for detention of prisoner,
 10, 204
- Where prisoner is to stand commit-
 ted until costs are paid, 10, 203
- Limitation of actions, 13, 732, 741
- Place of**, 10, 198
- Parol evidence as to place, 10, 198
- Records, best evidence of, 10, 198
- Statute of United States court, 10, 198
- Recapture**, 10, 199
- Recommitting without warrant or ad-
 judication, 10, 200
- Sentence**, *see* SENTENCE.
- Validity of, 10, 199
- Solitary confinement, 22, 836
- Term of**, 10, 199
- Recapture, 10, 199
- What constitutes, 10, 197
- Where person held not in custody, 10,
 197
- IMPRISONMENT FOR DEBT**, 10, 212
- See* FRAUDULENT DEBTOR; IMPRISON-
 MENT; JAIL LIMITS; POOR DEBTOR;
 PRISONS.
- Privilege from arrest*, *see* ARREST.
- Absconding debtors, 10, 214
- Action for divorce, 10, 230
- Action for libel, 10, 230
- Agency, 10, 227
- Assault and battery, 10, 230
- Breach of promise to marry, 10, 214, 220
- Constitutional Law**, 1, 720; 3, 713; 10, 220
- Abolition, 18, 828
- Actions Founded in Tort**, 10, 215
- Assault and battery, 10, 215, 216
- Effect of judgment, 10, 215
- Ejectment, 10, 216
- Seduction, 10, 216
- When debtor is confined to obliga-
 tion arising ex contractu, 10, 215
- Wrongful conversion of property,
 10, 216
- Bastardy proceedings, 2, 145; 10, 219
- Constitutionality of, 3, 713
- Constitutionality of law abolishing,
 3, 756; 10, 220; 11, 176
- Contempt, 10, 217
- Costs of criminal proceedings, 10, 219
- Disobedience to orders of court, 10,
 217
- General nature, 10, 220
- Non-compliance with order to deliver
 property, 10, 217
- Obligations of contract, 10, 220; 18,
 828
- Costs, 10, 219
- Criminal conversation, 10, 230
- Definition, 10, 212
- Discharge of Prisoner**, 10, 239
- Application, 10, 209
- Assignment and delivery of property,
 10, 201
- Assignment of imprisoned debtor, 10,
 209
- Barred by fraud, 10, 201, 202
- Burden of proof upon creditors, 10,
 203
- Compliance with statute, 10, 201
- Contract by way of inducement, 10,
 231
- Denial of motion to vacate arrest, 10,
 202
- Discharge in bankruptcy, 10, 201
- Imprisoned for longer time than six
 months, 10, 204
- In New Hampshire, 10, 204
- Jurisdiction, 10, 208
- Liability to perform act or endure im-
 prisonment, 10, 201
- New York, 10, 207, 209, 210
- Order of arrest in replevin, 10, 205
- Proceedings**
- Affidavit to petition, 10, 210
- Bond by imprisoned debtors, 10,
 211
- Defendant debtor in custody, though
 on bail, 10, 211
- Evidence of transactions prior to
 judgment, 10, 211
- For discharge, 10, 208
- Indorsement of application, 10, 210
- In neighboring county, 10, 208
- New York practice, 10, 210
- Petition setting forth cause of im-
 prisonment, 10, 210

IMPRISONMENT FOR DEBT—Cont'd**Discharge of Prisoner—Cont'd**

Surrender by debtor, 10, 201

Torts arising from negligence, 10, 231

What must be shown to prevent, 10, 204

When Denied, 10, 203

Bond for jail limits, 10, 205

Fraudulent conduct, 10, 206

Grounds for discharge, 10, 206

Intent to defraud creditors, 10, 205

Proceedings, 10, 208

Proceedings have been just and fair, 10, 207

Whether applies to order of arrest, 10, 204

Effect of judgment, 10, 233

Fine, 21, 1077

Fraud, 10, 213

See infra, STATUTORY PROVISIONS.

Agent and persons occupying fiduciary relations, 10, 227

Fraud of co-partner, 10, 223

Fraud of wife, 10, 224

Fraudulently contracting debts, 10, 221

Fraudulently obtaining loan, 10, 223

Fraudulent purchases, 10, 222

Fraudulent representation on part of agent, 10, 222, 223

General rule as to fraudulent representation, 10, 222

Knowledge of his insolvency, 10, 221

Necessity of actual fraud, 10, 221

Purchaser knowing himself to be insolvent, 10, 221

Representation of solvency, 10, 221

Impairing obligation of contract, 3, 756; 10, 220; 11, 176

In bastardy proceedings, 2, 145; 10, 219

Injuries to person and character, 10, 230

Jail limits, 10, 212

Joinder of causes of action, 10, 232

Maintenance of prisoners, 19, 90

Malicious prosecution, 10, 230

Meaning of the term "debt," 5, 154

Necessity of intention, 10, 230

Negligent killing, 10, 231

Non-resident, 10, 213

Sentence that defendant stand committed until he pays costs, 21, 1081

Statutory Provisions, 10, 220*Fraudulently contracting debts*, see *infra*, FRAUD.**Agents and Persons Occupying Fiduciary Relation, 10, 227**

Agents for collection, 10, 228

Agents for sale on commission, 10, 227

Attorney, 10, 229

Auctioneers, 10, 228

Bankers, 10, 228

Brokers, 10, 228

Directors and officers of corporations, 10, 228

Money received in another state or country, 10, 229

Necessity of violation of trust, 10, 227

Partner, 10, 229

Persons entrusted with money, 10, 228

Public officers, 10, 229

To what persons statute authorizing arrest applies, 10, 227

Where agent must have embezzled money, 10, 229

Where agent must have fraudulently misapplied money, 10, 229

Where party must have acted in bad faith, 10, 229

Assignees for the benefit of creditors, 10, 228

Disposal and Concealment of Property

Application to recover realty, 10, 227

Constructive fraud, 10, 224

Fraudulent disposal in another state, 10, 224

Nature of fraudulent intent, 10, 226

Necessity of actual intent to defraud, 10, 224

Partnership property, 10, 224

Preference, 10, 224

Presumption in favor of honest purpose, 10, 224

Property disposed of must be of value, 10, 225

Whether complaint demands relief by judgment of damage, 10, 226

Seduction, 10, 230

Supersedas, 24, 583

Taxation, 25, 14

See TAXATION.

Unsuccessful plaintiffs, 10, 232

What constitutional, 10, 212

IMPROPER, 10, 240

Improper removal, 10, 241

Navigation, 10, 240

IMPROVEMENTS, 6, 655; 10, 242; 23, 441*See* EMINENT DOMAIN; FIXTURES; JOINT TENANTS AND TENANTS IN COMMON; LOCAL ASSESSMENTS.*Improvements of highways*, see HIGHWAYS.*Streets and sidewalks*, see STREETS AND SIDEWALKS.

Adverse possession, 1, 294; 10, 252

Betterment of Private Real Property by Occupant Under Color of Title, 10, 243*See infra*, EJECTMENT.*Fixtures as improvements*, see FIXTURES.

Actual value of improvements, 10, 252

Adverse possession, 1, 294; 10, 250

Bona fide purchaser, 10, 249

Boundary, mistaken, 10, 257

Constitutionality of statute, 10, 244, 251

Cost value of improvements, 10, 252

Enhanced value, 10, 244

Equity

Protection of co-tenant, 10, 252

- Purchaser without written deed, 10, 252
 Where there are no claims for rents and improvements, 10, 253
 Existence of color of title when making improvements, 10, 251
 General rule, 10, 243
 Good faith, 10, 244
 Good faith rights of occupants, 10, 250
 Improvements made under mistake of law, 10, 248
 Knowledge of adverse claim, 10, 251
 Lien on, 10, 247
 Means of knowledge of adverse claim, 10, 251
 Notice, 10, 245
 Burden of proof as to want of knowledge, 10, 245
 Commencement of suit, 10, 246
 Constructive, 10, 247, 250
 Good faith, 10, 247
 Lien on, 10, 247
 No notice, 10, 247
 Purchaser's right, 10, 247
 Registry of superior title, 10, 245
 Offsets, 10, 249
 Purchaser, 10, 249
 Set-off, 10, 244
 Set-off against rents, 10, 249
 Statutory compensation, 10, 245
 Strict construction, 10, 251
 Time within which improvements have been made, 10, 246
 Where occupant has no color of title, 10, 251
 Where occupant has notice of defective title, 10, 244
 Bona fide purchaser, 16, 835
 Contribution among tenants in common, 4, 8
 Definition, 10, 243
 Definition of betterment, 2, 186
Ejectment, 6, 218, 245z
 See infra, BETTERMENT OF PRIVATE PROPERTY.
 At common law, 6, 245z
 Constitutionality of statutes, 6, 245bb
 In Alabama, 6, 218
 In Arkansas, 6, 218
 In California, 6, 218
 In Colorado, 6, 218
 In Connecticut, 6, 218
 In Illinois, 6, 218
 In Indiana, 6, 219
 In Iowa, 6, 219
 In Kentucky, 6, 219
 In Massachusetts, 6, 219
 In Michigan, 6, 219
 In Minnesota, 6, 219
 In Mississippi, 6, 219
 In Missouri, 6, 219
 In Nebraska, 6, 219
 In New Hampshire, 6, 219
 In New Jersey, 6, 219
 In New York, 6, 219
 In Ohio, 6, 219
 In Oregon, 6, 219
 In South Carolina, 6, 219
 In Tennessee, 6, 219
 In Texas, 6, 219
 In Vermont, 6, 219
 In Virginia, 6, 219
 In West Virginia, 6, 219
 In Wisconsin, 6, 218, 219
 Measure of recovery, 6, 245aa
 Pre-requisites to recovery, 6, 245bb
 Strict construction of statutory provisions, 6, 245aa
 Tenant in common, 6, 245aa
 Under the statutes, 6, 245aa
 When claimed to be made, 6, 245bb
 Whether recovery for improvements does not lie, 6, 245bb
Estoppel
 Lawful Owner of Stock
 Where improvements are made without notice being given by him, 7, 13
 Waiver, 7, 32
Husband and Wife, 14, 579
 Creditors, 14, 579
 Fixtures, 14, 580
 Liability for improvements, 14, 580
 Reimbursement for improvements, 14, 580
 Where land of one is liable for improvements placed upon other, 14, 579
 Improved or cultivated land, 4, 953
 Internal improvement acts, 23, 48
Landlord and Tenant
 Louisiana law, 12, 695
Liens, 13, 599
 Joint tenants and tenants in common, *see* JOINT TENANTS AND TENANTS IN COMMON.
 Improvement made by mistake, 13, 599
 Interference by equity, 13, 599
 Occupants generally, 13, 599
 Owner's silence, 13, 600
 Purchase by trustee of trust property, 13, 600
 Set-off at law, 13, 600
 Set-off in equity, 13, 600
Statutory Liens, 13, 600
 Examples of the statute, 13, 601
 Nature of the statute, 13, 601
 When allowed, 13, 600
Mortgages, 15, 748, 814
 Compensation, 15, 814
Mortgagee, 15, 825
 Allowance in accounting, 15, 825
 Consent of mortgagor, 15, 825
 Increased rents and profits, 15, 825
 Mortgagee believing himself to be absolute owner, 15, 825
 Purchaser at foreclosure sale, 15, 825
 Purchaser in good faith from a mortgagee, 15, 825
 What improvements may be made by him, 15, 825
 Mortgagor's right to make, 15, 814

IMPROVEMENTS—*Cont'd*

Navigable Waters, 16, 264

Legislative Powers, 16, 264

Examples, 16, 264

In general, 16, 264

Power of congress, 16, 264

Power of parliament, 16, 264

Powers of state, 16, 264

Rights of Riparian Owner to Compensation, 16, 265Injuries incident to improvements,
16, 265Unnavigable stream made navigable,
16, 265Where injury is not incident to im-
provement, 16, 265**Partition**Co-tenant joined in erecting improve-
ment, 10, 258**Disposition of, and Allowance for**, 17,
758

Allotment by commissioners, 17, 772

Assigning improvements to those
who have made them, 17, 758Chargeable with rents and profits,
17, 761Consent on the part of co-tenants,
17, 760

Cost of improvement, 17, 761

For what improvements allowance
will be made, 17, 760

How amount is estimated, 17, 761

Improvements made in good faith,
17, 759Increased value of the property, 17,
761

Ornamental improvements, 17, 760

Probate courts, 17, 781

Property not susceptible of division,
17, 758Purposely covering whole estate with
valuable improvements, 17, 759Rents and profits due to enhanced
value of land, 17, 761

Sale instead of division, 17, 807

Suitable compensation for improve-
ments, 17, 758Supposition of sole ownership, 17,
760, 761

Value to the estate, 17, 761

Where co-tenant supposes himself to
be sole owner, 17, 760Whether court will take improve-
ments into consideration, 17, 758

Improvements by widow, 10, 258

Improvements must be necessary, 10,
257**Partnership**, 17, 950Land held by partners as tenants in
common, 17, 950

Property owned by one partner, 17, 951

Temporary improvements, 17, 951

Public Lands, 10, 258

Compensation to settler, 10, 258

In Iowa, 10, 258

In Kansas, 10, 258

In Texas, 10, 258

Occupying claimant's law, 10, 258

Statute regulations, 10, 258

Real covenants, 19, 1015

Replevin, 20, 1113

Statute of frauds, 8, 661, 698

Taxation

Redemption, 25, 425

Tax Titles**Compensation for Improvements**, 25,

725

Deed void on its face, 25, 725

Generally, 25, 725

In Kansas, 25, 725

In Louisiana, 25, 725

In Michigan, 25, 725

In Minnesota, 25, 725

In Ohio, 25, 725

In Wisconsin, 25, 725

Occupying claimants, 25, 725

Possession necessary, 25, 725

Possession of tenant, 25, 726

Statutes, 25, 725

Value of improvements, 25, 726

Trespass

Trespass to try title, 26, 690

Trust deeds and power of sale mortgages,
26, 936, 946

Trusts and trustees, 27, 157, 158, 177

Vendor and purchaser, 28, 124

IMPROVIDENCE, 10, 321**IMPUNITY**, 10, 322**IMPUTABLE NEGLIGENCE**, 16, 447

See CONTRIBUTORY NEGLIGENCE.

Street railways, 23, 1016

IN, 10, 322; 15, 1231

At equivalent to, 1, 890

In action, 10, 323

In any manner, 14, 252

In any street, 10, 325

In case, 10, 323

In cash, 10, 323

In charge, 10, 323

In commission, 10, 323, 325

In field, 10, 323

In first place, 10, 323

In following form, 10, 323

In fraud, 10, 323

In full, 10, 323

In gross, 10, 324

In lieu of, 23, 488

In manner above mentioned, 14, 254

In manner following, 14, 254

In manners and form, 14, 254

In name of, 10, 324

In next place, 10, 323

In or near, 16, 365

In pairs, 10, 324

In personam, 10, 324

In possession, 18, 841

In pursuance, 10, 324; 19, 591

In rem, 10, 324

In same manner, 14, 252

In store, 10, 325

In substance, 10, 325

In such manner, 14, 253

In the first place, 8, 22

Representative in congress, 10, 323

INABILITY, 10, 325

INADEQUATE CONSIDERATION, 10, 325

In fraudulent conveyances, see FRAUDULENT CONVEYANCES.

In suits for specific performance, see SPECIFIC PERFORMANCE.

Affecting Validity of Contract, 10, 326

Court weighing consideration, 10, 326

Equity, 10, 327

General rule, 10, 326

Mutual ignorance of value, 10, 326

Value of property sold, 10, 326

As Evidence of Fraud, 10, 327

Confidential or fiduciary relation, 10, 327

Expectancy, 10, 329

Gross inadequacy, 10, 327

Inadequacy coupled with weakness of mind, 10, 327

Sale by auctioneer, 10, 331

Specific performance, 10, 334

Definition, 10, 325

IN AND ABOUT, 10, 322

INBOARD

Inboard cargo, 14, 332

INCEST, 10, 335

See generally, FORNICATION.

See LEWD AND LASCIVIOUS COHABITATION AND CONDUCT.

Assent, 10, 341

At common law, 10, 335

Brother

Includes illegitimate and half, 2, 599

Carnal Knowledge, 10, 339

Consent of female, 10, 340

Effect of force, 10, 341

Emission, 10, 340

Father and daughter, 10, 341

Marriage within prohibited degree, 10, 339, 340

Mutual consent, 10, 341

Necessity of direct proof, 10, 339

Single act of carnal knowledge, 10, 340

Conspiracy to commit, 4, 597

Conviction of fornication, 8, 559

Conviction under indictment for rape, 15, 367

Definition, 10, 335

Distinguished from fornication, 8, 556

Essentials of the crime, 10, 336

Evidence, 10, 344

Acts of indecency with others, 10, 345

Confessions, 10, 347

Of defendant as to relationship, 10, 346

Evidence impeaching witness, 10, 349

Expert testimony, 10, 346

General rules applicable, 10, 344

Prior acts of indecency, 10, 344

Proof of corpus delicti, 10, 346

Reputation, virtue, and chastity, 10, 349

Statement as to relationship with defendant, 10, 346

Sufficiency question for jury, 10, 346

Testimony of accomplice, 10, 347, 348

Indictment, 10, 341

Charging act of fornication, 10, 342

Charging knowledge, 10, 343

Charging several acts, 10, 342

Duplicity, 10, 342

Illegitimate relationship, 10, 343

Name and identity of the parties, 10, 343

Relationship not within prohibited degrees, 10, 343

Showing relationship, 10, 342

Where both parties must be charged, 10, 341

In Louisiana, 10, 336

In Missouri, 10, 336

In North Carolina, 10, 336

Jeopardy, 11, 944

Knowledge

Indictment, 10, 343

Of relationship, 10, 338, 339

Marriage, 14, 496

Proof of marriage, 14, 530

Relationship, 10, 336

Brother and sister of the half-blood, 10, 337

Brother-in-law and sister-in-law, 10, 337

Degrees to which marriage is prohibited, 10, 336

Illegitimate children, 10, 338

Indictment, 10, 342

Knowledge by one party, 10, 339

Knowledge of, 10, 338, 339

Parent and child, 10, 336

Step-parent, 10, 336

Solicitations to commit, 4, 670

Statutory offense, 10, 335

Submission, 10, 341

When fornication becomes, 8, 556

Witnesses

Wife as, 29, 639

INCH, 10, 349

INCIDENT

"Incident to the navigation of the river," 3, 148

INCIDENTAL, 10, 349

INCLOSE, 10, 351

INCLUDE, 10, 351

INCOME, 10, 352; 25, 646; 29, 441

Devise of Income

Examples, 29, 404-406

In general, 29, 404

What passes by devise of, 29, 404

Distinguished from profits, 19, 258

Income Tax

Taxation, 25, 115

Net income, 23, 613

INCOMPATIBLE, 10, 352

INCOMPETENCY, 15, 620

Distinguished from misconduct, 15, 620

INCORPORATION

See CORPORATIONS.

Averment of, see FORGERY.

Distinguished from establishment, 6, 873

Married women as incorporators, 14, 680

INCORPOREAL, 10, 352

INCORPOREAL HEREDITAMENTS, 9,

352

See ANNUITIES; CEMETERIES; CORPORATIONS; DIGNITIES; EASEMENTS; FISHERIES; FRANCHISES; HEREDITAMENTS; OFFICES; PENSIONS; PROFITS A PRENDRE; RENTS; TITHES.

Advowson

Definition, 10, 354

Law, 10, 354

Common

Definition, 10, 355

Common of appurtenant, 10, 356

Common of estover, 10, 355

Common of pasture, 10, 355

Common of piscary, 10, 355

Common of shack, 10, 356

Common of turbary, 10, 356

Corodies, 10, 354

Definition, 10, 354

Definition, 10, 352

Definition of pure, 10, 354

Lie in grant, 9, 360

Mixed, 10, 360

Partition, 17, 688

Perpetuities, 18, 344

Pipe lines, 18, 459

Real covenants, 19, 997

Whether included in term "land," 12,

655

INCREASE, 10, 360

Increase of land, 10, 320

INCUMBENT, 10, 361

INCUMBRANCES, 10, 361

See FIRE INSURANCE; LIENS; MORTGAGES.

See generally, PURCHASE-MONEY MORTGAGES.

See REAL COVENANTS; TRUST DEEDS AND POWER OF SALE MORTGAGES.

Priority of incumbrances, *see* RECORDING ACTS.

Definition, 10, 361

Party-wall, 18, 4

Sheriff's sales, 22, 580

Streets and Sidewalks

Incumbrances, 24, 113

INCUR, 10, 398

INCURABLE, 10, 399

INDEBITATUS ASSUMPSIT

Express contract, not under seal, 1,

883

INDEBTED, 10, 399

See DEBT; INDEBTEDNESS.

Deeply, 5, 459

INDEBTEDNESS, 10, 399

See DEBT.

Distinguished from debt, 5, 144

INDECENCY, 10, 401

See ASSAULT; DISORDERLY HOUSE; EXPOSURE OF PERSON; LEWD AND LASCIVIOUS COHABITATION AND CONDUCT; OBSCENITY.

INDECENT EXPOSURE, *see* EXPOSURE OF PERSON.

Indictment, 16, 966

INDECENT LANGUAGE, *see* OBSCENE LANGUAGE.

INDECENT PUBLICATION, *see* OBSCENITY.

INDEMNITY, 10, 401

See INDEMNITY CONTRACT.

Definition, 10, 401

Indemnity against claims, 3, 274

Trespass, 26, 579

INDEMNITY BONDS

Collateral attack upon judgment, 12,

1488

INDEMNITY CONTRACT, 10, 387, 402

See FORTHCOMING BONDS; INDEMNITY

MORTGAGES.

Bond for prison bounds, *see* PRISONS.

Against the law, void, 2, 4661; 10, 405

As affected by statute of fraud, 10, 404

Assignment of the indemnity bond, 2,

4661

Breach of Condition, 10, 413

Action of covenant maintainable for a breach of covenant to save harmless from a judgment, 4, 488

Bond to save harmless against judgment, 10, 416

Conclusiveness of judgment as to obligee's liability, 10, 417

Judgment by consent, 10, 417, 418

Judgment by default, 10, 416

Judgment without notice to obligor, 10, 417

Necessity of actual damage, 10, 413

Obligation to pay debts, 10, 416

Obligation to perform some specific act, 10, 415

Save obligee harmless against damage, 10, 415

Save promisor harmless against liability, 10, 415

Upon request, 10, 417

Conclusiveness of judgment against obligee, 10, 417, 418

Consideration, 10, 403

Antecedent promise, 10, 404

Indemnity to officers, 10, 403

Moral obligation, 10, 403

Permission to defend suit, 10, 403

Promise subsequent to liability, 10, 404

Release of lien, 10, 403

Removal of property, 10, 403

What consideration sufficient, 10, 403

Construction, 10, 410

Bond against individual indebtedness, 10, 413

Covenants to keep harmless from all liens and claims of liens, 10, 412

Indemnity against incumbrances, 10, 411

Indemnity against specified debt, 10, 413

Indemnity to note indorser, 10, 413

Lawful title or unlawful entry, 10, 412

Misstatement of amount, 10, 413

Natural and proximate consequences, 10, 411

- Purchase of incumbered lands, 10, 411
- Restriction by recital, 10, 411
- Creditor's rights, 10, 387
- Definition, 10, 402
- Distinguished from covenant against incumbrances, 10, 403
- Illegality**, 2, 466*t*; 10, 405; 19, 542
 - A policy of re-insurance, 10, 407
 - Assault, 10, 406
 - Breach of trust, 10, 407
 - Fraud, 10, 407
 - Guarantee policy, 10, 407
 - Indemnities against expense of highways, 10, 408
 - Indemnity for trespass, 10, 407
 - Statutory prohibitions, 10, 406
 - Support of pauper, 10, 407
 - Trespass, 2, 466*t*; 10, 407
 - When the act is not known to be unlawful, 10, 406
- Indemnities to Bail**, 10, 409
 - Failure of contract by person to indemnify his bail, 10, 409
 - Indemnity for costs, 10, 410
 - When contract executed, 10, 409
- Indemnity against expenses of highway, 10, 408
- Indemnity for Trespass**
 - Act palpably illegal, 10, 407
 - Distinction between valid and invalid promises, 10, 408
 - Knowledge of promisee, 10, 408
 - When act is palpably a trespass, 10, 407
- Judgment Against Principal**, 12, 100
 - Constructive notice, 12, 102
 - Indemnity of attaching officer, 12, 102
 - Judgment as prima facie evidence, 12, 101
 - Knowledge of pendency of suit, 12, 102
 - Necessity of knowledge of action to indemnitor, 12, 100
 - Stipulation of contract as to amount, 12, 101
 - Where indemnitor appears as defendant, 12, 102
- Lost Papers**, 13, 1113
 - Examples, 13, 1114, 1115
- Exceptions Where Indemnity Is Not Required**, 13, 1117
 - Paper not negotiable, 13, 1117
 - Paper payable to order, 13, 1117
 - Paper proven to have been destroyed, 13, 1117
 - Paper specially indorsed, 13, 1117
 - Paper traced to custody of defendant, 13, 1117
 - When defendant is protected by statute of limitation, 13, 1117
- General rule**, 13, 1113
- Indemnity for lost halves of bank notes, 13, 1116
- Necessity, 13, 1113, 1118
- Where tender of indemnity must be made, 13, 1118
- Who entitled to indemnity, 13, 1116
- Measure of Recovery**, 10, 418
 - Amount of judgment, 10, 418
 - Costs, 10, 419
 - Cost when action was brought against obligee wrongfully, 10, 419
 - Damages up to time of trial, 10, 418
 - Interest, 10, 419
 - Penal bond, 10, 418
 - Reasonable grounds for defense, 10, 419
- Notice of Suit Against Obligee**, 10, 417
 - Conclusiveness of judgment as to obligee's liability, 10, 417, 418
 - General promise of indemnity, 10, 417
 - Indemnity against judgment, 10, 418
 - Opportunity to defend, 10, 417
- Public Officers**, 19, 542
 - Party seeking to enforce legal right, 19, 542
 - Promise contrary to public policy, 19, 542, 543
 - Promise to indemnify as an inducement for violation of duty, 19, 542
 - Promise to indemnify for known illegal acts, 19, 542
 - Validity of agreement, 19, 542
 - Void promises, 19, 542
- Re-Insurance**
 - Libel, 10, 407
- Savings Banks**
 - Where pass-book is lost, 21, 727
- Sheriffs**, 22, 537
 - Assignment of the indemnity bond, 2, 466*u*
 - Bond against the law void, 2, 466*t*
 - Examples, 22, 537, 538
 - In general, 22, 537
 - Notifying plaintiff that bond may be given, 22, 537
 - Not levying though bond is given, 22, 538
 - Sheriff's right to require bond, 22, 537
 - When indemnity is implied, 22, 538
 - When liability upon bond arises, 2, 466*u*
 - When officer is entitled to reimbursement, 2, 466*t*
 - Where officer knows a seizure to be trespass, 2, 466*t*
- Specific performance**, 22, 999
- Suretyship**, 24, 817, 863
 - Rights of surety where indemnity is given, 24, 787
- Validity**, 10, 403
 - When liability upon bond arises, 2, 466*t*
 - Where officer is entitled to reimbursement, 2, 466*t*
 - Whether original or collateral promises, 10, 405
- INDEMNITY MORTGAGES**, 10, 435; 15, 803
 - As continuing security, 10, 436
 - Fulfillment of condition, 10, 437
 - Intention of party, 10, 436
 - Obligation upon mortgagee, 10, 437
 - Parol evidence, 10, 436
 - Renewals of notes, 10, 436

INDEMNITY MORTGAGES—Cont'd

Validity, 10, 436

Where there is breach of condition, 10, 437

INDENT. 10, 437

INDENTURE. 10, 437

See DEEDS.

INDEPENDENT

Independent promises, 19, 283

INDIANS. 10, 438

Citizenship of, 3, 245; 10, 440

How Indians may become citizens, 3, 246; 10, 444

Contracts, 10, 445

Crimes Committed by or Against, 10, 442

Crime by white man against white man on Indian reservation, 10, 443

Crime of Indian against an Indian, 10, 442

Crime of white against Indian, 10, 443

Protection of United States court, 10, 443

United States constitution, 10, 442

Enlistment, 15, 401

Exemption from taxation, 10, 439

Homestead laws, 10, 447

Indian Lands, 23, 43

Public land grants, 9, 49, 58

Indian traders, 10, 446

Instruction of, 10, 444

Judicial notice of treaties, 12, 160

Legal Position of, 10, 438

Allegiance, 10, 438

Application to them of general acts of congress, 10, 438, 439

Exemption from taxation, 10, 439

Fourteenth amendment, 10, 440

Lands in severalty, 10, 441

Naturalization, 3, 246; 10, 440

Persons within the meaning of the habeas corpus act, 10, 439

Power of congress to legislate for them, 10, 439

Right to sue and be sued, 10, 440

Status in United States courts, 10, 440

Title to lands, 10, 439

Wards of the nation, 10, 438

Whether a citizen, 3, 245; 10, 440

Whether part of people of United States, 10, 438

Officers of Indian Affairs. 10, 447

Agents, 10, 448

Board of Indian commissioners, 10, 447

Commissioner of Indian affairs, 10, 447

Inspectors, 10, 448

Jurisdiction of Indian agents, 10, 449

Register's certificate, 10, 449

Superintendents, 10, 447

Protection of, 10, 443

Driving cattle from Indian lands, 10, 443

Hunting, 10, 444

Lands in severalty, 10, 444

Purchase from Indians, 10, 444

Sale of Indian lands, 10, 443

Surveying of Indian lands, 10, 443

Public Lands

Preemption, 19, 314, 317

Removal of causes, 20, 993

Sale of liquors to, 10, 445

Status in court, 3, 245; 17, 486

Taxation, 10, 439; 25, 30, 118

Taxation of Indian lands, 25, 115

Treaty, 10, 444

Whether a person, 10, 439

Whether citizen, 10, 440

Whether they may sue and be sued, 17, 486

Witnesses, 29, 622

INDICTMENT. 10, 450

See ARREST OF JUDGMENTS; BURGLARY; CONCEALMENT OF BIRTH; FORGERY; FORNICATION; GAMING.

See generally, OBSTRUCTING JUSTICE.

See GRAND JURIES; RECEIVING STOLEN PROPERTY; VARIANCE; VENUE.

Against corporations, see CORPORATIONS.

As to election between different felonies, see ELECTION.

As to qualification, competency, etc., of grand jurors, see GRAND JURY.

As to words "knowing" and "knowingly," see "KNOWING AND KNOWINGLY."

Cure by verdict, see VERDICT.

Demurrer to, see DEMURRER.

Forcible entry and detainer, see FORCIBLE ENTRY AND DETAINER.

For criminal conspiracy, see CRIMINAL CONSPIRACY.

For indictment in cases of embezzlement, see EMBEZZLEMENT.

Infamous crimes which are required by the statute of United States to be punished by indictment, see INFAMOUS CRIMES.

In larceny, see LARCENY.

Jeopardy, see JEOPARDY.

Joinder of persons, see JOINDER OF PARTIES.

Joinder, see JOINDER OF OFFENSES.

Jurisdiction, see CRIMINAL PROCEEDINGS.

Keeping gaming houses, see GAMING HOUSES.

Nuisances, see NUISANCES.

Prosecutions for obtaining money under false pretenses, see FALSE PRETENSES.

Rape, see RAPE.

Videlicet, see VIDELICET.

Abbreviations. 1, 19; 10, 550, 595

General rule, 1, 19; 10, 550

Numerals, 10, 550

Signs, 10, 550

Signs for degrees of longitude, 10, 550

Use of figures, 7, 959; 10, 550, 585

Written instrument, 10, 595

"&" for "and" 10, 550

Accessory

Unlawfully, 10, 598

Action, 10, 461

Adulteration of food, 1, 210
 "Aforesaid" county, 10, 592
 "Against," 1, 325
 Against the form of the statute, 1, 325
Allegation of Intent
 In statutory crimes, 4, 747
 Alleging every traversable fact, 4, 743
 Alleging more than one offense in the same count, 4, 754
 Alterations, 10, 551
Amendment, 4, 740, 780; 10, 534
 As to What Matters, 10, 537
 Adding new charges, 10, 538
 Amendment of conclusion, 10, 538
 "And" instead of "or" 10, 539
 Charging offenses, 10, 538
 Clerical errors and omissions, 10, 538
 Date, 10, 541, 542
 Description of person, 10, 539
 Description of property, 10, 539
 Errors and defects generally, 10, 537
 Examples of amendment as to time, 10, 542
 Foreman's name, 10, 540
 Formal matters, 10, 538
 Misnomer, 10, 539
 Omission of a figure, 10, 539
 Omission of "did," 10, 539
 Omission of word "dollars," 10, 539
 Omission of word "manner," 10, 539
 Ownership, 10, 539
 Place, 10, 540
 Place and year left unfilled, 10, 542
 Time, 10, 541
 Value of thing stolen, 10, 540
Caption, 10, 480, 536
 How made, 10, 480
 In appellate court, 10, 480
 In court where indictment found, 10, 480
 Nunc pro tunc, 10, 480
 Concurrence of grand jury, 10, 535
 Construction of statute annulling, 10, 534
 Effect, 10, 534
Larceny, 12, 828
 Examples, 12, 828
 Name of owner, 12, 828
 Prejudice of defendant, 12, 828
 Variance, 12, 828
 Necessity of concurrence of grand jury, 10, 534
 Power and jurisdiction to allow, 10, 534
 Signature of grand jury, 10, 508
 Statute, 10, 534
 Statute of jeofail, 10, 535
Time of Amending, 10, 536
 As to time, 10, 537
 Before recording, 10, 536
 Caption, 10, 536
 Dates, 10, 537
 Generally, 10, 536
 Record, 10, 537
 To show presentment, 10, 536
Argumentativeness, 10, 551

Arson

Allegation of ownership, 1, 769
 Allegation of ownership of public buildings, 1, 771
 Sufficiency of in, 1, 764
 At common law, 10, 456
 Averments as to time, 10, 456

Bail

See generally, BAIL.

Failure to Find

Indictment, bail bad, 2, 31
 Failure to present at next term of court, 2, 31

Where prisoner has been indicted capitally, 2, 8

"Being," 2, 158

"Body of the county," 2, 440

Boundaries, 10, 593

Calling all witnesses whose names are on the back of indictment, 10, 504; 24, 710

Caption, 2, 729; 4; 735; 10, 461, 479

Amendment, 10, 480, 536

Why caption may be amended, 10, 536

Contents

County or district, 10, 490

Day on which indictment was found, 10, 491

Designation or Description of Court,

10, 489

Necessity, 10, 489

Sufficiency, 10, 489

History, 10, 481

Name of court, 10, 481

Name of judge, 10, 481, 489

Names of grand jurors, 10, 481

Naming judge, 10, 481, 490

Omission of mention of time when found, 10, 489

Place of holding court, 10, 490

Session of court, 10, 491

Showing where court was held, 10, 489

Term of court, 10, 491

Time and place where found, 10, 481

Wrong term of court, 10, 491

Court, 10, 488

Date, 10, 482, 587

Defects, 10, 481

Definition, 10, 479

Distinguished from commencement, 10, 485

Figures, 10, 482

Where figures are in English, 10, 482

Form and Contents Generally, 10, 481

What should be shown, 10, 481

Grand Jury, 10, 492

Affirmation, 10, 497

Caption showing that grand jury was properly sworn, 10, 496

Effect of omission of oath of grand jury, 10, 497

Facts necessary to proper organization, 10, 494

Good and lawful men, 10, 493

Vol. I.

INDICTMENT—Cont'd**Caption—Cont'd****Grand Jury—Cont'd**

Meaning of "good and lawful men,"
10, 494

Names not corresponding with
names in the panel, 10, 493

Necessity of allegations as to oath
of grand jury, 10, 496

Necessity of showing county from
which impaneled, 10, 494

Omission to follow usual form, 10,
495

Qualifications generally, 10, 493

Showing county from which impan-
eled, 10, 494

Showing organization, 10, 494

Stating name and number, 10, 492

Sufficiency of averments as to
county, 10, 495

What qualifications must be shown,
10, 493

What sufficient, 10, 493

Whether caption proper place, 10,
492

Naming state, 10, 487

Necessity, 10, 480

Court acting under special commis-
sion, 10, 481

Court having general jurisdiction,
10, 480

Removal to another court, 10, 480

When dispensed with, 10, 480

Office of, 10, 479

Omissions

And, 10, 482

Body of the county, 10, 483

Court, 10, 482

For, 10, 482

Misuse of Words, 10, 482

By for to, 10, 483

Impounded instead of impaneled,
10, 483

Of defendant's name, 10, 485

Then and there, 10, 483

Use, 10, 482

Time and place at which indictment
was found, 10, 489

Whether part of indictment, 10, 479

Certificate, 10, 455

Change in, 10, 455

Charging Offense, 10, 566, 599d

As to charging special offense, see
SPECIAL TRIAL.

Alternative, 10, 599e

Averment as to preliminary examina-
tion, 10, 568

Certainty and Particularity, 10, 566

All facts necessary to support a con-
viction must be alleged, 10, 567

Certain to every intent, 10, 566

Degree of certainty, 10, 567

Examples, 10, 567

Explicitness, 10, 567

General rules, 10, 566

Leaving nothing to inference, 10,
567

"One pair of boots," 2, 476

State every element of crime, 10, 566

Charging two offenses in same count,
4, 742

Common-law offense, 10, 568

Grades and degrees, 10, 568

Misdemeanor and a felony in the same
count, 4, 816

Nomination of offense, 10, 568

Prior Conviction, 10, 569

Alleging jurisdictional matters, 10,
570

Form and sufficiency of allega-
tions, 10, 569

Jurisdiction of court of former con-
viction, 10, 469

Larceny, 10, 570

Minuteness depending upon statutory
terms, 10, 570

Necessity of alleging, 10, 569

Presumption as to first offense, 10,
569

Sale of Intoxicating Liquors

Particular offenses, 10, 579

Showing county of former judgment,
10, 569

When indicted for second offense,
10, 569

Charging Statutory Offenses, 4, 748, 750;
10, 572

See *infra*, CONCLUSION.

Adoption of common law without fur-
ther defining it, 10, 572

Common-law offenses and forms of
pleading, 10, 572

Describing or defining offense, 10, 573

Forms where statute is recited, 10, 572

General principles, 10, 572

Mistaken date of statute, 10, 572

New offense unknown to common law,
10, 577

Particular statute of offense, 10, 572

Reciting statute, 10, 572

Reciting title, 10, 572

Referring to statute without specially
pleading, 10, 572

Use of Statute Language, 4, 748; 10,
573

Circumstances of each class of stat-
utes, 10, 578

Criterion of sufficiency of an in-
dictment, 10, 575

Identity and charging specific of-
fense, 10, 577

Offense unknown to common law,
10, 576, 577

Particularity, 10, 577

Statute simply designating offense,
10, 576

Statutory appellation of crimes, 10,
575

Sufficiency, 10, 573

Using words of statute, 10, 573

When not sufficient, 10, 575

Commencement, 10, 485

Definition, 10, 485

Distinguished from caption, 10, 485

- Effect of omissions in, 10, 486
 Forms of, 10, 486
 Illustrations, 10, 486
 Omission of the word "present," 10, 486
 Common scold, 16, 966
Conclusion, 4, 757; 10, 456
 Against form of statute, etc., 2, 570; 10, 515
 Alteration in the, 4, 757
Common-Law Form, 10, 513
 Abbreviation, 10, 515
 Against the peace, 10, 513
 Effect of omission, 10, 513
 Material variance, 10, 514
 Misspelling, 10, 515
 Name of commonwealth, 10, 513
 Name of state abbreviated, 10, 515
 Necessity, 10, 513
 Necessity of excepting, 10, 513
 Necessity of following the form, 10, 514
 Omission of words, 10, 514
 Omission of words "against the peace and dignity," 10, 513
 Repetition of each count, 10, 514
 Separate counts, 10, 514
 Sufficiency, 10, 513
 Surplusage, 10, 520
 Where statute is not mandatory, 10, 513
 Error in the form of, 4, 757
 Statutory, 10, 576
Statutory Offenses, 10, 515
 Common-law offenses, 10, 518
 Contra formam statuti, 2, 570; 10, 515
 Exact language of statute, 10, 517
 Form of statute, 10, 515
 Indictment founded upon several statutes concluding against the form of the statute, 10, 517
 Indictment founded upon single statute, 10, 518
 Necessity, 10, 515
 One statute defining offense and another providing punishment, 10, 518
 Referring to statute, 10, 515
 Repetition of each count, 10, 517
 Separate counts, 10, 517
 Single and plural forms, 10, 517
 Specific reference to statute, 10, 515, 516
 Statute creating new offense, 10, 519
 Statute imposing punishment or penalty, 10, 518
 Statute indicated, not common law, 10, 519
 Sufficiency generally, 10, 516
 Surplusage, 10, 520
 Surplusage, 10, 519
 Corporation's liability to, 4, 267
Count, 4, 754
 Definition, 4, 331
County
 As to showing in which county grand jury was impaneled, see CAPTION.
- "County aforesaid," 1, 320
Crime committed partly in one county and partly in another, see JURISDICTION.
Cruelty to Animals
 Force of the term "beating," 2, 160
 Defects not prejudicial to substantial rights of defendant, 4, 771
 Definition, 4, 733; 9, 14; 10, 454, 461
Describing Property, Ownership, and Value, 10, 595
 Bank bills, 10, 595
 Description requisite, 10, 595
 Larceny, 10, 596
 Simply describing the subject of larceny as so many dollars, 10, 596
 Value, 10, 596
 When allegation of value necessary, 10, 596
 Description of dwelling house in arson, 1, 770
Description of Offense, 4, 739; 10, 456
 Allegation of every fact necessary, 4, 744
 Charged in crime with certainty, 4, 744
 Proof satisfying description, 4, 743
 Statement of a legal result, 4, 744
 Variance, 10, 559
 When sufficient, 4, 744
Description of Person, 16, 133
 Sufficiency of proof, 10, 562
Variance, 10, 564
 Partnership, 10, 564
 Persons committing particular offense, 10, 564
Description of Property
 Amendment, 10, 539
 Sufficiency of proof, 10, 563
Description of Weapon, 10, 594
 In case of assault, 10, 594
 Indictment for murder, 10, 594
Description of Written Instrument, 10, 594
 Abbreviations, 10, 595
 According to its legal effect, 10, 594
 According to purport, 10, 595
 Exact copy, 10, 595
 Forgery, 10, 595
 Libel, 10, 595
 Substance, 10, 595
 Tenor of writing, 10, 595
 What must be set out, 10, 595
Descriptive Matters, see infra, VARIANCE.
 Surplusage, 10, 554
 Directness, 10, 551
 Discharge of prisoner upon failure to indict, 10, 463
Disturbing Meetings, 5, 722
 Character of disturbance, 5, 722
 Describing place, 5, 722
 Generally, 5, 722
 Duplicity, 4, 742, 755, 768
 "Effect," 6, 169
Embezzlement
 Allegation of conversion, 6, 498i

INDICTMENT—Cont'd**Errors****Formal and Technical**, 4, 770; 10, 544

Effect of, 10, 544

Omission to lay venue, 10, 544

When fatal, 10, 544

Unprejudicial, 4, 770; 10, 545

Clerical errors, 10, 545

Effect of, 10, 545

The place where offense was committed, 10, 546

Escape, 6, 853e

Aiding, 6, 853f

Attempt to, 6, 853e

Showing lawful detention, 6, 853e

Suffering, 6, 853f

Essentials, 10, 455**Exposure of Person**, 7, 537

Effect of statutory indictment good at common law, 7, 537

Language of statute, 7, 537

Extortion

Color of office, 7, 594

Each a separate offense, 7, 593

Evidence of intent, 7, 594

Statement of amount collected, 7, 593

Statement of facts due, 7, 593

What should contain, 7, 594

Figures in, 7, 959; 10, 550, 58^r**Final judgment**, 12, 70**For Attempt**, 4, 748

To poison, 4, 742

"Force and arms," 8, 99

For contempt, 3, 794**For false swearing**, 7, 794**For keeping disorderly house**, 5, 694**Form**, 10, 460

Power of legislature to ordain, 10, 460

Substance not to be dispensed with, 10, 460

Formal and immaterial defects, 4, 770; 10, 544**For malicious mischief**, 4, 750**For obtaining goods under false pretenses**, 4, 749**"Good and lawful men,"** 8, 1360**Grand Jury**, see *infra*, AMENDMENT.

See GRAND JURY.

As to statement of number of grand jurors, see CAPTION.

Record

Showing appointment of foreman, 10, 526

Showing organization, 10, 526

Habeas Corpus

After, 9, 195

Insufficiency of indictment, 9, 229

Hawkers and Peddlers, 9, 316

Averments, 9, 316

Facts that constitute hawking and peddling, 9, 316

Homicide

Verdict of assault, 15, 364

Homicide cases, see HOMICIDE.**Illegibility**, 10, 551**Incest**, 10, 341

Charging act of fornication, 10, 342

Charging knowledge, 10, 343

Charging several acts, 10, 342

Duplicity, 10, 342

Illegitimate relationship, 10, 343

Name and identity of the parties, 10, 343

Relationship not within prohibited degrees, 10, 343

Showing relationship, 10, 342

Where both parties must be charged, 10, 341

Indictable Offenses, 10, 457**Capital and Infamous Offenses Generally**, 10, 459

Definition as to what crimes may be prosecuted, 10, 459

Felonies, 10, 459

Common-law offenses, 10, 457

Disobedience to statute, 10, 457

Effect of knowledge or intent, 10, 459

Effect of repeal and amendment of statute, 10, 458

Failure to enact penalty, 10, 458

Generally, 10, 457

Misdemeanors, 10, 457, 459

Municipal charter penalties and ordinances, 10, 458

Statute imposing fine or penalty, 10, 458

Indorsement, 10, 497

Direction for indorsement mandatory, 10, 498

Error in, 4, 768

For different offense from that set out, 10, 498

General matters relating to, 10, 497

Name and nature of offense, 10, 498

Name of Prosecutor

At what time advantage may be taken of omission, 10, 499

Effect of omission, 10, 499

Foreman of grand jury as prosecutor, 10, 500

Form of words, 10, 501

For what offense, 10, 501

Indorsement only necessary to certain indictment, 10, 498

Malicious prosecution, 10, 499

Necessity of indorsement, 10, 498

On what part of indictment to be made, 10, 501

Quashing for lack of, 10, 500

Reasons for requiring prosecutor's name, 10, 498

Sufficiency of indorsement, 10, 501

Where prosecutor is infant or a married woman, 10, 500

Whether indorsement must be voluntary, 10, 501

Whether mandatory or directory, 10, 499

Whose name may be indorsed, 10, 500

Names of Witnesses, 10, 501

Bill of exception, 10, 504

Discretion of court, 10, 502

Effect of omission, 10, 501

- Examination of witnesses at trial omitted, 10, 504; 24, 710
- Examination of witnesses indorsed, 10, 504
- Misnomer, 10, 503
- Objection**, 10, 504
 - To admission of witnesses, 10, 502
- Presumption as to**, 10, 503
 - Names by noting, 10, 503
- Presumption when there is reference to other witnesses, 10, 503
- Right Christian name, 10, 503
- Statutory requirements, directory or mandatory, 10, 501
- Testimony of witnesses, 10, 502
- When no objection has been taken to admission of witnesses, 10, 502
- Where prosecution is bound to call witnesses, 10, 504
- Whether state is confined to testimony given by witnesses before grand jury, 10, 504
- Necessity**, 10, 498
 - Of name of offense, 10, 497
 - Quashing for want of, 10, 498
- Indorsement by Foreman of Grand Jury**
 - Motion to quash for failure to indorse, 4, 757
 - Reversal of judgment where indorsement is wanting, 4, 758
 - What is sufficient indorsement, 4, 758
- Informers**, see *infra*. PROSECUTOR.
- Indorsement of Prosecutor's Name on Indictment**
 - At what time advantage may be taken of omission, 10, 499
 - Effect of omission, 10, 499
 - Foreman of grand jury as prosecutor, 10, 500
 - Form of words, 10, 501
 - For what offense, 10, 501
 - Indorsement only necessary to certain indictment, 10, 498
 - Malicious prosecution, 10, 499
 - Necessity of indorsement, 10, 498
 - On what part of indictment to be made, 10, 501
 - Quashing for lack of, 10, 500
 - Reasons for requiring prosecutor's name, 10, 498
 - Sufficiency of indorsement, 10, 501
 - Where prosecutor is infant or a married woman, 10, 500
 - Whether indorsement must be voluntary, 10, 501
 - Whether mandatory or directory, 10, 499
 - Whose name may be indorsed, 10, 500
- Injunctions, 10, 986
- Intent**, 4, 746; 10, 596
 - Indictment against accessory, 10, 598
 - Necessity and sufficiency, 10, 596
 - Necessity of allegation of, 4, 746
 - Necessity of expressing, in indictment for carrying concealed weapons, 3, 415
- Particular words to describe, 10, 597
- Unlawfully**, 10, 597
 - Feloniously, 10, 597
 - Feloniously for unlawfully, 10, 598
 - Substitute and equivalent words, 10, 597
 - Sufficiency and effect generally, 10, 598
 - "Unlawfully" in indictment for misdemeanor, 10, 597
 - "Unlawfully and wantonly" for "willfully and maliciously," 10, 598
 - Where evil intent forms part of crime, 10, 596
 - Where intent forms no part of crime, 10, 596
- Interlineations, 10, 551
- Jeofail, 10, 535
- Kidnapping, 12, 520
- "Knowingly," 12, 522
- "Knowingly and willfully," 12, 522
- Knowledge, 10, 501
- Libel and Slander**, 13, 599
 - Action for slander, 13, 502
 - Allegations, 13, 501
 - Innuendos, 13, 501
 - Sufficiency, 13, 501
- License**, 13, 518
 - In general, 13, 518
 - Keeping a restaurant, 13, 518
- Loss or Destruction**, 10, 473
 - Copies, proof of contents, 10, 475
 - Effect of loss generally, 10, 473
 - Effect of new indictment, 10, 475
 - Finding new indictment, 10, 475
 - Lost indictment, 10, 473
 - Necessity of indictment being among records at time of sentence, 10, 474
 - Nunc pro tunc entry or return of indictment, 10, 473
 - Parol evidence of contents, 10, 476
 - Replacing lost indictment, 10, 476
 - Restoring mutilated indictment, 10, 474
 - Right and power of court to order new indictments, 10, 474
 - Showing loss of indictment, 10, 476
 - Statutory enactments, 10, 474
 - Subsequent trial and conviction, 10, 475
 - Sufficiency of certified copies, 10, 475
- Lotteries, 13, 1183
- Maintenance of persons under indictment, 19, 90
- Malicious Mischief**, 14, 12
 - Allegation of ownership, 14, 12
 - "Break, destroy, or injure," 14, 13
 - Examples, 14, 12-15
 - Injury to cattle, 14, 13
 - Injury to two animals one offense, 14, 14
 - Malice, 14, 13
 - "Maliciously," 14, 13
 - Nature and extent of injuries, 14, 12
 - Necessary allegations, 14, 12
 - "Willfully," 14, 13
- Materiality of matter sworn to, 18, 313

INDICTMENT—Cont'd

- Mayhem**, 14, 995
 - Allegations necessary, 14, 995
 - At common law, 14, 995
 - Charging the facts, 14, 995
 - Intent, 14, 995, 996
 - Miscellaneous, 14, 996
 - Under statutes, 14, 995
 - Unlawfully, 14, 996
 - Willfully, 14, 996
- Middle name**, 4, 739
- Misnomer**, 4, 769; 10, 456
 - See **MISNOMER**.
 - Amendment, 10, 539
 - Clerical error, 4, 770
 - Defendant's name, 4, 769
 - Effect of, 4, 769
 - Idem sonans, 4, 769
 - Person against whom the crime was committed, 4, 769
 - Two names from a common source, 4, 769
- Misspelling**, 4, 739, 771; 10, 548
 - Caption, 10, 549
 - Description of the offense, 10, 549
 - Generally, 10, 548
- Instances**
 - "Cash" for "case," 10, 549
 - "Eigh" for "eight," 10, 548
 - "Fourman" for "foreman," 10, 549
 - "Incestous" for "incestuous," 10, 550
 - "Inhabitance" for "inhabitants," 10, 549
 - "Mair" for "mare," 10, 550
 - "Raysor" for "razor," 10, 550
 - "Rill" for "kill," 10, 550
 - "Stael" for "steal," 10, 550
 - "Febuary" instead of "February," 10, 549
- Omission or addition of letters, 10, 549
- Where meaning of word can be determined from context, 10, 549
- Where significance is not changed, 10, 548
- Motion to Quash**, 4, 762
 - Discretion of Court**, 6, 838
 - When motion must be made, 4, 762
 - Duplicity, 4, 768
 - Error in indorsement, 4, 768
 - Evidence sustained in the indictment, 4, 767
- Ground Upon Which Motion May Be Made**, 4, 762, 763
 - In Illinois, 4, 763
 - In Indiana, 4, 763
 - In Iowa, 4, 763
 - In Kentucky, 4, 763
 - In Michigan, 4, 763
 - In Ohio, 4, 763
- Illegal arrest of accused, 4, 767
- Instances where motion has been sustained, 4, 765
- Objections should be made in trial court, 4, 771
- Surplusage, 4, 772

- Waiver of error, 4, 764
- When granted, 4, 764
- When it must be made, 4, 764
- When not granted, 4, 767
- Where affidavit does not support information, 4, 765
- Where complaint follows words of statute, 4, 768
- Where defect does not prejudice the substantial rights of defendant, 4, 767
- Where defendant never had a preliminary examination, 4, 765
- Where essential part of offense is omitted, 4, 764
- Where indictment avers an impossible time of commission, 4, 765
- Where one of counts of indictment was good, 4, 767
- Where time for the fine is subsequent to date of indictment, 4, 765
- Municipal Corporations**, 15, 1196
 - Bridges, 15, 1197
 - Examples, 15, 1196-1198
 - Nuisances, 15, 1198
 - Requisites of indictment, 15, 1197
 - Streets and highways, 15, 1196
 - Whether corporation liable for indictment, 15, 1196
- Murder**
 - See **HOMICIDE**.
 - Accessory, 15, 364
 - Conviction of lower degree of crime, 15, 363, 364
- Name**, 16, 114
 - See **NAME**.
 - Name of third party, 10, 456
- Naming Defendant**, 10, 456, 483, 528
 - See *infra*, **MISNOMER**.
 - Amendment, 10, 539
 - Exception to indictment by initials, 10, 484
 - Identification, 10, 485
 - Indictment in fictitious name, 10, 484
 - Initials, 10, 484
 - Middle name, 10, 485
 - Name in body of indictment though not in title, 10, 485
 - Name partially known, 10, 483
 - Necessity, 10, 483
 - Plea in abatement, 10, 484
 - Refusal to disclose name, 10, 483
 - Single letter for name, 10, 484
 - Statement that name is unknown, 10, 483
 - Statute of additions, 10, 484
 - Substitution of true name for fictitious name, 10, 484
 - Taking advantage of indictment in wrong name, 10, 484
 - Where name is not known, 10, 483
- Naming State**, 10, 487
 - Fictitious names of states, 10, 488
- Necessary allegation**, 4, 743
- Necessity**, 10, 456
 - Of proving as laid, 10, 559
 - Of, under constitution, 3, 730
 - Unlawfully, 10, 597

Negation of Defense, 10, 578

Exceptions of provision in same clause, 10, 578

Facts that might change character of offense, 10, 578

General rule, 10, 578

Necessity of Negating Exceptions or

Provisos, 4, 753, 754; 10, 579

Facts necessary to conviction, 10, 579

General rule, 10, 579

Misdemeanors, 10, 581

Negative description, 10, 579

Part of definition of, 10, 580

Special circumstance, 10, 580

Statutory penalty, 10, 581

When negative averments are not necessary, 10, 579

Willfully, unlawfully, and maliciously, 10, 580

Negative averments generally, 10, 578

Sufficiency of negative averments, 10, 581

Nolle Prosequi

Where offense is set out with aggravating circumstances, 4, 841

Numerals, 7, 959; 10, 550, 585

Objections to complaint for formal defects should be taken in trial court, 4, 771

Object of indictment, 10, 454

Obscenity, 17, 10

Accuracy, 17, 10

Description of book by title only, 17, 10

Examples, 17, 10, 11

General requisites, 17, 10

Mailing obscene matter, 17, 10, 11

Scienter, 17, 11

Setting forth the language, 17, 10

Variance, 17, 11

Obstructing Attendance of Witness, 17, 25

Alleging on whose behalf witness was summoned, 17, 26

Particular means employed, 17, 26

Setting out record, 17, 25

Obstructing Justice, 17, 21

Court of limited jurisdiction, 17, 22

Distinction between assault and resistance, 17, 21

Examples, 17, 23

Form, 17, 21

Habeas corpus, 17, 22

Knowledge of official character, 17, 23

Legality of process, 17, 21

Method of obstruction, 17, 23

Official character of persons, 17, 21

Reciting the writ, 17, 21

Refusal to assist an officer, 17, 24

Rescue, 17, 22, 23

Resisted person, 17, 21

United States officer, 17, 22

What must appear on face of indictment, 17, 21

Words of statute, 17, 23

Of accessory, 1, 65

Offense failed to be set out, 10, 455

Omission and Misuse of Words

And, 10, 482

"And" instead of "or," 10, 539

"At" a county instead of "in" a county, 10, 546

"Attorney-general" instead of "attorney for the state," 10, 506

"Body of the county," 10, 483

"By" for "to," 10, 483

"Corporal" for "solemn," 10, 546

Court, 10, 482

For, 10, 482

"Impounded" instead of "impaneled," 10, 483

"Is" instead of "are," 10, 547

Omission of a figure, 10, 539

Omission of "did," 10, 539

Omission of word "dollars," 10, 539

Omission of word "manner," 10, 539

Omission of Words, 10, 514, 547

"Against the peace and dignity," 10, 513

Effect of, 10, 547

Where word is not material, 10, 547

"Present," 10, 486

"Prosecuting attorney" instead of "district attorney," 10, 506

"Sabbath" for "Sunday," 10, 547

"State," 10, 547

"Suit" for "cause," 10, 547

"Then and there," 10, 483

"To," 10, 547

Use of a Wrong Word, 10, 482, 546

Effect generally, 10, 546

Where defendant is not prejudiced, 10, 546

Where meaning is not changed, 10, 546

Where word changes meaning of instrument, 10, 546

"Was" for "did," 10, 547

"On or about," 10, 599

Order setting aside an indictment, 4, 764

Ownership

Variance, 10, 560

Partnership

Variance, 10, 564

Perjury, 18, 313

Affidavits, 18, 321

Amendment, 18, 320

Argumentativeness, 18, 313

Assignments, 18, 319

Averments as to place, 18, 318

Averments as to time, 18, 318

Cause in which perjury was committed, 18, 313

Certainty, 18, 313

Counts, 18, 319

Court in which perjury was committed, 18, 313

Defect in one count, 18, 320

Forms of indictments, 18, 322, 323

In general, 18, 313

Intent, 18, 316

Contradicting statements sworn to, 18, 316

Examples, 18, 316, 317

INDICTMENT—Cont'd**Perjury—Cont'd****Intent—Cont'd**

- Falsely, 18, 316
- Knowledge of falsity, 18, 317
- Necessity of averments, 18, 316
- Willfully, 18, 316

Jurisdiction, 18, 314

- Authority of person administering oath, 18, 314
- Certainty required, 18, 314
- Facts giving authority or jurisdiction, 18, 315
- Name of officer, 18, 315
- Style of court, 18, 315

Juror, 18, 322**Materiality, 18, 317**

- Examples, 18, 317, 318
- Necessity of averments, 18, 317

Of False Statement

- Examples, 18, 317, 318
- Setting forth facts, 18, 317

Oath, 18, 314

- Averments as to, 18, 314
- "Duly sworn," 18, 314
- Substance of false oath, 18, 314
- What must be set out, 18, 314
- Swearing in one's vote, 18, 322
- Tax laws, 18, 323
- Variance, 18, 320

Physicians and Surgeons

- Indictment for practicing without a license, 18, 431

Place, Averments as to, see VENUE.

As to crimes committed partly in one county, partly in another, see JURISDICTION.

Amendment, 10, 540

- Necessity, 10, 591
- Offense on water, 10, 591
- Offenses committed in more than one jurisdiction, 10, 594

Organization and Division of Counties, 10, 593

- New county, 10, 593
- Offense on or near boundaries, 10, 593

Particular locality, 10, 591**Public place, 10, 591****Repeating and Referring to Allegations, 10, 592**

- "Aforesaid county," 10, 592
- Generally, 10, 592
- "Said county," 10, 592
- "Then and there," 10, 592

Steamer on inland waters, 10, 591**Sufficiency of proof, 10, 561****Variance, 10, 560, 564****Vessel on high sea, 10, 591****Place where crime was committed, 4, 742****Poison and poisoning, 18, 738****Power of amendments under codes, 28, 52****Practice as to, by grand juries, 9, 14****Presentation**

- Effect, 10, 471
- Minutes, 10, 470

Presentment, 9, 15; 10, 456, 470

Record, see infra, RECORD.

Admissible as evidence, 10, 471

Amendment, 10, 536

Appearing in record, 10, 470

By grand jury as a body, 10, 470

Character, 9, 15

Distinguished from indictment, 9, 15

Indorsement of circumstance of, 10, 470

Necessity, 10, 470

Presentment instead of indictment, 10, 471

Presumption of, 10, 471

Prevailing practice, 9, 15

Signature by foreman of grand jury alone, 10, 470

Special presentment as evidence, 10, 471

Subsequent proceedings thereon, 10, 471

Previous conviction, 4, 744

Proceeding by indictment or information according to discretion of district attorney, 4, 734

Proof of descriptive averments, 4, 843

Proof satisfying description, 4, 743

Property, see *infra*, DESCRIBING PROPERTY, OWNERSHIP, AND VALUE.

Variance, 10, 560, 564

Prosecutor, 10, 461, 500

See INFORMER.

Informer, 10, 461

Necessity, 10, 461

Public Officers, 19, 505

Act complained of, 19, 506

Averring election or appointment, 19, 505, 506

Entry upon duties of office, 19, 506

Facts stating illegality, 19, 506

Following language of statute, 19, 505

Necessary averments, 19, 505, 506

Official capacity, 19, 506

Statement of illegality, 19, 506

Record, 20, 497

Amendment, 10, 537

As to Grand Jury, 10, 526

Appointment of foreman, 10, 526

Describing defendants, 10, 526

Describing offense, 10, 528

Designating court, 10, 528

Name of witnesses, 10, 527

Oath of witnesses, 10, 527

Reciting evidence and names of witnesses, 10, 527

Showing arraignment, 10, 528

Showing indorsement, 10, 527

Showing manner in which drawn, 10, 526

Showing organization of grand jury, 10, 526

Showing plea, 10, 528

Showing signing, 10, 527

Showing sufficient power of proceedings, 10, 528

Showing venue, 10, 527

- Change of Venue, 10, 529**
 - Contents of record, 10, 529
 - In which county should be recorded, 10, 529
 - Place and time of recording or filing, 10, 529
 - Transcript, 10, 529
 - What transcript should show, 10, 529
- Objection to, 10, 530**
- Presumption in favor, 10, 530**
- Reciting amendment, 10, 530**
- Record; Filing, 10, 521**
 - Consent of court, 10, 522
 - Effect of mistake, 10, 522
 - Effect of omission, 10, 521
 - General requisites, 10, 522
 - Immaterial omissions, 10, 523
 - Informalities and omissions, 10, 522
 - Necessity, 10, 521
 - Nunc pro tunc, 10, 523
 - Presentment must appear on records, 10, 523
- Return of Presentment, 10, 523**
 - Admissibility and sufficiency as evidence, 10, 526
 - Effect of omission, 10, 524
 - Necessity, 10, 523
 - Sufficiency, 10, 525
- Showing finding, 10, 523**
- Substitution, 10, 522**
- What amounts to filing, 10, 523**
- What constitutes, 10, 522**
- When filed, 10, 523**
- When indictment becomes part of record, 10, 522**
- When indictment shows proper in extent, 10, 522**
- When statute requiring is directory, 10, 521**
- Repugnancy, 10, 565**
 - What Constitutes, 10, 565**
 - As to immaterial points, 10, 566
 - Between different counts, 10, 566
 - Effect of, 10, 565
 - Rejecting surplusage, 10, 566
- Requisites, 10, 460.**
- Return, 10, 470**
 - Admissible as evidence, 10, 471
 - Appearing in record, 10, 470
 - By grand jury as a body, 10, 470
 - Effect, 10, 471
 - Indorsement of circumstance of presentation, 10, 470
 - Minutes, 10, 470
 - Necessity, 10, 470
 - Presentment instead of indictment, 10, 471
 - Presumption of presentment, 10, 471
 - Record, 10, 470
 - Special presentment as evidence, 10, 471
 - Subsequent proceedings thereon, 10, 471
- Return of Grand Jury, 4, 759**
 - Record must show the return, 4, 760
 - Record showing that grand jury was lawfully impaneled, 4, 759
 - Upon oath or affirmation, 4, 759
- Return of Presentment**
 - Record, 10, 523**
 - Admissibility and sufficiency as evidence, 10, 526
 - Effect of omission, 10, 523
 - Necessity, 10, 523
 - Presentment must appear on records, 10, 523
 - Sufficiency, 10, 525
 - Right of accused to copy of indictment, 4, 815**
 - Riot, 21, 410**
 - Robbery, 21, 427**
 - Against the will of person robbed, 21, 429
 - Animus furandi, 21, 430
 - Description of property, 21, 428
 - Examples, 21, 427
 - Fear, 21, 430
 - Force, 21, 430
 - From the person, 21, 429
 - Grand larceny, 21, 431
 - Included offenses, 21, 430
 - Indictment on statute, 21, 428
 - In general, 21, 427
 - Larceny, 21, 430
 - Larceny from the person, 21, 431
 - Ownership, 21, 428
 - Requisites generally, 21, 427, 428
 - Value, 21, 430
 - "Said county," 10, 592**
 - Scienter, 21, 850**
 - Second Indictment, 10, 534**
 - See infra*, LOSS OR DESTRUCTION.
 - See* JEOPARDY.
 - Reexamination of witnesses, 10, 479
 - Reversal or arrest of judgment, 10, 479
 - Seduction, 21, 1045**
 - Several counts, 21, 1045
 - Time of seduction, 21, 1045
 - Words of statute, 21, 1045
 - Service on Defendant of Copies, Lists, etc., 10, 472**
 - Capital case, 10, 472
 - Cases not capital, 10, 473
 - Copies of indictment and venire, 10, 472
 - Copies of testimony, 10, 472
 - Defendant's right to list, 10, 472
 - In federal courts, 10, 472
 - List of witnesses, 10, 472
 - Personal service, 10, 473
 - Reading, 10, 473
 - Service of copy, 10, 472
 - Signature, 4, 757**
 - By deputy, 4, 757
 - Indorsement, 4, 757
 - Legibility, 4, 757
 - Of foreman alone, 10, 470
 - Where name of prosecutor is written with his consent, 4, 757
 - Whether failure to sign prejudices the "substantial rights of defendant," 4, 757
 - Signature by Grand Jury, 10, 508**
 - Amendment, 10, 508
 - Effect of omission, 10, 508

INDICTMENT—Cont'd**Signature by Grand Jury—Cont'd****Indorsement as a True Bill, 10, 510**

Effect of indorsement, 10, 512

Effect of omission, 10, 511

In absence of mandatory statute, 10, 510

Indorsed "not a true bill," 10, 512

Indorsing a true bill, 10, 511, 512

Necessity, 10, 510

Statute, 10, 510

True bill, 10, 511

Where statutory provisions directory, 10, 511

Necessity, 10, 508

At common law, 10, 508

Under constitution, 10, 508

Sufficiency, 10, 509

Clerk signing in foreman's name, 10, 509

Designation as "foreman," 10, 510

Generally, 10, 509

Initials of Christian name, 10, 510

Name and initials of foreman, 10, 510

One of the grand jury signing as foreman, 10, 509

On what part of bill signature should appear, 10, 509

Signature by juror, 10, 510

Time of signing, 10, 509

True bill, 10, 508

Where no foreman is appointed, 10, 509

Signature of Prosecuting Officer, 5, 715; 10, 505

Effects of omission, 10, 505

Necessity, 10, 505

At common law, 10, 505

Common even when not required, 10, 505

State statutes, 10, 505

Sufficiency, 10, 505

Attorney-general instead of attorney for the state, 10, 506

Deputy or assistant, 10, 507

Designation of county or district, 10, 506

Generally, 10, 505

Initials of Christian name, 10, 506

Judicial notice of signature, 10, 506

Official designation, 10, 506

Omission of official designation, 10, 506

Presumption as to appointment of special or deputy pro tem, 10, 507

Prosecuting attorney instead of district attorney, 10, 506

Special or pro tem prosecuting officer, 10, 507

Whether statute requirement is mandatory, 10, 505

Sodomy, 22, 830

Statement of a legal result, 4, 744

Statute of additions, 16, 133

Statutory offenses, 4, 746

Street Railways

Unauthorized use of streets, 23, 95C

Sufficiency of, 3, 730; 10, 460**Jeopardy, 11, 930**

Arraignment, 11, 932

Illegally organized grand jury, 11, 931

Insufficient indictment, 11, 930

Invalid indictment, 11, 930

Misdescription, 11, 932

Mistake in allegation of time, 11, 932

No legal crime, 11, 930

Proceedings on a second indictment, 11, 932

Quashed indictment, 11, 931

Test of sufficiency, 11, 931

Validity of indictment, 11, 930

Voidable indictment, 11, 931

*Signature by grand jury, see infra, SIGNATURE BY GRAND JURY.***Surplusage, 4, 772; 10, 519, 552***See infra, VARIANCE.*

Aggravating matter, 10, 552

Alleging aggravating matter, 10, 521

Defective allegation, 10, 553

Describing intent, 10, 554

Describing ownership, 10, 554

Describing particular offense, 10, 554

Describing person, 10, 554

Description matters, 10, 554

Effect generally, 10, 552

Examples, 10, 552, 553

General matters, 10, 552

Intent, 10, 554

Matters of description must be properly alleged, 10, 556

Matters of evidence, 10, 554

Needless words, 10, 521

Ownership, 10, 554

Person, 10, 554

Rejecting defective allegations, 10, 521

Rejection, 10, 552

Repugnancy, 10, 566

Sufficiency of charge in one offense and insufficiency in another, 10, 555

Time, 10, 554

Time of offense, 10, 554

Unnecessary allegation, 10, 552

Unnecessary or redundant words, 10, 552

Unnecessary words and phrases, 10, 521

What can be regarded as, 10, 554

Words showing that no offense was committed, 10, 521

Technical words, 4, 739**"Then and There," 10, 587, 592**

Effect of omission, 10, 587

Necessity, 10, 587

Preceding every material allegation, 10, 588

Sufficiency, 10, 587

Two or three different days, 10, 588

When proper, 10, 588

Threats and threatening letters, 25, 1072**Time and Place, 4, 745**

Allegation of an impossible date, 4, 746

- Allegation of time, 4, 745; 10, 581
 Offense must appear to have been committed anterior to presentment of indictment, 4, 746
 Specific day, 4, 745
Time, Averment as to, 4, 745; 10, 581
See infra, "THEN AND THERE."
Alleging Continuous Offenses, 10, 589
 Doctrine of Massachusetts, 10, 590
 Examples, 10, 590
 Failure to pay over money, 10, 590
 Intoxicating liquors, 10, 590
 Specified day, 10, 589
Alleging Particular Day, 10, 582
 Acts on different days, 10, 583
 Between two days, 10, 583
 Continuous offense, 10, 583
 Necessity, 10, 582
 "On or before," 10, 582
 Repugnancy or uncertainty, 10, 582
 Statute, 10, 582
 Where the day does not enter into the offense, 10, 582
 Amendments, 10, 541
 "Anno domini," 10, 584
 Blank dates, 10, 585
 Day of week, 10, 586
 Defective or omitted averments, 10, 584
 Defects, mistakes, 10, 585
 Effect of alleging future date, 4, 764; 10, 589
 Effect of omission of time, 10, 581-584
 Effect of omitting year, 10, 584
 Future and impossible dates, 10, 589
 Impossible or future date, 10, 584
 Necessity, 10, 581
 Necessity of alleging prior date, 10, 589
 Necessity of proof of date as laid, 10, 586
 Omission of year, 10, 584
 On divers other days, 10, 590
 "On or about," 10, 588
 Reference to captain, 10, 587
 Reference to counts, 10, 587
 Repetition, 10, 587
 Statute of limitation, 10, 585
 Sufficiency, 10, 581
 Sufficiency of proof, 10, 562
Sunday, 10, 586
 Day of month, 10, 586
 Where act is illegal on Sunday, 10, 586
 Surplusage, 10, 554
 The hour, 10, 583
 Time covered by indictment, 10, 584
 Use of figures, 10, 585
 Use of numerals, 10, 585
 Variance, 10, 559, 560, 564
 When indictment may be barred by lapse of time, 10, 581
 When time is essential to the offense, 10, 581
Time of Amending
 After trial was commenced, 10, 541
 Time of commission of offense, 10, 456
Time of Finding, 10, 462
See infra, CAPTION.
At What Term of Court May Be Found, 10, 462
 Adjourned terms, 10, 463
 Change of time of holding, 10, 463
 Discharge on failure to indict, 10, 463
 Extra, 10, 463
 Generally, 10, 462
 Recess, 10, 463
 Regular term, 10, 462
 Special, 10, 463
 Unauthorized term, 10, 463
 Filed on same day offense was committed, 10, 462
 Found while investigation was going on, 10, 462
 Offense committed after term of court began, 10, 462
 Offense previous to the finding, 10, 462
 Title of action, 10, 483
True bill, see infra, SIGNATURE BY GRAND JURY.
Under Codes of Civil Procedure, 28, 52
 In general, 28, 52
 Power as to amendments under codes, 28, 52
Variances, see infra, VARIANCE.
Under Statute, 10, 572
 Alleging a negative, 4, 754
 Changing disjunctive to conjunctive form, 4, 751, 752
 Charging defense in words of statute, 4, 768
 Charging in the words of the statute, or in language equivalent thereto, 4, 752
 Complaint for a penalty, 4, 751
 Following language of statute, 4, 750; 10, 573
 Indictment for misdemeanor, 4, 751
 In the language of statute, 4, 748; 10, 573
 Must contain all substantial requirements of an indictment at common law, 4, 740
Negating Provisos and Exceptions, 4, 753
 When necessary, 4, 753, 754; 10, 579
 Where exception is made in the enactment clause, 4, 754
 Where exception is not necessary to a complete definition of the offense, 4, 753
 Offense bearing close relation to a common-law offense, 4, 752
 Offense unknown to the common law, 4, 752
 Precision in charging offense, 4, 752
 Setting out statutes, 4, 750
 Where a statute refers by name to a well-known crime and makes such crime a constituent of the defined crime, 4, 751
 Ungrammatical language, 10, 548

INDICTMENT—*Cont'd*

"Unlawfully," 12, 522

See infra, INTENT.

Usury, 27, 940

Value, *see infra*, DESCRIBING PROPERTY, OWNERSHIP, AND VALUE.

Variance, 10, 560

Variance, 10, 564; 15, 363*See* VARIANCE.

Conviction of a lower crime, 15, 361

Conviction of lower crime as bar to higher, *see* JEOPARDY.

Felony proved on indictment for misdemeanor, 15, 361

Indictment as principal, conviction as accomplice, 15, 361

Indictment containing several counts, 15, 362

Indictment for offense, conviction for attempt, 15, 362

Necessity of Proving as Laid, 10, 556

Adjective allegation, 10, 557

All averments, 10, 556

Assault with intent to murder, 10, 560

Color of animal, 10, 558

Description of particular offense, 10, 559

Description of written instrument, 10, 559

Descriptive allegation, 10, 557

Descriptive matters, 10, 557

Embezzlement of bank notes, 10, 559

Generally, 10, 556

General rule as to descriptive matters, 10, 557

Intention as laid, 10, 559

Name of animal, 10, 558

Name of corporation, 10, 557

Name of person, 10, 557

Neglect of providing for children, 10, 559

Omitted and unnecessary averments, 10, 557

Ownership, 10, 560

Place, 10, 560

Property, 10, 560

Resisting an officer, 10, 559

Sex, 10, 558

Surplusage, 10, 566*See infra*, SURPLUSAGE.

Termini, 10, 561

Time, 10, 560

Unnecessary adjectives, 10, 557

Unnecessary particularity, 10, 558

Value, 10, 560

When time is the essence of the offense, 10, 559

Offense proved includes offense charged, 15, 361

Offenses belonging to the same class, 15, 362

Statutory offense, 10, 572

Sufficiency of Proof, 10, 561

Describing animals, 10, 563

Describing property, 10, 563

Describing written instrument, 10, 563

Description of money, 10, 563

Description of person, 10, 562

Description of property stolen, 10, 563

Generally, 10, 561

Place, 10, 561

Time, 10, 562

Time as laid, 10, 586

Under Codes of Civil Procedure**Immaterial Variance**, 28, 54

Action upon contract, 28, 57

Alleging implied promise, 28, 56

Examples, 28, 54-58

In general, 28, 54

Instances, 28, 58

Slander, 28, 57

Usury, 28, 57

Kinds of, 28, 53

Material, 28, 53

Affidavit, 28, 54

Effect of want of proof of prejudice, 28, 53

Examples, 28, 53, 54

In general, 28, 53

Variances in justices' courts, 28, 53

What Constitutes, 10, 563

Acquittal and rehearing in case of variance, 10, 565

Description of corporation, 10, 564

Description of partnership, 10, 564

Description of person, 10, 564

Description of place, 10, 564

Description of property, 10, 565

Description of time, 10, 564

Description of written instrument, 10, 565

Ownership, 10, 565

Persons committing particular offenses, 10, 564

Technical variance, 10, 564

Where different degrees of offense are charged, 15, 363

Venue, 10, 456, 543*See* VENUE.

County of the defendant's residence, 10, 543

Failure to Lay, 10, 543

When omission to lay fatal, 10, 544

Laying offense in words of law, 10, 543

Necessary when essential to description of crime, 10, 544

Record

Showing arraignment and plea, 10, 528

Unprejudicial errors, 10, 545

When place essential, 10, 543

Violating local option law, 4, 740

What crimes are prosecuted by, 4, 734

What indictment should contain, 4, 735

When necessary to allege that crime was committed "willfully and maliciously," 4, 747

When objection to formal defects must be taken, 4, 740

- Where all counts are based upon same transaction, presumption that one offense was intended to be charged, 4, 816
- Whether synonymous with prosecution, 19, 290
- INDIFFERENT**, 10, 600
- INDIGENT**, 10, 600
- INDIGNITY**, 10, 600
- Outrage and indignity, 17, 293
- INDIRECTLY**, 10, 600
- INDIVIDUAL**, 10, 600
- Expenses, 7, 490
- Individual banker, 10, 600
- INDOOR**, 10, 601
- INDORSED**
- Held equivalent to written upon, 8, 510
- INDORSEMENT**, 2, 315
- See **BILLS AND NOTES**.
- Absolute, 2, 316
- Conditional, 2, 316
- Qualified, 2, 316
- Restrictive, 2, 316; 21, 295
- INDUCEMENT**, 10, 601
- INELIGIBLE**, 10, 601
- INEVITABLE ACCIDENT**, 4, 41; 16, 396-440
- See **ACCIDENT; ACT OF GOD**.
- Navigation**, 16, 348
- Examples, 16, 348, 349
- In general, 16, 348
- Liability, 16, 348, 349
- Rule as to loss, 16, 349
- Negligence**, 16, 396
- Accident and want of ordinary care concurring, 16, 396
- Accidents from machinery, 16, 397
- Concurring with inevitable accident, 16, 429
- Inevitable accident distinguished from act of God, 16, 397
- Inevitable casualties, 3, 37
- Liability for, 16, 396
- Liability of person originally negligent, 16, 440
- Of surgeon following injury by defendant, 16, 441
- Shooting in self-defense and killing third party, 16, 397
- Where there is no want of ordinary care, 16, 396
- INEVITABLE ACCIDENT OR CASUALTY**, 3, 37; 10, 601
- INFAMOUS CRIMES**, 4, 644; 10, 603
- See **INFAMY**.
- Construction of a term, 23, 325
- Criminal conspiracy, 4, 596
- Definition, 10, 603
- What Crimes Are Infamous**, 6, 243; 10, 603
- See **INFAMY**.
- At common law, 10, 607
- Bankruptcy offense, 10, 603
- Conspiracy to defraud the United States, 10, 604
- Counterfeiting, 10, 604
- Crimes punishable at hard labor, 10, 603
- Crimes punishable in state penitentiary, 10, 603
- Embezzlement, 4, 646; 10, 603, 609
- Embezzlement from mails, 10, 603
- Erroneous judgment, 10, 606
- Felony, 10, 603, 607
- Forgery, 4, 646, 725; 10, 605
- In general, 10, 603
- Passing counterfeit money, 10, 603
- Receiving stolen goods, 4, 646; 10, 605
- Stigma of public infamy, 10, 609
- Whether depending upon, nature of act, 10, 604
- Within United States Constitutional Provisions**, 4, 645; 10, 603
- Conspiracy, 10, 604
- Examples, 10, 604
- Offenses not infamous, 10, 604
- Provisions generally, 10, 604
- Witnesses**, 4, 646, 647; 10, 604
- Adultery, 10, 605
- Assault and battery, 10, 608
- Barratry, 10, 605
- Bribery, 10, 605
- Certificate of conviction, 10, 609
- Conspiracy, 10, 605
- Conviction without judgment, 10, 606
- Crimen falsi, 10, 604
- Embezzlement, 10, 609
- Felony, 10, 607
- Judgment and conviction, 10, 609, 610
- Keeping gaming house, 10, 605
- Keeping house of ill fame, 10, 605
- Larceny, 10, 605
- Libel, 10, 608
- Necessity of conviction, 10, 606, 607
- Necessity of judgment, 10, 607
- Obtaining goods under false pretenses, 10, 605, 608
- Parol evidence of transportation, 10, 610
- Petit larceny, 10, 608
- Prostitution, 10, 605
- Receiving stolen goods, 10, 608
- Record of conviction, 10, 609
- Subornation of perjury, 10, 605
- Suppression of testimony, 10, 605
- INFAMY**, 3, 516, 537; 10, 606
- As to what crimes are infamous, see **INFAMOUS CRIMES**.
- Affidavit by party convicted of, 1, 308
- As cause for expulsion from a corporation, 1, 559
- Common law, 10, 607
- Competency of witnesses affected by, 4, 647; 10, 604
- Confinement in penitentiary, 4, 645
- Conviction and punishment for infamous crimes, 4, 647
- Counterfeiting, 4, 646
- Credibility of witness, 29, 815
- Credibility of witnesses affected by, 4, 646

INFAMY—Cont'd

- Definition, 10, 606
- Disfranchisement**, 6, 272; 19, 409
 - Bribery, 6, 273
 - Necessity of conviction, 6, 273
 - Pardon, 6, 274
 - Power of congress, 6, 273
 - What are infamous crimes, 6, 273; 10, 603
 - Whether a cruel or unusual punishment, 6, 272
- Disqualification does not arise until after judgment, 4, 725
- Distinction between felonies and crimes falsi, 4, 647
- Effect of**, 10, 611
 - Disqualification as witness, 4, 647; 10, 604, 606
 - Excluding from jury service, 10, 606
- Embezzlement, 4, 646; 10, 603, 609
- Executors and administrators, 21, 369
- Extra-territorial force of infamy, 3, 516, 537
- Forgery, 4, 646, 725; 10, 605, 607
- How proven, 10, 609
- Incompetency as witness of person convicted of felony, 4, 725
- Infamous crimes within the meaning of United States constitution, 4, 645; 10, 603
- Larceny, 4, 646, 725; 10, 605
- Necessity of conviction, 10, 607
- Necessity of judgment, 10, 609
- No disqualification until conviction, 647
- Pardon, 17, 327
- Party to suit, 10, 610
- Perjury, 4, 646, 725
- Public Officers**, 6, 272; 19, 409
 - Condonation, 19, 410
 - Constitutional disqualifications, 19, 409
 - Constitutionality of provisions, 19, 41
 - Constitution of United States, 19, 410
 - Criminal acts denoting an unfitness for office, 19, 409
 - Duelling, 19, 411
 - In absence of constitutional provisions, 19, 409
 - In general, 19, 409
 - Judicial ascertainment of guilt, 19, 411
 - Necessity of previous conviction, 19, 411
 - Persons liable for public moneys, 19, 411
 - Power of the legislature, 19, 410
- Receiving stolen goods, 4, 646; 10, 605
- Record of conviction, 10, 609
- Removal of**
 - By pardon, 10, 611
 - By reversal, 10, 611
- Statutory Provisions**, 10, 606
 - Disqualification, 10, 606
 - Exceptions, 10, 613
 - In California, 10, 612
 - In Colorado, 10, 612
 - In Connecticut, 10, 612
 - In Delaware, 10, 612

- In England, 10, 612
- In Georgia, 10, 612
- In Illinois, 10, 612
- In Indiana, 10, 612
- In Iowa, 10, 612
- In Kansas, 10, 612
- In Maine, 10, 612
- In Massachusetts, 10, 613
- In Michigan, 10, 613
- In Minnesota, 10, 613
- In Missouri, 10, 613
- In New Hampshire, 10, 613
- In New Jersey, 10, 613
- In New York, 10, 613
- In North Carolina, 10, 613
- In Rhode Island, 10, 613
- In United States, 10, 612
- In Vermont, 10, 613
- In Virginia, 10, 613
- In Wisconsin, 10, 613
- Stealing from mails, 4, 646
- Subornation of perjury, 4, 646, 725
- Suits**, 17, 487
 - Executor or administrator, 17, 487
 - Removal of disabilities, 17, 487
 - Trustee, 17, 487
 - Whether person convicted may be sued, 17, 487
 - Whether person convicted may sue at law, 17, 487
 - Whether person convicted may sue in equity, 17, 487
- Suppression of evidence, 4, 646, 725
- The crime involving charge of falsehood, 4, 645
- What are infamous crimes, 4, 644; 10, 603
- Whether embezzlement is an infamous crime, 6, 453
- Whether foreign judgment operates to disqualify a person as a witness, 4, 725
- Whether witness disqualified in another state, 4, 647
- INFANTICIDE**, 9, 562; 15, 221
 - A dead-born child, 15, 222
 - Burden of proof, 15, 225
 - Child must be wholly delivered, 15, 221
 - Compression of the umbilical cord, 15, 225
 - Debility, 15, 226
 - Definition, 15, 221
 - Evidence, 15, 228
 - Examples, 15, 226
 - Expert testimony, 9, 719
 - Fractures, 15, 226
 - Hemorrhage, 15, 226
 - Hydrostatic test, 15, 223
 - Independent circulation, 15, 222
 - Live child, 15, 222
 - Medical evidence, 15, 222
 - Neglect causing death, 15, 226
 - Protracted delivery, 15, 226
 - The respiratory organs, 15, 223
 - The umbilical cord, 15, 222
- INFANTS**, 5, 496e; 10, 613, 658
- See* APPRENTICES.
- See generally*, CHILDREN.

See GUARDIAN AND WARD; HOUSE OF CORRECTION; PARENT AND CHILD.
Avoidance of contracts, see *infra*, RATIONIFICATION AND AVOIDANCE.

Guardian and ward, see GUARDIAN.
Resulting trusts, see IMPLIED TRUST.
Account stated not conclusive, 1, 111

Actions Against, 10, 686

As to guardian and ward, see GUARDIAN.

Appearance by attorney, 10, 686

Brought against infant in person, 10, 686

Infant coming of age pending suit, 10, 691

Actions by, 10, 679

Amendment of writ, 10, 684

Appearance by attorney, 10, 679

Authority to remove next friend, 10, 682

Employment of attorney, 10, 680

General guardian, 10, 680

Infant married women, 10, 681

Knowledge and consent of infant, 10, 681

Next Friend

Allegation of appointment, 10, 685

Appointment of, 10, 682

Connected with defendant, 10, 682

Disqualified as witness, 10, 684

Evidence of appointment, 10, 683, 685

Liable for costs, 10, 683

Refusing to appeal, 10, 682

Regarded as officer of court, 10, 681

Reimbursing himself for costs, 10, 683

Relationship between infant and, 10, 682

Right to appear as, 10, 682

When authority ends, 10, 685

Whether a party, 10, 683

Who may be and is, 10, 682

Parent or next friend, 10, 680

Parent or special guardian, 10, 681

Plea in abatement, 10, 684

Responsible for costs, 10, 682

Statute, 10, 690

Suit by next friend, 10, 580

Suit in forma pauperis, 8, 545; 10, 685

Suit in infant's name, 10, 679

Suit in name of guardian, 10, 680

Suit of parent and child for injuries, 10, 678

Whether by next friend or guardian, 10, 680

Acts Binding on Infants, 10, 667

See *infra*, NECESSARIES.

Apprenticeship, see APPRENTICESHIP.

Acts which the law would have compelled infant to perform, 10, 667

Enlistment, 10, 667; 15, 402

Examples, 10, 667

Infant trustee, 10, 667

Admissions of, 5, 496f; 10, 689

Guardian and ward, 10, 689

Affidavits by, 1, 308

Agents appointed by, 1, 333; 10, 632, 633

Age of Majority, 1, 327; 10, 614

Conflict of laws as to, 10, 614

Age, see *infra*, FRAUDULENT REPRESENTATIONS AS TO AGE.

Amendment, 10, 684

Answer, 1, 608; 10, 689

Appearance as conferring jurisdiction, 12, 300

Appointment of Agent, 1, 333

Void or voidable, 10, 632, 633

Appointment of Attorney

Void or voidable, 10, 632, 633

Assignment for benefit of creditors, 1, 846; 10, 536

Bankruptcy, 10, 641, 642

Filing petition in, 2, 70

Bastardy, 10, 699

Bastardy, bond of, 2, 450

Bills and Notes of, 2, 346

Void or voidable, 10, 630

Bills in Equity, 6, 739

Against, 6, 745

Next friend having adverse interest, 6, 739

Party to, 6, 739

Prochain ami, 6, 739

Bonds, 2, 449

Void or voidable, 10, 631

Bounties, 15, 452

Breach of promise of marriage, 2, 523; 10, 624

Burden of proof as to necessities, 10, 665

By what law personal status is determined, 3, 518

Capacity as grantor of deed, see *infra*, DEEDS.

Capacity to Commit Crime, 4, 683, 798; 10, 697, 698

Assault, 4, 684

Burden of proof to show malice on prosecution, where child is between seven and fourteen, 4, 684

Confession of infants, 4, 685

Conviction of infant under fourteen years of age, 4, 684

Opinion of medical experts to prove age, 4, 685

Presumption as to capacity of infant over fourteen to be determined from facts of case, 4, 684; 10, 698

Presumption as to guilty knowledge between seven and fourteen years of age, 4, 684; 10, 698

Rape, 4, 684

Where malice is shown between seven and fourteen years of age, 4, 684

Carriers of Passengers

Care and discretion to be used by infant, question for the jury, 2, 750

Degree of care to be used by carriers of passengers towards infants, 2, 750

Child en Ventre sa Mere, 10, 624, 625

Partition of real estate, 10, 626

Collateral attack, 12, 147

Conditions subsequent, 13, 778

Confession of judgment, 28, 695

INFANTS—*Cont'd*

- Confessions by children, 3, 489
- Confessions of, 4, 685
- Confirmation**
 - Lease, 12, 993
 - Conflict of laws, 3, 580
- Contracts, 10, 628**
 - Necessaries*, see *infra*, NECESSARIES.
 - Compromise for injuries, 10, 679
 - Departing from terms of, 10, 669
 - Distinction between contract and tort, 10, 669
 - Emancipated minor, 14, 758; 17, 395
 - Executed or voidable, 10, 636
 - Infant's right to avoid his acts, 10, 628
 - Marriage settlement*, see *infra*, MARRIAGE SETTLEMENTS.
 - Prejudicial acts, 10, 628
 - Ratification and avoidance*, see *infra*, RATIFICATION AND AVOIDANCE.
 - Rescission*, see *infra*, RESCISSION.
- Right to Avoid Personal Privilege, 10, 637**
 - Assignee in insolvency, 10, 638
 - Examples, 10, 638
 - Maker of note refuses payment to infant indorser, 10, 638
 - Others for their own benefit, 10, 687
 - Privies in blood, 10, 638
 - Privies in estate, 10, 638
 - Sureties and indorsers for infant, 10, 638
 - Third persons, 10, 637
 - Whether privilege passes to heirs of infant, 10, 638
 - Whether privilege passes to personal representatives of infant, 10, 638
 - Who may take advantage of, 10, 637
- Tort connected with, 10, 669
- Trading, 10, 639
- Voidable acts, 10, 637
- Void or Voidable, 3, 862; 10, 628**
 - Executed contracts, 10, 636
- Contributory Negligence**, see CONTRIBUTORY NEGLIGENCE.
- Master and servant, 14, 861
- Conveyances, 10, 620**
 - Infant's right to avoid his acts, 10, 628
 - Prejudicial acts, 10, 628
 - Void or voidable, 10, 628
- Cost**
 - Liability for, 10, 682, 692
- Coverture and Infancy, 13, 732, 733; 14, 593**
 - Deed of infant married woman, 9, 31, 34; 14, 593
 - Effect of removal of one disability, 14, 593
 - Marital rights of infants, 14, 593
 - Restoration of consideration, 14, 594
 - Separate property, 14, 394
- Criminal conspiracy against female, 4, 604
- Custody of, 10, 628**
 - See PARENT AND CHILD; and see *infra*, DISPOSITION OF CHILDREN IN DIVORCE SUITS.

- Decree, 12, 87
- Decree by default, 5, 505, 506
- Decree in Equity**
 - Against infants, 5, 382
 - Providing for a day for infant to show cause against it, 5, 382
 - When becomes absolute, 5, 382
- Deeds, 5, 426**
 - Acquiescence in grantee's possession, 5, 427
- Capacity as Grantor of, 9, 27**
 - Delay, 9, 28
 - Grantee, 9, 30
 - How deed is avoided, 9, 27
 - In Alabama, 9, 29
 - In California, 9, 27
 - In Delaware, 9, 27
 - In Indiana, 9, 29
 - In Michigan, 9, 28
 - In North Carolina, 9, 28
 - Infant must give notice of disaffirmance, 9, 27
 - Married woman infant, 9, 31, 34; 14, 593
 - Notice of disaffirmance, 9, 29
 - Purchaser with knowledge of infant's prior conveyance, 9, 31
- Ratification, 5, 426; 9, 30**
 - See *infra*, RATIFICATION.
 - By delivery of deed after maturity, 9, 31
 - By express words, 9, 30
 - By omission to disaffirm within a reasonable time, 9, 27, 28, 30
 - Implied, 9, 30
 - Of second sale by minor, 9, 29
- Re-entry by infant, 9, 28
- Restoring consideration, 5, 426; 9, 29
- Sale to third party by infant, 9, 29
- What amounts to an affirmance, 9, 27, 28
- Where consideration is retained, 9, 30
- Where consideration is wasted, 9, 30
- Where infant dies before coming of age, 9, 27
- Whether acquiescence amounts to affirmance, 9, 28
- Whether deed is void or voidable, 9, 26
- Whether guardian may avoid, 9, 27
- Whether it may be avoided before infant is of age, 9, 27
- Whether retaining and spending consideration is an affirmance, 9, 29
- Consideration, 5, 426**
 - Ratification or disaffirmance, 5, 426; 9, 30
 - Restoration of consideration upon disaffirmance, 5, 426; 9, 29
 - Time within which infant may disaffirm, 5, 427
 - Void or voidable, 5, 426; 10, 632
 - What amounts to ratification, 5, 427
 - Where infant is under guardianship, 5, 426

Default, 5, 496s; 12, 87
 Definition, 10, 613
 Descent and distribution, 24, 363
Disaffirmance, see RATIFICATION AND AVOIDANCE.
 Lease, 12, 992
 Discretion of court in sentencing an infant, 4, 723
Disposition of Children in Divorce Suits, 5, 832
 Access by party not having custody, 5, 837
 Amendment of decree, 5, 837
 Awarding custody to third party, 5, 836
 Award of custody pendente lite, 5, 833
 Award of custody upon determination of suit, 5, 833
 Children of nearly same age, 5, 835
 Collateral impeachment of decree, 5, 836
 Constituting infants wards of court, 5, 837
 Disposition upon bill for alimony only, 5, 836
 Effect of decree, 5, 836
 Extra-territorial effect of decree, 5, 837
 Fitness of parties, 5, 834
 Habeas corpus proceedings, 5, 833
 Inherent jurisdiction of courts, 5, 832
 Innocent and successful party, 5, 835
 Judicial discretion, 5, 835
 Jurisdiction of courts, 5, 832
 Legal rights of party not having custody, 5, 837
 Liability of party not having custody, 5, 837
 Modification of decree in absence of statute, 5, 837
 Religious belief, 5, 836
 Religious education, 5, 836
 Requiring children to be kept within jurisdiction, 5, 837
 Restraining party from interfering with custody, 5, 837
 Scope of decree, 5, 837
 Separate proceeding by habeas corpus, 5, 836
 Statutory jurisdiction of courts, 5, 832
 Statute providing for amendment of decree, 5, 837
 Tendency of court to favor the mother, 5, 835
 Welfare of infant controls, 5, 833
 Where child has reached age of discretion, 5, 834
 Where divorce is denied, 5, 836
 Whether child included by decree, 5, 836
 Disqualified from voting, 6, 272
Divorce, 5, 767
 See *infra*, DISPOSITION OF CHILDREN.
 As witnesses, 5, 830
Domicile
 Change of, 5, 866
 Apprentices, 5, 868

Change of male infant's domicile by marriage, 5, 866
 Change with domicile of father, 5, 866
 Emancipated minors, 5, 866
 Father's mother after death of father, 5, 866
 How affected by mother's marriage, 5, 867
 Illegitimate infant, 5, 866
 Power of infants to change, 5, 866
 Whether orphan's domicile follows guardian's, 5, 867
Dower
 Assignments, 5, 924
 Release of Dower
 By infant, 5, 914
 Dying declarations, 6, 133
 Ejectment against infant, 6, 245e
Election, 6, 253
 By infant widow, 5, 919
 Equitable conversion, 6, 673
Of Remedies
 May defeat plea of infancy, 6, 248
Emancipation, see PARENT AND CHILD.
 See *infra*, POOR AND POOR LAWS.
 Power to contract, 14, 758; 17, 395
Enlistment of, 10, 667; 15, 402
 Consent of parent, 15, 402
 Habeas corpus, 15, 402
 Power of congress, 15, 402
 Whether minor can avoid the contract, 15, 403
Estoppel
 By deed, 7, 4
 In pais, 7, 24
 Representation as to age, 14, 642
Exchange
 Void or voidable, 10, 632
Executors and Administrators, 10, 615; 21, 369
 See *infra*, PROBATE AND LETTERS OF ADMINISTRATION.
 Appointment of guardian, 10, 616
 Liability for money received, 10, 616
 Statutes disqualifying infants during minority, 7, 173
 Where there are several executors, 10, 616
 Whether infants may be, 7, 173; 10, 615
 Extra-territorial force of laws protecting infancy, 3, 517
Foreclosure of mortgages, see *infra*, MORTGAGES.
 Forma pauperis, 8, 545; 10, 685
Fraudulent Representations as to Age, 10, 670
 Action for deceit, 10, 673
 Effect of, 10, 670
 Equitable estoppel, 10, 672
 Estoppel, 10, 671
 Rule of civil law, 10, 671
 Sale of infant's property, 10, 672
 Statute forbidding disaffirmance, 10, 674

INFANTS—Cont'd

Gifts, 8, 1310
 Presumption of acceptance, 8, 1332
 Void or voidable, 10, 632
Habeas Corpus, 10, 699
 Enlistment, 15, 402
 Infant's capacity governed by law of domicile, 3, 515
 Infant's liability, 10, 670
 Infant's relief act, 10, 644
 Insolvency, 10, 641
Intoxicating Liquors, 11, 694, 723
 Each sale a separate offense, 11, 695
 Intent, 11, 719
 Knowledge, 11, 719
Knowledge and Belief as to Minority of Purchaser, 11, 696
 Aiding and abetting sale, 11, 702, 704
 Allegation, 11, 697
 Bartering, 11, 703
 Bitters, 11, 699
 Cider, 11, 699
Consent of Parent or Guardian, 11, 700
 Statutes, 11, 700, 701
 Written consent of parent, 11, 700
 Defendant's intention, 11, 695
 Domestic wine, 11, 699
 Effect of knowledge as defense or justification, 11, 698
 Exchanging, 11, 704
 General rule, 11, 696
 Giving away liquor to minor, 11, 701
 Giving distinguished from selling, 11, 702
 Honest belief, 11, 698
 Inquiry of purchaser as to his age, 11, 698
 Joint sale to minor and adult, 11, 701
 Kind and character of liquor, 11, 699
 Liability of one purchasing for minor, 11, 702
 Materiality of license, 11, 700
 Personal appearance, 11, 697, 699
 Presumption, 11, 696
 Proof of, 11, 697
 Purchase by third person for minor, 11, 702
 Reasonable belief, 11, 696
 Sale for mechanical purposes, 11, 703
 Sale for medicinal purposes, 11, 703
 Sale for sacramental purpose, 11, 703
 Sale to minor for the use of another, 11, 702
 Sale to minor for use of parent, 11, 703
 Showing good faith and due care, 11, 699
 Treating minor, 11, 701
 Vendor selling at his peril, 11, 697
 Knowledge and consent to sale, 11, 696

Liability of partners, 11, 723
 Ownership of liquors, 11, 696
Sale by Agent, 11, 718
 Bartender's liability, 11, 719
 Deception practiced by minors, 11, 719
 In Arkansas, 11, 718
 In Georgia, 11, 718
 In Indiana, 11, 718
 In Maryland, 11, 718
 In Massachusetts, 11, 718
 Intent, 11, 719
 Intent a question of fact for jury, 11, 719
 Knowledge of minors, 11, 719
 Liability of principal, 11, 718
 Statutes prohibiting sale, 11, 694
 Whether indictable, 11, 695
 Whether misdemeanor, 11, 695
Judgments, 10, 636
Service of writ upon infant, see SERVICE OF PROCESS.
 Absolute decree against infant, 12, 87
 By confession, 10, 694; 12, 87
 By default, 5, 496s; 10, 688; 12, 87
 Day in court, 12, 87
 Equitable relief, 12, 147a
 Record showing that infant was made a party to action, 12, 88
 Void or voidable, 12, 87
 When infant does not avail himself of opportunity to set aside, 12, 88
 Without appointment of guardian ad litem, 12, 87
 Labor regulations, 18, 753
Laches of, 5, 496f, 12, 552
 Absence from state, 12, 558
 Ancestor and heir, 12, 554
 Cumulative disability, 12, 554
 Defendant an infant, 12, 554
 Doubt cast upon claim by delay, 12, 553
 Effect of delay, 12, 552
 Fulfilment of condition, 12, 555
 General rule, 12, 552
 Minors residing in different state, 12, 552
 Suit after majority, 12, 553
Larceny, 12, 830
Lease, 12, 990
 As contracts for necessities, 12, 991
 Avoidance of lease for infancy, 12, 991
 By agent, 12, 990
 By attorney, 12, 990
 Disaffirmance on becoming of age, 12, 992
 To infants, 12, 991
 Void or voidable, 10, 632
 What is a confirmation of an infant's lease, 12, 993
 When infancy does not avoid a lease, 12, 992
 When infant may disaffirm, 12, 992
 Whether voidable or void, 12, 990
 Liability of fine, 7, 993
 Liability of, upon recognizance, 2, 15

Limitation of Actions, 13, 725, 740
 Disability of ancestor, 13, 741
 Exceptions must be express, 13, 735
 Executor who might sue, 13, 740
 Guardian who might sue, 13, 740
 Infancy plus coverture, 13, 732, 733;
 14, 593
 In general, 13, 740
 Trustee who might sue, 13, 740
Malicious prosecution, 14, 41
Mandamus, 14, 165
Marriage, 10, 622; 14, 487
 Acknowledgment, 14, 488
 Age of consent, 10, 622
 At common law, 14, 487
 Cohabitation, 14, 488
 Consent of parents, 14, 488
 Construction of statutes, 14, 488
 Females, 14, 487
 Guardian, 14, 489
 How confirmed, 14, 488
 Males, 14, 487
 Nullity suit, 14, 489, 534
 Parties over seven, 14, 488
 Ratification inferred from cohabitation,
 10, 622
 Ratification of marriage, 10, 622
Settlements, 14, 543
 Contracts to bar dower, 14, 543
 In absence of statute, 14, 543
 In general, 14, 543
 Statutory provisions, 14, 543
 Void or voidable, 10, 632; 14,
 543
 When absolutely void, 14, 544
 Wife's contract as to personality, 14,
 544
Statutes, 14, 488
 Statutory provisions, 10, 622
Under Age of Consent, 10, 622
 Examples, 10, 623
 Fraud, 10, 624
 In what states void, 10, 623
 Judicial decree, 10, 623
 Magistrate forbidden to issue certifi-
 cates, 10, 623
 Necessity of judicial decree avoiding
 marriage, 10, 623
 Under seven years absolutely void,
 10, 624
 Voidable, 10, 622
 When marriage can be annulled, 10,
 623
 Whether sufficient to support prose-
 cution for bigamy, 10, 623
 Validity of marriage, 14, 488
 Voidable, 14, 488
 Want of age, 14, 487
 When marriage must be avoided, 14,
 489
Married Women
 Estoppel, 14, 639
Master and Servant, 14, 753, 758, 899
See infra, RATIFICATION AND
 · AVOIDANCE.
Emancipation, *see* PARENT AND
 CHILD.

*Existence of the relationship between
 parent and child*, *see* PARENT AND
 CHILD.
American rule, 14, 754
 Common-law rule, 14, 753
 Consent of parents, 14, 755
 Contract of parents, 14, 755
 Duty and liability of hirer of infant,
 14, 758
 Duty towards, as distinguished from
 adults, 14, 900
 Employment of minors, 14, 900
 Examples, 14, 899
 Failure to instruct, 14, 902
 Generally, 14, 753
 Incompetency of instructor, 14, 902
 In equitable contracts, 14, 754
 Infant as a master, 14, 759
 Mere fact of minority of injured per-
 son, 14, 901
 Minor employed contrary to wish of
 parents, 14, 900
 Negligence of co-employee, 14, 902
 Notice of special peril, 14, 902.
 Notice to quit, 14, 780
 Permanent injury, 14, 902
 Presumption as to understanding, 14,
 902
 Railroad's knowledge of minority, 14,
 900
 Recovery by parent, 14, 900
 Risks of employment, 14, 843
 Statute of frauds, 14, 765
 Voiding contracts, 14, 755
 Void or voidable at common law, 14,
 753
 Void or voidable in United States,
 14, 754
 What must be shown by parents in
 order to recover, 14, 901
 Where minor is instructed, 14, 901
 Whether contract void or voidable, 14,
 753
 Whether employment of minor is neg-
 ligence, 14, 901
 Whether regarded as for benefit of in-
 fants, 14, 753
 Work more dangerous than agreed
 upon, 14, 899
 Work outside scope of employment,
 14, 861
Mechanic's Liens, 15, 60
 Validity of contract, 15, 60
 When owner includes infant, 15, 60
 Whether lien exists against, 15, 60
 "Minor," 15, 617
Mortgages
Foreclosure of, 8, 215
 When guardians necessary parties,
 8, 220
 When infants should be made parties,
 8, 226
 When necessary parties, 8, 217
Ratification and Avoidance, 10, 650
 Conveyance subject to age of majori-
 ty, 10, 650
 Deed in fee, 10, 650

INFANTS—Cont'd

Mortgages—Cont'd

Ratification and Avoidance—Cont'd

Purchase-money mortgage, 10, 650
What amounts to disaffirmance, 10, 650

Void or voidable, 10, 631

Mutual insurance, 16, 33

Naturalization, 16, 225

Declaration, 16, 226

Evidence, 16, 226

Resident, 16, 225

Statute, 16, 225

When deemed citizens, 16, 225

Necessaries, 10, 660

Already supplied, 10, 663

Articles of convenience, 10, 661

Articles of mere luxury, 10, 662

Articles of mere ornament, 10, 662

Attorney's bill, 10, 662

Board, 10, 661

Breach of credit, 10, 660

Burden of proof, 10, 665

Carriages, 10, 662

Contract binding, 10, 660

Debts of wife, 10, 661

Definition, 10, 660

Education, 10, 661

Examples, 10, 660-667

Horses, 10, 662

Infant absent from home, 10, 664

Infant living with parents, 10, 663

Infant supplied by parents, 10, 664

Jewelry, 10, 662

Lease, 12, 991

Luxuries, 10, 662

Married infant, 10, 661

Medical education, 10, 661

Money loaned directly to infant, 10, 665

Note for, 10, 666

Parents' consent to purchase, 10, 663

Parents poor and unable to pay, 10, 663

Presumption as to infant dwelling with parents, 10, 664

Question for the court, 10, 665

Repairs to real estate, 10, 663

Station and degree in life, 10, 661

Supplied by third party, 10, 665

Trust deed for, 10, 666

Wedding presents, 10, 661

Negligence

Liability for, 16, 408

Acts of guardians and agents, 16, 409

Conflict of authority, 16, 408, 409

Liability of his property, 16, 409

True rule, 16, 408

When infant is capable of ordinary care, 16, 409

Whether liable, 16, 406

New Promise, 10, 647

As ratification of bill or note, 2, 347

Next Friend

Writ of error, 6, 818

Notice by publication, 18, 810

Partition, 17, 726

By agreement of the parties, 17, 662, 663

Conformity with law for protection of infants, 17, 727

Division or sale, 17, 726

Errors and irregularities, 17, 727

Fraud or collusion of guardian, 17, 727

Guardians for infant defendants, 17, 717

Infant Co-Tenant, 17, 703

Discretion of court, 17, 703

Distinguished from parent's rights, 17, 703

Necessity of substantial compliance with provision, 17, 704

Provisions designed for his protection, 17, 703

Whether action is binding upon, 17, 703

Whether he may institute action, 17, 703

Service of process, 17, 727

Shares in the proceeds of sale, 17, 807

Unequal partition, 17, 727

Whether they must be made parties, 17, 726

Partnership, 10, 639; 17, 921

Accounting and settlement, 17, 922

Creditors, 17, 923

Disaffirmance, 10, 639, 17, 923

Examples of ratification, 17, 922, 923

Fraud and misrepresentation, 17, 921

Giving notice when seeking to disaffirm, 10, 641

Holding out upon obtaining majority, 10, 641

Immunity from firm's liability, 10, 640

Immunity from personal liability, 10, 640

Implied ratification, 17, 922

Liability of infant partner, 10, 639

Ratification, 10, 641; 17, 922

Right as against creditors, 10, 640

Suits by and against the firm, 10, 641

Taking profits and refusing to be debited with losses, 10, 639

Where infant must bear his portion of losses, 10, 640

Whether contract void or voidable, 17, 921

Whether infant may be partner, 10, 639; 17, 921

Whether infant partners can bind firm, 10, 639

Who may avail themselves of infant's incapacity, 17, 921

Patent Law

Assignment, 18, 133

Payment of legacy to, 7, 323

Pleading, 18, 554

Examples, 18, 554

General Issue, 18, 554

Account, 18, 554

Assumpsit, 18, 540, 554

In covenant, 18, 554

Waiver of privilege, 18, 554

- When it must be specially pleaded, 18, 554
 Hilary rules, 18, 554
 Infancy, 10, 692
 Necessaries, 10, 554
 Plea of infancy, 18, 554
 Ratification of contract, 18, 554
 What will support replication of ratification, 18, 554
- Poor and Poor Laws**
See infra, FORMA PAUPERIS.
 Removal, 18, 806
- Settlement**, 18, 785, 787
 Adopted child, 18, 790
 Children by divorced father, 18, 791
 Children separated from parents, 18, 790
 Continuance of, 18, 788
 Deriving settlement from grandfather, 18, 788
Emancipation, 18, 789
 By law, 18, 789
 Examples, 18, 789, 790
 Leaving home for temporary employment, 18, 789
 Who may emancipate child, 18, 789
 Example, 18, 778-788
 Follows that of father, 18, 788
 Generally, 18, 787
- Illegitimate Children**, 18, 791
 Emancipation, 18, 792
 Examples, 18, 792
 Retaining mother's settlement, 18, 791
 Settlement of mother at time of birth, 18, 791
 Statutes, 18, 792
 Leaving home for temporary employment, 18, 789
 Legitimate child, 18, 787
- Marriage of Parent**, 18, 790
 Effect of another marriage at common law, 18, 790
 Examples, 18, 791
 Statutes, 18, 791
 Place of birth, 18, 788
 Prima facie settlement, 18, 788
 When child arrives at age, 18, 788
 When father has no settlement, 18, 788
 When it ceases to follow father, 18, 788
 Whether child can acquire in his own right, 18, 789
- Powers**, 18, 950
- Contract**
 Emancipation, 17, 395
 Infant wife, 18, 951, 952
- Of Attorney**
 Void or voidable, 10, 632, 633
- Prescription Against**, 19, 16
 Incapax doli, 19, 45
 Rape, 19, 46
 Privilege from arrest, 10, 238
- Probate and Letters of Administration**, 19, 198, 209
See infra, EXECUTORS AND ADMINISTRATORS.
- Administration During Minority**, 19, 215
 Examples, 19, 215, 216
 Executor under age, 19, 215
 In United States, 19, 215
 Party entitled to administration under age, 19, 215
 Powers, 19, 216
 When granted, 19, 215
 Amount of interest, 19, 199
 Corporations, 19, 199
 Examples, 19, 198, 199
 Illegitimates, 19, 199
 Infancy and extreme old age, 19, 198
 Nomination by the person entitled, 19, 199
 Renunciation, 19, 199
 Whether a disqualification, 19, 198
 Public lands, 19, 325
- Rape**
Child as Witness, 19, 958
 Confirmation, 19, 958
 How age of infant is shown, 19, 958
 Swearing infant, 19, 958
 Too young to understand the nature of an oath, 19, 958
 Unsupported evidence of infants, 19, 958
 Child under ten years, 19, 948
 Indictment, 19, 956
 Presumptions as to capacity of a boy under fourteen, 19, 947
- Ratification and Avoidance**
See infra, DEEDS; TIME FOR AVOIDANCE.
- Affirmance by a Court of Equity**, 10, 659
Partition sale, see PARTITION.
 Confirmation, 10, 659
 Election, 10, 659
 Power of court, 10, 659
 Sale and re-investment, 10, 659
- Contracts**, 10, 644
Right to avoid a personal right, see *infra*, CONTRACTS.
 Affirmance by agent, 10, 648
 By whom new promise may be made, 10, 647, 648
 Declaration to stranger, 10, 647
 Distinguished from debt barred by the statute of limitation, 10, 645
 Effect of expressed acts, 10, 647
 Examples, 10, 645
 Express promise, 10, 645
 For Services, 10, 656
 Claim for services rendered, 10, 657
 Counterclaim for board and necessities, 10, 657
 Counterclaim for breach of contract, 10, 657
 Damage from breach, 10, 657
 Fraudulent representation as to age, 10, 670

INFANTS—*Cont'd*

Ratification and Avoidance—*Cont'd*

Contracts—*Cont'd*

For Services—*Cont'd*

Infant's right to avoid contract, 10, 656

Ratification, 10, 657; 14, 755

Ratification by parents, 10, 658

Ignorance of law, 10, 648

Implied ratification, 10, 645

Indication to abide by the award of arbitrators, 10, 646

Infant not aware of rights, 10, 648

Infant's power to ratify, 10, 646

Iowa statute, 10, 649

Lord Tenterden's act, 10, 649

Necessity of disaffirmance, 10, 647

Necessity of expressed, 10, 644, 645

Necessity of expressed disaffirmance, 10, 647

Necessity of new promise, 10, 645

New promise, 10, 645

New York doctrine, 10, 646

Promise to pay a certain sum in settlement, 10, 645

Ratification and suit brought, 10, 649

Ratification defined, 10, 646

Ratification in writing, 10, 649

Restoration of Consideration

At law, 10, 656

Avoidance of partnership, 10, 656

Effect of retention, 10, 654

Necessity, 10, 654

Right of action to recover, 10, 654

Use and occupation, 10, 656

Wasted consideration, 10, 655

Silence, 10, 647

Statute forbidding disaffirmance, 10, 674

Suing to set aside transaction, 10, 647

When act amounts to a ratification, 10, 644

Conveyances, 10, 649

See infra, DEEDS.

Conveyance to an infant, 10, 653

Implied ratification, 10, 649

Inconsistent deeds, 10, 653

Prior deed, 10, 653

Promise to make deed of affirmance, 10, 650

Reasonable time for disaffirmance, 10, 651

Restoration of Consideration, 10, 654

See EQUITY.

At law, 10, 656

Avoidance of partnership, 10, 656

Effect of retention, 10, 654

Necessity, 10, 654

Right of action to recover, 10, 655

Use and occupation, 10, 656

Wasted consideration, 10, 655

Revocation by deed, 10, 652

Revocation of easement, 10, 651

Statute requiring disaffirmance within certain time, 10, 651

Subsequent deed of infant, 10, 652

Within what time avoidance may be made, 10, 649

Infant Married Women, 10, 658

Disability of coverture, 10, 658

Necessity of writing, 2, 347

Ratification of bills and notes of, 2, 347

Receivers, 20, 41

Another suit pending, 20, 24

Examples, 20, 41

Infant ward, 20, 41

Next friend as, 20, 76

When appointed, 20, 41

Where there is a guardian, 20, 41

Where there is no trustee, 20, 41

Redemption of mortgage, 20, 628

Reference to a master, 5, 496f

Release, 20, 760

Claim for personal injury, 20, 763

Rescission

Contracts, 21, 42

Sale, 21, 55

Duty to place other party in statu quo, 21, 90

Restoration of consideration, 21, 90

Returning Consideration

Upon bill or note, 2, 348

Right to hold ministerial offices, 10, 617

Right to hold property, 10, 615

Seduction, 21, 1027

Service of Process, 10, 615; 22, 155

Different from adults, 22, 156

In Indiana, 22, 156

In Kentucky, 22, 155, 156

In Maine, 22, 156

In Missouri, 22, 156

In New York, 22, 156, 157

Service upon guardian, 22, 155

Statutory regulations, 22, 155

Summary of the statutory provisions, 22, 155

Set-off, 22, 269

Sheriffs

Infant as purchaser, 22, 600

Silence, 10, 647

Specific Performance, 22, 937

Laches, 22, 1050

Statute of Frauds

Promise to answer for debt of an infant, 8, 676

Stockbrokers

Gambling contracts, 10, 635; 23, 744

Stockholders, 10, 634

Infants as shareholders, 10, 635

Necessity of allegation of avoidance, 10, 635

One subscribing for stock in the name of an infant, 10, 636

Ratification, 10, 635

Right of corporation to refuse to accept infants, 10, 635

Right of infant to avoid his liability, 10, 634

Right of infant to become, 10, 634

- Stock-gambling contract, 10, 635; 23, 744
- Subscriptions, 10, 635
- What creates ratification, 10, 635
- Streets and Sidewalks**
- Dedication by infants, 24, 8
- Prescription, 24, 16
- Subpœna**
- Decree in equity against infants, 24, 180
- Subpœna in equity, 24, 185
- Subscription to stock, 10, 636
- Succession, 24, 363**
- Half blood, 24, 371
- Succession to Estate of Unmarried Infant, 24, 404**
- Ancestor, 24, 407
- Estate derived from brother, 24, 407
- Estate derived from grandparents, 24, 407
- Estate derived through representation, 24, 408
- Estate descends as though infant had died in lifetime of parent, 24, 406
- Examples, 24, 404-408
- Generally, 24, 404
- How parent derived title, 24, 408
- In California, 24, 405
- In Kentucky, 24, 405
- In Maine, 24, 406
- In New Hampshire, 24, 405
- In Virginia, 24, 405
- Nature of the descent, 24, 406
- Source whence the deceased derived the estate, 24, 404
- Suing for divorce, 5, 767
- Suits in Equity, 10, 692**
- Merits of case, 10, 693
- Privilege of infants, 10, 692
- Proper service, 10, 693
- Rules of pleading, 10, 693
- Supplementary proceedings, 24, 608
- Suretyship, 10, 630, 631; 24, 725**
- Examples, 24, 725, 726
- Ratification of contract by infant, 24, 725
- When surety bound, although contract not binding on principal, 24, 773
- Where contract is beneficial to infant, 24, 725
- Where infants may become sureties, 24, 725
- Whether contract is void or voidable, 24, 725
- Surrogates' courts, 24, 985
- Taxation, 25, 118**
- Forfeited lands, 25, 407
- Redemption**
- Time for, 25, 420
- Where infant is co-tenant, 25, 417
- Tax titles, 25, 718
- Time for Avoidance, 10, 643**
- Conveyance, 10, 643
- Transactions relating to personal property, 10, 643
- Torts Against, 10, 674**
- See CONTRIBUTORY NEGLIGENCE.
- Compromise for injuries, 10, 679
- Contributory negligence of father, 10, 679
- General rule as to, 10, 674
- Parent's right of action, 10, 678
- Suit of parent and child for injuries, 10, 678
- Torts Committed by, 10, 668**
- See *infra*, FRAUDULENT REPRESENTATIONS AS TO AGE.
- Command of parent, 10, 668
- Distinction between contract and tort, 10, 669
- Examples, 10, 668
- False representations as to soundness of horse, 10, 669
- Going beyond scope of contract, 10, 669
- Hiring horse, 10, 669
- Injury to person, 10, 668
- Injury to property, 10, 668
- Procuring another to commit a tort, 10, 669
- Taking horse to different place, 10, 669
- Tort connected with contract, 10, 669
- Tort under his implied authority, 10, 669
- Trover, 10, 670
- Trust deeds and power of sale mortgages, 26, 968
- Trusts and Trustees, 10, 616; 27, 229**
- As cestuique trust, 27, 23
- Constructive, 10, 617
- Creation of Trust by, 27, 14**
- Infants contemplating marriage, 27, 14
- In general, 27, 14
- Power, 27, 14
- Who may avoid trust, 27, 14
- Interest, 10, 617
- Parents, 10, 617
- Whether courts will appoint, 10, 617
- Validity of Judgment and Decrees**
- See *infra*, JUDGMENTS.
- Decree in equity, 10, 694
- Decree pro confesso, 10, 694; 12, 87
- Judgment by default, 5, 496s; 10, 688; 12, 87
- Knowledge of right and wrong, 10, 698
- Vendor and purchaser, 28, 83
- Warranty of Attorney**
- To confess judgment, 28, 695
- When rule of comparative negligence is not applicable to, 3, 373
- Who May Be Principal**
- Agents, 1, 333
- Wills, 10, 618**
- Age fixed by statute, 10, 618
- Personalty, 10, 618
- Real estate, 10, 618
- Statute, 10, 618
- Witnesses, 10, 619; 29, 608**
- Apprehension of oath, 29, 608
- Child of six or seven, 10, 619
- Competency in general, 29, 608.

INFANTS—Cont'd**Witnesses—Cont'd**

- Decision of judge, 10, 621
- Decision of question, 29, 609
- Examples, 10, 619, 620
- Fourteen years of age, 10, 619
- General rule, 10, 620
- Interest, 10, 621
- Nature of an oath, 10, 619
- Preliminary examination by court, 10, 619
- Presumption, 10, 619
- Statute, 10, 621

Writ of error, 6, 818

Writ of error, coram nobis, 6, 812

INFERENCE, 10, 700**INFERIOR, 10, 700****INFERIOR COURTS, 10, 700****INFIDEL, 10, 701****INFLAMMABLE**

Inflammable fluid, 12, 518

INFLICT, 10, 701

Inflict punishment, 10, 701

IN FORMA PAUPERIS, see POOR AND POOR LAWS.**INFORMATION, 10, 702, 710**

See generally, INDICTMENT.

See Quo WARRANTO.

Information in nature of quo warranto, see Quo WARRANTO.

In homicide cases, see HOMICIDE.

Amendment, 4, 780; 10, 536, 709

At What Time It May Be Made, 10, 709

At demurrer, 10, 709

Examples, 10, 709

Conclusion, 10, 707

Constitutional and Statutory Provisions

Prohibiting Proceedings by, 9, 1

As to what are infamous crimes, see INFAMOUS CRIMES.

Admiralty, seizure, 10, 705

Constitution of the United States, 10, 704

Due process of law, 10, 706

Fourteenth amendment, 10, 706

In Alabama, 10, 705

In Arkansas, 10, 706

In California, 10, 705

In Connecticut, 10, 706

In Georgia, 10, 705

In Indiana, 10, 705

In Louisiana, 10, 706

In Massachusetts, 10, 706

In Mississippi, 10, 705

In New Hampshire, 10, 705, 706

In New York, 10, 705

In Pennsylvania, 10, 705

In Vermont, 10, 705

Offenses not infamous, 10, 704

Prosecution by state, 10, 704

State prohibitions, 10, 705

To what crimes United States provi-

sion applies, 10, 704

Under revenue laws, 10, 705

Criminal procedure by, 4, 734

Definition, 10, 702

District attorney, 10, 703

Felonies may be prosecuted by, 4, 735

Forms of, 10, 706

Conclusion, 10, 707

In general, 10, 706

Signature, 10, 707

Verification, 4, 757; 10, 707

Gaming, 8, 1053

Giving information, 10, 710

History, 10, 702

In equity, 6, 730

Information of Intrusion, 10, 711

Purpresture, 16, 940

Injunctions, 10, 986

Judgment of demurrer of, 10, 709

Libel and Slander, 13, 501

Action for slander, 13, 502

Allegations, 13, 501

Innuendos, 13, 501

Origin, 10, 702

Proceeding by indictment, or information according to discretion of district

attorney, 4, 734

Purpresture, 16, 940

Same certainty required as in an indictment, 4, 741

Source, 10, 702

Sufficiency, 10, 708

Verification, 4, 757

What must be recited in an information for additional punishment, 10, 708

When Information Lies, 10, 702

Felonies, 10, 703

Misprision of treason, 10, 703

Public misdemeanors, 10, 702

Right to file information, 10, 703

Treason, 10, 703

Usurpation for private franchise, 10, 703

Who may file in England, 10, 703

Who may file in United States, 10, 703

INFORMATION OF INTRUSION, 10, 711**INFORMERS, 10, 711**

See PENALTIES, PENAL AND QUI TAM ACTIONS.

Competency as a Witness, 10, 724

Examples of admission of testimony, 10, 725

Exception to general rule, 10, 725

General rule, 10, 724

Information taken before trial, 10, 725

When law could not be executed without informer's testimony, 10, 724

Contract between, 10, 712

Credibility as witnesses, see WITNESSES.

Information, 10, 711

Taken before trial, 10, 725

Joint acts, 10, 712

Larceny

Owner of property, 12, 862

Pardon by President, 10, 721

See infra, WHEN INFORMER'S INTEREST VESTS.

After judgment, 10, 721

As to all interest in United States, 10, 721

Prosecution of suit, 10, 720

- Remedy by which informer can sue, 10, 720
- Remission by secretary of the treasury, 10, 721
- Rights of, 18, 275**
- Necessity of statutory authority to sue, 18, 275
 - Qui tam, 18, 276
 - Vested rights, 18, 276
 - What confers right to sue, 18, 276
 - When informer entitled to penalty when recovered by indictment, 18, 276
 - When rights vest, 18, 276
- Right to Share in Proceeds of Forfeiture, 10, 715**
- Disclosing a conspiracy, 10, 718
 - His share, 10, 718, 719
 - Joint informers, 10, 715
 - Must be first informer, 10, 716
 - Reward apart from statutory provisions, 10, 717
 - Under the confiscation act, 10, 716
 - United States constitution, 10, 715
 - When not entitled to compensation, 10, 716
- Sales of intoxicating liquors to, 11, 753
- Statute, 10, 722
- When Informer's Interest Vests, 10, 717**
- See infra*, PARDON BY PRESIDENT.
 - Before verdict, 10, 717
 - Examples, 10, 717-719
 - Final judgment, 10, 717
 - Where informers are interested, 10, 720
- Who May Be, 10, 712**
- Officers of the United States, 10, 714
 - United States officers acquiring useful information, 10, 715
 - United States revenue act, 10, 712
 - What information is necessary, 10, 713
- INFRINGEMENTS (PATENT LAW), 10, 726**
- See* COPYRIGHT; PATENT LAW.
- Accounts, 10, 767
- Agreement necessary, 10, 727
- Burden of Proof**
- Damages, 10, 760
 - Where defendant has made improvement, 10, 764
- By replacing worn out parts, 10, 750
- By use of part of patented machine, 10, 742
- Circumstances attending proof, 10, 760
- Combination, 10, 735, 751**
- Addition of elements, 10, 737
 - Different combinations of same elements, 10, 739
- Equivalents in, 10, 737**
- Equivalent although performing additional service, 10, 738
 - Formal differences, 10, 738
 - Mechanical equivalent, 10, 738
 - Substituted element is new, 10, 738
 - Substituted element performing function better than the old, 10, 737
 - Substituted parts substantially different, 10, 738
- Substitute known at date of patent, 10, 737
 - Formal change in, 10, 737
 - Improvement of some of the parts, 10, 739
 - Invention of parts, 10, 740
 - Materiality, 10, 736
 - Modifications of the rule, 10, 736
 - New combinations containing all the old elements, 10, 739
 - Principle of patentee's combination embodied in defendant's, 10, 737
 - Pro tanto infringements, 10, 739
 - Subordinate devices, 10, 736
 - Three parts—two used, 10, 736
 - Use of combination for different purpose, 10, 740
 - Use of less than the entire, 10, 735
 - Using new elements, 10, 738
 - What is an element, 10, 736
 - When patentee is restricted to, 10, 739
- Compensation for, 10, 753**
- See infra*, DAMAGES; PROFITS.
- Construction of Patent, 10, 743**
- Allowance for illiteracy of patentee, 10, 745
 - Generally, 10, 743
 - Liberal construction, 10, 744
 - Not a monopoly, 10, 744
 - Patent construed with reference to prior state of art, 10, 745
 - Question for the court, 10, 744
 - To sustain the patent, 10, 744
 - What courts will take judicial notice of, in construing a patent, 10, 745
- When Patentee Is Entitled to Broad Construction, 10, 746**
- Improver, 10, 746
 - Limitation of process claims by state of the art, 10, 746
 - Merit of embodying the idea only, 10, 747
 - Original inventors, 10, 746
 - Peculiar arrangement of old elements, 10, 747
- When patentee is limited to precise invention by action of patent office, 10, 748
- Where a patent admits of two different constructions, 10, 744
- Damages, 10, 754**
- Burden of proof, 10, 760
 - Evidences of settlement for past infringements, 10, 755
 - Exemplary damages, 10, 754
 - Forfeiture of damages for failure to mark in accordance with statute, 10, 761
 - Ignorance of existence of patent, 10, 762
- Increase of, 10, 761**
- Deliberate intention of infringer, 10, 761
 - Profits, 10, 761
 - Question for the court, 10, 761
 - Statute, 10, 761
 - When increase will be added, 10, 761

INFRINGEMENTS (PATENT LAW)—*Cont'd***Damages—Cont'd****Increase of—Cont'd**Where suit is merely for collection,
10, 761

In suits in equity, 10, 769

Interest, 10, 762

Measure of, 10, 754

Damages beyond that caused by actual interference of defendant, 10, 757

Damages must be direct, 10, 757

General rule, 10, 757

Profits of defendant, 10, 760

Royalty on licensed machines, 10, 754

Royalty, or License Fee, 10, 754

Evidence of settlements with past infringers, 10, 655

Reason for the doctrine, 10, 755

Royalty must be fixed, 10, 755

Single license not sufficient to establish market price, 10, 755

True rule, 10, 754

When the royalty is a measure of damages, 10, 755

Where improvement has been in use but a limited time, 10, 756

Where infringement covers only a part of the patented article, 10, 756

Where there has been a former contract, 10, 755

Where Test of License Fee Cannot Be Applied, 10, 757

Damages beyond that caused by actual interference of defendant, 10, 757

Damages must be direct, 10, 757

Entire new composition of matter, 10, 758

Failure to sell, 10, 757

General rule, 10, 757

Statements of the measure, 10, 757

Mitigation, 10, 762**What May Be Evidence of, 10, 758**

Competition of defendant, 10, 758

Loss of profit, 10, 758

Loss of sale, 10, 758

Reduction of prices, 10, 759

What may be taken as measure of damages, 10, 758

What patentee must show, 10, 758

Where patent is an "incident" of complete device, 10, 759

Where plaintiff's invention is used in conjunction with other devices, 10, 759

Definition, 10, 726

Difference in Form as Affecting Infringement, 10, 732

Essence of invention, 10, 732

Where substance and form are inseparable, 10, 732

Where substance and form are separable, 10, 732

Doing same work in substantially the same line, 10, 727

Equivalents, 10, 733; 18, 49**Chemical, 10, 734**

And date of patent, 10, 735

Definition, 10, 733

Equivalent of substance, 10, 734

Form, 10, 733

In combinations, 10, 737

Mechanical, 10, 733

Name, 10, 733

Performing added functions, 10, 733

Physical though not chemical, 10, 735

Requisites of, 10, 733

Same result obtained, 10, 733

What is mechanical, 10, 733

When not, 10, 734

Essence of the invention, 10, 732

Evidence, 10, 760

Exemplary damages, 10, 754

Extent of right, 10, 753

Extra-territorial force of patent, 10, 753

Form and essence of the invention, 10, 732

Ignorance of existence of patent, 10, 753, 762

Improvements, 10, 730, 743

Rights of improver and original patentee, 10, 743

Use of one improvement where several distinct improvements are patented, 10, 742

Infringers**Who Are, 10, 748-751**

Agent, 10, 750

Corporation, 10, 749

County, 10, 749

Employees making infringing machines, 10, 750

Infringement by contractor, 10, 749

Infringement by replacing worn out parts, 10, 751

Joint infringers, 10, 751

Liability of employer for employee, 10, 750

Machine constructed before patent granted, 10, 749

Making for use abroad, 10, 748

Making patented machine, 10, 748

Manufacture and sale of part of patented device with intent to procure infringement, 10, 752

Municipal corporations, 10, 749

Officers of corporations, 10, 749

Owners and lessees of real estate, 10, 751

Sale, 10, 748

Of materials by sheriff, 10, 749

Salesmen, 10, 750

Using patented machine, 10, 748

Injunctions, 10, 917

Establishment of patent at law, 10, 917

Expiration of patent, 10, 920

Jurisdiction of United States courts, 10, 917

Mere lapse of time, 10, 919

Patent for separate parts, 10, 919

vol. I.

- Patent upheld by repeated adjudications, 10, 921
- Preliminary, 10, 917, 921
- Prior adjudications, 10, 921
- Reasonable doubt as to novelty and originality, 10, 917
- Repeal of patent, 10, 919
- Threat of legal proceedings, 10, 919
- United States courts, 10, 917
- Violation of, 10, 920
- What constitutes sufficient user, 10, 917
- Where plaintiff shows undisturbed possession, 10, 917
- Intention as Affecting Infringement, 10, 751**
 - Accompanying device with directions, 10, 752
 - Article made and put on market useful only in combination, 10, 751
 - How intent is shown, 10, 751
 - Intention not to infringe, 10, 753
 - Liability of joint infringers, 10, 751
 - Manufacture and sale of part of manufactured device with intent to procure infringement, 10, 751
 - One party manufacturing one part and another party another part, 10, 752
 - Patentee limiting the use of his invention, 10, 752
 - Where full effect could be obtained only by infringement, 10, 751
- Interest**
 - Interest on profits, 10, 769
- Judicial notice, 10, 747
- Mode of Operation, 10, 727**
 - Essential elements, 10, 728
 - Examples, 10, 728
 - General rule, 10, 727
 - Substance of application, 10, 728
- Obvious imitation, 17, 27
- Principle, 10, 729
- Process, 10, 740**
 - Change in degree, 10, 741
 - Chemical, 10, 741
 - Formal change, 10, 742
 - How far independent of machinery, 10, 742
 - Manufacture and sale of article made by, 10, 741
 - Omission of essential part, 10, 741
 - Omission of step, 10, 741
 - Omission of use of ingredients, 10, 741
 - Parts claimed must be employed, 10, 741
 - Process distinguished from product, 10, 742
 - Product, 10, 742
 - Special definition, 10, 740
 - Substantial identity in the application of the principle, 10, 740
 - Two steps out of one, 10, 742
 - When it takes place, 10, 740
- Product**
 - Distinguished from process, 10, 742
 - Of a patented process, 10, 742
- Profits**
 - Actual, 10, 763
 - As measure of damages, 10, 760
- Burden of proof where defendant has made improvement, 10, 764
- Definition, 10, 763
- Design patent, 10, 764
- Improvements made by defendant, 10, 764
- Infringer as trustee, 10, 763
- Measure of, 10, 765**
 - Expenses to Be Allowed Infringer**
 - Apportionment of expenses, 10, 768
 - Clerk hire, 10, 768
 - Construction, 10, 765
 - Decrease in expenses as profits, 10, 766
 - Deduction to be allowed infringers, 10, 767
 - Exception as to improvement, 10, 765
 - Expense of manufacture and sale, 10, 768
 - Freight, 10, 768
 - Improvements, 10, 765
 - Infringer's disbursements, 10, 767
 - Interest, 10, 768, 769
 - License fees, 10, 767
 - Limitation of time of accounting by act of plaintiff, 10, 767
 - Losses, 10, 768
 - Loss of business, 10, 766
 - Machine, 10, 766
 - Materials used, 10, 768
 - Process, 10, 766
 - Profits derivable from defendant's own improvement, 10, 768
 - Profits must be immediate, 10, 766
 - Property used for carrying on business, 10, 767
 - Salary paid defendant, 10, 769
 - Shop room, 10, 768
 - Storage, 10, 768
 - Taxes and insurance, 10, 768
 - Time to be included in accounting, 10, 767
 - Use, 10, 765
 - Wages and salaries, 10, 768
 - What account should and should not include, 10, 767
 - Not what could have been made, 10, 763
 - Patent for improvement on old machine, 10, 764
 - Reasons for the rule, 10, 763
 - Statutory increase of damages, 10, 761
 - Where complainant's device is merely an improvement, 10, 764
 - Where complainant's device is used with other combinations, 10, 764
- Rights of Improver and Original Patentee to Improve Machine, 10, 743**
 - Rights of improver, 10, 743
 - Rights of original patentee, 10, 743
- Similarity of Principle and Idea, 10, 728**
 - Copying principle, 10, 729
 - General rule, 10, 728
 - Substantial identity, 10, 729
 - What is meant by principle, 10, 728

INFRINGEMENTS (PATENT LAW)—*Cont'd*

Substantial identity, 10, 729

Substantially, 10, 728

Superiority or Inferiority of Mechanical Skill or Machine

Arrangements different, 10, 630

Examples of substantial improvements, 10, 732

Machine not as perfect as plaintiff's, 10, 730

Machine superior to plaintiff's, 10, 730

Principle, 10, 731

Reason of rule, 10, 730

Same kind though not of same perfection, 10, 730

Substantial improvements, substantial difference, 10, 731

Superior utility as showing substantial difference, 10, 731

INGRESS, 10, 770**INHABITANCY**

Compared with domicile, 5, 858

Compared with residence, 21, 125

INHABITANT, 6, 445; 10, 770; 15, 1279*See generally, CITIZENSHIP; DOMICILE; RESIDENT.*

Act providing for place of probate of wills, 10, 773

Compared with resident, 5, 858

Corporations, 25, 626

Criminal statutes, 10, 771

In attachment laws, 10, 770

In a will, 10, 776

In general, 10, 776

In law of procedure, 10, 774

In laws prescribing qualifications of electors and of office, 10, 771

In municipal charter, 10, 773

In school law, 10, 774

Insolvent laws, 10, 773

Taxation, 10, 775; 25, 137

In general, 25, 137

Question of law or fact, 25, 138

Two places of residence, 25, 137

Where elective franchise is conferred, 6, 271

INHALE, 10, 776**INHERITANCE, 10, 776; 29, 349***See ESTATE; SUCCESSION.*

Estate of, 6, 895

INHERITANCE TAX, see SUCCESSION TAXES.**INJUNCTION, 10, 777***See BILL OF PEACE; BILL QUIA TIMET; BILL TO REMOVE CLOUDS.**See generally, NUISANCES; WASTE.**For infringement of copyright, see COPYRIGHT.**Relief against judgments, see JUDGMENT.*

Acquiescence of owner of water power, 10, 961

Active or passive, 10, 782

Actors, 10, 948; 22, 1005; 25, 1049

Adequate relief at law, 10, 792

Against Cemeteries

As nuisances, 3, 55

Against decrees of courts of inferior jurisdiction, 5, 389

Against payment of bill or note, 5, 108, 528z

Against transfer of debtor's property, 4, 576

Alimony

Wife's injunction, when entitled to, 1, 483

Amendment, 10, 1019

Ancient Lights, 10, 847

Doctrine in the United States, 10, 848

English doctrine, 10, 847

Examples, 10, 847, 848

Twenty years' quiet enjoyment, 10, 847

When enjoining authorized, 10, 847

Answer, 10, 1006*See infra, DISSOLUTION.*

Admission of facts in bill, 10, 1006

Dismissal, 10, 1006

Full denial, 10, 1006

Appeal, 10, 1007

As substitute for quo warranto, 10, 794

Attachments, 10, 898

Bankruptcy to prevent transfer by debtor, 2, 86

Bill Quia Timet

Relief by injunction, 2, 262

Bills and Notes, 10, 942

Notes obtained through fraud, 10, 942

Restraining collection, 10, 942

Restraining transfer, 10, 916

Bills for, 6, 767

Blasphemous publications, 10, 924

Bondholders

Railroad, 10, 976

Bonds, see infra, INJUNCTION BONDS.

Boycott, 24, 135

Breach of condition of deed, 10, 942

Bridges, 10, 977, 979

Infringing on ferry franchise, 7, 945, 946; 10, 979

Jurisdiction, 10, 977

Lessee of railroad bridge, 10, 978

Navigable waters, 10, 842, 977; 23, 81

Obstructing navigation, 2, 564

Toll bridges, 10, 978

By executors and administrators, 7, 394

By stockholders of corporation against unauthorized issue of negotiable securities or use of corporate funds, 4, 229; 10, 953

Causes retained for full relief, 10, 795

Caution to be exercised, 10, 780

Cemeteries, 3, 55

To prevent desecration, 3, 54

Combination among carriers, 10, 949

Concurrent Jurisdiction, 10, 795, 833

Fraud, 10, 905

Contempt, 3, 785, 792; 10, 1008, 1010**Supplementary Proceedings, 24, 664**

Confessing judgment, 24, 664

Corporations, 24, 664

Examples, 24, 664-666

- How long injunction order remains in force, 24, 666
- In general, 24, 664
- Permitting violation, 24, 664
- Service of injunction, 24, 664, 665
- Subsequently acquired property, 24, 666
- Title to property not in judgment debtor, 24, 665
- Continuance, 10, 1007
- Continuous injury, 3, 822
- Contracts**, 10, 937
- Contract must be certain, 10, 940
- Contract must be free from doubt, 10, 939
- Discretion of court, 10, 940
- Erection of buildings, 10, 938
- General rule as to when granted, 10, 940
- Injury from violation must be irreparable, 10, 939
- In Restraint of Trade**, 10, 943
- Attorneys, 10, 946
- Contract valid in part, 10, 947
- Dentists, 10, 945
- Dress-makers, 10, 946
- Druggists, 10, 945
- Generally, 10, 943
- Innkeepers, 10, 946
- Injunction to restrain breach of contract, 10, 943
- "In the neighborhood," 10, 948
- Liquidated damages, 10, 947
- Photographers, 10, 946
- Professional employment, 10, 947
- Publications, 10, 947
- Publishers, 10, 946
- Resuming business in employ of third person, 10, 947
- School teachers, 10, 946
- Trade as to particular places, 10, 945
- Undertakers, 10, 947
- Liquidated damages, 10, 940
- Of service, 22, 1002, 1005
- Restrictive covenants not implied, 10, 940
- Resuming trade in vicinity after good will has been sold, 10, 940
- To restrain breach, 10, 937
- Usurious contracts, 10, 938
- What is meant by irreparable injury, 10, 939
- Controversy of a legal character involving an equitable, 10, 801
- Copyright**, 10, 922
- See* COPYRIGHT.
- A bona fide abridgment, 10, 923
- Acquiescence, 10, 927
- Allegations in bill, 10, 927
- Circumstances considered by the court, 10, 928
- Compliance with statutory conditions, 10, 924
- Delay in ascertaining rights, 10, 928
- Delay when ignorant of piracy, 10, 928
- Directory, 10, 922
- Discretion of court, 10, 922
- Engravings, paintings, etc., 10, 930
- External appearance, 10, 926
- Fair use, 10, 925
- How piracy determined, 10, 925
- Inadequacy of relief at law, 10, 922
- Indecent plays, 10, 925
- Infringement abroad, 10, 923
- Interlocutory injunction, 10, 928
- Irreligious, immoral, or obscene works, 10, 922
- Jurisdiction of equity, 10, 922
- Law reports, 10, 926
- Legal title, 10, 927
- Libellous publication, 10, 924
- Literary productions distinct from copyright, 10, 928
- Maps and charts, 10, 926
- Mistake of a year in notice of entry required to be printed on title page, 10, 924
- Musical compositions, 10, 926
- Name or title of book, 10, 925
- Of book made to resemble externally a copyrighted book, 10, 926
- Permanent injunctions, 10, 928
- Plaintiff's work itself a piracy, 10, 922
- Printed diary, 10, 927
- Private letters, 10, 930
- Quantity and value of selections, 10, 924
- Reference to master, 10, 925
- Same sources of information, 10, 924
- The unauthorized use of lectures, 10, 928
- Use of slips in compiling new directory, 10, 923
- Violation of covenants, 10, 925
- Corporations**, 4, 275; 10, 953
- See* CORPORATIONS; DIRECTORS; STOCKHOLDERS.
- See infra*, ULTRA VIRES.
- Abuse of power, 10, 953
- Against unauthorized consolidation, 4, 272*m*
- Change of corporate powers, 10, 957
- Consolidation of company, 10, 957
- Corporate name, 10, 958
- Creating a monopoly, 10, 954
- Destruction of franchise, 10, 956
- Deviation from original undertaking, 10, 955
- Diligence required, 10, 958
- Discretion of court, 10, 956
- Ecclesiastical, 10, 956
- Election of officers, 10, 957
- English authorities, 10, 954
- Enterprise not contemplated by charter, 10, 954
- Examples, 10, 953, 954
- Expulsion of members, 10, 956
- Illegal stock, 10, 958
- Misappropriation of funds, 4, 229; 10, 953
- Negligence in exercise of corporate powers, 10, 954

INJUNCTION—Cont'd**Corporations—Cont'd****Officers**

- Sale of property, 17, 152
- Refusal to defend suits, 10, 953
- Trust relationship, 10, 953
- Ultra vires, 10, 958
- Unauthorized issue of shares, 10, 953
- Use of funds for unauthorized purpose
 - 4, 229; 10, 954
- Violation of duty, 10, 953
- Violation of injunction, 10, 959
- What must be shown, 10, 955
- When enjoined, 10, 953
- Court enjoining its own decree, 5, 389
- Covenant not to erect a fence, 10, 938
- Covenants in lease, 12, 1028

Crossings

- One road crossing another, 10, 973
- Dams, erection of, 4, 977
- Defective title, 10, 808
- Definition, 10, 779
- Definition of enjoin, 6, 646

Demurrer, 10, 1006

- And motion to dissolve pending at same time, 10, 1007
- What court will consider, 10, 1006
- Description of particular acts, 10, 782
- Dies non juridicus, 5, 87
- Discretion of court, 10, 780
- Discrimination in freight charges, 8, 967

Disobedience

- As contempt, 3, 785, 792

Dissolution, 10, 1014

- Allegations in bill insufficient, 10, 1016
- Amendment, 10, 1019
- Answer must deny facts in inference, 10, 1018
- Answer of all defendants, 10, 1017
- Answer on information and belief of executor and administrator, 10, 1017
- Death of plaintiff, 10, 1018
- Deficient injunction bond, 10, 1019
- Denial on information and belief, 10, 1014
- Discretion of court, 10, 1016
- Exceptions, 10, 1015
- Formal or technical denial, 10, 1014
- Full denial in answer, 10, 1014
- Hearing motion before answer filed, 10, 1019
- Irregularities, 10, 1019
- Irreparable mischief, 10, 1016
- Laches, 10, 1019
- Motion, 10, 1018
- New matter on motion, 10, 1018
- On denial of allegations in the bill, 10, 1006, 1014
- Plaintiff failing to take steps to have all defendants answer, 10, 1017
- Positive denial of all material facts, 10, 1014
- Power to dissolve in vacation, 10, 1020
- Preliminary injunction, 10, 1015
- Representative of deceased person, 10, 1018
- Unsworn amendment, 10, 1019

When motion will be heard, 10, 1018

Where part only of the defendants apply for, 10, 1017

- Distinguished from mandamus, 14, 93
- Distinguished from prohibition, 19, 264
- Distinguished from quo warranto, 10, 794; 19, 663
- Drainage, 10, 852
- Easements, 10, 847
- Ejectment, 6, 245^{dd}

Elections

- Acts based upon fraudulent elections, 6, 392
- Canvass of votes, 6, 392
- Contest, 6, 392
- Holding of an election, 6, 392
- To obtain possession of office, 6, 391
- To prevent collection of fees, 6, 391
- To prevent issue of commission, 6, 392
- Use of certificate, 6, 392

Electric light station, 10, 829

Elevated Railroads, 23, 1052

- Additional tracks, 23, 1053
- Against construction of another road, 23, 1039
- Alternative damages, 23, 1053
- A single proceeding, 23, 1054, 1055
- Damages for noise, 23, 1055
- Effect of injunction proceeding, 23, 1053

For what compensation awarded, 23, 1055

Generally, 23, 1052

In Kentucky, 23, 1055

Jury trial, 23, 1055

Light, air, and access, 23, 1055

Limitation of actions, 23, 1083

Measure of Damages, 23, 1070

Contemplated building of road, 23, 1072

Examples, 23, 1070-1074

Excessive damages, 23, 1072

In general, 23, 1070

Insufficient damages, 23, 1072

Measure of damages to fee value, 23, 1071

Past damages, 23, 1070

Prospective damages, 23, 1071

Proximity of stations, 23, 1072

Nature of the proceedings, 23, 1052

Right of owner who has leased property, 23, 1060

Right to trial by jury, 23, 1085

Suspension of the injunction, 23, 1053

To compel company to make compensation, 23, 1052

Eminent Domain, 6, 592; 10, 964

Abutting owner, 6, 592

After revocation of license, 6, 596

Entry without any valid condemnation proceedings, 6, 592

Failure to make payment, 6, 592

Individual whose property has not been taken, 6, 592

In general, 6, 592

Municipal corporation, 10, 964

Vol. I.

- Railroads, 10, 969**
 Action for damages reversed, 10, 971
 Enjoining condemnation of different route than that conveyed, 10, 972
 Entry for surveys, 10, 972
 Hesitation on part of courts, 10, 969
 Illegally entering lands, 10, 969
 Injunctions causing public inconvenience, 10, 971
 Irregular condemnation proceedings, 10, 969
 Property damaged but not taken, 10, 972
 Railroad authorized by statute, 10, 972
 Unconstitutional statute, 10, 972
 Withholding injunction to give opportunity to pay damages, 10, 971
 Unlawful opening of a road, 10, 980
 Where landowner has given consent, 6, 593
 Where lands are entered upon without authority, 6, 605
- Engravings, Paintings, etc., 10, 930**
See infra, COPYRIGHT.
- Enjoining payment of dividend, 5, 734
 Equitable defense not applying to entire cause of action, 10, 801
 Equitable interests, 10, 801
 Erection of wooden building, 10, 781, 965
- Execution, 10, 887**
See infra, JUDGMENTS.
 Exempt property, 10, 892
 Illegal, 10, 894
 Owner not party, 10, 894
- Execution sale, 10, 892**
- Ferries, 7, 945; 10, 979**
 Absence of remedy at law, 10, 980
 Erection of bridge, 10, 979
 Examples, 10, 980
 Forfeited franchise, 10, 980
 Infringement of ferry franchise, 7, 946; 10, 979
 Parties seeking injunction must have complied with his license, 7, 945
 Protection of exclusive right, 10, 979
 Rival ferry, 7, 946; 10, 979
 Running to unauthorized point, 7, 945
 When interruptions are a nuisance, 7, 946
 When rival can be enjoined, 7, 945
 Within what distance rival ferry may be started, 7, 945
- Final, see infra*, PERPETUAL.
- Fixtures, 8, 65; 10, 875**
 Definition, 10, 875
 Examples, 10, 875
 Mortgagor and mortgagee, 10, 875
 Removal, 10, 875
- Flowing neighbor's land, 10, 853
 Foreclosure of mortgages, 10, 810, 899
- Foreign Corporations, 8, 377**
 Payment of stock dividends, 8, 379
- Forfeiture, 8, 446**
- Franchises, 10, 967**
 Forfeiture, 10, 967
- Interfering with exclusive franchise, 10, 967
 When injunction will not be granted, 10, 967
- Gambling Contracts**
 Enjoining collection of judgment obtained upon gambling obligations, 8, 1020
 Restraining collection, 8, 1020
 Restraining transfer of a gambling obligation, 8, 1020
- Gas Companies, 8, 1290**
 Taking up streets, 8, 1290
- Good-will, 8, 1370**
- Grounds for, 10, 779**
- Highways, 10, 980**
 Compliance with statutory requirements, 10, 981
 Encroachment upon street, 10, 983
 Erecting building in public street, 10, 982
 Obstructions in alley or street, 10, 982
 Railroads, 10, 977
 Remedy at law, 10, 981
 Road for benefit of single individual, 10, 981
 Unauthorized opening of road, 10, 980
- Information, 10, 986**
- Information and belief, 10, 787**
- Injunction Bonds, 2, 466s; 10, 986**
- Action on Bond, 10, 988, 993**
 Another injunction obtained, 10, 990
 Dissolution of preliminary injunction, 10, 989
 Final determination of action in which injunction was obtained, 10, 989
 Voluntary dismissal of suit, 10, 989
 What is a final judgment, 10, 989
 When cause of action accrues, 10, 989
- Action upon before determination of suit, 2, 466t**
- Additional security, 10, 991**
- Assessment of Damages, 10, 993**
 In absence of statute, 10, 994
 In Colorado, 10, 995
 In Illinois, 10, 995
 In Kentucky, 10, 995
 In Louisiana, 10, 995
 In Missouri, 10, 995
 In New York, 10, 995
 In South Carolina, 10, 995
 In Tennessee, 10, 995
 In Texas, 10, 995
 In United States courts, 10, 993
 In Wisconsin, 10, 995
 Limit of liability, 10, 994
 Statutory regulations, 10, 994
- Bond construed with reference to statute, 10, 987**
- Condition precedent to injunction, 2, 466s**
- Conditions conforming to statute, 10, 987**

INJUNCTION—Cont'd**Injunction Bonds—Cont'd****Counsel Fees, 10, 992, 999**

Action in state court upon bond given in federal court, 10, 1000

Appeal, 10, 1000

Defendant's right to, 10, 992, 999

Fees for defending entire suit, 10, 1000

Final hearing, 10, 1001

Injunction unfairly obtained, 10, 1001

Motion to dissolve, 10, 1000

Payment to counsel a prerequisite, 10, 1002

Reasonable amount, 10, 999

When not recoverable, 10, 1002

Effect on surety of judgment against principal, 12, 98

Evidence to vary liability, 10, 992

Giving bond as condition precedent, 10, 987

Injunction ineffectual until bond is executed, 2, 466s

Measure of Damages, 10, 995

Benefit which orator has derived, 10, 996

Conclusiveness of decree, 10, 998

Costs, 10, 997

Counsel fees, 10, 999

Examples, 10, 998, 999

Expenditure by defendant, 10, 996

General rule, 10, 995

Interest, 10, 998

Natural and proximate damages, 10, 996

Penalty of bond, 10, 998

Remote damages, 10, 997

Speculative damages, 10, 997

Statute of limitations, 2, 466t

Statutes, 10, 987

Statutes requiring, mandatory, 2, 466s

Sufficiency of bond, 10, 987

Sureties, 10, 991; 24, 861

Action Against, 10, 993; 24, 861

Defenses, 10, 993

In Louisiana, 10, 993

In New York, 10, 993

Jurisdiction of equity, 10, 993

Mitigation of damages, 10, 993

Proceedings at law, 10, 993

Solvency of principal, 10, 993

Surety as party to the suit, 10, 993

Discharge, 24, 861

Discretion of judge as to condition of bond, 10, 991

Liability strictly construed, 10, 991; 24, 861

Precise terms of the undertaking, 10, 991

Surplusage, 10, 987

To obtain preliminary injunction, 10, 986

When required, 10, 987

Whether injunction is dissolved for insufficient bond, 10, 987

Who entitled to benefit of, 2, 466t

Instances, 10, 781

Interlocutory, see *infra*, PRELIMINARY.

Internal revenue, 21, 322

Intoxicating Liquors, 11, 664

See INTOXICATING LIQUORS.

Erroneous grant of license, 11, 664

Lease, 10, 941

Restraining commissioners, 11, 664

In vacation, 10, 1007

Irreparable injury, 10, 782

Joint tenants and tenants in common, 11, 1133

Judgments or Actions at Law, 10, 884, 902; 14, 662

Accident, 10, 896

Actions at Law Under the Code, 10, 812

Equitable defense as available as legal, 10, 812

Multiplicity of suits, 10, 913

Where additional parties are required, 10, 913

Attorney

Collusion, 12, 147

Fraud, 12, 147

Ignorance of, 12, 147

Misapprehension of, 12, 147

Neglect of attorney, 12, 147

Unauthorized act in management of case, 12, 147

Bona fide purchasers, 12, 147a, 147b

Cases in which equity has refused to interfere, 12, 147a

Case tried at special term, 12, 142

Clerical errors, 10, 886, 904

Cloud on title, 10, 895

Compelling judgment creditor to submit to new trial, 12, 140

Continuance, 10, 887

Creditor's fraudulently concealing facts, 12, 143

Criminal prosecutions, 10, 914; 12, 139

Defendant privileged from service of process, 12, 141

Defense which has arisen since judgment, 12, 147

Diligence in discovering defense, 12, 145

Diligence required in ordinary business of life, 12, 145, 146

Direct defense in court of law, 12, 140

Disqualification of judge, 12, 142

Effect of fraud, 12, 143

Ejectment, 10, 891

Equitable defense in action at law, 12, 145

Equity court for relief, 10, 889

Error of Court, 10, 901; 12, 147

In conceding, 10, 901

In excluding or admitting evidence, 10, 901

Error of law, 12, 147

Examples of party's negligence, 10, 902, 903

Execution sale, 10, 892

Exempt property, 10, 892

False return by officer, 12, 140

Fraud, 10, 896, 905; 12, 142
 Attorney, 12, 147
 Concurrent jurisdiction, 10, 905
 Foreign or domestic judgments, 10, 905
 In cause of action, 12, 142
 Practiced by co-defendant, 12, 143
Fraudulently prevented from attending trial, 12, 144
 Gambling debts, 12, 146
 General rule, 12, 145
 Grounds available at law, 10, 889
 Ignorance of existence of good defense, 12, 144
 Ignorance of law of another state or nation, 10, 904
 Ignorance of law on part of judge, 12, 147
 Ignorance of material facts, 10, 905
 Illegal execution, 10, 894
Independent Complaint, 10, 907
 Decree in the same court, 10, 907
 Failure to summon defendant, 10, 907
 Where no opportunity to defend was given, 10, 907, 908
Injunction for false representations of plaintiff, 10, 905, 906
 Irregularities, 10, 886; 12, 147
Judgment
 Against infant, 12, 147a
 At law, 12, 139
 By confession, 10, 886
 Fraudulently alleged, 12, 143
 In criminal action, 10, 914; 12, 139
 Not equitable, 10, 898
 On usurious contract, 10, 938; 12, 146
 Procured by fraud, 10, 896, 905; 12, 142
 Procured without service of process, 12, 140
 Jury tampered with, 12, 142
 Laches of party, 10, 902; 12, 605
 Miscellaneous cases, 10, 895
 Mistake, 10, 888, 896
 Mistake in bringing in verdict, 12, 142
 Mistake in computing amount of judgment, 12, 144
 Mistake of clerk of court, 12, 142
Mistake of Fact, 10, 904
 By judge, 12, 144
 By party to action, 12, 144
 Ignorance of material facts, 10, 905
Mistake of Law, 10, 901
 Joined to other considerations, 10, 904
 On part of judge, 10, 901; 12, 147
 Relief in some states, 10, 904
 Neglect to make defense, 10, 900
 Newly discovered evidence, 10, 901; 12, 141
 Original bill and nature of bill of review, 12, 140
 Owner at law, 10, 894
 Owner not a party to execution, 10, 894

Partitions, 10, 887, 890
 Payment of amount rightfully due, 12, 147a
 Perjury, 12, 143
 Personal representative of deceased person, 12, 146
 Pleadings, 10, 890
 Practice, 10, 888
 Prevented from attending trial by force, 12, 144
Proceedings in Other Courts, 10, 908
 Attachment in another state, 10, 910
 English rule, 10, 909
 Enjoining party from instituting or proceeding, 10, 908
 Enjoining party from suing in another state or country, 10, 909
 Exceptions to the rule, 10, 912
 Injunction addressed to parties and not to court, 10, 908
 State court restraining action in federal court, 10, 912
 United States courts, 10, 912
 United States statutes, 10, 912
 Where court has jurisdiction, 10, 908
 Where court is pending, 10, 908
 Promptness required in application, 12, 147a
 Relief against execution, 10, 887, 892
 Showing recital of service to be untrue, 12, 140
 Sickness, 12, 144
 Specific performance, 10, 891
 Surprise, 12, 141, 144
 Unauthorized appearance by attorney, 12, 141
 Unjust judgments, 10, 898
 Upon grounds which would be a defense at law, 10, 885
 Usury, 10, 938; 12, 146
 Violation of agreement not to take judgment, 12, 143
 Void judgments, 10, 887
 Want of care and management of the case, 10, 902
 Want of jurisdiction over defendant, 12, 141
 When court at law can do full justice, 10, 884; 12, 140
 When equity will not interfere, 12, 145
 Where courts of law grant relief, 12, 139
 Where no attempt is being made to enforce judgment, 12, 147a
 Where relief may be obtained at law, 10, 884; 12, 140
 Where result of new trial would be different, 12, 141
 Wife's property, 10, 892
 Writing to attorney asking him to take charge of case, 12, 146
Jurisdiction, 10, 792
 Concurrent, 10, 795
 Defense available at law, 10, 792
 Equitable defense, 10, 792
 Illustrations, 10, 794
 Legal grounds, 10, 792

INJUNCTION—Cont'd**Jurisdiction—Cont'd**

- Persons beyond, 10, 795
- Statutory remedy, 10, 794
- Subject-matter within jurisdiction of the court, 10, 794

Laches, 10, 802

- Acquiescence, 10, 803
- General rule, 10, 802
- Reasonable diligence, 10, 802
- Relief refused for want of diligence, 10, 802

Landlord and tenant, 10, 909**Lateral Support, 10, 849; 12, 939**

- Ancient buildings, 10, 850
- Nature of the right, 10, 849
- Prescriptive right to, 10, 850
- Right of property, 10, 849
- Right of support, 10, 850
- Rights of adjoining proprietor, 10, 850
- Subjacent support, 10, 850
- Weight of buildings, 10, 850

Leases, 10, 816

- Restrictive Covenants in, 10, 941**
 - Certain business, 10, 942
 - Instances, 10, 941
 - Keeping bar for sale of spirituous liquors, 10, 941
 - Particular covenants, 10, 941
 - Particular opportunities, 10, 941
 - Violation prevented by injunction, 10, 941

Lectures, 10, 928**Legal defense, 10, 792****Letters, 10, 930; 13, 253**

- Against opening, 13, 253
- Against publishing, 13, 253

Liability of Plaintiff, 19, 518

- Malicious prosecution, 19, 518
- Where injunction bond is taken, 19, 518
- Where no injunction bond is taken, 19, 518

Libel and Slander, 10, 985; 13, 453

- Libellous publications, 10, 924
- Libel of patent right, 18, 124

License, 13, 551**Limitation of Actions, 13, 719**

- Defendant imposing legal obstacle to suits, 13, 719

Literary productions distinct from copy-right, 10, 925**Local Assessments, 25, 574**

- Adequate remedy at law, 25, 574
- Examples, 25, 574
- In general, 25, 574
- Sale and collection, 24, 80
- When granted, 25, 574

Local Improvements, 10, 960

- Acquiescence, 10, 961
- Allowing improvement to be carried on without objection, 10, 961
- Notice to property owner, 10, 960

Malicious prosecution, 14, 36; 19, 518**Mandamus, 10, 986; 14, 105**

- Enjoining proceedings for writ of mandamus, 10, 986

Examples, 10, 986

- Granting or dissolving, 14, 117
- Stay of proceedings by, 10, 986
- To compel an act forbidden by injunction, 4, 291
- To compel grant of appeal, 10, 986
- To compel grant or dissolution of injunction, 10, 986
- Whether peremptory writ can be stayed by, 14, 217

Mandatory, 10, 784, 789

- Caution to be exercised when granting, 10, 789
- Instances, 10, 789
- Interlocutory, 10, 791
- Not granted until final hearing, 10, 791
- Power of court, 10, 791
- Preventive remedy only, 10, 791
- Railroad companies, see infra, RAILROADS.*

To alter building, 10, 790**To enforce delivery of real property, 10, 789****To enforce yielding up of real property, 10, 789****To tear down building, 10, 790****Trespass committed, 10, 790****When granted, 10, 789****Market, 14, 461, 462****Married Women, 10, 983***See infra, ALIMONY.***Alienating property, 10, 985****Apprehension of abandonment by husband who is alienating property, 10, 985****Conveyance of husband's property pending divorce, 10, 985****Entireties, 10, 984****Equitable separate estate, 10, 983****Examples, 10, 983, 984****Interfering with custody of children, 10, 985****Restraining creditor or husband, 10, 983****Restraining husband from interfering with wife's business, 10, 984****Marshaling assets, 14, 692****Master and Servant, 10, 948****Actors, etc., 10, 948****Breach of restrictive covenant, 10, 948****Enticing away servant, 14, 803****General rule, 10, 948****Mercantile agencies, 15, 301****Mills, 10, 852****Acquiescence for a long period, 10, 855****Erected on both banks of stream, 10, 854****Large sums invested in improvements, 10, 855****Owners flooding track, 10, 977****Reasonableness of detention of water, 10, 853****Several mills on same stream, 10, 853****Use of mill for a long period, 10, 855**

- What to be considered when deciding between conflicting rights, 10, 854
 When law will limit right, 10, 852
Mines and Mining Claims, 15, 587, 605
See infra, TRESPASS.
 Examples, 15, 606
 In behalf of the United States, 15, 514, 606
 Laches, 15, 606
 Legal title in controversy, 15, 606
 Restraining trespassers, 15, 605
 Tailings and debris, 15, 587
 Trespass, 10, 881; 15, 606
 Urgent necessity, 15, 607
 When removal of ore is irredeemable injury, 15, 605
Mortgage Sale or Foreclosure, 10, 810, 899
See infra, TRUST DEEDS AND POWER OF SALE MORTGAGES.
 Absolute conveyance as security for debt, 10, 814
 Allegation of fraud or illegality, 10, 812
 Allegation that sale would embarrass and injure plaintiff, 10, 812
 Amount due uncertain, 10, 814
 Equity uncertain, 10, 814
 Fraud in inception of the mortgage, 10, 813
 General rule, 10, 810
 Heirs of grantor, 10, 811
 In absence of fraud, 10, 810
 Injunction and receiver, 10, 811
 Junior lien, 10, 816
 Mistake, 10, 814
 Mistake in description, 10, 814
 Mortgage of doubtful validity, 10, 813
 Parties, 10, 811
 Payment into court, 10, 811
 Penalty, 10, 815
 Pleading, 10, 812
 Remedy at law, 10, 812
 Sale under a power to secure purchase-money, 10, 814
 Statement of facts in bill, 10, 812
Tender, 10, 810
 Amount which mortgagee swears is due him, 10, 811
 Payment into court, 10, 811
 Where mortgagor admits in his bill that a portion of the debt is justly due, 10, 810
 Usury, 10, 815
 Waste by mortgagor, 10, 816; 15, 816; 28, 933
Municipal Corporations, 10, 959
 Acquiescence in improvements by property owner, 10, 960, 961
 Advertising and letting to lowest bidder, 15, 1097
 Construction of waterworks, 15, 1117
 Drains, 10, 964
 Eminent domain, 10, 964
 Employment of attorney, 15, 1120
 Erection of wooden buildings, 10, 965
 Exercising authority over outside territory, 10, 959
 Expenditure under void ordinance, 10, 960
 Flooding abutting owners, 10, 964
 Founded in trust, 10, 959
 Illegal acts, 10, 959
 Illegal creation of debt, 10, 962
 Illegal warrants, 15, 1217
 Instances, 10, 959
 Irregularities in the assessment of a tax, 10, 960
 Issue of bonds, 10, 963; 15, 1255
 Jurisdiction of courts of equity, 10, 959
Limitation of Municipal Indebtedness, 15, 1140
 Enjoining carrying out of contract, 15, 1140
 Examples, 15, 1140
 Taxpayer, 15, 1140
 Notice to property owner, 10, 960
 Nuisance, 10, 966
 Opening streets and highways, 10, 964
 Ordinance, 10, 962; 17, 269
Proper Parties, 10, 963
 Gross laches, 10, 963
 In Illinois, 10, 964
 In Iowa, 10, 964
 In Kansas, 10, 963
 In Massachusetts, 10, 964
 In Missouri, 10, 964
 In New York, 10, 964
 In Pennsylvania, 10, 964
 Other states, 10, 964
Restraining Issue of Bonds, 10, 963; 15, 1255
 Acquiescence, 15, 1256
 Bonds void in hands of innocent purchaser, 15, 1255
 Illegal issue, 15, 1255
 Taxpayers, 15, 1255
 Void bonds, 15, 1256
 Where like bonds have been issued, 15, 1256
 Whether temporary injunction matter of right, 15, 1255
 Slaughter-houses, 10, 967
 Violating statute, 10, 960
 When granted against municipality, 10, 959
 Wrongful appropriation of funds, 10, 962
 Municipal officers, 10, 968
Municipal Securities
 Bona fide purchaser, 15, 1289
 Failure to comply with conditions, 15, 1272
 Notice of election, 15, 1276
 Mutual insurance, 16, 78
 National banks, 16, 216
Navigable Waters, 10, 842, 977
 By attorney-general when nuisance is erected, 23, 81
 Necessity, 10, 780
Nuisances, 10, 826, 965
 Allegation of special damage where nuisance is public, 10, 838
 Annoyance of neighbors, 10, 834

INJUNCTION—Cont'd**Nuisances—Cont'd**

Blacksmith shop, 10, 831
 Blowing sand, 10, 829
 Brick-burning, 10, 834
 Bricks, 10, 829
 Bridge across navigable river, 10, 842,
 977; 23, 81
 Chinese laundry, 10, 828
 Cinders, 10, 833
 Clear legal right injured, 10, 832
 Coal yards, 10, 831
Continuous, 10, 832, 837
 Prevented, 10, 832
 What is, 10, 837
 Crowds, 10, 828
 Definition of, 10, 826
 Domestic broils, 10, 835
 Dwelling, 10, 833
 Erection of building which may be-
 come a nuisance, 10, 832
 Erection of milldam, 10, 843
 Factory, 10, 828
 Fouling streams, 10, 844
 General principles governing, 16, 959
 General rule as to granting, 10, 826
 Ground of interference, 10, 827
 Gunpowder making, 10, 834
 House of ill fame, 10, 834
 Injury constantly recurring grievance,
 10, 826
 Injury not susceptible of adequate com-
 pensation, 10, 826
 Instances of, 10, 827
 Intrusion on the freehold of another,
 10, 839
Irreparable Injury, 10, 836
 What is, 10, 836
 Jurisdiction, 10, 837
 Laches, 16, 960
Lawful Business, 10, 829
 Becoming a nuisance by reason of
 noise, smoke, cinders, etc., 10, 833
 Which is a nuisance per se, 10, 830
 Manufacture of brick, 10, 829
 Manufacturing gas, 10, 833
 Noise, 10, 828, 833
 Noxious gases, 10, 833
Nuisance at Law, 10, 831
 Benefit to public exceeding injury to
 individual, 10, 831
 Concurrent jurisdiction, 10, 831
 Necessity that wrong be a nuisance
 at law, 10, 831
 Right violated where there is no
 remedy at law, 10, 831
 Where either party may suffer by
 granting or withholding, 10, 831
Nuisance Per Se, 10, 830
 As to what constitutes a nuisance
 per se, 10, 830
 Lawful business which is a nuisance
 per se, 10, 830
 Where injury is not a nuisance per
 se, 10, 830
 Powder kept in large quantities, 10, 831
 Projecting buildings, 10, 839

Public Nuisance, 10, 838, 966

Railroad track in streets, see
 STREETS AND HIGHWAYS.

Allegation of special damage, 10, 838
 Crib or pier erected in navigable
 water, 10, 839
 Examples, 10, 839, 840
 Floating elevator, 10, 839
 Slaughter house, 10, 967
 Soap factory, 10, 839
 Special damage to be alleged, 10, 966
 Wharf, 10, 839

Purpresture, 10, 839

Application of private parties, 10,
 841
 Definition, 10, 841
 Information of the attorney in gen-
 eral, 10, 481
 Jurisdiction of equity, 10, 841
 Navigable river, 10, 842
 Obstruction of highway, 10, 842
 Special damage to individual, 10,
 842

**Reasonable fear of danger from neigh-
boring buildings**, 10, 831

Ringling bells, 10, 834
 Smoke, 10, 833, 834
 Soap factory, 10, 839
 Something which may become a nui-
 sance, 10, 837

Surface waters, 10, 843

Temporary or continuous, 10, 832

Threatened, 10, 835, 836

Allegations in bill, 10, 836
 Constantly recurring grievance, 10,
 835
 Contingent injury, 10, 836
 When equity will enjoin, 10, 835
 Wanton annoyance of neighbors, 10,
 835
 When injunction granted, 10, 826
 Where bridge is authorized, 10, 843
 Where bridge is not authorized, 10,
 842
 Where building itself is not a nuisance,
 10, 832

**Officers and Agents of Private Corpora-
tions**, 17, 53

Sale of property, 17, 152
 Opera singers, 10, 948; 22, 1005; 25,
 1049

Ordinances, 10, 962; 17, 269

Adequate relief, 17, 270
 Restraining legislation by council, 17,
 270
 To enforce, 17, 270
 Violation of municipal ordinances, 17,
 269
 Void ordinances, 17, 269
 When equity will interfere, 17, 269

Origin of the writ, 10, 779**Parent and Child**

Custody, 17, 367

Parks and Public Squares, 17, 410

Revocation of dedication, 17, 410
 Sale of land, 17, 409
 Used for different purposes, 17, 409

- Parties**, 10, 796; 17, 656
 Easements, 10, 798
 Joinder of defendant, 10, 797
 Joinder of parties, 10, 797
 Judgments at law, 10, 797
 Multifarious, 10, 796
 Officers of court, 10, 797
 Omission of necessary party defendant, 10, 796, 797
 One party prosecuting for benefit of all, 10, 796
 Public nuisances, 10, 798
 Violating of public duty by officers, 10, 798
 Whether granted against one not a party, 10, 796
Partition, 17, 765
 Against proceedings at law, 17, 765
 To stay waste, 17, 765
Party Walls, 10, 851; 18, 16
 How created, 10, 851
 What is a party wall, 10, 851
 What is sufficient wall, 10, 851
 When injunction will issue, 10, 851, 852
 Wrongful use of wall, 10, 851
Partnership, 10, 950
 See infra, RECEIVER.
 Acts injurious to partnership, 10, 950
 After dissolution of partnership, 10, 951
 Against co-partner and third party, 10, 951
 By executor, 17, 1166, 1167
 Covenant not to carry on firm business, 10, 952
 Good will, 17, 1186
 Good will of professional partner, 17, 1193
 Indorsing negotiable paper, 10, 951
 Indorsing notes, 10, 950
 Interfering with partnership property after dissolution, 10, 951
 Misapplying funds after dissolution, 10, 951
 Misappropriation of assets, 10, 951
 Name of firm, 10, 952
 Partner competing with the firm, 17, 1058
 Partner engaging in business injurious to firm, 10, 950
 Partner entering into a new partnership, 10, 951
 Receiver, 10, 952
 Removing partnership books, 10, 950
 Sale and levy, 17, 1342
 Sale of good will with agreement not to compete, 17, 1195
 When granted, 10, 950
 When not granted, 10, 950
 Where partnership is formed for definite period, 10, 951
Patent Law, 10, 917; 18, 74
 Bill in equity, 18, 76
 Bill to enjoin libel of patent right, 18, 124
 Bill to restrain suits against customers of a manufacturer, 18, 123
 Contempt, 18, 120, 121
 Establishment of patent at law, 10, 917
 Expiration of patent, 10, 920
Final Injunction, 18, 112
 Articles made during the life of a patent, 18, 113, 114
 Complainant's title clear, 18, 113
 Delivering up infringing articles, 18, 114
 Destroying infringing articles, 18, 114
 Examples, 18, 112-115
 Expiration of patent before decree, 18, 114
 Granted against whom, 18, 113
 Infringement not willful, 18, 113
 In general, 18, 112
 Necessity of title at law, 18, 113
 Other relief by equity, 18, 114
 Profits denied on account of laches, 18, 112
 Suspension, 18, 113
 When granted, 18, 112
 When not granted, 18, 112
 Jurisdiction of United States courts, 10, 917
 Mere lapse of time, 10, 919
 Patent for separate parts, 10, 919
 Patent upheld by repeated adjudications, 10, 921
Preliminary Injunction, 10, 917, 921; 18, 77
 Ability of defendant to respond in damages, 18, 82
Adjudication Not Warranting Preliminary Injunction, 18, 80
 Collusive injunction or decree, 18, 80
 Evidence different, 18, 80
 Examples, 18, 80
 New defense or evidence, 18, 81
 Adjudication warranting the grant of preliminary injunction, 18, 79
 Admission of past infringement, 18, 83
 Contractual relation between the parties, 18, 82
 Defendant in prior action the same, 18, 79
 Defendant interested in former suit, 18, 79
 Delay during pendency of other suits, 18, 81
 Estoppel, 18, 84
 Evidence of infringement held insufficient, 18, 83
 Examples of adjudication, 18, 79
 Exclusive possession for some time, 18, 83
 Favorable decision in interference, 18, 79
 Final decree in equity, 18, 79
 Former construction followed, 18, 84
 General principles, 18, 77
 Infringement not clear, 18, 82
 Judgment by agreement, 18, 79

INJUNCTION—*Cont'd***Patent Law**—*Cont'd***Preliminary Injunction**—*Cont'd*

- Judgment in a trial at law, 18, 79
- Matter of discretion, 18, 77
- Motion for, 18, 77
- Notorious possession, 18, 83
- Plaintiff filing bond with defendant, 18, 84
- Plaintiff's laches, 18, 81
- Power of court to impose conditions, 18, 84
- Prior adjudication, 18, 78
- Provision in decree for dissolving injunction, 18, 85
- Public acquiescence, 18, 83
- Requiring defendant to keep account, 18, 84
- Title, 18, 78
- Validity of patent, 18, 78
- What is sufficient evidence of infringement, 18, 83
- Where the patent had previously been sustained, 18, 77
- Willingness of defendant to accept license, 18, 81
- Writ of error, 18, 79
- Prior adjudications, 10, 921
- Prior use of invention, 10, 919
- Reasonable doubt as to novelty and originality, 10, 917
- Repeal of patent, 10, 919
- Threat of legal proceedings, 10, 919
- United States courts, 10, 917
- Violation of agreement, 18, 143
- Violation of injunction, 10, 920
- What constitutes sufficient user, 10, 917
- Where plaintiff shows undisturbed possession, 10, 917

Perpetual, 10, 784

- Appearance of defendant, 10, 785
- Burden of establishing right of, 10, 785

Pews, 18, 423**Pollution of waters**, 28, 970**Power of legislature to dissolve**, 3, 683**Prayer for**

- In bill of discovery, 2, 200

Preliminary Injunctions, see *infra*, **INJUNCTION BOND**.

- Bill of complaint, 10, 786
- Common, 10, 788
- Information and belief, 10, 787
- Instances in which injunction was denied, 10, 787
- Instances in which injunction was granted, 10, 787
- Mandatory, 10, 791
- Motion to dissolve, 10, 788
- Special, 10, 788
- What plaintiff must allege, 10, 784
- What plaintiff must show, 10, 785
- When continued, 10, 787
- When denied, 10, 785
- When granted, 10, 786
- When writ perpetual, 10, 786
- Where plaintiff's right is denied, 10, 787

Procedure, see *infra*, **ANSWER**; **DEMUR-RER**.

- Amendment, 10, 1019
- Appeal, 10, 1007
- Continuance, 10, 1007
- Granted before issuing summons, 10, 1006
- In vacation, 10, 1007
- Venue, 10, 1007

Procedure to Obtain, 10, 1002*Verification*, see *infra*, **VERIFICATION**.

- Affidavits, 10, 1003
- Affidavits without bill, 10, 1002
- Allegations must be direct and positive, 10, 1002
- Bill of complaint, 10, 1004
- Information and belief, 10, 1002
- Injunction must be granted as prayed, 10, 1004
- Necessity of bill, 10, 1004
- Prima facie case to be made, 10, 1002
- Swearing the bill, 10, 1005
- Prohibition, 10, 986
- Publication of a work in violation of covenant, 10, 925

Publications, see *infra*, **COPYRIGHT**.

- Blasphemous, 10, 924
- Immoral, 10, 924
- Libellous, 10, 924, 986; 13, 485
- Protecting property rights, 10, 986

Public Lands

- Inclosure, 19, 372
- Officers of land office, 19, 342
- Public officers, 10, 968
- Purpresture, 16, 940

Railroads, 10, 969, 973*Unauthorized occupation of streets*, see **STREET RAILROADS**.

- Compelling railroad to furnish express facilities, 7, 574
- Conflicting claims as to right of way, 10, 973

Covenants, 10, 976

- Crossing each other, 19, 870
- Discrimination against express companies, 7, 573
- Ejectment against, 19, 845

Eminent Domain, 10, 969

- Action for damages reserved, 10, 971
- Enjoining condemnation of different route than that conveyed, 10, 972
- Entry for surveys, 10, 972
- Illegally entering lands, 10, 969
- Injunctions causing public inconvenience, 10, 971
- Irregular condemnation proceedings, 10, 969
- Property damaged but not taken, 10, 972
- Railroad authorized by statute, 10, 972
- Unconstitutional statute, 10, 972
- Withholding injunctions to give opportunity to pay damages, 10, 971
- Fraudulent combinations, 10, 977
- Hesitation on part of courts, 10, 969
- Highways, 10, 977

- In Streets**, 10, 973; 23, 1132, 1133
See STREET RAILROADS.
 Suit enjoined from revoking grant of right of way, 10, 975
 Unauthorized occupation, 10, 973
 When granted, 10, 974
- Mandatory**, 10, 789
 Agreement not to transport goods at rate fixed by statute, 10, 790
 Obligation to public, 10, 790
 To build roads, 10, 791
- Mill owners flooding track, 10, 977
 Necessity of special damage to individual asking for, 10, 975
 Operating contracts, 10, 977
 Parallel roads, 10, 977
 Planting trees, 10, 977
 Pools, 19, 693
 To compel railroad to complete its road, 8, 619
- Real Property**, 10, 804, 806
See *infra*, MORTGAGE SALE OR FORECLOSURE; TRESPASS; WASTE.
- Actions Involving Title to Real Estate**, 10, 805
 Defendant in possession, 10, 806
 Denial of plaintiff's title by defendant, 10, 806
 General rule as to enjoining proceedings at law, 10, 805
 Inadequacy of remedy at law, 10, 805
 When equity will interfere, 10, 805
- Ascertaining the existence of a legal right, 10, 804
 Defendant in possession, 10, 806
 Denial of plaintiff's title by defendant, 10, 806
 Disposition of debtor's property, 10, 807
 Ejectment, 10, 809
 Encroachments on land, 10, 807
 Erecting permanent building, 10, 807
 Excavations, 10, 807
 General rule as to enjoining proceedings at law, 10, 805
 Homesteads, 10, 809
 Inadequacy of remedy at law, 10, 805
 Judicial sales, 10, 808
 Landlord and tenant, 10, 809
 Mandatory writ to compel yielding of possession, 10, 789
 Official injunction, 10, 804
 Protecting property until right can be determined, 10, 804
 Stranger to title, 10, 807
 To preserve property pending litigation, 10, 805
 To prevent sale which would culminate in cloud upon title, 10, 808
 When equity will interfere, 10, 805
 Writ of restitution, 10, 809
- Receivers**
 Against, 20, 253
Appointment in Connection with Injunction, 20, 22
 Examples, 20, 22
 In general, 20, 22
 When refused, 20, 22
- Appointment of receiver operating as injunction, 20, 256
- Corporations**
Actions by Receivers of Insolvent, 20, 265
 Enforcing liability of stockholder, 20, 265
 Examples, 20, 265, 266
 In general, 20, 265
 Injunction as adjunct to receivership, 20, 264
 In proceedings to dissolve, 20, 266
Where Injunction Preferred to Receivership, 20, 263
 Allegation of fraud of officers, 20, 263
 Examples, 20, 263, 264
 In general, 20, 263
- Creditor's Suits**, 20, 268
 After judgment, 20, 268
 Before judgment, 20, 268
 Partnership cases in New York, 20, 269
 Special or equitable lien, 20, 269
- Difference Between Appointment of Receiver and Injunction**, 20, 258
 Effect on possession of property, 20, 258
 Examples, 20, 258, 259
 Distinct and separate remedy, 20, 258
- For and against**, 20, 263
- Partnership**, 20, 266
 Actual partnership must be shown, 20, 266
 Creditor's suits, 20, 269
 Examples, 20, 266, 267
 Prerequisites to injunction, 20, 266
 Prerequisites to receivership, 20, 266
 When court will appoint receiver, 20, 266
 Where a dissolution is not an injunction, 20, 267
- Protecting receiver in discharge of his duty, 20, 263
 Protecting third persons against abuse of power by receiver, 20, 263
- Real property**, 20, 270
- Resemblance in Effect Between Appointment of Receiver and Injunction**, 20, 256
 Discretion, 20, 257
 Examples, 20, 256, 257
 Illustration in partnership cases, 20, 256
 In general, 20, 256
 Investigation, 20, 257
 Object, 20, 257
- Restraining action at law against, 20, 263
 To protect possession of, 20, 262
 To restrain trespassing, 20, 144
- What Remedy May Apply**
 When neither Receiver nor Injunction Applicable
 Acquiescence, 20, 260

INJUNCTION--*Cont'd*Receivers--*Cont'd*What Remedy May Apply--*Cont'd*When neither Receiver nor Injunction
Applicable--*Cont'd*

Laches, 20, 260

Title to public office in dispute,
20, 260When relief may be had at law,
20, 259Where Receivership or Injunction or
Both May Be Granted, 20, 261Conflict of jurisdiction between state
and federal courts, 20, 261**Religious Societies**, 20, 825

Examples, 20, 825, 826

In general, 20, 825

Injunction to restrain persons claiming
as trustees, 20, 821

When injunction will issue, 20, 825

When injunction will not issue, 20,
825

Remedy at law not adequate, 10, 796

Removal of causes, 20, 1014

Restraining Actions at Law, 12, 293*See infra*, JUDGMENTS.

Partition, 17, 765

Restraint of trade, *see infra*, CON-
TRACTS.

Reversioner, 10, 822

Riparian Rights

Diversion of water, 28, 980

Pollution of waters, 28, 970

Sale under absolute conveyance as secu-
rity for debt, 10, 814

Scandal and impertinence, 21, 745

Set-OffDebt the collection of which has been
enjoined, 22, 271

Sheriff's sales, 22, 575

Societies and Clubs

To expel members, 22, 822

Specific performance, 22, 1064

State officers, 10, 968

Stations (Railroad)

Abandonment of station, 23, 116

StockCollection by insolvent company, 10,
975

Preferred dividends, 23, 610

Restraining transfer, 10, 916

Transfer of illegally issued stock, 23,
622**Stock Exchange****Improper Expulsion**, 23, 761

Execution of expulsion, 23, 765

Threatened with expulsion, 23, 764

When party may have injunction,
23, 761, 764Majority oppressing minority, 23,
784

Railroads, 10, 976

Unauthorized forfeiture, 23, 824

Street Railways

Change of gauge, 23, 1101

Ordinary railways in streets, 23, 1132,
1133**Unauthorized Use of Streets**

Adequate remedy at law, 23, 959

By private citizens, 23, 959

By public authorities, 23, 959

Where municipality may remove
tracks by force, 23, 959

When abutter may maintain, 24, 39

Strikes, 24, 134Against unlawful acts of strikers, 24,
134

Boycott, 24, 135

Examples, 24, 134-136

In general, 24, 134

Railroad employees, 24, 135

Who will be enjoined, 24, 134

Subterranean streams, 10, 856

Sunday, 24, 579

Supplementary Proceedings*Injunction against transfer of prop-
erty*, *see* SUPPLEMENTARY PRO-
CEEDINGS.Beginning and termination of injunc-
tion, 24, 666**Violating Injunction**Title to property not in judgment
debtor, 24, 665**Violation as Contempt**, 24, 664

Confessing judgment, 24, 664

Corporations, 24, 664

Examples, 24, 664-666

How long injunction order remains
in force, 24, 666

In general, 24, 664

Permitting violation, 24, 664

Service of injunction, 24, 664, 665

Subsequently acquired property, 24,
666**Surface Waters**, 10, 843

Changing course, 10, 853

Taxation, 10, 857, 960; 25, 453, 465

Allegation of fraud, 10, 759

Board of equalization, 10, 862

Cloud upon title, 10, 859

**Enforcement of Taxes Against Person-
alty**, 10, 871

Adequate remedy at law, 10, 871

Property of third person, 10, 871

When injunction will lie, 10, 871

Excess of value, 10, 860

Federal taxation, 10, 874

Fraud, 10, 857

General doctrine, 10, 857

Grounds, 10, 857Which can be remedied at law, 10,
860

In Alabama, 10, 863

In Arkansas, 10, 863

In California, 10, 863

In Colorado, 10, 864

In Connecticut, 10, 864

In Dakota, 10, 864

In Delaware, 10, 864

In Florida, 10, 864

In Georgia, 10, 864

In Idaho, 10, 864

In Illinois, 10, 865

In Indiana, 10, 865, 870

- In Iowa, 10, 865
- In Kansas, 10, 866
- In Kentucky, 10, 866
- In Louisiana, 10, 866
- In Maine, 10, 866
- In Maryland, 10, 866
- In Massachusetts, 10, 867
- In Michigan, 10, 867
- In Minnesota, 10, 867
- In Mississippi, 10, 867
- In Missouri, 10, 867
- In Nebraska, 10, 868
- In New Jersey, 10, 868
- In New York, 10, 868
- In North Carolina, 10, 868
- In Oregon, 10, 868
- In Rhode Island, 10, 868
- In South Carolina, 10, 868
- In Texas, 10, 868
- In West Virginia, 10, 868
- In Wisconsin, 10, 868
- In Wyoming, 10, 868
- Illegality of taxes, 10, 857
- Irregularity in assessment, 10, 861
- Irreparable injury, 10, 857
- Mistake of officers, 10, 861
- Multiplicity of suits, 10, 857, 859
- Municipal Taxation**, 10, 872, 960
 - Bounties, 10, 874
 - Doubt as to validity of ordinance, 10, 872
 - Exempt property, 10, 873
 - Extension of city limits, 10, 874
 - Fraud and mistake, 10, 873
 - Illegal assessments, 10, 872
 - Improvements, 10, 874
 - When equity will not interfere, 10, 874
- Necessary allegation, 10, 859
- Necessity of application to board of equalization and review, 25, 453
- Property exempt from taxation, 10, 872
- Redemption, 25, 436
- Resort to ordinary remedies first, 25, 452
- Restraining Execution of Deed**, 25, 680
 - Conditional relief, 25, 681
 - Examples, 25, 680, 681
 - In general, 25, 680
 - Interest in the land, 25, 680
 - Parties, 25, 681
 - Speculative danger, 25, 680
 - To avert a cloud from title, 25, 680
 - When equity will interfere, 25, 680
- Tax Partly Legal and Partly Illegal**
 - Bill must allege tender, 10, 869
 - Bill should show to what extent tax is illegal, 10, 869
 - In Alabama, 10, 869
 - In Arkansas, 10, 870
 - In Connecticut, 10, 870
 - In Florida, 10, 870
 - In Illinois, 10, 870
 - In Iowa, 10, 870
 - In Kansas, 10, 870
 - In Maryland, 10, 870
 - In Michigan, 10, 870
 - In Mississippi, 10, 870
 - In Missouri, 10, 870
 - In Nebraska, 10, 870
 - In North Carolina, 10, 870
 - In Ohio, 10, 870
 - In Oregon, 10, 871
 - In South Carolina, 10, 871
 - In Texas, 10, 871
 - In Wisconsin, 10, 871
 - In Wyoming, 10, 871
 - Necessity of tender, 10, 863
 - Receipt in full, 10, 869
 - Tender of part conceded to be due, 10, 863
 - Unconstitutional tax, 10, 872
 - When granted in general, 10, 857
 - When injunction will not be granted, 10, 863
 - When taxes should be satisfied out of personalty, 10, 866
- Telegraphs and Telephones**
 - Against proximity of other electric wires, 25, 765
- Tenant for life, 10, 823
- Theaters**, 25, 1041, 1042
 - Restraining Actors**, 10, 948; 22, 1005; 25, 1049
 - Agreement for liquidated damages 25, 1051
 - Discretion of court, 25, 1050
 - Examples, 25, 1049-1051
 - In equitable contract, 25, 1049
 - In general, 25, 1049
 - Power of court of equity, 25, 1049
 - When injunction will be granted, 25, 1050
 - When not the proper remedy, 25, 1050
- Theatrical Contracts**, 22, 1005
 - Enjoining actor from breach of contract, 10, 948; 22, 1005; 25, 1049
- To settle boundary lines, 2, 257
- To state officers, 10, 968
- Trade Combinations and Corporate Trusts**, 26, 236
 - By the state, 26, 236
 - Dissenting stockholders, 26, 236
- Trade Marks**, 10, 930; 26, 505
 - Bottles, 26, 505
 - Collocation of words, 26, 507
 - Colorable imitations, 10, 935
 - Conducting same business in the same locality under the same trade name, 26, 279
 - Continuance of infringement, 10, 937
 - Corporate name, 10, 933, 958; 26, 509
 - Deceptive, 10, 935
 - Examples**, 26, 505-512
 - Of cases in which injunctions were refused, 10, 933
 - Of infringements against which injunctions were granted, 10, 933
 - Fancy name, 10, 933
 - Firm name, 10, 934

INJUNCTION—*Cont'd***Trade-Marks**—*Cont'd*

- Fraudulent use of, 10, 930
- Ground for relief, 10, 931
- Imitations, 10, 935
- Informing purchaser that article is an imitation, 10, 935
- Infringement of technical trade-mark, 26, 505
- Intention to deceive, 10, 936
- Labels, 10, 934
- Laches, 10, 937; 26, 504
- Letters and figures, 10, 934
- Manufacturers, 10, 937
- Name of person, 26, 507
- Name of publication, 26, 509
- Name of town, 10, 934
- Newspapers, 10, 937; 26, 509
- Order requiring the giving up of labels, wrappers, etc., 26, 512
- Persons of the same name, 26, 262, 280
- Preliminary Injunction**, 10, 936; 26, 500
 - Denial of plaintiff's title, 26, 500
 - Examples, 26, 500-504
 - In general, 26, 500
 - Laches in bringing suit, 10, 937; 26, 504
 - Reasonable doubt of infringement, 26, 503
 - Reasonable doubt of title, 26, 503
 - When granted, 26, 500
 - When not granted, 26, 500-504
 - Where plaintiff's title is clear, 26, 500
- Restraint by, 10, 930
- Right to use one's own name, 10, 933
- Seals, 26, 505
- Secret obtained through confidential relations, 26, 510
- Signatures, 26, 505
- Simulated article equal in quality to the genuine article, 10, 935
- Statement that plaintiff's article is not genuine, 26, 511
- Statement that source of goods is the same as that of plaintiff, 26, 511
- Street number, 10, 934
- Violation, 10, 936
- What amounts to imitation, 10, 935
- When granted, 10, 930, 931; 26, 505
- When trade-mark protected, 10, 935
- Where the resemblance would not deceive ordinary purchaser, 10, 935
- Wrappers, 10, 934; 26, 505
- Trade secrets, 10, 949, 951

Trees

- Trees in highways and streets, 26, 561

Trespass, 2, 257; 10, 876**Cutting Timber**, 10, 883

- Fruit trees, 10, 884
- Irreparable loss, 10, 883
- Multiplicity of suits, 10, 883
- Ornamental shrubbery, 10, 884
- Possession of plaintiff, 10, 883
- Timber constituting chief value of estate, 10, 884

Timber necessary to enjoyment of property, 10, 884

When injunction will lie, 10, 883

Definition of, 10, 876

Distinguished from waste, 10, 876; 28, 938

Irreparable damage, 10, 876

Mines, 10, 881; 15, 606

See infra, **MINES AND MINING CLAIMS**.

Examples, 10, 882

Flooding mine, 10, 881

Mines protected by injunction, 10, 881

Persons restrained from digging, 10, 881

Proof required to stop work, 10, 883

Quarries, 10, 884

Question of defendants' solvency, 10, 883

Title of plaintiff, 10, 882, 883

Undisturbed possession, 10, 883

Where title is in dispute, 10, 882

Origin and nature of jurisdiction, 10, 876

Test of jurisdiction, 10, 877

Trust Deeds and Power of Sale Mortgages, 26, 895, 898

See infra, **MORTGAGE, FORECLOSURE, AND SALE**.

Injunction to Restrain Sale, 26, 970

Bill for injunction, 26, 974

Costs, 26, 975

Examples, 26, 970-975

Ex parte application, 26, 973

Failure to give notice, 26, 973

He who seeks equity must do equity, 26, 974

In general, 26, 970

Lis pendens, 26, 974

Mortgagor insolvent, 26, 970

Payment or tender as condition precedent, 26, 974

Preliminary injunction, 26, 973

Readiness to pay amount justly due, 26, 974

Sale absolutely void, 26, 970

Trustee, 26, 970

What circumstances justify injunction, 26, 970

When court of equity will interfere, 29, 970

Where beneficiary owes grantor a larger debt, 26, 972

Trusts and Trustees, 10, 914; 27, 248

Breach of duty by trustee, 27, 248

Insolvent trustee, 27, 248

Trustee conveying trust property, 27, 248

Trustee of bad habits or character, 27, 248

Ultra Vires, 27, 396

See infra, **CORPORATIONS**.

Assent of all but one stockholder to ultra vires act, 27, 396

- At Suit of the State, 27, 410
 - Act amounting to a public nuisance, 27, 411
 - Adequate remedy at law, 27, 410
 - Information in nature of quo warranto, 27, 410
 - Injury to the public, 27, 411
 - Obstruction of road, 27, 413
 - Statute, 27, 411
- Averting ultra vires, 27, 403
- Banks, 27, 397
- By creditors, 27, 398
- By single stockholder, 27, 396
- Complainant interested in rival corporation, 27, 400
- Corporation repudiating ultra vires contract, 27, 402
- Equity interfering with internal policy, 27, 398
- Instances of ultra vires acts restrained, 27, 397
- Motives of complainant, 27, 400
- Necessity of interest of shareholder, 27, 398
- Parties Defendant, 27, 402
 - Corporation as party, 27, 402
 - Directors as parties, 27, 403
 - Third parties, 27, 403
- Plaintiff acting on behalf of another, 27, 401
- Plaintiff mere nominee of another, 27, 401
- Purchase of lands, 27, 362
- Purchase of shares in another company, 27, 397
- Quantum of interest, 27, 399
- Railroads, 27, 397
- Stranger, 27, 399
- Unauthorized consolidations, 27, 397
- Unauthorized leases, 27, 397
- Unregistered Transferee, 27, 400
 - In general, 27, 400
 - Wrongful refusal of corporation to register stock, 27, 400
- Where complainant must show pecuniary injury, 27, 396
- Unauthorized use of lectures, 10, 928
- United States Courts
 - Amount in controversy, 27, 653
 - United States officers, 10, 968
- Vacation
 - Contempt, 10, 1010
 - Venue, 10, 1007
- Verification, 10, 1004
 - Attorney-general, 10, 1005
 - Complainant's oath alone, 10, 1005
 - Examples, 10, 1004, 1005
 - Necessity, 10, 1004
 - Recitals, 10, 1004
 - Sufficiency, 10, 1004
- Violation, 10, 1008
 - Acts enjoined pending appeal, 10, 1013
 - Advice of counsel, 10, 1011
 - Attachment for contempt, 10, 1013
 - Attorneys, 10, 1012
 - Extent of fine imposed, 10, 1014
 - Illustrations of what constitutes violation, 10, 1008
 - Indemnity to opposite party, 10, 1009, 1010
 - Injunction granted in vacation, 10, 1010
 - Interference with status of property, 10, 1012
 - Jurisdiction, 10, 1010
 - Of special judge, 10, 1010
 - Laches, 10, 1013
 - Motion to commit, 10, 1013
 - Motive, 10, 1010
 - Notice, 10, 1011
 - Proof of, 10, 1008, 1013
 - Punishable as contempt, 3, 785, 792; 10, 1008
 - Punishment for breach, 10, 1013
 - Purging a contempt, 10, 1010
 - Receiver of railroad, 10, 1012
 - When punishment authorized, 10, 1008
 - Where court had no jurisdiction, 10, 1010
 - Where injunction should not have been granted, 10, 1009
- Voidable instruments, 10, 916
- Void instruments, 10, 916
- Waste, 10, 816; 28, 922
 - Accounting, 28, 941
 - Act of God, 10, 824
 - Adverse possession, 10, 824
 - Against Whom Maintainable, 28, 929
 - Copyholder, 28, 941
 - Executors, 28, 941
 - Judgment debtor, 28, 939
 - Mortgagor and Mortgagee, 28, 933
 - Waste by mortgagee in possession, 10, 822; 28, 936
 - Waste by Mortgagor in Possession, 10, 816; 15, 816; 28, 933
 - Examples, 28, 933-936
 - In general, 28, 933
 - Irreparable injury, 28, 934
 - Mortgagor's insolvency, 28, 934
 - Parties, 28, 934
 - Pending bill for foreclosure, 28, 935
 - Rendering security insufficient, 28, 934
 - Using property as used before mortgage, 28, 935
 - What acts do not warrant injunction, 28, 935
 - When injunction will not lie, 28, 935
- Municipal corporation, 28, 941
- Tax delinquents, 28, 939
- Tenant by the curtesy, 28, 930
- Tenant for life, 28, 929
- Tenant for Years, 10, 822; 28, 931
 - Bad husbandry, 28, 931
 - Buildings, 28, 932
 - Examples, 28, 931-933
 - Improper use of leased premises, 28, 931
 - Injunction granted to lessee, 28, 933
 - Timber, 28, 931

INJUNCTION—*Cont'd***Waste**—*Cont'd***Against Whom Maintainable**—*Cont'd*

- Tenant in common, 10, 822; 11, 1134; 28, 930
- Tenant in dower, 28, 929
- Tenant in qualified fee, 28, 939
- Trespasser, 10, 876; 28, 938
- Vendor and Purchaser, 28, 936
- Examples, 28, 936-938
- In general, 28, 936
- Voidable contract of sale, 28, 937

As a matter of course, 28, 923

By Whom Maintainable, 10, 819; 28, 928

- Contingent interest, 28, 929
- Examples, 28, 928, 929
- Intervention of an intermediate estate, 28, 928
- Owner of executory bequests, 28, 929
- Owner of inheritance, 28, 928
- Remainderman, 28, 928
- Reversioner, 28, 928

Cases where action would not lie at common law, 10, 819; 28, 926

Conveyance to use premises for particular purpose, 10, 817

Doubtful title, 28, 925

Equitable, 10, 824

Ex parte application, 28, 923

Foreclosure of land contract, 10, 820

Granted to stay, 10, 818

In general, 28, 922

Insolvency of defendant, 10, 819

Irreparable injury, 10, 819; 28, 927

Joint tenants and tenants in common, 10, 822; 11, 1134; 28, 930

Jurisdiction, 28, 924

Land in foreign countries, 28, 924

Material alterations, 10, 817

Necessity of irreparable injury, 10, 819

Partition, 17, 765

Plaintiff's estate purely equitable, 10, 819

Privity of parties, 28, 925

Property in litigation, 10, 824

Subtenant, 10, 817

Threat to commit, 10, 822

Timber, 10, 817, 818, 820

Timber already cut, 10, 821; 28, 924

Timber constituting chief value of land, 10, 820

Timber upon pine lands, 10, 821

When cutting will be enjoined, 10, 820

Young trees, 10, 821

Title in litigation, 28, 925

When injunction will be dissolved, 28, 927

When maintainable, 28, 924

When plaintiff might obtain action at law, 10, 818, 819

"Without impeachment of waste," 28, 864

Waterwork Companies, 12, 632

Drawing underground waters, 12, 633

Tapping ponds, 12, 633

Wharves, 29, 82

When a final decree, 7, 968

When Granted, 10, 782, 819

Act already committed, 10, 783

Adequate remedy at law, 10, 784

Consequential injury, 10, 783

Defendant asserts that he does not intend to do a certain act, 10, 783

Doubtful right, 10, 784

Injunction which would cause irreparable injuries for plaintiff, 10, 783

Injunction which would work harm, 10, 783

Insolvent defendant, 10, 783

Irreparable injury, 10, 782

Mere apprehension of wrong, 10, 783

Nominal or theoretical injury, 10, 783

Particular injury, 10, 783

Past injuries, 10, 783

Where Legal Rights of Parties Are in Dispute, 10, 799

Court will consider inconvenience to defendant, 10, 800

Delay in applying for relief sought, 10, 799

Legal right must be clear, 10, 799

Prima facie case, 10, 799

Relief denied until right established at law, 10, 799

Trial at law, 10, 799

Whether interlocutory or final decrees, 5, 372-374

INJURIA, 5, 3

Injuria sine damno, 5, 3

INJURIOUSLY, 10, 547**INJURY**, 11, 1

See ACCIDENT; CIVIL DAMAGE ACTS; CONTRIBUTORY NEGLIGENCE; DAMNUM ABSQUE INJURIA; DEATH; ELEVATED RAILROADS; FELLOW SERVANTS; MASTER AND SERVANT; MUNICIPAL CORPORATIONS; NEGLIGENCE; RAILROADS; STREETS AND SIDEWALKS; TORTS; WRONG.

Serious bodily harm, 22, 105

Speed of train, 16, 461

To the Person

Accident, 1, 83

INLAND, 11, 1

Inland navigation, 11, 1

Inland waters, 11, 2

INLET, 11, 2**IN LOCO PARENTIS**, see PARENT AND CHILD.**INMATE**, 11, 2**INN**, 10, 591**INNER**

"At" equivalent to, 1, 890

INNOCENCE**Presumptions**, 19, 40

Conflicting with marriage, 19, 48

From acts indicating fear, 19, 73

From flight, 19, 73

In Civil Cases, 19, 42

Burden of proof, 19, 42

Fraud, 19, 42

General application, 19, 42

- Regularity of Official Acts**, 19, 43
 In general, 19, 43
 Officer's conduct collaterally in issue, 19, 44
 Public officer accused of misconduct, 19, 44
In criminal cases, 19, 45
Innocence and chastity conflicting, 19, 41
Innocence and continuance of existing state of things conflicting, 19, 40
Innocence and continuance of life conflicting, 19, 40
Innocence and marriage conflicting, 19, 41
Innocence and regularity of official acts conflicting, 19, 41
INNOCENT CONVEYANCES, 11, 3
INNS AND INNKEEPERS, 11, 3
See BAGGAGE; LODGINGS AND APARTMENTS.
Acting in special capacity, 11, 9
Assumpsit against innkeepers, 1, 886
Boarding-house keeper's liability, 11, 55
Boarding-house keeper's lien, see *infra*, LIENS.
Burglary
 Upon guest, 2, 680
 Callers upon guests, 11, 36
 Civil rights, 11, 34; 18, 753
 Colored persons, 11, 34; 18, 753
 Company as proprietor, 11, 103
 Compensation, 11, 37
 Contract in restraint of trade, 10, 946
 Creating a disturbance, 11, 36
 Dead property, 11, 68
 Definition of hotel, 11, 5
Definition of Inn, 11, 4
 Distinguished from mere eating-place, 11, 5
 In general, 11, 4
 Inn distinguished from boarding-house, 11, 6
 Inn distinguished from restaurant, eating-place, 3, 305; 11, 7
 Liquors and care of animals, 11, 4
 Lodging-house distinguished from inn, 11, 7; 13, 1000
 Parties accommodated, 11, 4
Definition of Innkeepers, 11, 7
 Holding out, 11, 8
 Keeper of boarding house, lodging-house, etc., 11, 8; 13, 1000
 Occasionally affording accommodation, 11, 40
 Possession of license, 11, 8
 Definition of tavern, 11, 5
 Disorderly guests, 11, 34-36, 38
 Distinguished from coffee-house, 3, 305
 Drummer's hotel bill, 11, 103
Duty, 10, 32
See infra, LIABILITY.
 Care of persons of guests, 11, 32
 In general, 11, 32
 Procurement of license, 11, 32
 Reasonable accommodation, 11, 32
 Scope at common law, 11, 32
 Similarity to duty of common carrier, 11, 32
 To receive business callers, 11, 36
To Receive Guests, 11, 32
 Brawlers, 11, 35
 Civil rights bill, 11, 33
 Criminal liability, 11, 33
 Disorderly guests, 11, 34, 38
 Drunk or disorderly persons, 11, 34
 Extent of duty, 11, 32
 In general, 11, 32
 Insufficient excuses for refusing admission, 11, 33
 Liability for refusal, 11, 32
 Sufficient grounds for exclusion, 11, 34
 Thieves, 11, 34
 What accommodation must be afforded, 11, 32
Election
 As to remedies, 6, 248
English Innkeeper's Act, 11, 95
 Omission in copy of portion of act, 11, 96
 Provisions of enactment, 11, 95
European plan, 11, 5
Expulsion of guest, 11, 34-36, 38
Guest, 13, 1001
See infra, RELATION OF HOST AND GUEST; WHO ARE GUESTS.
 Contract to board, 9, 160
 Disorderly, 11, 34-36, 38
 Ejectment, 11, 35
 Leaving baggage, 9, 160
 Lien and liability limited to, 11, 12
Innkeepers as Ordinary Ballees, 11, 99
 Different liability in general, 11, 99
 Goods of departing guests, 11, 100
 Liability for gross negligence, 11, 100
 Liability to boarders and others, 11, 99
 Presumption of want of ordinary care, 11, 100
Innkeeper, see *infra*, RELATION OF HOST AND GUEST; WHO ARE INNKEEPERS.
Innkeepers in general, 11, 7
Inns in general, 11, 4
Intoxicating Liquors, 11, 9, 642, 644, 691.
 725
 Common victualler, 11, 725
 Common victualler keeping public bar, 11, 726
 Examples, 11, 725, 726
 Keeping liquor in refreshment room, 11, 726
 Liability for sale, 11, 725
 Necessity of license to inn, 11, 653
 Prevailing doctrine, 11, 691
 Restaurant keepers, 11, 725
 Sale to guest, 11, 692
 Sale without license, 11, 725
 Sunday, 11, 691
 What included in innkeeper's license, 11, 644
 Judgment in gold coin, 11, 103
Leaving horse at inn, see *infra*, WHO ARE GUESTS.

INNS AND INNKEEPERS—*Contd*

Liability, 11, 49

See infra, DUTIES.

Liability for Goods of Guests, 11, 51

See infra, INNKEEPERS AS ORDINARY BAILEES; NEGLIGENCE.

Absence of innkeeper, 11, 72

Accidents, 11, 53

Act of God, 11, 54

Acts of force from without, 11, 72

Acts of parties within the inn, 11, 56

Acts of parties without the inn, 11, 57

As Insurers, 11, 58

Common-law doctrine, 11, 58

Illustrative cases, 11, 58-60

Modification of doctrine, 11, 60

Statement of the doctrine, 11, 58

At common law, 11, 51

Burglary, 11, 57

Conflict as to inevitable accident, 11, 54

Contributory Negligence of Guest, 11, 80

Confinement to period while party a guest, 11, 81

Definition of ordinary care, 11, 81

Exposure of goods to unnecessary peril, 11, 82

Failure to comply with rules of inn, 11, 82

Failure to fasten window, 11, 83

Failure to lock or bolt door, 11, 83

In general, 11, 80

Intoxication of guest, 11, 81

Keeping valuables in room, 11, 82

Locking but failing to bolt, 11, 84

Lock on door out of repair, 11, 84

Massachusetts statutes, 11, 80

Omission to use key, 11, 84

Showing negligence of guest, 11, 80

Statute declaratory of common law, 11, 80

Supplementary facts of failure to bolt, 11, 85

Theft by fellow guest, 11, 83

Unnecessary display of articles, 11, 82

Want of ordinary care by guest, 11, 80

Where guest is taking exclusive care of goods, 11, 80

Whether failure to lock or bolt door is negligence per se, 11, 83

Whether guest must have been grossly negligent, 11, 80

Departing Guests, 11, 76

As gratuitous bailee, 11, 76

Enlarged liability, 11, 77

Gross negligence, 11, 76

In general, 11, 76

Distinguished from liability of common carrier, 11, 52

Duration, 11, 75

End of relation and responsibility, 11, 76

In general, 11, 75

Temporary absence of guest, 11, 75

When liability begins, 11, 75

Enactments Concerning Losses by Fire, 11, 92

In Maine, 11, 93

In New York, 11, 92

English Innkeeper's Act, 11, 95

Omission in copy of portion of act, 11, 96

Provisions of enactment, 11, 95

Extraordinary nature of the liability, 11, 51

Force from without, 11, 53, 57

Goods Kept for Show and Sale, 11, 71, 99

Innkeeper's release from common-law liability, 11, 71

Notice required by statute, 11, 93

Statutory regulations, 11, 71

Use of room for special purpose, 11, 71

Guest Assuming Special Custody of Goods, 11, 86

Allowing another to exercise control, 11, 86

Guest retaining money on person, 11, 86

Guest taking goods from his room, 11, 86

Intrusting money to another inmate of the house, 11, 86

Ordering goods to a particular room, 11, 87

In general, 11, 72

Injuries to Animals, 11, 64

Death of animal, 11, 65

Horse found dead in stall, 11, 65

Inevitable accident, 11, 64

Without negligence of keeper, 11, 64

In Precincts, 11, 72

Absence of innkeeper, 11, 72

Goods not within precincts, 11, 72

Infra hospitium, 11, 72

Parts of house to which liability extends, 11, 74

Placing goods in appurtenant out-house, 11, 73

Placing goods near or on highway, 11, 73

Putting animal to pasture, 11, 74

Separate bath house along seashore, 11, 73

Transportation of baggage to and from hotel, 11, 74

Whether delivery into special custody is necessary, 11, 72

Irresistible force, 11, 54

Liability compared with that of common carrier, 11, 52

Liability for guests, 11, 56

Liability for servants or agents, 11, 56

Liability limited to guest, 11, 55

Liability of owner for goods infra hospitium, 11, 72

Liability to boarders, 11, 55

Limitation by Contract, 11, 87

Posting notice in room, 11, 88

Printed heading in register, 11, 89

Vol. I.

- Reasonable regulations, 11, 87
 Unreasonable regulations, 11, 88
 Violation of rules causing loss, 11, 90
Limitation by Statute, 11, 89
See infra, NOTICE.
 Scope of statutory provisions, 11, 89
Valuables, 11, 69, 89, 90
 Actual notice, 11, 94
 Compliance with statute in giving notice, 11, 90
 Construction of special privilege, 11, 96
 Failure to deposit valuables in safe, 11, 91
 In California, 11, 90
 In Georgia, 11, 90
 In Louisiana, 11, 90
 In New Jersey, 11, 90
 In New York, 11, 90
 In Wisconsin, 11, 90
 Jewelry taken along for personal use, 11, 98
 Limitation of exemption to specified species of property, 11, 96
 Money in sealed package, 11, 97
 Money, watch, etc., not deposited in safe, 11, 97
 Negligence of innkeeper or his servant, 11, 91
 Opportunity to make deposit, 11, 92
 Place of posting notice, 11, 94
 Posting notice on single door, 11, 94
 Printed heading in register, 11, 94
 Provisions of statutes, 11, 96
 Regarded as, in custody of guest, 11, 98
 Scope of statutes, 11, 89
 Statute for benefit of innkeeper, 11, 92
 Sufficiency of notice, 11, 95
 Territorial scope of statute, 11, 92
 What valuables covered by statute, 11, 96
Limitation by Usage or Custom, 11, 89
 Custom altering express agreement, 11, 89
 Custom of other individual innkeepers, 11, 89
 Effect of local usage, 11, 89
 Knowledge or notice of usage, 11, 89
Loss by Accidental Fire, 11, 63
 Conflict of authority, 11, 63
 Statute in Maine, 11, 93
 Statute in New York, 11, 92
Negligence, 11, 73, 77
 Application of statute where innkeeper is negligent, 11, 91
 Materiality of, 11, 73, 77
Prima Facie Liability, 11, 77
 Capacity of ordinary bailee, 11, 79
 Degree of care required, 11, 78
 Exposing guests to infection, 11, 79
 Extremest care, 11, 78
 Holding out safety of premises, 11, 79
 Uncommon care, 11, 78
 Want of negligence held to exonerate, 11, 77
Prima Facie Liability, 11, 54, 60, 79
 Exoneration by showing extreme care, 11, 62
 Guest's contributory negligence, 11, 63
 Ordinary care, 11, 62
 Statement of the doctrine, 11, 60
 What constitutes utmost care, 11, 62
 What will exonerate, 11, 60
 Putting goods on or near highway, 11, 73
 Reconciliation of authorities, 11, 55
 Riots, 11, 54, 57
 Robbery, 11, 57
 Scope of liability, 11, 53
 Scope of liability in general, 11, 53
 Similarity to liability of common carrier, 11, 52
Statute Concerning Goods for Sale, 11, 93
 Delivery for safe keeping, 11, 93
 Enforcement of written notice, 11, 93
To What Articles Liability Attaches, 11, 66
 Articles which should be placed in custody of innkeeper, 11, 69
 Baggage of guest, 11, 68
 "Dead property" left by departing guest, 11, 68
 Distinction concerning presumed custody, 11, 69
 Liability confined to baggage, 11, 68
 Liability for property of guest temporarily absent, 11, 30
 Louisiana law, 11, 70
 Maryland doctrine as to baggage, 11, 68
 Maryland doctrine as to money, 11, 71
 Materiality or kind of value, 11, 66
 Money, 11, 66
 Responsibility for valuables, 11, 68
 Rule in Maryland as to baggage, 11, 68
 Special agreements for safe keeping, 11, 70
Statutes Limiting Liability Where Notice and Safe Is Provided, 11, 69, 90
 Articles not covered by enactment, 11, 70
 Law in Louisiana, 11, 70
 Statutory regulations, 11, 69
 Whether confined to property arriving with guest, 11, 67
 Whether confined to traveling apertenances, 11, 66
 Whether depository is bailee for hire, 11, 70
 Whether it extends beyond reasonable traveling expenses, 11, 67, 69
 Transportation of baggage to and from hotel, 11, 74
 Uncertain extent and limits, 11, 51

INNS AND INNKEEPERS—Cont'd**Liability for Goods of Guests—Cont'd**

What will excuse innkeeper, 11, 54

Whether delivery into innkeeper's special custody is necessary, 11, 72

Liability for Personal Injury, 11, 49, 50

Assault, 11, 50

Assault by employees, 11, 50

For goods of guest, 11, 50

Indirect injury, 11, 50

Infectious disease, 11, 50

Injury by other guests, 11, 50

Liability for refusal to furnish entertainment, 11, 32, 49

Liability in General, 11, 49

Limited to guests, 11, 23

Of Boarding House Keepers, 11, 100

American view of liability, 11, 101

Care to be used by boarding-house keeper, 11, 101

English view of liability, 11, 100

Show rooms, 11, 23

To agent for loss of goods in his custody, 11, 102

To fathers for loss of son's property, 11, 103

To master for loss of goods in servant's custody, 11, 101

Where guest is bailee of goods, 11, 102

Where innkeeper has failed to procure license, 11, 32

Libel and slander, 13, 358

License

Failure to procure, 11, 32

Liens, 3, 305; 11, 37, 45, 49

Agisters and livery stable keepers, see **LIVERY STABLE KEEPERS**.

Against Whom it May Be Exercised, 11, 41

See *infra*, **GUESTS**.

Boarders, 11, 41

Boarding-house keeper, 11, 41, 46, 49

By whom lien may be exercised, 11, 40

Conflict of opinion, 11, 45

Dependent upon liability, 11, 38, 45

Enforcement, 11, 46

Missouri statute, 11, 47

Nature of the remedy, 11, 47

Sale of horse for keeping, 11, 46

Sale without judicial process, 11, 46

Statutory regulations, 11, 47

Exempt property, 11, 39

General and special, 11, 46

General doctrine, 11, 38

Goods of Third Persons, 11, 39

American doctrine, 11, 42

At common law, 11, 41

English doctrine, 11, 41

Knowledge of Ownership by Innkeeper, 11, 42, 43

Drummer's goods known to belong to employer, 11, 44

Hired carriage, 11, 45

Known ownership of piano loaned by manufacturers, 11, 43

Want of knowledge of ownership of consigned piano, 11, 44

Statutory regulations, 11, 43

When lien extends to, 11, 39

Innkeeper accustomed to taking boarders, 11, 49

In general, 11, 45

Livery stable keeper who is also an innkeeper, 13, 952

Lodgings and apartments, 13, 1008

Of Boarding House Keeper, 11, 41, 49

Effects of boarders, 11, 46

On drummer's goods, 11, 44

Qualified denial of, 11, 38

Rights in general, 11, 37

Under the Massachusetts statutes, 11, 49

Under the New York statutes, 11, 49

Waiver of, 11, 47

Agisters and livery stable keepers, 11, 48

By loss of possession, 11, 47

By selling chattel, 11, 48

By taking security, 11, 49

Drummer's goods, 11, 47

Fraudulent inducement to part with possession, 11, 48

What Covered by, 11, 45

All goods brought by guests, 11, 45

Carriage and horses, 11, 46

Exempt property, 11, 39

Quantity covered by, 11, 39

When it exists, 11, 38

Lodging-house keeper distinguished from innkeeper, 11, 8; 13, 1000

"Money, jewelry, or ornaments," 11, 984

Negligence, see *infra*, **LIABILITY FOR GOODS OF GUEST**.

Notice

Compliance with Statute in Giving, 11, 90

Printed heading in register, 11, 91

Goods for sale, 11, 93

In other rooms, 11, 95

Mandatory nature of provision, 11, 93; 23, 467

Need of compliance with terms of statute, 23, 467; 11, 93

Place of posting, 11, 94

Posting notice in room, 11, 68, 88

Posting on single door, 11, 94

Printed heading in register, 11, 89, 94

Statutory Notice Limiting Liability, 11, 93

Insufficiency of actual notice, 11, 94

Statutory regulations, 11, 69

Sufficiency of, 11, 95

Police power, 18, 753

Public house, 19, 305

Relation of Host and Guest

Coming and Being Received as a Traveler, 11, 27

Putting up horse, see *infra*, **WHO ARE GUESTS**.

Slipping into dining room, 11, 28

Taking rooms, 11, 28

Continuance, 11, 28

During traveler's sojourn, 11, 28

Guest leaving horse during absence, 11, 29

- How long a person may stay away, 11, 29
 Length of stay, 11, 29
 Liability for property of guest temporarily absent, 11, 30
 Occasional absence, 11, 29
 Viewing town, 11, 29
 Where entertainment only partial, 11, 28
Creation, 11, 27
Termination of Relation, 11, 30
 Guest's property still on premises, 11, 31
 Intention to return, 11, 30, 31
 Leaving an inn and promising to return, 11, 30
 Leaving horse, 11, 31
 Property left behind, 11, 31
 Settling bill, 11, 30
 Removal of obnoxious persons, 11, 38
Rights, 11, 37
 Liens, see *infra*, **LIENS**.
 To expel guest, see *infra*, **EXPULSION OF GUESTS**.
 Compensation, 11, 37
 In general, 11, 37
Showing Goods for Sale, 11, 23
 Innkeeper's duty to provide safe, 11, 23
 Innkeeper's liability, 11, 23
 Release of innkeeper from common-law liability, 11, 23, 71
 Statutory regulations, 11, 71
 Use of room for special purpose, 11, 71
Sunday, 24, 536
 Synonymous use of terms "inn," "tavern," and "hotel," 11, 6
 Tender of price, 11, 37
Travelers, 9, 159; 11, 15, 17
 Army officer, 11, 17
 Change of position or location, 11, 17
 Fixed residence, 11, 17
 Flying visit to family, 11, 17
 Neighbor or townsman, 11, 17
 Transient or temporary visitor, 9, 160; 11, 17
Unreasonable Demands and Obnoxious Visitors, 11, 35
 Bringing dogs into inn, 11, 35
 Compliance with caprices of guest, 11, 35
 Disorderly guest, 11, 35
 Expulsion of guests, 11, 34, 36, 38
 Party creating disturbance, 11, 35
 Removal of obnoxious persons, 11, 35
Valuables, see *infra*, **LIABILITY FOR GOODS OF GUEST**.
 Visit with prostitute, 11, 34
Who Are Guests, 9, 159; 11, 12, 19
 See *infra*, **RELATION OF HOST AND GUEST**.
 Boarder, 9, 159; 11, 18
 Definitions of guests, 9, 159; 11, 13
Distinction Between Guests and Boarders, 9, 160; 11, 18
 Contract for definite stay, 11, 18
 Length of stay immaterial, 11, 19
 Question of fact, 11, 19
 Entering refreshment rooms, 11, 20
 Fixing price or length of stay, 11, 13
 Hiring rooms for immoral purposes, 11, 22
 Illustrations, 11, 13
Leaving Horse at Inn, 9, 160; 11, 12, 23, 27
 Conflict of opinion, 11, 24
 Horse left during visits to wife, 11, 26
 Insufficiency of traveler leaving horse, 11, 26
 Leaving horse after termination of relationship, 11, 31
 Leaving horse during absence, 11, 30
 Other acts besides leaving horse, 11, 27
 Putting up horse at inn, 11, 27
 Stallion standing at inn, 11, 22, 27
 Status of party never stopping at inn, 11, 26
 Travelers as distinguished from residents, 11, 25
 Limits of doctrine, 11, 20
 Lodger, 11, 19
 Mere visitor, 11, 20
 Necessity of assent of innkeeper, 11, 14
 Necessity of personal presence of guest, 11, 23
 Neighbor or friend accepting invitation, 9, 159
 Object of stay, 11, 22
 Party attending ball at inn, 11, 21
 Party obtaining slight entertainment, 11, 19
 Party purchasing liquor, 11, 20
 Party taking rooms for showing and selling of goods, 11, 22
 Person attending ball given at hotel, 9, 160
 Person seeking temporary refreshment, 9, 159
 Presumption as to continuance of relation of guest, 9, 160
 Property in possession of agent, 9, 160
 Property in possession of member of family, 9, 160
 Property in possession of wife, 9, 160
 Purchaser of liquor on Sunday, 11, 13
 Question of fact, 11, 19
Restriction of Term "Guests" to Travelers, 11, 15
 See *infra*, **TRAVELERS**.
 Nature of restriction, 11, 15
 Neighbor, 11, 16
 Scope of restriction, 11, 16
 Townsman, 11, 16
 Wayfarer, 11, 16
 Scope of the term guests, 11, 13
 Showing and selling goods, 11, 22, 23
 Situation of parties and circumstances of case, 11, 14
 Test, 9, 159
 Transient accommodation, 9, 160
 Transient visitor or caller, 11, 20

INNS AND INNKEEPERS—*Cont'd*

Who Are Guests—*Cont'd*

- Unlawful purpose, 11, 22
- What constitutes a, 9, 160

Who Are Innkeepers

- Holding out, 11, 8
- Keepers of boarding-houses, 11, 10
- Keeping livery stable, 11, 8
- Keeping occasional boarders, 11, 11
- Lodging-house keeper, 11, 11
- Occasionally entertaining travelers, 11, 8
- Proprietor of watering place, 11, 10
- Restaurant keepers, 11, 10
- Sleeping car companies, 11, 11, 12
- Steamship companies, 11, 12

Who Are Not Innkeepers, 11, 9

- Possession of license, 11, 8
- Witnesses, 29, 546

INNUENDO, 11, 104

See LIBEL AND SLANDER.

INQUEST, see CORONER.

INQUEST OF OFFICE, 11, 104

- Denouncement, 5, 567
- Taxation, 25, 405

INQUIRY, WRIT OF

Assessment of damages by, in case of default, see DEFAULT.

INQUISITION

As to the writs de lunatico inquirendo, see INSANITY.

In forcible entry and detainer, see FORCIBLE ENTRY AND DETAINER.

IN REM, see JUDGMENTS.

INSANITY, 11, 105

See DRUNKENNESS.

Wills, see TESTAMENTARY CAPACITY.

Account stated not conclusive against insane, 1, 111

Affidavit by insane person, 1, 308

Agency, 1, 447

Effect of insanity of agent upon contract, 1, 448

Lunatic as agent, 1, 954

Amentia, 15, 255

Answer by lunatics, 1, 608

Arrest of insane person, 1, 739; 11, 113

As a defense to homicide, see infra, CRIMINAL RESPONSIBILITY; HOMICIDE.

As affecting contract of insurance, 11, 137

Bill in Equity, 6, 739

Against lunatics, 6, 745

Committee of insane persons, 6, 739

Lunatic as party, 6, 739

Bills and Notes

By committee of lunatic, 2, 362

Insane persons, 11, 143; 2, 345

Bonds of persons non compos mentis, 2, 450

Burden of proof, 2, 657

Capacity to commit crime, see infra, CRIMINAL RESPONSIBILITY; HOMICIDE.

Carriers of Passengers

Degree of care to be used, 2, 750

Charity by lunatic, 11, 123

Classification, 15, 255

Committee and Guardians, 11, 120

Accounts, 11, 130

Causes for removal, 11, 131

Committee engaging in business, 11, 130

Committee making profit for himself, 11, 130

Compensation, 11, 131

Conflict of laws, 3, 659

Death of lunatic, 11, 131

Discharge, 11, 131

Discretion of court as to appointment, 11, 120

Discretion of court as to removal, 11, 131

Expenses, 11, 131

Father of lunatic, 11, 121

Lease, 12, 994

Liability for costs, 11, 131

Liability for loss, 11, 130

Liability of committee, 11, 130

Management of the Estate, Support of Lunatic, etc., 11, 121

Comfort of lunatic only to be considered, 11, 122

Committee as bailiff of the court, 11, 121

Conflict between a trustee and the committee, 11, 122

Contribution to charity by lunatic, 11, 123

Maintenance of lunatic's household, 11, 122

Necessity of order of court, 11, 121

Payment of lunatic's debts, 11, 123

Personal estate primarily liable for the lunatic's support, 11, 123

Repair of real estate, 11, 124

Responsibility to the court, 11, 121

Rights of persons entitled to estate by lunatic's death, 11, 122

Sale of real estate for the payment of lunatic's debts, 11, 123

Traveling expenses, 11, 123

When conversion takes place, 11, 124

Whether sale of real estate converts into personalty, 11, 124

Next of kin or heir at law, 11, 121

Non-resident, 11, 121

Removal, 11, 131

Suits Against Lunatics or Their Committees, 11, 127

Appearing and defending by attorney, 11, 128

Appointment of guardian ad litem, 11, 128

At common law, 11, 127

Executions against lunatic's estate, 11, 127

Guardian should be made a party to the suit, 11, 129

In Illinois, 11, 128

In Pennsylvania, 11, 127

Insanity as a plea, 11, 128, 129

- Necessity of permission of court, 11, 127
 Necessity of personal service, 11, 128
 Notice of appointment of guardian ad litem, 11, 129
 Service of process, 11, 127, 128
 Service upon committee, 11, 128
 When equity will enjoin suit, 11, 127
 When suits may be at law, 11, 127, 128
 Suits by lunatics or their committees, 11, 124
 Who may be appointed, 11, 120
 Wife of lunatic, 11, 121
Confinement of Persons Alleged to Be Insane, see *infra*, INQUISITION.
Confinement, see *infra*, FALSE IMPRISONMENT.
 Arrest by magistrate, 11, 113
 Arrest of insane persons, 1, 739; 11, 113
 Habeas corpus, 11, 114
 Liability for arrest of a person actually sane, 11, 113, 114
 Liability for unnecessary arrest, 11, 113
 Who may confine a lunatic, 11, 112
 Conflict of laws, 3, 518
Contracts of Insane Persons, 11, 132; 14, 760
 See *infra*, AS AFFECTING THE CONTRACTS OF INSURANCE DEEDS.
As affecting partnership, see *infra*, PARTNERSHIP.
As affecting the contract of marriage, see *infra*, MARRIAGE.
Insane persons as makers or indorsers of promissory notes, see *infra*, BILLS AND NOTES.
 After finding of an inquisition of insanity, 11, 134
 Capacity, 3, 862
 Cases in which restitution has been held not necessary, 11, 133
 Delusion unconnected with contract 11, 132
For Necessaries, 11, 134
 Board, nursing, etc., 11, 135
 Costs and counsel fees, 11, 135
 Made without notice, 11, 136
 Necessaries furnished to wife of lunatic, 11, 135
 Validity, 11, 134
 What covered by the word "necessaries," 11, 135
 General rule as to validity, 11, 132
 Partial unsoundness, 11, 132
Rescission, 21, 42
 In general, 21, 36
 Mental weakness combined with inadequate consideration, 21, 35
Sale, 21, 55
 Duty to place other party in statu quo, 21, 90
 Examples, 21, 55, 56
 In general, 21, 55
 Inquisition of lunacy, 21, 55
 Rescission by committee, 21, 56
 Rescission by lunatic, 21, 56
 Restoration of consideration, 21, 90
 Undue influence, 21, 36
 Weak mental capacity and undue influence, 21, 36
 Whether voidable or void, 11, 132
Contributory Negligence
 Of persons non compos mentis, 4, 48
 Crazy, 11, 106
Criminal Responsibility of Insane, 4, 625, 715, 799
 See *infra*, HOMICIDE.
 Burden of proving insanity, 4, 801
 Crime committed under influence of passion, or jealousy, which temporarily dethroned reason, 4, 720
 Delusion, 4, 719
 Dementia, 4, 720
 From drunkenness, 4, 809
 Incapacity to understand the nature of act, 4, 716
 In general, 4, 799
 Insanity as an essential ingredient in crime, 4, 715
 Insanity resulting from intoxication, 4, 713
 Irresistible impulse, 4, 718
 Knowledge of right and wrong, 4, 695, 697, 715, 717, 800
 Lucid intervals, 4, 720
 Mania, 4, 720
 Melancholia, 4, 720
 Mere weakness of mind, 4, 716, 801
 Monomania, 4, 720
 Moral or emotional insanity, 4, 719, 721
 Occasional oddity or hypochondria, 4, 716
 Of idiots, 4, 685
 Partial insanity, 4, 720, 801
 Party acting under the influence of insane delusion, 4, 695
 Permanent insanity from intoxication, 4, 716
 Presumption of sanity, 4, 715
 Question for jury, 4, 718
 Reasonable doubt, 4, 801
 Temporary insanity, 4, 719, 801
 Temporary insanity from drunkenness, 4, 708, 801
 Test of responsibility, 4, 696, 717
 Three stages in the history of the law of insanity, 4, 800
 Uncontrollable impulse, 4, 696, 716, 799
 What constitutes insanity, 4, 800
 What delusions are excused by, 4, 695
 What insanity excuses from crime, 4, 716
 Deaf and dumb persons distinguished from idiots, 5, 119
Decree by Default Against, 5, 506
Opening and Setting Aside, 5, 506
 An appeal, 5, 507
 For irregularity, 5, 506

INSANITY—*Cont'd*

Deeds of Insane Grantors, 5, 426; 9, 20;
11, 146; 21, 84

After finding of inquisition, 11, 147

Condition of grantor's mind at time of conveyance, 9, 22

Conveyance by matter of record, 11, 146

Declared void by statute, 11, 147

Deed by monomaniacs, 11, 148

Deed made in lucid interval, 11, 148

Evidence of mental weakness, 9, 22

Feoffment, 11, 146

Grossly inadequate consideration, 9, 23

Imposition, 9, 23

Insane person not under guardianship, 9, 20

Insane person under guardianship, 9, 20

Insane settler, 11, 147

Insanity before and after conveyance, 9, 23

Insanity of a remote period, 9, 23

Knowledge of insanity, 9, 23

Mental weakness, 9, 22

Nervous excitement, 9, 23

Proof of sanity, 9, 23

Ratification, 11, 148

Ratification inferred, 11, 148

Ratification of disaffirmance, 5, 426

Restoration of consideration upon disaffirmance, 5, 427; 11, 150

Set Aside in Equity, 11, 149

At whose instance deed will be set aside, 11, 149

Powers of court of equity, 11, 149

Prior restitution of purchase-money, 11, 150

Restitution of purchase-money, 5, 427; 11, 150

Where deed is accepted without notice of grantor's insanity, 11, 150

Specific performance, 11, 151

What degree of sanity is sufficient, 5, 426

When void or voidable, 5, 426; 11, 146; 28, 84, 85

Where deed is equivalent to feoffment, 11, 146

Whether void or voidable, 9, 20

Definitions, 11, 105

Amentia, 15, 255

Crazy, 11, 106

Delusions, 11, 107

Dementia, 15, 258

Dipsomania, 5, 668; 15, 257

Homicidal mania, 15, 257

Idiocy, 4, 685, 694; 15, 255

Idiot, 11, 105

Imbecility, 11, 111; 15, 255

Imbecility distinguished from lunacy, 11, 111

Insane person, 11, 105

Kleptomania, 15, 257

Lucid intervals, 11, 112

Lunatic, 11, 105

Mania, 15, 256

Matters of opinion, 11, 111

Melancholia, 15, 256

Mere beliefs on questions of opinion, 11, 111

Monomania, 15, 257

Moral insanity, 11, 112

Moral mania, 15, 256

Non compos mentis, 11, 106

Partial insanity, 11, 111

Puerperal insanity, 15, 257

Pyromania, 15, 257

Suicidal mania, 15, 257

Temporary insanity, 11, 112

Unsound mind, 11, 107

Delusions, 11, 107

Dementia, 15, 258

Descent and distribution, 24, 363

Dipsomania, 5, 668; 15, 257

Divorce, 11, 141

Nullity, see *infra*, MARRIAGE.

Nullity suit, 5, 770

Defense for adultery, 11, 141

Defense for extreme cruelty, 11, 141

Insane person as complainant, 5, 768

Legal separation, 5, 770

Statute permitting guardian to sue, 5, 770

Suit brought when party is insane, 5, 768

Suit for alimony, 5, 770

Where one party is insane, 5, 768

Whether ground for 5, 809; 11, 141

Domicile, 5, 869

Dotage, 5, 883

Dower

Release of Dower

By insane person, 5, 914

Effect of principal's insanity upon agency, 1, 447

Ejectment by committee of lunatic 6, 243

Election, 6, 253

By insane widow, 5, 919

Evidence

Expert testimony, 7, 503; 9, 702, 720; 11, 163

In Homicide Cases, 9, 716

Defendant's coolness and unconcern, 9, 717

Evidence must be direct, 9, 716

General conduct and appearance of defendant, 9, 717

Illustrations, 9, 717

Inference of insanity from nature of crime, 9, 716

Insanity in defendant's family, 9, 716

Prior insanity, 9, 716

Reputation to prove, 9, 716

Time to which the inquiry may extend, 9, 718

Opinions of Witnesses, 11, 161

Opinions of experts, see *infra*, EXPERTS.

Opinions of non-experts, 11, 162

Reason for admitting opinion, 11, 162

Vol. I.

- Stating facts upon which opinion is based, 11, 162
 Subscribing witnesses to will, 11, 162
 Suit upon life policy, 11, 163
 Witnesses differing in describing appearance and conduct, 11, 162
 Province of judge and jury, 11, 158
 Testimony of non-experts, 9, 720
- Executors and Administrators**, 21, 369
 Capacity of insane persons, 7, 174, 176
 Exercise of the elective franchise by insane persons, 6, 269
 Expert and opinion evidence, 7, 503; 9, 702, 720; 11, 163
- False Imprisonment**, 7, 666
See infra, CONFINEMENT.
 Care to be exercised in restraint, 7, 666
 Certificate of physician, 7, 667
 Insane person not dangerous, 7, 666
 Self-protection, 7, 666
 Where there has been an adjudication, 7, 667
 Where there has been no adjudication, 7, 666
- Foreclosure of Mortgages**
 When committee of lunatics necessary party, 8, 220
 When lunatics should be made parties, 8, 226
- Hearsay evidence, 9, 328
 Homicidal mania, 15, 257
- Homicide**
See infra, RESPONSIBILITY FOR CRIME.
As a Defense to Homicide, 9, 613
 Homicidal mania, 9, 614
 Incapacity to deliberate, 9, 614
 Insanity as mitigation of homicide, 9, 615
 Irresistible impulse, 9, 614
 Lucid intervals, 9, 615
 Mere mental weakness, 9, 614
 Moral insanity, 9, 614
 Presumption of continuity, 9, 615
 Reason temporarily dethroned, 9, 614
 Right and wrong test, 9, 613, 615
 Temporary insanity, 9, 614
 What insanity is a defense, 9, 613
 Burden of proof, 9, 727
 Inciting a madman to homicide, 9, 534
 Necessity of averment of defendant's sanity, 9, 640
- Sufficiency and Weight of Evidence**, 9, 731
 Insanity established by preponderance of evidence, 9, 732
 Proof by defense beyond reasonable doubt, 9, 732
 Reasonable doubt as to sanity, 9, 732
 What evidence sufficient to show insanity, 9, 733
- Husband and Wife**, 9, 815
 Husband's liability for insane wife's torts, 9, 826
- Idiocy, 4, 685, 694; 15, 255
 Idiot, 11, 105
 Idiot's capacity to commit crime, 4, 694
- Imbecility**, 11, 111; 15, 255
 Definition, 11, 111
 Distinguished from lunacy, 11, 111
 Inability to transact ordinary affairs, 11, 111
 Test, 11, 111
- Impeachment**
 Collateral attack, 12, 147ⁿ
- Inquisition**, 11, 115
 Affidavit in support of petition, 11, 115
 As proof of, 2, 345
 Compelling production of alleged lunatic, 11, 117
- Costs**, 11, 120
 As necessities, 11, 135
 Counsel fees, 11, 120
 In general, 11, 119, 120
 Proceedings taken without probable cause, 11, 120
 When paid out of lunatic's estate, 11, 120
- Counsel fees, 11, 120, 135
 Discretion of court, 11, 117
 Execution of the commission, 11, 116
 Finding of, 11, 117
 In forma pauperis, 11, 117
 Jury of, 11, 116
- Notice**, 11, 115
 Discretion of court as to, 11, 116
 Effect of want of, 11, 116
 Necessity of personal, 11, 116
 Party's right to, 11, 115
 To relatives, 11, 116
 When notice may be dispensed with, 11, 115
- Petition, 11, 115
 Power of commissioners, 11, 117
 Presence of party, 11, 116
 Presence of relatives, 11, 116
 Return day of commission, 11, 117
 Review by certiorari, 11, 118
 Right of trial by jury, 3, 721
 Setting aside finding, 11, 117
 Subpoena to compel the attendance of witnesses, 11, 117
- Supersedeas, 11, 119
 The commission, 11, 115
- Traverse of**, 11, 118
 Burden of proof, 11, 118
 Discretion of court, 11, 118
 Effect of finding as evidence, 11, 118
 In England, 11, 118
 Procedure, 11, 118
 When traverse a matter of right, 11, 118
 Who may traverse proceedings, 11, 118
- Whether writ of error lies, 11, 117
 Who may sue out commission, 11, 115
- Insane person, 11, 105
 Instructions, examples of, 11, 267-274
 Judgments against lunatics, 12, 90
- Jurisdiction Over Insane Person**, 11, 114
 Chancellor's jurisdiction, 11, 114
 Equitable jurisdiction, 11, 114
 In England, 11, 114
 In United States, 11, 114

INSANITY—Cont'd

Kleptomania, 15, 257

Laches, 12, 554

Lease, 12, 993

By committees or guardians, 12, 994

Deaf, dumb, and blind, 12, 993

Mere weakness of mind, 12, 993

Previous insanity, 12, 993

Subsequent insanity, 12, 993

Void or voidable, 12, 993

Where party has a guardian or committee, 12, 993

Libel and slander, 11, 144; 13, 306

Limitation of actions, 13, 741

Lucid intervals, 11, 112; 13, 1192

Lunatic, 11, 105; 13, 1193

Mania, 14, 250; 15, 256

Marriage, 11, 140; 14, 489*See infra*, **DIVORCE**.

After death, 14, 490

Avoidance, 14, 490

Burden of proof, 14, 491

Capacity to contract, 14, 490

Capacity to manage affairs, 14, 491

Collaterally questioned, 14, 490

Continuation, 14, 491

Death without lucid interval, 14, 491

Decree of nullity, 14, 492

Development of insanity after marriage, 14, 491

In joint contract, 14, 490

Insanity before marriage, 14, 491

Lucid intervals, 14, 491

Nullity suit, 14, 534

Ratification, 14, 489, 491

Refusing to recognize marriage, 14, 491

Time of marriage, 14, 491

What mental capacity necessary, 14, 490

Whether the marriage is void, 14, 489

Master and Servant, 14, 759, 813

In general, 14, 759

Liability of master for insane person, 14, 813

Validity of contract, 14, 760

Matters of opinion, 11, 111**Mechanics' Liens**

Enforcement of lien against insane person, 15, 118

Melancholia, 15, 256**Memorandum**

Insane clerks, 15, 272

Mere beliefs on questions of opinion, 11, 111

"Monomaniacs," 15, 257, 710

Moral insanity, 11, 112; 15, 715

Moral mania, 15, 256

Mortgages

Mortgagors, 15, 743

Murder

Through the medium of an insane person, 9, 570

Negligence**Lunatic's Liability**, 16, 406

Absolute idiocy, 16, 409

Acts of guardians, etc., 16, 409

In general, 16, 406-409

Negligent use of lunatic's property, 16, 409

Partial idiocy, 16, 410

Next friend of lunatic, 11, 126

Non compos mentis, 11, 106

Partial insanity, 11, 111

Partition, 17, 727

Partnership, 11, 142; 17, 921**Dissolution**, 11, 142; 17, 1102

From when dissolution dates, 17, 1102

Incapacity to attend to business, 17, 1102

In general, 17, 1102

Lunatic's right to share of profits, 17, 1102

Partnership dissolvable upon notice, 17, 1102, 1103

Permanent insanity, 17, 1102

Referring question to a master, 17, 1102

Temporary insanity, 17, 1102

Whether it works dissolution of itself, 17, 1102

In England, 11, 142

In United States, 11, 143

Poor and Poor Laws, 18, 769

Asylums for, 18, 769

Settlement, 11, 166; 18, 793

After legal residence has been established, 18, 793

Becoming insane after majority, 18, 793

Continuance of derangement, 18, 794

Derived from that of father, 18, 793

Effect of removal to asylum, 18, 784-793

Generally, 18, 793

How acquired, 18, 794

Presumption of intellect, 18, 794

Same as that of father, 18, 793

Prescription against insane person, 19, 16

Presumptions, 2, 655, 658; 11, 159*See* **TESTAMENTARY CAPACITY**.

Burden of proof, 11, 160

Finding of an inquisition, 11, 160

Intermittent insanity, 11, 161

Lucid intervals, 11, 160

Of Sanity, 2, 346; 4, 715; 9, 727; 11, 159; 13, 644; 19, 45

Conflict of opinion, 11, 155

Where insanity is once established, 11, 155

Of Sanity and Insanity, 4, 856; 11, 159*See* **TESTAMENTARY CAPACITY**.

Burden of proof, 11, 160

Finding of an inquisition, 11, 160

Intermittent insanity, 11, 161

Lucid intervals, 11, 160

Presumption of sanity, 11, 159

Presumption that sanity continues, 11, 159

Suicide, 11, 160

Whether of law or fact, 11, 160, 161

Vol. I.

- Suicide, 11, 160
 That insanity continues, 11, 160
 Whether of law or fact, 11, 160, 161
Probate, 19, 197
Public officers, 19, 405
Puerperal insanity, 15, 257
Pyromania, 15, 257
Questions of law and fact, 11, 158
Rape, 19, 952
Reasonable doubt, 9, 731
Receivers
 Another suit pending, 20, 24
 Committee, 20, 42
 Examples, 20, 42
 In connection with committee, 20, 42
 When no person will act as a committee, 20, 42
 When receiver appointed for lunatic's estate, 20, 42
Release, 20, 748
 Claim for personal injury, 28, 762
Rescission
 Contract, 21, 42
 In general, 21, 36
 Mental weakness combined with inadequate consideration, 21, 35
 Sale, 21, 55
 Duty to place other party in statu quo, 21, 90
 Examples, 21, 55, 56
 In general, 21, 55
 Inquisition of lunacy, 21, 55
 Rescission by committee, 21, 56
 Rescission by lunatic, 21, 56
 Restoration of consideration, 21, 90
 Undue influence, 21, 36
 Weak mental capacity and undue influence, 21, 36
Res judicata, 21, 239
Sanity presumed, 2, 346; 4, 715; 9, 727; 11, 159; 13, 644; 19, 45
Service of process, 22, 156
Settlement, see *infra*, POOR AND POOR LAWS.
Specific performance, 22, 1027
Streets and Sidewalks
 Prescription, 24, 16
Subscriptions, 24, 338
Succession, 24, 363
Suicidal mania, 15, 257
Suicide
 Life Insurance, 13, 643
 Burden of proof, 13, 644
 Conflict of authority, 13, 643, 644
 Die by his own hand or act, "or otherwise," 13, 646
 "Die by suicide," 13, 644
 In Massachusetts, 13, 644
 In Pennsylvania, 13, 644
 Insane delusion, 13, 644
 Intent, 13, 643
 Knowledge, 13, 643
 Non-professional witness to proof, 13, 645
 Presumption as to sanity, 2, 346; 4, 715; 9, 727; 11, 159; 13, 644; 19, 45
 Proof of insanity, 13, 644
 Provision against suicide without reference to insanity, 13, 643
 Provision that suicide clause shall apply to sane or insane, 13, 645
 Uncontrollable impulse, 13, 644
 United States courts, 13, 644
 Where there is no provision against suicide, 13, 643
 Where there is no provision as to insanity, 13, 643
 Suretyship, 24, 726
 When surety bound, although contract not binding on principal, 24, 773
 Taxation, 25, 118
 Forfeited lands, 25, 407
 Redemption, time for, 25, 420
 Temporary, 11, 112
 Test
 Delusions as a, 11, 107
 Mere beliefs on questions of opinion, 11, 108
 Of imbecility, 11, 111
 What delusions are a test of insanity, 11, 107
 Torts of insane persons, 11, 144
 Trusts and Trustees
 Creation of Trust by Lunatic, 27, 14
 After appointment of committee, 27, 15
 Bona fide purchaser, 27, 15
 Court of equity, 27, 15
 Examples, 27, 14, 15
 In general, 27, 14
 Valuable consideration, 27, 15
 Void or voidable, 27, 14
 Ground for removal, 27, 86
 Lunatics as trustees, 27, 21
 Unsound mind, 11, 107
 Vendor and Purchaser, 28, 84
 See *infra*, DEEDS.
 Drunken persons, 28, 86
 Insane person, 28, 84
 Persons of slight intelligence, 28, 85
 Validity of contract to purchase, 28, 84
 What constitutes, 4, 695
 Whether a good plea, 11, 129
 Whether insanity is "sickness," 22, 780
Witnesses, 11, 144; 29, 609
 Burden of proof, 29, 611
 Competency in general, 29, 609
 Competency question for court, 11, 145
 Competent at time of examination, 29, 610
 Condition of witness at the time of the event to which he testifies, 29, 611
 Idiots, 29, 610
 Lucid intervals, 29, 611
 Lunatics, 29, 610
 Monomaniacs, 29, 612
 Old age, 29, 610
 Permanent insanity, 29, 611
 Pleading, 29, 612
 Presumption of competency, 29, 611

INSANITY—Cont'd**Witnesses—Cont'd**

Sane at time of testimony, insane at time of transaction, 11, 145

Understanding nature of oath, 11, 144

When competent, 11, 144

INSIMUL COMPUTASSENT, see ASSUMPSIT.**INSOLVENCY, 11, 167**

See ASSIGNMENT; ASSIGNMENTS FOR BENEFIT OF CREDITORS; CONFLICT OF LAWS; IMPRISONMENT FOR DEBT; SOLVENCY.

As to extra-territorial effect of insolvency laws, see generally, BANKRUPTCY; COMPOSITION WITH CREDITORS; DEBTORS AND CREDITORS.

As to when assignments for the benefit of creditors conflict with statute of frauds, see ASSIGNMENTS FOR THE BENEFIT OF CREDITORS.

Composition with creditors, see COMPOSITION WITH CREDITORS.

Non-resident creditors, see CONFLICT OF LAWS; DEBTOR AND CREDITOR.

Act of, 1, 178

Allowance for claims, 11, 207

Amount to be proved, 11, 197

Assignee

Extra-territorial rights of, 11, 170

Res judicata, 21, 160

Takes property subject to equities, 11, 178

Assignees, Commissioners, Trustees, etc., 11, 184

Assignor himself acting, 11, 185

Assignor's right to select assignee, 11, 184

Attorney at law, 11, 186

Compensation, 11, 190

Counsel fees, 11, 190

In England, 11, 190

In United States, 11, 190

Large salary, 11, 190

Misconduct or violation of trust, 11, 190

Payment out of trust fund, 11, 190

Refusal to account, 11, 190

Statutory provision as to, 11, 190

Stipulated salary, 11, 190

Where there is no express agreement, 11, 190

Who ascertains and awards proper compensation, 11, 190

Continuing Assignor's Business, 11, 193

General rule, 11, 194

How long business may be continued, 11, 194

Stock of retail goods, 11, 194

Where for benefit of assignor, 11, 194

Where for benefit of creditors, 11, 194

Where manifestly for interest of estate, 11, 194

Creditor, 11, 186

Duties and Powers, 11, 186, 189

See infra, CONTINUING ASSIGNOR'S BUSINESS; RIGHTS IN MORTGAGED PROPERTY.

Action against assignor for withholding property, 11, 187

Agent of all parties, 11, 188

Appointment of clerks and agents, 11, 186

Attacking validity of judgments, 11, 186

Compromising claims, 11, 187

Contesting validity of claim, 11, 186

Disposition of doubtful claims for less than their face value, 11, 190

Duty to proceed promptly in collecting debts, 11, 186

Payment of clerks and agents, 11, 186

Power Conferred in Deed of Assignment, 11, 187

As to preferences, 11, 187

Authority to levy property, 11, 187

Power to compound debts, 11, 187

Power to sell on credit, 11, 187

Selling without order of court, 11, 188

Power to collect debts, 11, 186

Power to obtain possession of property, 11, 186

To bring actions, 11, 186

To confess judgments, 11, 186

To join attacking creditors, 11, 186

Freeholder, 11, 186

Liability of, 11, 191

Application to court for instruction, 11, 193

Failure to take proper security, 11, 192

For neglecting to collect debts, 11, 191

General rule, 11, 191

Good faith, 11, 191

Loss through an honest mistake, 11, 192

Misconduct or violation of trust, 11, 191

Omitting to recover property from debtor, 11, 192

Permitting debtor to retain possession, 11, 192

Presumption as to faithful discharge of duty, 11, 193

Property lost through negligence, 11, 191

Pecuniary ability, 11, 184

Presumption of fraud in selecting, 11, 184

Qualifications, 11, 184

Relationship to parties, 11, 185

Removal, 11, 193

Failure to give new bond, 11, 193

Grounds generally, 11, 193

Habitual drunkenness, 11, 193

Insanity, 11, 193

Insolvency, 11, 193

- Misconduct for violation of trust, 11, 191, 193
 Personal incapacity, 11, 193
Rights in Mortgaged Property, 11, 195
 Conflict of authority, 11, 195
 Whether a bona fide purchaser of debtor's goods, 11, 195
Sale Made by, 11, 188
 Assignee cannot be purchaser, 11, 189
 Conveyance by his attorney in fact, 11, 189
 Covenants, 11, 189
 Disposition of doubtful claims for less than their face value, 11, 190
 Duty of assignee, 11, 188
 Presence at sale, 11, 189
 Public or private sale, 11, 189
 Selling without order of court, 11, 188
 Time of sale, 11, 189
 When sale should be by auction, 11, 189
 Whether power of sale is implied, 11, 188
 Various designated, 11, 184
 Where creditors are consulted, 11, 185
 Who may be, 11, 184
Assignment
 Foreign, 11, 179
 What constitutes, 11, 172
What Passes, 11, 177
 Action by assignee, 11, 178
 Choses in action which have been assigned, 11, 177
 Claim against another as surety, 11, 179
 Claims against United States, 11, 179
 Contingent claims, 11, 178
 Patent right, 11, 179
Property, 11, 177
 Held in trust, 11, 177
 Sold conditionally, 11, 179
 Right of action for tort, 11, 178
 Trade-mark, 11, 178
 Vessel at sea, 11, 178
When It Takes Effect, 11, 180
 From time of adjudication, 11, 180
 From time of deed, 11, 180
 Retroactive effect, 11, 180
 Time when assignee takes oath, 11, 180
Assignor, see *infra*, THE INSOLVENT OR ASSIGNOR.
Foreign, 11, 182
 Rule in the United States, 11, 182
 Subsequent to attachments, 11, 182
Banks, see *infra*, SAVINGS BANKS.
Bill in the Nature of a Bill of Revivor
 For assignee, 2, 272
 Certificate, 11, 229
Committee of Lunatic
 Land purchased by committee with lunatic's funds, 7, 277
Conflict of Laws, 3, 753; 11, 176
 Discharge, 3, 506, 580
 Involuntary assignments, 3, 572
Constitutionality of State Insolvent Laws, 2, 88; 3, 623; 11, 170, 173
 Conclusiveness of United States decisions, 11, 175
 Distinctions and power to pass discussed, 11, 173
 Effect of existing state law after repeal of national law, 11, 175
 General rule, 11, 173
 Impairment of obligation of contracts, 3, 752; 11, 175
 Law enacted while bankrupt law was in force, 11, 175
 Law not impairing obligation of contracts, 11, 173
 Suspension of state law, 3, 629; 11, 175
 Validity of, respecting persons residing in state, 11, 170
What Laws Impair the Obligation of Contracts, 3, 752; 11, 170, 175
Abolition of imprisonment for debt, see IMPRISONMENT FOR DEBT.
 Debts contracted after law was passed, 11, 175
 Debts contracted before law was passed, 11, 175
 Where power of congress is not exercised, 11, 174
 Contemplation of insolvency, 3, 776
 Contracts between a citizen of one state and a citizen of another state, 2, 88
Corporations, see RECEIVERS.
 Preference of directors, 17, 122
Stockholders
 Action to enforce liability, 23, 886
 Statute of limitations, 23, 883
Definition, 11, 168
 Under the bankrupt act, 2, 79
 Description of proceedings, 11, 171
Discharge, 11, 224
 After repeal of law, 11, 228
 Claims which were provable under insolvency proceedings, 11, 226
 Conclusiveness of certificate, 11, 229
 Conflict of laws, 3, 506, 580
 Contract made prior to passage of law, 11, 227
 Debt created by fraud, 11, 226
 Debt due state, 11, 228
 Debt due United States, 11, 226
 Debtor not actually insolvent, 11, 229
Defalcation of
 Agent, 11, 227
 Attorney, 11, 227
 Commission merchant, 11, 227
 Executors and administrators, 11, 227
 Fiduciary, 11, 227
 Guardian, 11, 227
 Public office, 11, 226, 227
 Trustee, 11, 227
 Definition, 11, 224
 Effect upon rights of insolvent, 11, 229
Exemptions, 11, 233
 Claim not made until after sale, 11, 234
 Express reservation in assignment, 11, 233

INSOLVENCY—Cont'd**Discharge—Cont'd****Exemptions—Cont'd**

Partnership property, 11, 234

What is exempt, 11, 233

When the claim must be made, 11, 234

Where there has been a waiver of the right, 11, 234

Whether property must be specifically mentioned, 11, 234

Failure to file proper schedule, 11, 224

From imprisonment by assignment, 10, 201

Giving security, 11, 224

How proven, 11, 229

Irregularities in proceedings, 11, 228

Liens upon property, 11, 226

Miscellaneous, 11, 224, 225, 228

Mortgages, 11, 226

Necessity of arrest, 11, 224

New Promise, 11, 230; 28, 582

Insufficient promise, 11, 231

What sufficient promise, 11, 230, 231
Whether discharge protects against, 11, 230

Opposition to, 11, 233

Person having no notice of proceedings, 11, 228

Person imprisoned under bastardy act, 11, 224

Pleading, 11, 230

Effect of omission to plead, 11, 230

Necessity of, 11, 230

Pleaded specially, 11, 230

Where obtained too late to be pleaded, 11, 230

Surety on bond, 11, 227

To whom and when granted, 11, 224

When Invalid, or Not a Good Defense, 11, 226

Discharge of one joint debtor, 11, 227, 229

Inoperative to protect debtor against imprisonment, 11, 229

When party is committed for contempt, 3, 794

When Valid and a Good Defense, 11, 226

Actions in tort, 11, 226

Contingent liability as surety, 11, 226

Creditor's bill, 11, 226

Debts arising ex delicto, 11, 226

Judgment, 11, 226

Property acquired after discharge, 11, 226

What creditors are barred, 11, 226

Who is a fiduciary, 11, 227

Distinguished from bankruptcy, 11, 169

Distinguishing features, 11, 169

Distraint after petition, 11, 183

Distribution of Assets, 11, 218

Application to court for mode and order of payment, 11, 219

Creditor for usurious interest, 11, 219

Creditors not complying with terms of assignment, 11, 218

Debts subsequent to assignment, 11, 219

How paid, 11, 219

Interest, 11, 219

Notice of payment, 11, 219

Order of Payment, 11, 219

Claims of the United States, 11, 219;

27, 542

Corporations, 11, 220

Debts due after assignment, 11, 220

Expenses incurred in collection, 11, 220

General assignments, 11, 220

Involuntary assignments, 11, 220

Partial assignment, 11, 220

Preceding United States claim, 11, 220

Priority of the United States, 11, 219

Subrogation, 11, 220

Labor, 11, 221

Secured Creditors, 11, 221

Claim by second mortgagee, 11, 222

Dividend on balance remaining unpaid, 11, 222

Dividend on whole debt, 11, 221

Redemption of security for the benefit of other creditors, 11, 222

Preference in payment of rent, 11, 221

Preferred creditors, 11, 218

To creditors, 11, 218

To what debts applied, 11, 219

To whom payable, 11, 218

What creditors entitled to share, 11, 218

Effect of United States bankrupt law, 2, 88; 3, 629

Effect of United States bankrupt law relating to lunatics, 2, 88

Effect of United States bankrupt law relating to spendthrifts, 2, 88

Effect of United States bankrupt law upon assignee and third person, 2, 88

Evidence, 11, 230

Executors and Administrators, 21, 372

Appointment of receiver to compel insolvent to give security, 7, 174

Assets to be distributed among creditors who are citizens, 7, 255

Effect of assignment by representative of trust estate, 7, 233

Equity restraining insolvent from acting, 7, 174

Whether insolvent may act, 7, 173

Existing Attachments**Local**, 11, 180

In absence of statute, 11, 180

Statutes, 11, 180

Subsequent statutes, 11, 180

Trustee in insolvency and attaching creditors, 11, 181

Non-resident voluntarily making himself a party, 11, 177

- Rights of assignees, 11, 177
- Voluntary appearance, 11, 177
- Extra-Territorial Effect of Insolvency**
- Laws, 3, 506, 572, 753; 11, 176
- See *infra*, FOREIGN ASSIGNMENTS.
- Contracts with citizens of other states, 11, 177
- Contract to be performed without the state, 11, 177
- Extra-territorial effect of state law, 11, 176
- Foreign assignment, 8, 284; 11, 179
- "Failure," 7, 659
- Federal law where state law has acquired jurisdiction, 2, 87
- Foreign Assignments**, 8, 284; 11, 179
- Domestic creditors, 8, 285
- Effect of, 8, 284
- Foreign creditors, 8, 285
- When effect will be given to, 8, 284
- Garnishment**
- Assignee, 8, 1145
- General remarks, 11, 168
- Hearsay evidence, 9, 329
- How insolvent laws construed, 11, 173
- How Proven**, 11, 172
- Reasonable cause to believe, 11, 172
- Reputation, 11, 172
- Suing out an attachment, 11, 172
- Infants, 10, 641
- "Inhabitants," 10, 771
- Injunction, 10, 783
- Insolvent circumstances, 3, 240
- Insolvent maker of promissory note, 11, 229
- Inventory, 11, 812
- Jury trial, 3, 721
- Laches, 12, 556
- Libel and slander, 13, 306
- Liens of Attorney**, 13, 621
- Assignment prior to commencement of suit, 13, 621
- Equity and law, 13, 621
- Priority of attorney's lien, 13, 621
- Limitation of actions, 13, 710; 23, 888
- Limited Partnership**, 13, 829
- Assignment for Benefit of Creditors**
- By general partner, 13, 832
- Rights of assignee, 13, 833
- Without consent of special partner, 13, 832
- Assignments of separate property by special partner, 13, 830
- Conveyances Upon or in Contemplation of**, 13, 829
- Assignments of separate property by special partner, 13, 830
- Collusion, 13, 829
- Confession of judgment, 13, 829
- General rule, 13, 829
- Inability to pay, 13, 830
- Liability of special partner, 13, 831
- Meaning of insolvency, 13, 830
- Preferences to creditor, 13, 829
- Preference to partner, 13, 829
- Transfers after dissolution of firm, 13, 831
- Validity, 13, 829
- Validity as between assignor and assignee, 13, 830
- Validity as to creditors, 13, 830
- Who may take advantage of invalidity, 13, 830
- General rule, 13, 829
- Inability to pay, 13, 830
- Liability of special partner, 13, 831
- Meaning of insolvency, 13, 830
- Preferences to creditor, 13, 829
- Preference to partner, 13, 829
- Rights in Case of**, 13, 831
- Appointment of receiver, 13, 832
- Creditor's application in equity, 13, 832
- Creditor's rights, 13, 831
- Evidence of insolvency, 13, 832
- General creditor, 13, 831
- Intervention of equity, 13, 832
- Judgment creditor, 13, 832
- Partner's right, 13, 832
- Priority obtained by judgment in execution, 13, 831
- When trust commenced, 13, 831
- Winding up concern, 13, 832
- Special Partner as Creditor**, 13, 834
- Advances, 13, 834
- Corporation in which special partner is stockholder, 13, 834
- Loans, 13, 834
- Meaning of term "insolvency," 13, 834
- Payment made by partner after dissolution, 13, 834
- Priority over other creditors, 13, 834
- Who may claim protection of statute, 13, 834
- Transfers after dissolution of firm, 13, 831
- Validity, 13, 829
- Validity as between assignor and assignee, 13, 830
- Validity as to creditors, 13, 830
- Who may take advantage of invalidity, 13, 830
- Winding up, 13, 832
- Master and servant, 14, 775
- Meaning of the term "debt," 5, 153
- Mechanics' liens**, 15, 48
- "Merchant," 15, 306
- Merger**, 15, 350
- Claim not barred by discharge, 15, 350
- Discharge in foreign countries, 15, 350
- In general, 15, 350
- Judgment after filing a debtor's petition, 15, 350
- Mutual Insurance**, 16, 37, 105
- Liability, 16, 106
- National Banks**, 16, 211
- "Act of insolvency," 16, 211
- Attachment, 16, 212
- Effect of, 16, 211
- Injunction, 16, 212
- Preferences**, 16, 212
- Examples, 16, 212
- In general, 16, 212

INSOLVENCY—Cont'd**National Banks—Cont'd****Preferences—Cont'd**

Knowledge of insolvency, 16, 213
Provisions of national bank act, 16, 212

Transfer, 16, 212

Priority, United States, 16, 212

Remedies after, 16, 212

What constitutes, 16, 211

Notice of, 11, 198

Affidavit of publication, 11, 198

Effect of discharge as against a person having no, 11, 228

Insolvent's right to notice of proceedings, 11, 201

Proved by affidavit, 11, 199

Service of, 11, 198

Statutes requiring, 11, 198

Notorious, 11, 170**Novation, 16, 870****Partnership, 11, 202**

See infra, LIMITED PARTNERSHIP.

Action between firms having common members, 17, 1272

Assignee of estate of both partners, 11, 203, 204

Assignment working dissolution of partnership, 11, 203; 17, 1103

Averment of individual insolvency of partners, 11, 203

Dissolution, 11, 203; 17, 1103

Assignment for benefit of creditors by one partner, 17, 1103

Assignment for the benefit of creditors by the firm, 17, 1103

Attachment, 17, 1104

Bankruptcy of a partner, 17, 1103

Insolvency of the firm, 17, 1103

Levy of execution upon interest of partner, 17, 1104

Merely insolvency of a partner, 17, 1103

Notice of dissolution, 17, 1119

Power of Partner After, 17, 1151

Allowing assignee to wind up, 17, 1153

Assignee in possession of assets, 17, 1152

Assignment of power to wind up, 17, 1153

Joining solvent partner with assignee, 17, 1152

Making new contracts, 17, 1153

Payment of debts, 17, 1153

Power of court, 17, 1152

Powers of assignee in bankruptcy, 17, 1151

Powers of insolvent partners, 17, 1151

Powers of solvent partners, 17, 1153

Sale of effects, 17, 1153

Tenants in common, 17, 1152

Individual discharge, 11, 203, 204

Necessity of partner's consent to assignment, 11, 204

Partnership creditors and separate creditors, 11, 203

Preference of individual debts, 11, 204

Preferring individual creditors to firm creditors, 11, 203

Proceedings commenced by surviving partner, 11, 202

Pro rata division, 11, 204

Sale by one partner to other of partnership assets, etc., 11, 202

Where separate proceedings must be instituted, 11, 204

Patent law, 18, 144**Petition for, 11, 182**

Address to court, 11, 183

By partnership, 11, 203

Certainty required, 11, 182

Date of each debt, 11, 183

Petitioner not actually insolvent, 11, 183

Proceedings to declare, 11, 183

Property passed by assignment, 11, 183

Recognizance for costs, 11, 183

Signature, 11, 183

Surrender of all petitioner's property, 11, 183

What must be set forth, 11, 182

Power of Congress to Pass Laws, 11, 173

See BANKRUPTCY.

Power of states to pass laws, 2, 88; 3, 623 11, 170, 173**Preferences, 11, 212**

See infra, LIMITED PARTNERSHIP; PARTNERSHIP; NATIONAL BANKS.

See FRAUDULENT CONVEYANCES; FRAUDULENT SALES.

At Common Law, 11, 212

Assignment of property, 11, 213

By corporations, 11, 212

Condemning preferences, 11, 213

Debtor exhausting his whole property, 11, 213

Provision of judgment, 11, 213

Security, 11, 213

Transfer of property, 11, 123

Transfer of property in trust, 11, 213

Validity, 11, 212

Directors, 17, 122

Of individual debts, 11, 203, 204

Partnership, preferring individual debts, 11, 203, 204

Statutory Enactments and State Decisions, 11, 214

In Alabama, 11, 214

In California, 11, 214

In Colorado, 11, 214

In Connecticut, 11, 214

In Dakota, 11, 214

In Delaware, 11, 214

In District of Columbia, 11, 214

In Florida, 11, 214

In Georgia, 11, 214

In Idaho, 11, 214

In Illinois, 11, 214

In Indiana, 11, 214

In Iowa, 11, 215

- In Kansas, 11, 215
- In Kentucky, 11, 215
- In Louisiana, 11, 215
- In Maine, 11, 215
- In Maryland, 11, 215
- In Massachusetts, 11, 216
- In Michigan, 11, 216
- In Minnesota, 11, 216
- In Mississippi, 11, 216
- In Missouri, 11, 217
- In Nebraska, 11, 217
- In Nevada, 11, 217
- In New Hampshire, 11, 217
- In New Jersey, 11, 217
- In New Mexico, 11, 217
- In New York, 11, 217
- In North Carolina, 11, 217
- In Ohio, 11, 217
- In Oregon, 11, 217
- In Pennsylvania, 11, 217
- In Rhode Island, 11, 217
- In South Carolina, 11, 217
- In Tennessee, 11, 217
- In Texas, 11, 217
- In Utah, 11, 217
- In Vermont, 11, 217
- In Virginia, 11, 218
- In Washington, 11, 218
- In Wisconsin, 11, 218
- In Wyoming, 11, 218
- Preference made within time limited, 11, 218
- Presumptions**, 19, 77
 - Of jurisdiction, 12, 279
- Probate, 19, 196
- Proceedings to declare, 11, 183
- Railroads**, 19, 744
 - Effect on corporate existence, 19, 803
- Receivers**
 - Railroads**
 - As grounds for appointment, 20, 344-352
 - Mere insolvency alone, 20, 350
 - Necessity of appointment, 20, 363
 - Removal, 20, 204
 - Where applicant is insolvent, 20, 38
 - Whether Defendant's Insolvency Alone Is Sufficient**, 20, 39
 - Bankruptcy in England, 20, 39
 - Discretion of court, 20, 39
 - Examples, 20, 39
 - In general, 20, 39
 - Insolvency not denied, 20, 39
 - Plaintiff's claim not clearly made out, 20, 39
 - Relation, 20, 737
 - Replevin, 20, 1116
 - Res judicata, 21, 160, 188
 - Revival of state laws upon repeal of federal laws, 2, 87
- Rights of Creditors**, 11, 196
 - Notice of insolvency*, see *infra*, **NOTICE OF INSOLVENCY**.
 - Amount to be proved, 11, 197
 - Composition with creditors, 11, 198
 - Contesting claims of other creditors, 11, 197
- Creditor may require production of assignee's books, 11, 193, 196
- Generally, 11, 196
- Rights no greater than that of debtor, 11, 196
- Right to prove claim, 11, 196
- Sale by debtor in contemplation of insolvency, 11, 198
- Security given to surety enures to benefit of creditor, 11, 197
- Vested right in estate, 11, 198
- Savings Banks**, 21, 740
 - Assets as trust fund, 21, 740
 - Creditor's bill, 21, 740
 - Depositor's rights, 21, 740
 - Forfeiture of charter, 21, 741
 - In general, 21, 740
 - Scaling down deposits and authorizing bank to continue business, 21, 741
 - Set-off of deposits against debts of bank, 21, 740
 - Special deposit, 21, 741
- Seduction, 21, 1029
- Set-Off**
 - Counterclaim**, 22, 419
 - Claim not due and payable, 22, 419
 - Demand in favor of insolvent not due at time of assignment, 22, 419
 - Insolvency of one of the parties, 22, 418
 - Interposition of court of equity, 22, 418
 - In Equity**, 22, 451
 - Discretion of jury, 22, 451
 - Unliquidated damages, 22, 451
 - Unmatured claim, 22, 451
 - Judgment for costs, 22, 455
- Simple, 11, 170
- Specific performance, 22, 1075
- Stockbroker, 23, 734
- Stoppage in Transitu**, 23, 855
 - Buyer Must Be Insolvent**, 23, 923
 - At the time of sale, 23, 923
 - Evidence of insolvency, 23, 924
 - In general, 23, 923
 - Liability where buyer is insolvent, 23, 924
 - Unknown to the seller, 23, 923
 - What meant by insolvency, 23, 923, 924
 - Whether adjudication is necessary, 23, 924
 - While buyer is yet solvent, 23, 923
- Strict construction of laws, 23, 400
- Subrogation**, 11, 220
 - Where fiduciary's principal becomes insolvent, 24, 217
 - Where surety is indebted to principal, 24, 203
- Suits by and against debtor in respect to property assigned, 11, 229
- Supplementary Proceedings**
 - Discharge, 24, 183
- Suspension of state laws, 2, 87; 3, 629

INSOLVENCY—Cont'd**The Insolvent or Assignor, 11, 200****Action in Name of Insolvent, 11, 200**

Payment to insolvent after insolvency, 11, 200

Assignor may be solvent, 11, 201

Bill in equity against assignee for misconduct, 11, 200

Compliance with requirements of law, 11, 200

Debtor conceals property, 11, 200

Notice of proceedings, 11, 201

Person removing to a state to obtain benefit of law, 11, 201

Presumption as to his good faith, 11, 11, 200

Residents, 11, 200

Resulting trusts, 11, 200

Time within which claim should be proved, 11, 205

Transfer of insolvent corporation into another state where it is not forbidden, 8, 337

Trusts and Trustees**Creation of Trust by Insolvent, 27, 15**

Examples, 27, 15

In England, 27, 15

In United States, 27, 15

Property exempt from execution, 27, 15

Insolvent as Trustee, 27, 21

Assignees, 27, 21

Certificate of discharge, 27, 21

In general, 27, 21

United States, 11, 219; 27, 542

Waiver, 28, 582

Of all objections by creditor to constitutionality of the act, 11, 196

Of Discharge by New Promise, 11, 230

28, 582

Before discharge, 28, 585

Conditional, 28, 584

Distinct and unequivocal promise, 28, 583

Examples, 28, 582-585

General terms, 28, 583

In general, 28, 582

New consideration, 28, 582

Suit upon original claim, 28, 585

Where discharge is by act of parties, 28, 583

Writing, 28, 583

Proof of Whole Debt by Secured Creditor, 28, 585

Examples, 28, 585-587

In general, 28, 585

Partnership cases, 28, 586

Where security has been given, 28, 586

What Claims May Be Proved, 11, 205

Allowance for claims, 11, 207

Damages not liquidated, 11, 206

Examples, 11, 205

Liability of stockholder to corporation, 11, 206

Miscellaneous cases, 11, 206

Promissory notes, 11, 205

What Constitutes, 11, 171

Absolute inability, 11, 172

An assignment, 11, 172

Assets not satisfying demands at a given time, 11, 171

Examples, 11, 171, 172

General rule, 11, 171, 172

Nominal value of property, 11, 172

When proceedings must be begun to effect a transfer, 1, 855

Whether corporate insolvency works a dissolution, 4, 302

Who is a trader, 11, 171

INSOLVENT LAWS, 11, 234**INSPECTION, 11, 234***Of corporate books, see STOCKHOLDERS.**Of records, see RECORD.***INSPECTION LAWS, 11, 234, 558***Inspection laws, see POLICE POWER.**See TAXATION.**Ships, see SHIPS AND SHIPPING.***INSTANT**

"Next" equivalent to "instant," 16, 701

INSTANTER, 11, 236**INSTANTLY, 11, 236****IN STAY OF PROCEEDINGS**

Audita querela as, 1, 1005

INSTEAD OF, 11, 236**INSTIGATION TO COMMIT CRIME, see ACCESSORY; AIDERS AND ABETTORS.****INSTITUTION, 11, 236**

Public institutions, 19, 303

INSTRUCTIONS, 3, 121; 11, 237*See BILL OF EXCEPTIONS; DIRECTING VERDICT; EXCEPTION.**See generally, NEW TRIAL.**See QUESTIONS OF LAW AND FACT; REASONABLE DOUBT.**Instructions must be upon the law, see QUESTIONS OF LAW AND FACT.**Upon alibi, see ALIBI.*

Abstract propositions of law, 11, 248

Additional, 11, 256

Argumentative, 11, 256

At What Stage of Trial Instructions to Be Given, 11, 257

After close of argument, 11, 257

Calling in jury for further instructions, 11, 257

Discretion of court, 11, 257

Exception to instructions given after retirement, 11, 257

Comments on Evidence, 11, 254*See infra, SUMMING UP EVIDENCE.*

Argumentative instructions, 11, 256

Assuming doubt, 11, 255

Assuming existence of facts not in evidence, 11, 254

Assuming non-existence of facts, 11, 255

Careless or playful remarks, 11, 255

Incidental expressions of opinion, 11, 255

Judge assuming a state of facts as proven, 11, 254

Opinion expressed by manner and emphasis of judge, 11, 256

When in error, 11, 254

- Considered together, 4, 640
 Contradictory, 11, 256
Defendant's Credibility in a Criminal Case, 29, 677
 Comment on defendant's failure to testify, 29, 679
 Examples, 29, 677, 678
 That jury are not bound to believe defendant, 29, 678
 That jury may consider the fact of defendant's interest, 29, 677
 That jury may disregard defendant's testimony, 29, 678
 Definition, 11, 237
 Duty of judge in instructing jury, 11, 251
Duty of Judge to Instruct
 Incomplete instructions, 11, 266
Duty to Give, 11, 251, 258
 At what time request should be submitted, 11, 259
 Failure, 11, 251
 How presented to jury, 11, 260
 In criminal cases, 11, 251
 In general, 11, 251
 Instructions asked for must be certain, 11, 259
 Necessity of exception, 11, 252
 Necessity of request by counsel, 11, 251
 Omission to charge on a particular point, 11, 258
 When judge not bound to give, 11, 258
 When one of a number of requested instructions is wrong, 11, 260
 When requested out of time, 11, 260
 Where no instructions are asked, 11, 251
 Whether they must be asked for, 11, 258
 Whether verbal or written, 11, 259
Elements of the Charge, 11, 247
Abstract Propositions of Law, 11, 248
 Abstract propositions which are not misleading, 11, 248
 Conflict of authority, 11, 248
 Instances, 11, 248
 So worded as to lead the jury to infer existence of a state of facts not warranted by evidence, 11, 248
 Whether error is refused, 11, 248
 Whether error to give, 11, 247, 248
 Hypothetically upon state of facts, 11, 247
 Its relation to the evidence, 11, 247
 Slight evidence, 11, 248
 Submitting a fact which there is no evidence tending to prove, 11, 247
Exceptions to, 11, 265
 See BILL OF EXCEPTIONS.
 Miscellaneous cases, 11, 265
 Must be taken to the instructions separately, and not en masse, 11, 266
 Necessity of, 11, 252
 To instructions after jury has retired, 11, 257
 When Must Be Taken, 11, 265
 For misdirection or nondirection, 11, 265
 Objection to the charge being oral, 11, 265
 Express companies, 7, 578
 Failure of court to call attention to strong presumptions of fact, 19, 59
 Forgery, 8, 541
Given in Open Court, 11, 257; 12, 376
 Allowing jury to put certain questions to judge in their room, 11, 257
 Going into room where they are deliberating, 11, 257
 Private communications between judge and jury, 11, 257
 Sending paper in absence of counsel, 11, 258
 Sending written instruments to them, 11, 258
 Visiting jury in their room, 11, 257
 Writing letter, 11, 258
Homicide, 9, 741
Sufficiency and Correctness as to Form, 9, 744
 Circumstances of the case, 9, 744
 Clearness of instructions, 9, 745
 Discretion of court, 9, 744
 Form of verdict—on trial for murder, 9, 747
Misleading Instructions
 Instances, 9, 746
 Written instructions, 9, 747
What Questions Must Be Submitted by the Instructions, 9, 741
 Competency and weight of evidence, 9, 743
 Degrees of murder, 9, 741
 Different grades of homicide, 9, 741
 Excuse or justification, 9, 743
 Failure to instruct as to manslaughter, 9, 742
 Form of verdict, 9, 744
 Generally, 9, 741
 Involuntary manslaughter, 9, 742
 Law defining offense, 9, 741
 Law relating to self-defense, 9, 743
 Punishment, 9, 744
 Repetition, 9, 744
 Verdict, 9, 744
 When defendant entitled to have law of manslaughter given, 9, 742
 Where evidence shows that homicide was not less than murder in the first degree, 9, 741
 Where there is no evidence tending to show self-defense, 9, 743
 Whether there should be a reversal of the instructions as to murder in the second degree, 9, 742
 Instructions to jury in criminal conspiracies, 4, 639
 Judge's right to give as on his own motion, 19, 616
 Jury room, 11, 257; 12, 376
 Justice of the peace, 12, 464

INSTRUCTIONS—Cont'd**Larceny, 12, 870**

Assumption of facts in issue, 12, 871

As to fraudulent intent, 12, 874

As to identity, 12, 873

As to ownership, 12, 873

As to want of consent, 12, 874

Biased or prejudicial charge, 12, 873

Circumstantial evidence, 12, 872

Construed as a whole, 12, 870

Felonious, 12, 871

How construed, 12, 870

Invasion of province of jury, 12, 871

Reasonable doubt, 12, 87

Special instructions, 12, 870

Weight and effect of evidence, 12, 871

When entitled to instructions, 12, 873

When error to refuse, 12, 870

Mechanics' liens, 15, 191Modification by court of good, 6, 825;
11, 256**New Trial, 11, 266; 16, 507**Assuming existence of disputed facts,
16, 510Assuming that material point has been
proven, 16, 510

Charge construed as a whole, 16, 509

Charge tending to mislead jury, 16, 509

Charge that there is no evidence, 16,
510

Complainant not injured, 16, 507

Contradictory instructions, 16, 509

Erroneous charge as to measure of
damages, 16, 508

Examples, 16, 507-511

Failure to direct attention of jury to
issues, 16, 511

In general, 16, 507

Instructions not founded upon evi-
dence, 16, 510Instructions upon abstract proposi-
tions, 16, 511Instruction that fact must be proven,
16, 510Instruction under misapprehension of
facts, 16, 510

Irreconcilable instructions, 16, 509

Irrelevant matter, 16, 508

Justice done by the verdict, 16, 508

Submitting question when there is no
evidence, 16, 510Treating uncontradicted facts as open
questions, 16, 510Verdict appearing right upon the proof,
16, 508

Want of precision, 16, 509

Where erroneous charge disregarded
by jury, 11, 266; 16, 508Where given at request of party com-
plaining, 11, 266

Where incomplete, 11, 266

Where instructions were merely ob-
noxious to verbal criticism, 11, 266Where it appeared that jury were mis-
led, 16, 509Where jury may have been influenced,
16, 509Where new trial would produce same
result, 11, 266; 16, 508Where party was not prejudiced, 11,
266

Where reasons are wrong, 11, 266

Where substantial justice has been
done, 11, 266

Where verdict is right, 11, 266

**Precedents of Instructions as Applied to
Particular Branches of the Law, such as
Drunkenness, Negligence, Trespass,
Slander, Murder, Larceny, etc., etc.,
11, 267**

In Alabama, 11, 267

In Arkansas, 11, 267

In California, 11, 267

In Colorado, 11, 267

In Connecticut, 11, 267

In Georgia, 11, 267

In Illinois, 11, 268

In Indiana, 11, 269

In Iowa, 11, 269

In Kansas, 11, 269

In Louisiana, 11, 270

In Maine, 11, 270

In Maryland, 11, 271

In Massachusetts, 11, 271

In Michigan, 11, 271

In Minnesota, 11, 272

In Mississippi, 11, 272

In Missouri, 11, 272

In Nebraska, 11, 273

In Nevada, 11, 273

In New Hampshire, 11, 273

In New Jersey, 11, 273

In New York, 11, 273

In North Carolina, 11, 274

In Oregon, 11, 274

In Pennsylvania, 11, 274

In Tennessee, 11, 274

In Texas, 11, 274

In Vermont, 11, 274

In West Virginia, 11, 275

In Wisconsin, 11, 275

Presence of the parties or their attor-
neys, 11, 257

Presumed to be correct, 11, 253

Rape, 19, 967

Examples, 19, 967, 968

In general, 19, 967, 968

When instruction is bad, 19, 967

Relation to the evidence, 11, 248

Right to ask for, after default, 5,
473**Right to Modify Instructions Given, 6, 825;
11, 256**

Additional instructions, 11, 256

Discretion of court as to, 11, 257

Erroneous instructions should be with-
drawn, 11, 256Explanatory or contradictory instruc-
tions, 11, 256Power of court at any time during
trial, 11, 256Presence of the parties or their attor-
neys, 11, 257

Robbery, 21, 434

- Should Be Pointed and Definite, 11, 249, 259
 Ambiguous instructions, 11, 249
 Examples, 11, 249
 Inconsistent or contradictory, 11, 249
 Instruction capable of two interpretations, 11, 249
 Should cover the whole case, 11, 250
 Technical language, 11, 250
Specific, 11, 258, 266
 At what time request should be submitted, 11, 259
 How presented to the jury, 11, 260
 Instructions asked for must be certain, 11, 259
 Omission to charge on a particular point, 11, 258
 When judge not bound to give, 11, 258
 When one of a number of requested instructions is wrong, 11, 260
 When requested out of time, 11, 260
 Whether they must be asked for, 11, 258
 Whether verbal or written, 11, 259
Statutes requiring judge's charges to be in writing, 3, 121
 Suggesting compromise verdict, 11, 258
Summing up Evidence, 11, 253
See infra, COMMENTS UPON EVIDENCE.
 Duty of judge, 11, 253
 Presenting all material facts, 11, 253
 Singling out isolated parts of testimony, 11, 253
Sunday, 24, 578
Telegraphs and Telephones
 Adequate, 25, 836
 To be taken and construed together, 11, 250
Trespass
 Trespass to try title, 26, 693
Verdict, 28, 264
 Cure by, 28, 431
When Required by Statute
 At what stage of trial request must be made to have instructions in writing, 11, 264
 Compliance with statute, 11, 263
 Effect of oral instructions, 11, 261
 In criminal cases, 11, 262
 Modifications, 11, 262, 263
 Reference to a page in a law book, 11, 263
 Strict compliance required, 11, 264
 Waiver of the requirement, 11, 262
 What must be in writing, 11, 263
 Whether mandatory, 11, 262
Written
 In Illinois, 11, 261
 In Indiana, 11, 261
 In Iowa, 11, 261
 In Michigan, 11, 262
 In Ohio, 11, 262
 In Wisconsin, 11, 262
 Mandatory or directory, 23, 464
 Requested instructions, 11, 259, 260
 Specific instructions, 11, 259
 When objection must be taken, 11, 265
 When required by statute, 11, 261
 Whether required at common law, 11, 261
 Wrong, 11, 256
INSTRUMENT, 11, 275
See WRITTEN INSTRUMENTS
 Exemption from execution, 7, 136
INSUFFICIENCY, 11, 276
INSUFFICIENT, 11, 276
INSULTING, 11, 277
 Insulting language, 11, 277
 Insulting words addressed towards a female, 11, 278
INSURABLE INTERESTS, *see* INSURANCE.
INSURANCE, 11, 278
See ACCIDENT INSURANCE; BENEFICIAL ASSOCIATIONS; FIRE INSURANCE; GUARANTY INSURANCE; INSURANCE AGENTS; LIFE INSURANCE; MARINE INSURANCE; MUTUAL INSURANCE; TITLE INSURANCE; TONTINE INSURANCE.
 Against drafts, 15, 406
 Ambiguities, 1, 545
 Arbitration stipulations, 11, 353
 By what law governed, 3, 551
Concealment, 11, 302
 Character of answer, 11, 304
 Definition, 11, 302
 Effect, 11, 302
 Evasive answers, 11, 304
Facts that Must Be Stated, 11, 303
 Attempts to burn contiguous property, 11, 303
 Attempts to burn property, 11, 303
 In life insurance, 11, 303
 Instances, 11, 303
 Pending litigation, 11, 303
 Facts which insurer should know, 11, 302
 Facts within knowledge of insurers, 11, 302
 Knowledge of facts by insured, 11, 303
 Knowledge of materiality of facts by insured, 11, 303
 Particular inquiry regarding facts, 11, 302
 Presumption as to knowledge of insured, 11, 303
 Representations of agent as to sufficiency of statement, 11, 329
 Warranty of full statement, 11, 302
 Contribution, 4, 7
Covenants to Insure, 8, 444
 Equitable mortgage, 13, 612
 Definition, 11, 280
Estoppel, *see infra*, WAIVER AND ESTOPPEL.
 Expert and opinion evidence, 7, 510
 "False swearing," 7, 661
 Foreclosure of mortgages, 22, 243
Foreign Insurance Companies
 Taxation, 8, 373
Foreign insurance companies doing business in the state, *see* FOREIGN CORPORATIONS.

INSURANCE—*Cont'd*Forfeiture, see *infra*, PAYMENT.

Of Policy, 8, 446

By breach of condition, 8, 446

By non-payment of premium, 8, 447

Waiver of, 8, 446

"For whom it may concern," 16, 896

Insurable Interests

Accident insurance, 1, 93

Assignee, 11, 315

Different parties having different interests, 11, 313

Equitable owner, 11, 313

Freight, 11, 317

Generally, 11, 312

Immoral or illegal interest, 11, 313

In Human Lives, 11, 318

Beneficiary of premium, 11, 318

Creditor in life of Debtor, 11, 320

Partnership debtor, 11, 320

Creditor in life of infant debtor, 11, 320

General rule, 11, 318

Insurance effected by beneficiary, 11, 318

Interest existing at time insurance was made, 11, 318

Man and woman living together as husband and wife, 11, 319

Of assignee of policy, 11, 320

Of child in life of parent, 11, 319

Of creditor in life of debtor, 11, 317, 319

Of employer and employee, 11, 319

Of husband and wife, 11, 319

Of parent in life of child, 11, 318

Of partner in life of co-partner, 11, 319

Of sister in life of brother, 11, 318

Of uncle and nephew, 11, 319

Person insuring his life for benefit of stranger, 11, 318

Son-in-law in life of mother-in-law, 11, 319

Whether interest of insured need be disclosed, 11, 320

Woman engaged to be married, 11, 319

In the profits of a voyage or enterprise, 11, 317

Mutual insurance, 16, 47, 49

Of agent, 11, 316

Of a partner, 11, 316

Of assignor, 11, 315

Of bottomry interest, 11, 317

Of builder, 11, 317

Of cestui que trust, 11, 316

Of commission merchant, 11, 317

Of common carrier, 11, 316

Of consignee, 11, 316

Of creditor in property of debtor, 11, 317, 319

Of executors and administrators, 11, 315

Of husband in wife's property, 11, 316

Of Lessor and Lessee, 11, 314

Lessor's interest, 11, 314

Structures erected by lessee, 11, 314

When lessee's interest is at an end, 11, 314

Of lien holder, 11, 315

Of master of vessel, 11, 317

Of Mortgagor and Mortgagee, 11, 314

After sale under foreclosure, 11, 315

Full value of property, 11, 315

Mortgage as collateral security, 11, 315

Mortgagor's interest, 11, 314

Several mortgages, 11, 314

Where foreclosure sale is vacated, 11, 315

Where property is mortgaged at full value, 11, 314

Of stockholders in corporate property, 11, 316

Of trustee, 11, 316

Of Vendor and Vendee, 11, 313

Purchaser at execution sale, 11, 314

Purchaser at judicial sale, 11, 314

Vendee in possession under contract, 11, 313

Vendee who could not enforce his contract, 11, 313

Vendor having contracted to sell, 11, 313

Part owner, 11, 313

Pecuniary loss to insured, 11, 312

Tenant by curtesy, 11, 316

Validity of policy where insured has no interest, 11, 312

Interstate Commerce, 11, 544*Knowledge of agent's want of power, see***INSURANCE AGENTS.**

Limitation as to time, 11, 350

Limitation of Actions, 11, 349

Conditions precedent to payment, 11, 352

Delay fraudulently induced by insurers, 11, 352

Effect of specific limitation, 11, 350

Excuses for not bringing suit within time limited, 11, 352

Fault of insurers, 11, 352

Limitation to a year, 11, 350

Limitation to six months, 11, 350

Limitation waived by insurers, 11, 352

New promise, 11, 351

Promise to extend time, 11, 351

Proof of waiver, 11, 352

Shorter period than that allowed by statute of limitations, 11, 349

Specification as to what time right shall accrue, 11, 350

Waiver, 11, 351

War intervening, 11, 352

When limitation begins to run, 11, 351

*Non-forfeitable or paid-up policy, see infra, PREMIUM.***Notice to Agent Is Notice to Company, 11, 323**

Agent of limited authority, 11, 329

Agent's acts subject to approval of company, 11, 329

- As notice to the company, 11, 323
- Broker, 11, 324
- Canvassing or soliciting agent, 11, 324
- Collusion of agent and applicant, 11, 328
- Contract not approved, 11, 329
- Existence of facts prior to existence of policy, 11, 324
- Inaccuracies of statement by application, 11, 324
- Knowledge acquired after execution of policy, 11, 323
- Medical examiner, 11, 328
- Miscellaneous agents, 11, 324
- Notice of other insurance, 11, 328
- When knowledge must have been acquired, 11, 328, 329
- Novation**, 16, 897
 - Annuity, 16, 898
 - Assent of assured, 16, 897
 - Assent of new company, 16, 897
 - Assent of old company, 16, 897
 - "For whom it may concern," 16, 896
 - Reserving right to assign business, 16, 897
 - Special act of parliament, 16, 899
 - Whether assignment of business binds assured, 16, 897
 - Whether there is a novation, question of fact, 16, 897
- Other Insurance**
 - Where void, 8, 341
- Parties to Actions**, see *infra*, **TITLE TO POLICY**.
- Assignment**, 17, 525
 - Assent of company, 17, 525
 - Codes and statutes, 17, 525
 - Partial assignments, 17, 525
 - Whether assignee may sue in his own name, 17, 525
- Beneficiary named in the policy, 17, 522
- Codes and statutes, 17, 525
- Insurance obtained by one person and insurance money expressly payable to third person, 17, 523
- In whose name action should be brought, 17, 524, 525
- "Loss, if any, payable to B as his interest may appear," 17, 523, 524
- Partnership, 17, 1084
- Payment*, see *infra*, **PREMIUM**.
- Policy*, see *infra*, **THE CONTRACT OR POLICY**.
- Powers**
 - Of insurance company to engage in banking, 4, 248
- Premium**, 11, 304
 - Acceptance as waiver, 11, 340
 - Condition precedent, 11, 282
 - Definition, 11, 304
- Excuses for Non-Payment**, 11, 310
 - Agency changed, 11, 311
 - Company enjoined, 11, 311
 - Custom of receiving overdue premiums, 11, 312
 - Failure to give insured notice, 11, 311
 - Insolvency of company, 11, 311
 - Physical inability of insured, 11, 311
 - Policy treated as forfeited, 11, 311
 - Statements in prospectus, 11, 311
 - Suspension during hostilities, 11, 310
 - War, 11, 310
 - Whether war voids policy, 11, 311
- Non-Forfeitable or Paid-up Policy**, 11, 306
 - Character, 11, 306
 - Non-payment of interest on premium notes, 11, 306
 - Surrender of original policy, 11, 306
 - Where premium required to be paid for certain time, 11, 307
- Payment**, 11, 304; 18, 156
 - And delivery usually concurrent acts, 11, 304
 - Application of dividends, 11, 308
 - By bank check, 11, 307
 - By note, 11, 307
 - By order of third person, 11, 307
 - By whom premium must be paid, 11, 305
 - Effect of suspension, 11, 306
 - Falling due on Sunday, 11, 308
 - Forfeiture for non-payment of interest, 11, 305
 - In depreciated funds, 11, 307
 - Instalments in arrear, 11, 306
 - Mode of, 11, 307
 - Necessity, 11, 304
 - Non-payment of instalments, 11, 305
 - No special mode of payment provided for, 11, 307
 - Provision that policy shall be void where premium is overdue, 11, 305
 - Provision that policy shall not be binding while premium is overdue, 11, 304
 - Suit by company, 11, 306
 - Suspension of policy, 11, 306
 - To agent, 11, 307
 - What hour it must be made, 11, 308
 - Where insured has money to his credit, 11, 308
- Presumption of payment, and delivery of premium being concurrent, 11, 284
- Waiver**, 11, 308
 - Acceptance of instalments, 11, 310
 - Acceptance of note, 11, 309
 - Agreement that agent shall be bound, 11, 309
 - By parol, 11, 308
 - By writing, 11, 309
 - Charging premium to insured, 11, 309
 - Demand for overdue premium, 11, 310
 - Examples, 11, 309
 - Express, 11, 308
 - Giving time, 11, 309
 - Implied, 11, 308
 - Implied waiver generally, 11, 310
 - Of instalments, 11, 310

INSURANCE—Cont'd**Premium—Cont'd****Waiver—Cont'd**

Payment prevented by insurers, 11, 310

Premium habitually received at other times, 11, 309

Telling insured that payment makes no difference, 11, 309

What waives an instalment, 11, 310

Proofs of Loss

Waiver, 11, 341

Provision to refer dispute to arbitration, 1, 668

Provision to submit to arbitration as condition of precedent, 1, 669

Proximate and remote cause, 19, 301

Reasonable doubt, 19, 1087

Receivers**Premium Notes****Recovery of Assessments on Insurance**

Premium Notes, 20, 290

Assessments, 20, 290

Contract between policy holder and insurance company, 20, 290

Necessity of showing that loss has occurred, 20, 290

Notes, 20, 290

Power of receiver, 20, 290

To pay debts of corporations, 20, 290

Receiver's right to insure property, 20, 115

Reference to referee, 20, 675

Reinsurance, 11, 343

Commencement and termination of risk, 11, 344

Duty of insurer in obtaining, 11, 344

Obligations of Insurer, 11, 343

Costs and expenses in defending claim, 11, 344

Generally, 11, 343

Partial loss, 11, 344

Policy void, 11, 343

Proof that loss was paid, 11, 344

Reinsurance for part only of original insurance, 11, 344

What proofs insurer must make, 11, 344

Waiver, 11, 345

What is, 11, 343

Within statute of frauds, 11, 344

Relation, 20, 736**Remedies, 11, 345**

Decree for re-delivery and cancellation, 11, 348

Effect of adjustment, 11, 347

Forfeited in case of loss by design, 11, 348

Fraud, 11, 347

Liability of agent for failure to cancel, 11, 349

Liability of officers for false statements, 11, 347

Liability where company fails to keep required funds, 11, 347

Mistake and fraud, 11, 346

No trust relation, 11, 348

Recovery of loss paid, 11, 349

Reformation of policy, 11, 346

Refusal of insured to separate damaged from undamaged goods, 11, 349

Repairs, 11, 349

Right of Insurers to Terminate Policy, 11, 348

Prejudice of insured, 11, 348

Provision, 11, 348

Strict terms of the policy, 11, 348

Where policy wrongfully forfeited, 11, 346

Where premium has been paid but policy has never taken effect, 11, 345

Where terms of insurance have been agreed upon but policy has not been issued, 11, 345

Representations, 5, 322; 8, 636

Affirmative, 11, 299

Agent's knowledge of inaccuracy, 11, 324

Binding force or scope of policy, 11, 330

Change of Facts Represented, 11, 300

After contract is consummated, 11, 300

Before contract is consummated, 11, 300

Change in occupation and habits, 11, 300

Examples, 11, 300

Definition, 11, 296

Distinguished from warranty, 11, 294, 297

Examples of substantially true, 11, 297

False in part, 11, 299

Fraud, or False Swearing, 11, 301

Effect of fraud where there is no provision, 11, 301

Intentional fraud, 11, 301

Intention a question for jury, 11, 301

Materiality, 11, 301

Overstating value, 11, 301

Risk recently rejected, 11, 301

Grossly negligent, 11, 299

Immaterial, 11, 297

Materiality question for jury, 11, 298

Of agent rather than of applicant, 11, 325

Oral, 11, 300

Party settling materiality for himself, 11, 298

Promissory, 11, 299

Provision as to materiality in policy, 11, 298

Substantially true, 11, 297

Test of materiality, 11, 298

Whether it must be literally true, 11, 297

Whether part of contract, 11, 297

Willfully false, 11, 299

Rescission of Policy, 21, 66

Agent's power, 21, 66

Consent of parties, 21, 66

Examples, 21, 66, 68

In general, 21, 66

- Member of a mutual company, 21, 66
- Notice of intention to rescind, 21, 66
- Paid-up policy, 21, 68
- Temporary insurance contract, 21, 67
- What constitutes rescission, 21, 67
- When equity will order cancellation of a policy, 21, 67
- Where fire is approaching premises, 21, 66
- Set-off, 22, 242, 251
- Special limitations, 13, 690
- Specific Performance**
 - Agreements to insure, 22, 998
- Statute of Frauds**, 11, 280
 - Contracts not to be performed within a year, 8, 690
- Statutes**
 - Constitutional provisions requiring that subject shall be expressed in the title, 23, 244
 - Constitutional provisions that statutes shall contain no more than one subject, 23, 273
- Subrogation**, 17, 559; 23, 301
 - Insurance of Mortgaged Property**, 24, 316
 - Examples, 24, 316-319
 - Insurance company's right to, 24, 316
 - Policy containing stipulation that insurer shall be subrogated to the mortgagee's rights, 24, 318
 - Subrogated to rights of mortgagee, 24, 316
 - Where mortgagee procured insurance, 24, 316
 - Where mortgagor is liable for premium, 24, 318
 - Where mortgagor pays premium, 24, 318
- Life Insurance**, 24, 319
 - Death caused by wrongful act, 24, 319
 - Payment of insurance as a defense to action against wrongdoer, 24, 320
 - Whether insurer entitled to subrogation, 24, 319
- Subrogation Against Carriers**, 24, 301
 - Admiralty courts, 24, 305
 - Carrier's defense, 24, 303
 - Examples, 24, 301-306
 - Express contract between owner and carrier of goods, 24, 301
 - Goods lost or damaged through negligence of carrier, 24, 301
 - In general, 24, 301
 - Insurance for benefit of carrier, 24, 301
 - In whose name action should be brought, 24, 305
 - Privity between insurer and carrier, 24, 305
 - Relation of joint tort-feasor, 24, 304
 - Satisfaction from insurance company as defense to action against carrier, 23, 304
 - Stipulation that insurance shall be subrogated to owner's right, 24, 301
 - What defense carrier may set up, 24, 305
- Subrogation Against Tort-Feasors**, 24, 306
 - Action for portion of claim only, 24, 311
 - Defense of wrongdoer, 24, 310
 - Duty to account to insurance company for satisfaction obtained from other torts, 24, 310
 - Examples, 24, 306-311
 - Fires caused by railroad locomotives, 24, 307
 - In general, 24, 306-311
 - Insurance company standing in place of insurer, 24, 306
 - In whose name action should be brought, 24, 308
 - Owner must be fully indemnified for the loss, 24, 309
 - Payment by insurer as defense, 24, 310
 - Release of damages executed by wrongdoer, 24, 309
 - Right of insurance company against wrongdoer, 24, 306
- Suit by beneficiary**, 16, 896
- The Contract or Policy**, 11, 280
 - Computation of time, 26, 13
 - Condition against alienation, 1, 466
- Construction**, 11, 286
 - Amount, 11, 290
 - Application and policy construed together, 11, 288
 - Application as part of policy, 11, 288
 - Beneficiary, 11, 290
 - Benzine, 11, 289
 - Carpenters' risk, 11, 290
 - Discarding false description, 11, 288
 - Divisible contract, 11, 287
 - Effect given to all parts of contracts, 11, 287
 - Explosion, 11, 289
 - Fences, 11, 290
 - Fixtures, 11, 290
 - Forfeiture, 11, 288, 289
 - General rule, 11, 286
 - Held on storage, 11, 290
 - In Pennsylvania, 11, 288
 - In Wisconsin, 11, 288
 - Kerosene permit, 11, 289
 - Location, 11, 289, 290
 - Ownership, 11, 290
 - Paid-up policy, 11, 290
 - Participating policy, 11, 290
 - Premises, 11, 290
 - Special clause conflicting with general, 11, 288
 - Substitution of beneficiary, 11, 290
 - Surrounding circumstances, 11, 288
 - Term of renewal, 11, 290
 - The prospectus, 11, 287
 - Time of payment, 11, 290
 - To prevent forfeiture, 11, 286

INSURANCE—Cont'd**The Contract or Policy—Cont'd****Construction—Cont'd**

- Watchman, 11, 290
- Wearing apparel, 11, 289
- When loss covered, 11, 290
- When stipulations construed strictly, 11, 286
- Where terms are explicit, 11, 286
- Written controlling printed portions, 11, 288

Consummation, 11, 281

- Acceptance through the mails, 11, 284

Agent Writing Policy Subject to Company's Approval, 11, 284

- Agent neglecting to forward, 11, 284

Intervening fire, 11, 284

- Compliance with conditions, 11, 283

Contract not in accordance with by-laws, 11, 286

- Contract through the mails, 11, 283

Countersigning by Agent, 11, 286

- Company agreeing without signature, 11, 286

Necessity of, 11, 286**Other evidence of completion, 11, 286****Where policy is in favor of agent, 11, 286****Delivery of policy, 11, 283**

- Description in policy not corresponding with description in receipt, 11, 285

Determined by charter, 11, 286**Fire between time of making application and receipt, 11, 285****Fixes rights of the parties, 11, 281****Interim receipts issued by agent, 11, 285****Necessity of form of policy, 11, 282****Necessity that all terms of contract should be agreed upon, 11, 282****Offer and acceptance, 11, 283****Payment of premium, 11, 283****Presumption upon payment and delivery, 11, 284****Presumption when there has been no payment or delivery, 11, 284****Question as to whether delivery of policy has been made, 11, 295****Reasonable time for acceptance, 11, 284****Rebutting presumption arising from payment and delivery, 11, 284****Whether necessary to insurer's liability, 11, 281****Form, 11, 281****Materiality, 11, 281****Where prescribed by statute, 11, 281****For whom it may concern, 3, 420****Made through the mail, 11, 283****Necessity of date, 5, 77****Parol Evidence, 17, 426****Admissibility, 17, 426****Examples, 17, 426****Policy, 17, 426****Admissibility, 17, 426****Verbal representations, 17, 426****Parties, 11, 281****Pledge of policy, 18, 651****Reformation of Instruments, 15, 671****Examples, 15, 671-673****Form of policy, 15, 673****In general, 15, 671****Mistake of law, 15, 671****Parol testimony, 15, 673****Renewal, 15, 672****Suspension of policy, 11, 306****Whether it may be in writing, 11, 281, 282****Whether It Need Be in Writing, 8, 690;****11, 280****General rule, 11, 280****Practice, 11, 280****Verbal agreement modifying contract, 11, 281****Where there is no stamp act, 11, 280****Time within which suit must be brought, 11, 350****Trover, 26, 769****Policies of insurance, 26, 769****Trust relation, 11, 348****Trusts and trustees, 27, 163****Usages and Customs, 27, 882****As part of policy, 27, 883****Examples, 27, 883, 884****General rules, 27, 883****General usage, 27, 883****In general, 27, 882****Knowledge of Usages, 27, 752, 753****Examples, 27, 753-755****In general, 27, 752****Usages at Lloyd's, 27, 755****Particular usage, 27, 884****Presumption of knowledge of usages, 27, 764****Usages to explain contracts, 27, 823****Usages Varying Contracts, 27, 849****Examples, 27, 849-852****Usages asserted by insurer, 27, 849****Usages asserted by the insured, 27, 849****Wager policies, 8, 1002****Waiver and Estoppel, 7, 82; 8, 447; 11, 336****See *infra*, PREMIUM.****Accepting proof without objection, 8, 447****By Agent, 11, 331, 338****Assignment, 11, 332****Change of residence, 11, 332****Costs, 11, 334****Knowledge of agent, knowledge of insured, 11, 338****Party authorized to deliver policy, 11, 334****Payment, 11, 331****Proofs of loss, 11, 333****Provision that agent cannot change terms or conditions, 11, 339****Receiving hours, 11, 333**

- Renewal of premiums, 11, 334
- Title of the insured, 11, 333
- Waiver by agent, 11, 339
- Where agent's authority is restricted, 11, 339
- Where not forbidden by terms of policy, 11, 331
- Consideration and estoppel, 11, 338
- Effect of Conduct of Insurers Subsequent to Loss, 11, 340**
 - Demand and receipt of assessment, 11, 341
 - Estoppel, 11, 340
 - General denial of liability, 11, 341
 - Notice of election to rebuild, 11, 341
 - Not objecting to proofs of loss, 11, 340
 - Objections to form of proofs, 11, 341
 - Payment of loss, 11, 341
 - Promise to pay loss, 11, 341
 - Refusal to pay because of the violation of a particular condition, 11, 341
 - Refusal to send blanks, 11, 341
 - Waiver of proof of loss, 11, 341
- Effect of conduct with knowledge of facts, 11, 336
- Examples, 11, 339
- Extending time of payment, 11, 334
- Failure to cancel, evidence of waiver, 11, 342
- Generally, 11, 336
- Impossible conditions, 11, 337
- Insured must be prejudiced, 11, 336
- Insurer executing policy, 11, 336
- Knowledge acquired after delivery of policy, 11, 336
- Knowledge of insured of fraudulent statements by insurers, 11, 338
- Of forfeiture by agent, 11, 336
- Of proof of loss, 11, 341
- The act of waiver must be done knowingly, 11, 336
- Unanswered questions, 11, 337
- Waiver indorsed on policy, 11, 342
- Waiver in writing, 11, 342
- Waiver of provision as to waiver 11, 343
- War, 28, 606
- Warranty, 11, 290**
 - Affirmative warranties, 11, 293
 - A Part of Policy—What Are Warranties, 11, 293**
 - "Accompanying articles," 11, 293
 - Application made part of policy, 11, 295
 - By-laws printed on policy, 11, 293
 - Case of doubt, 11, 294
 - Essential that a stipulation should be made, 11, 293
 - Expressly incorporated, 11, 293
 - Implication, 11, 295
 - Indefinite questions in application, 11, 296
 - In several papers each referring to the other, 11, 293
 - Intention of making paper part of policy not appearing, 11, 293
 - No intention that statement should be a warranty, 11, 295
 - Omission to answer questions in application, 11, 295
 - Paper attached to policy, 11, 294
 - Paper folded within policies, 11, 294
 - Printed on same sheet, 11, 293
 - Reference to application, 11, 295
 - Statute requiring condition to be stated in policy, 11, 295
 - Written on the margin of policy, 11, 293
 - Definition, 11, 290
 - Distinguished from representations, 11, 294, 297
 - Effect of, 11, 291**
 - Essentiality of absolute observance, 11, 292
 - Statements not literally true, 11, 291
 - Stipulations not fully observed, 11, 291
 - Willfulness of non-observance, 11, 292
 - Form, 11, 291
 - Necessity of particular words, 11, 291
 - Promissory warranties, 11, 293
- INSURANCE AGENTS, 11, 320**
 - See generally, INSURANCE.*
 - Brokers, see BROKERS.*
 - Applicability of general principles of agency, 11, 320
 - Authority to adjust and pay losses, 11, 336
 - General Agent, 11, 323**
 - Appointment of sub-agents by, 11, 323
 - What is evidence of general agency, 11, 323
 - Who is, 11, 323
 - Knowledge of Agent's Want of Power, 11, 330**
 - Agent knowingly making false representations, 11, 331
 - Agents of limited authority, 11, 330
 - Concerning condition of company, 11, 330
 - Limitation of agent's authority, 11, 330
 - Representing mutual company, 11, 330
 - Validity of policy, 11, 331
 - Liability for failure to cancel, 11, 349
 - License of insurance agent, 13, 527
 - Liens, 13, 587
 - Misrepresentations**
 - Of agent, 8, 636, 637
 - Mistakes and omissions of agent, 11, 331
 - Neglect of agent in forwarding premium, 11, 336
 - Notice to Agent, 11, 323**
 - Agent of limited authority, 11, 329
 - Agent's acts subject to approval of company, 11, 329
 - Broker, 11, 324
 - Canvassing or soliciting agent, 11, 323
 - Collusion of agent and applicant, 11, 328
 - Contract not approved, 11, 329

INSURANCE AGENTS—Cont'd**Notice to Agent—Cont'd**

Existence of facts prior to existence of policy, 11, 324

Inaccuracies of statement by application, 11, 324

Is notice to company, 11, 323

Knowledge acquired after execution of policy, 11, 323

Medical examiner, 11, 328

Miscellaneous agents, 11, 324

Notice of other insurance, 11, 328

When knowledge must have been acquired, 11, 328, 329

Power and Authority, 11, 320

Agent acting through clerks, 11, 321

Character of authority, 11, 321

Construction of authority, 11, 323

General agent, 11, 323

General mode of doing business, 11, 321

How determined, 11, 320

Manner in which he is held out by company, 11, 320

Particular circumstances of parties, 11, 322

Particular circumstances of transaction, 11, 322

Provisions of policy respected, 11, 322

Secret instructions to agent, 11, 322

Power of agents with reference to contracts made, 11, 335

Provision that Agent Shall Be Deemed Agent of Insured, 11, 334

Applicant making known certain facts to agent which he fails to communicate to company, 11, 335

Effect of the provision, 11, 334

Sub-agents, 11, 334

Representations of Agents, 11, 329

As to sufficiency of statement of applicant, 11, 329

Territorial limit of authority, 11, 336

Underwriting a policy on his own property, 11, 335

Waiver and Estoppel

Accepting payment of premium, 11, 340

Consenting to an assignment, 11, 340

Examples of waiver and estoppel by acts of insurers after knowledge, 11, 340

Knowledge of facts which vitiates policy, 11, 336, 339

Knowledge of vacancy, 11, 340

Knowledge that insurance is in contravention of by-laws, 11, 340

Knowledge that statements are untrue, 11, 339

On part of company, 11, 339

Waiver of forfeiture, 11, 329, 336

Waiver of Terms of Policy, 11, 331

Assignment, 11, 332

Change of residence, 11, 332

Costs, 11, 334

Extending time of payment, 11, 334

Party authorized to deliver policy, 11, 334

Payment, 11, 331, 332

Proofs of loss, 11, 333

Receiving hours, 11, 333

Renewal of premiums, 11, 334

Title of the insured, 11, 333

Where not forbidden by terms of policy, 11, 331

INSURANCE BROKERS, see BROKERS; INSURANCE AGENTS.

INSURANCE COMPANIES, see INSURANCE.

Service of process, see SERVICE OF PROCESS.

Bills and Notes

Power to issue, 4, 224

License, 13, 528

Municipal corporations, 13, 537

Stockholders

Power to subscribe, 23, 799

Whether insurance business is interstate commerce, 8, 368

INSURED, 11, 355**INSURRECTION, 11, 356**

Non-intercourse laws, see INTERNATIONAL LAW.

Belligerent rights, 11, 357

Definition, 11, 356

Distinguished from popular commotion, 11, 356

Means employed to protect and enforce rights of insurrectionary districts, 11, 365

Means Employed to Suppress Insurrection, 11, 258

Conditions imposed by government, 11, 362

Confiscation of Property, 11, 359

Condemnation of vessel, 11, 360

Constitutionality, 11, 360

Prize and capture, 11, 360

Declaring martial law, 11, 359

Denial of courts of justice to insurgents, 11, 363

Legislative acts of insurgents held void, 11, 364

Military power employed to suppress insurrection, 11, 358

Power of the president, 11, 359

Powers of congress, 11, 358

Restraint of commercial intercourse, 11, 361

Trading with the enemy, 11, 361

Validity of contract, 11, 361

Status of Insurgents, 11, 356

All citizens regarded as enemies, 11, 356

Belligerent rights, 11, 357

Persons residing within the states of insurrection, 11, 356

When civil war exists, 11, 357

What constitutes levying war, 11, 356

When civil war, 11, 356

When high treason, 11, 356

INTELLIGENCE OFFICES

False pretenses, 7, 745

INTEMPERANCE, 11, 265

See DRUNKENNESS; HABIT; HABITUAL DRUNKENNESS.

INTEMPERATE, 22, 803**INTEND**, 11, 365*Alleging intent*, see **INTENT**.

Intent, 11, 365

INTENT, 11, 366

See ALTERATION OF INSTRUMENTS;
 AMBIGUITY; CONSENT; DEDICATION;
 FRAUDULENT CONVEYANCES; IN-
 TEND; INTERPRETATION; SCIENTER;
 STATUTES; WILLS.

Animus manendi in questions of domicile,
 see **DOMICILE**.

*Intent as to fixtures between landlord
 and tenant*, see **LANDLORD AND TEN-
 ANT**.

Intention of testator, see **WILLS**.

Intent of parties to a contract, see **IN-
 TERPRETATION**.

Legislative intent, see **STATUTES**.

To dedicate land for public use, see
DEDICATION.

Trespass, see **TRESPASS**.

Abandonment, essence of, 1, 1

Adulteration

Necessity of knowledge, 1, 209

Adultery, necessity of, 1, 213

Adverse possession, element of, 1, 227,
 278

As an Element

Of a gambling contract, see **GAMBLING
 CONTRACTS**.

Of patent infringement, see **IN-
 FRINGEMENTS**.

To false pretenses, see **FALSE PRE-
 TENSES**.

Equitable mortgages, 5, 580

In criminal conspiracy, 4, 588

Of an attempt to commit crime, 2, 692;
 4, 662

Of assault, 1, 786; 4, 858

Of crime, 4, 644

Of deposit, 5, 572

Of embezzlement, 6, 455

Of exposure of person, 7, 536

Of offense in carrying concealed
 weapons, 3, 414

Assault, 1, 786; 4, 858

Assault, necessity of present intent, 1,
 804

Attempt, 2, 692; 4, 662

Attempt and intent distinguished, 1, 936

Burglary, 2, 688

Allegation of commission without alle-
 gation of intent, 2, 692

Impossibility of the intent, 2, 692

Intent not executed, 2, 692

Sufficiency of evidence as to the ab-
 sence of felonious intent, 2, 690

Variance in the statement of, 2, 691

Contrary, 4, 1

Criminal, 4, 644

See **MALICE**.

Abandonment of intent, 4, 677

Act and intent must unite, 4, 679

Admissibility of testimony in reference
 to similar transaction, 4, 674

Allegation and proof, 4, 674

Criminal intent connected with a law-
 ful act, 4, 674

Deliberation, 4, 675

Determining criminality of an act, 4,
 674

Establishing intent, 4, 674

Generally inferred, 4, 674

Intent inferred from act, 4, 680

Intent to kill one and another is
 wounded, 4, 675

Intoxication

Where particular intent is a particu-
 lar element of the crime, 4, 710-
 713

Knowledge of law where intent is an
 element of crime, 4, 688

Mistake of legal rights, 4, 688

Motive, 4, 674

Presumption that natural consequences
 were intended by actor, 4, 680

Proof of knowledge of acts malum pro-
 hibitum by law, 4, 681

Provoking a quarrel where homicide
 ensues, 4, 675

Unlawful thought followed by concur-
 ring act, 4, 677

What is, 4, 673

When criminal intent need not be
 proved, 4, 681

When intent is immaterial, 4, 681

Dedication

Streets and sidewalks, 24, 9

Definition, 11, 366

Divorce**As an Element of Desertion**

Absence during sickness, 5, 803

Imprisonment, 5, 803

Must be willful, 5, 802

Party expecting renewal of cohabi-
 tation, 5, 803

Party that drives the other away, 5,
 803

Party who refuses to receive back
 deserter, 5, 804

Permanent, 5, 803

What is meant by willful, 5, 803

When desertion begins, 5, 803

Domicile

What necessary, 5, 864

Drunkenness as disproving criminal in-
 tent, 4, 712

Elements, 5, 864

Evidence, 2, 693; 4, 674, 858; 11, 376

In reference to similar transactions, 4,
 860

Possession of stolen property, 2, 693

Rule in larceny as applying to burg-
 lary, 2, 693

Extortion, 7, 589

Error in computation, 7, 590

Evidence of usage, 7, 590

Presumed knowledge of law, 7, 590

Question for jury, 7, 590

Hearsay evidence, 9, 331

Ignorance of fact no defense where statute
 makes offense indictable irrespective of
 guilty knowledge, 4, 687, 689

INTENT—*Cont'd*

Ignorance of fact to negative a particular intent, 4, 688

Immaterial, 16, 930

Examples, 16, 930, 931

In general, 16, 930

Impossibility of the, 2, 692

In arson, 1, 773

In bankruptcy act, 2, 83

In Criminal Law

Allegation of in indictment, 4, 746

Evidence of intent, 4, 858

Indictment

Allegation of intent where felony is committed after the breaking and entering, 2, 693

Intention, 11, 378

Intentionally, 11, 378

Intent to injure, 11, 1

Intent to Prefer

In bankruptcy, 2, 84

Knowledge, 10, 599

Larceny, 12, 776

At time of taking, 12, 779

Bailee, 12, 779

Change of mind, 12, 776

Conversion for use of another, 12, 778

Disposition of property, 12, 778

Evidence of intent, 12, 777

Intent not existing at time possession was acquired, 12, 779

Necessity of felonious intent, 12, 776

To appropriate property, 12, 777

To deprive owner of use of property, 12, 778

To induce owner to offer reward, 12, 778

Wrongful taking without intent, 12, 777

Libel and Slander, 13, 385

Ambiguous language, 13, 385, 386

Jest, 13, 385

Whether material, 13, 385

Malicious and wicked intent in corporations, 4, 592

Motive, 15, 936

Necessity of, in accessory, 1, 64

Negligence, 16, 392, 462

Not an element of abortion, 1, 29

Nuisances, 16, 930

Indictment, 16, 963

Oath

Indictment

Contradicting statements sworn to, 18, 316

Necessity of averments, 18, 316

Willfully, 18, 316

Perjury, 18, 311

Examples, 18, 311-313

Indictment, 18, 316

Examples, 18, 316, 317

Falsely, 18, 316

Knowledge of falsity, 18, 317

Legal adviser, 18, 312

Mere mistake, 18, 312

Necessity, 18, 311

Proof, 18, 328

Willfulness, 18, 312

Presumptions, 11, 377; 19, 64

As to the presumption of malice, see MALICE.

As to the presumption of negligence, see NEGLIGENCE.

As to the repeal of a repugnant statute, see STATUTES.

Adequate purpose, 19, 64

Flight, 19, 73

In general, 19, 64

Knowledge of fact, 19, 61

Of guilt from acts indicating fear, 19, 73

Of law, 19, 658

Proof of, 2, 693; 4, 674, 858; 11, 376

Attendant circumstances, 11, 376

General rule, 11, 376

Party testifying as to his own motive, 11, 377

Person testifying to another's motive, 11, 377

Questions of Law and Fact, 19, 657

Abandonment of homestead, 19, 657

Criminal cases, 19, 658

Dedication of land to public use, 19, 657

Domicile, 19, 658

Eviction, 19, 657

Examples, 19, 657

Function of jury, 19, 657

Homestead, 19, 657

Interpretation of written language, 19, 658

Law conclusively imputes an intent, 19, 658

Parol evidence, 19, 658

Revocation of wills, 19, 658

Rape, necessity of intent to use force .. attempt, 1, 806

Receiving Stolen Property, 20, 447

Essential, 20, 447

Guilty knowledge, 20, 446

Honest intent, 20, 447

Intent to prevent discovery .. thief, 20, 447

To induce owner to pay a reward, 20, 447

What constitutes corrupt intent, 20, 447

Robbery, 21, 427

Common intent, 21, 427

Evidence, 21, 431

Indictment, 21, 427

In general, 21, 426, 427

To convict two or more, 21, 427

Streets and Sidewalks

Dedication, 24, 9

To defraud, 5, 519

INTENTION, 11, 378

See INTENT.

INTENTIONALLY, 11, 378

See INTENT.

INTERCOURSE, 11, 379

INTERDICTION, 11, 379

INTEREST, 6, 732; 11, 379

See ACCOUNTS.

See generally, PAYMENT.

See USURY.

On overdue coupons, see COUPONS.

Action of debt for, 5, 166

Advancements, 11, 402

Charging upon, 1, 222

Agreement to pay presumed from course of dealing, 5, 528²⁶

Amount of controversy, 12, 284, 289, 429

Annuities, 11, 387

Application of Payment, 18, 249

See PAYMENTS.

As Damages for Default in Payment of

Debt, 11, 383

After default, 11, 383

Before default, 11, 383

General rule, 11, 384

Subscriptions, 11, 383

Unreasonable and vexatious delay in payment, 11, 384

When allowable, 11, 383

As damages for use or benefit of another's money, 11, 395

At common law, 11, 379

Building and Loan Associations

Incident to a loan, 2, 628

Premiums, 2, 631

By What Law Governed, 3, 549, 562; 11, 382; 15, 1269

Contract rate, 3, 549

Interest upon bills and notes, 2, 332; 3, 586, 595

Rate after maturity, 3, 550

Place where contract is made and to be performed, 3, 549

Where contract is to be executed in another country, 3, 549

Where interest allowed at place of performance is greater than that at place of contract, 3, 549

Where parties had reference to laws of another country, 3, 549

Compound, 11, 407

Agreement, 11, 408

Coupons, 11, 410

Interest already accrued, 11, 408

Judgment, 11, 408

Mortgages, 15, 770

Not recoverable in general, 11, 407

Settlements between parties, 11, 408

Trusts and Trustees, 11, 840

Breach of trust, 11, 840

Illegal commissions, 11, 840

Refusing to account, 11, 840

Sums withheld from court, 11, 840

Usages and customs, 11, 408

Usury, 11, 408; 27, 998

Computation, 11, 402

Part payment, 18, 233

Time During Which Interest Accrues 11, 402

See *infra*, DEMAND.

Advancements, 1, 222; 11, 405

After maturity, 11, 402

Apportionment, 11, 407

Before principal is due, 11, 403

Contract for payment of a certain sum with interest, 11, 403

Damages arising from injury, 11, 405

Existence of war, 11, 406

Foreign judgments, 11, 407

From bringing of suit, 11, 404, 405

From time contract is made, 11, 403

From time principal should have been paid, 11, 402

Goods sold for cash, 11, 404

Judgments and decrees, 11, 406

Legacies, 11, 405

Meaning of the term "after maturity," 11, 402

Money paid by mistake, 11, 406

Money wrongfully obtained, 11, 406

Of annuities, 11, 405

On unliquidated claims, 11, 404

Promissory note, 11, 403

Right of action suspended, 11, 406

Sale on credit, 11, 405

Upon delivery, 11, 404

When paid for use of another, 11, 406

Condition that whole amount shall become payable if interest is not paid, 8, 450

Conflict of Laws, 3, 549, 562; 11, 382

See *infra*, BY WHAT LAW GOVERNED.

Consignors and factors, 5, 528²⁶

Contracts for, 11, 380

Express Contracts, 11, 380

Right of action for interest on principal not due, 11, 381

Separate action after payment of principal, 11, 381

When allowed, 11, 380

When not allowed, 11, 381

Where principal sum has been paid, 11, 391

Implied Contracts, 11, 381

Custom of creditor, 11, 382

Custom of parties, 11, 381

Usage of trade, 11, 381

County

State suit for taxes, 11, 388

Damages, 8, 1196; 11, 383

Infringement of patent, 10, 762

Definition, 11, 379

Demand, 5, 528²⁶; 11, 404

Accounts, 5, 528²⁸

As to amount, 5, 528²⁹

Contribution cases, 5, 528²⁸

Debtor prevented by law from payment on demand, 5, 527²⁹

Debts of decedents, 5, 528³⁰

Debts payable on demand, 5, 528²⁶

Duty to pay over without previous demand, 5, 528²⁷

Freight, 5, 528²⁸

From beginning of suit, 5, 528²⁸, 528²⁹

From service of summons, 5, 528²⁹

Goods sold and delivered, 5, 528²⁸

In cases of conversion, 5, 528²⁷

Interest by consent without demand, 5, 528²⁷

INTEREST—Cont'd**Demand—Cont'd****Legacies and Devises, 13, 183**

Legacies charged upon land, 5, 528²⁹

Money collected by an agent, 5, 528²⁷

Money paid by surety, 5, 528²⁷

On money paid as usury, 5, 528²⁶

On money paid by mistake, 5, 528²⁶

Open contracts and accounts, 5, 528²⁶

Payable from time suit is brought, 5, 528²⁹

Service performed, 5, 528²⁶

Statutes, 5, 528²⁷

Suits for wages, 5, 528²⁶

Trustees, 5, 528²⁰

Neglecting payment within a reasonable time, 5, 528²⁰

Who disclaims relationship, 5, 528²⁰

Upon bonds, 5, 528²²

Upon notes, 5, 528²²

Upon taxes illegally exacted, 5, 528²¹

Use of trust money by trustee, 5, 528²⁰

Vexatious delay in payment of claim, 5, 528²⁷

When account is unliquidated, 5, 528²⁵

When necessary, 6, 528²⁶

When unavailing, 5, 528²⁹

When unnecessary, 5, 528²⁷

Where contract calls for interest "after demand," 5, 528²⁶

Where property is loaned, 5, 528²⁶

Whether interest should be computed and added to principal sum, 5, 528²⁵

Wrongful refusal to pay, 5, 528²⁸

Direction that Legacy Shall Be Paid, 13, 170

"As soon as executor shall think proper," 13, 170

"As soon as possible," 13, 170

Executors "shall have five years within which to settle my estate," 13, 170

"That bequest shall be paid" at convenience of executors, 13, 170

"That bequest shall be paid" within one year, 13, 170

Direction that residue be invested in a particular way, 13, 179

Direction to pay legacy within three years, 13, 181

Divesting contingency, 13, 180

Duration, 13, 176

Effect of contest, 13, 167

Effect of exonerated personality, 13, 169

Examples, 13, 171

Expressions which give interest from death, 13, 173

First year after testator's death, 13, 166

From time of investment, 13, 179

From when interest is due, 13, 166-168

General contingent residuary bequest, 13, 180

General legacy, 11, 387; 13, 166

Grandchildren, 13, 173, 182

Illegitimate children, 13, 182

Infant is en ventre sa mere, 13, 173

In loco parentis, 13, 182

In satisfaction of a debt, 13, 171

Intention of testator, 13, 183

Legacy and annuity for maintenance and support of minors, 13, 174

Legacy charged solely upon land, 13, 169

Legacy charged upon another bequest, 13, 169

Legacy paid into court, 13, 170

Legacy payable in future with direction that interest shall be paid, 13, 182

Legacy payable out of proceeds of realty, 13, 170

Legacy to be raised out of land, 13, 169

Legacy to child, 13, 182

Legacy to persons not in loco parentis, 13, 183

Liability to debts of legatee, 13, 176

Life Tenant and Remainderman, 13, 190

Authorizing securities, 13, 192

Direction that enjoyment is to begin at a particular time, 13, 197

Direction to accumulate, 13, 198

Direction to convert and invest, 13, 196

Direction to keep together, 13, 198

Discretion as to time of conversion, 13, 197

During delay allowed for payment of legacies, 13, 198

From time of death of testator, 13, 199

Funds severed from bulk, 13, 191

Income from funds properly invested, 13, 196

Income of estate properly invested within year, 13, 192

Income which fund would have produced if invested, 13, 196

In England, 13, 200

Interest on reinvestment, 13, 195

Investment, 13, 193

Investment made within a year from death, 13, 196

Lewin's classification, 13, 198

Life tenant's interest for first year, 13, 190, 191

Life tenant's right at death of testator, 13, 190

Mode of computation, 13, 194

Money due on improper securities, 13, 193

No directions to accumulate, 13, 192

No directions to convert, 13, 192

Payment of debts and legacies out of income or capital, 13, 200

Payments on principal, 13, 191

Rate, 13, 194, 195

Reinvestment of money on improper securities, 13, 194

Making up arrearages of lean years from surplus income, 13, 177

Minor child, 13, 172

Necessity of demand, 5, 528²⁹; 13, 183

- Nephews, 13, 182
- Niece, 13, 182
- One year after grant of letters, 13, 167
- Payment of legacy impracticable, 13, 169
- Payment postponed until twenty-one, 13, 180
- Personal liability of devisee, 13, 169
- Provision by testator, 13, 170
- Rate, 13, 167, 168
- Rate in England, 13, 168
- Residuary bequest, 13, 180
- Residue to one for life, remainder to another, 13, 179
- Specific, 11, 387
- Testator's directions, 13, 170
- Time of payment fixed by will, 13, 180
- To be paid as needed, 13, 175
- To wife in lieu of dower, 13, 171
- Where assets are productive, 13, 169
- Where assets are unproductive, 13, 169
- Whether Annuity Is Charged on Income or Corpus**, 13, 178
 - Annuity plainly charged on corpus, 13, 178
 - Arrears out of corpus, 13, 178
 - Rules determining whether corpus is charged, 13, 178
- Discretion of jury, 11, 380
- Distinguished from annuities, 1, 598
- Distress, 11, 387
- Dividend**, 5, 731
 - Preferred dividends, 23, 613
- Eminent domain, 6, 627, 631
- Executors and Administrators**
 - Whether charged against executor or administrator, 7, 428
- Foreign judgments, 11, 394
- Garnishee's Liability**, 8, 1196
 - Interest by way of damages, 8, 1196
 - Interest due by contract, 8, 1196
 - Interest not due by contract, 8, 1196
 - Pending suit, 8, 1196
 - Presumption as to use, 8, 1196
 - Where garnishee has issued money as his own, 8, 1196
 - Where he assumes position of litigant, 8, 1196
 - Where he causes delay, 8, 1196
 - Where money is due at interest, 8, 1196
 - Where prevented by legal process from discharging debt, 8, 1196
 - Where served with void process, 8, 1196
- General principles, 11, 379
- Ground rent, 11, 387
- Guardian and Ward**, 9, 119
 - When allowed, 9, 119
 - When compound interest allowed, 9, 119
 - Guardian's liability for, 5, 528²¹
- Infants**
 - Void or voidable, 10, 631
- Interest Computed by**
 - By the *lex rei sitæ*, 2, 331
- Judgments, 11, 391
- Judicial Notice**
 - Rate of interest of another state, 12, 201
- Laches, 11, 395; 12, 608
- Laws impairing obligation of contracts, 3, 751
- Legacies and Devises**, 11, 387; 13, 166
 - Executor trading with assets*, see EXECUTORS AND ADMINISTRATORS.
 - Portions of annuities*, see ANNUITIES.
 - Accumulated interest, 13, 183
 - Adult children, 13, 173
 - Age of twenty-one attained in lifetime of testator, 13, 180
 - Annuity, 13, 172
 - Annuity payable out of income alone, 13, 177
 - Assignment of interest, 13, 183
 - Bequest to child by parent, 13, 181
 - Breaking into principal, 13, 176
 - Child with means of support, 13, 173
 - Compound Interest**, 13, 167
 - See EXECUTORS AND ADMINISTRATORS.
 - Contingent bequest, 13, 180
 - Demonstrative annuities, 13, 179
 - Devise to contingency, 13, 170
 - Directions that interest shall accumulate, 13, 182
 - Limitation of actions, 13, 725
 - Measure of damages, 6, 27
 - Money in hands of stakeholder, 8, 1000
- Municipal Corporations**
 - Semi-annual interest, 15, 1265
- Municipal Securities**, 15, 1269
 - By what law computed, 15, 1269
 - Coupon bonds, 15, 1269
 - Estoppel by payment of interest, 15, 1293
 - From what time bonds bear interest, 15, 1269
 - When railroad companies agree to pay interest, 15, 1269
 - Where no provisions have been made for payment of interest, 15, 1269
- Municipal Warrants**, 11, 388; 15, 1216
 - Coupons, 15, 1216
 - Examples, 15, 1216, 1217
 - In Illinois, 15, 1216
 - In Missouri, 15, 1217
 - In Tennessee, 15, 1216
 - Non-payment for want of funds, 15, 1216
 - Retention of warrant after refusal to pay, 15, 1216
 - Where not authorized by statutes, 15, 1216
 - Where warrant is regarded as negotiable paper, 15, 1216
- National Banks**
 - Addition of current rate of exchange, 16, 173
 - Deposits, 16, 206
 - In general, 16, 172
 - Legal rate where no state rate, 16, 173
 - Special state rate, 16, 173
 - State banks of issue, 16, 172

INTEREST—Cont'd**National Banks—Cont'd**

State rate followed, 16, 172

What rate, 16, 172

Obligations in Writing, 11, 390

General rule, 11, 390

Not payable in installments, 11, 390

Surety, 11, 391

Where principal sum has been paid, 11, 391

On Accounts, 11, 385

Account not rendered, 11, 386

Amount capable of being ascertained, 11, 386

Annual balances, 11, 385

Demand for payment, 11, 386

Liquidated accounts, 11, 385

Mutual cash accounts, 11, 385

Services, 11, 386

Unliquidated Accounts, 11, 385

For work and labor, 11, 386

When correctness of account has been acknowledged, 11, 385

Where goods were sold for cash, 11, 385

On amount of excessive damages remitted, 11, 392**On Award of Damages**

In eminent domain proceedings, 6, 458

On balance of account, 5, 528²⁶**On claim against county, 11, 380****On compensation awarded, 11, 392****On costs, 11, 393****On decrees, 11, 394****On funds held in trust, 11, 398****On Loans and Advances, 11, 395**

Action for money had and received, 11, 396

Advancements by parent to child, 11, 396

Money advanced by agent of factor, 11, 396

Money loaned, 11, 395

Money paid on account for use and benefit of another, 11, 396

Partnership liability to partner, 11, 396

When chargeable with interest, 11, 395

On money paid by mistake, 11, 398**On Money Wrongfully Withheld or Obtained, 11, 397**

Fraud or imposition, 11, 397

General rule, 11, 397

Proceeds of plaintiff's property, 11, 397

Public officer obtaining money, 11, 397

Wrongfully withheld, 11, 397

On purchase-money, 11, 389**On Rents, 11, 387**

Distress, 11, 387

Ground rents, 11, 387

Personal action, 11, 387

Rent in arrears, 11, 387

Sum certain due for rent, 11, 387

Partnership, 17, 1227

Accounting, 17, 1229

Advances or loans by one partner, 17, 1220

After balances are ascertained, 17, 1230

Agreement that Capital Shall Draw Interest, 17, 1228

Unreasonable delay in winding up, 17, 1228

Upon dissolution, 17, 1228

Usury laws, 17, 1228

Whether partners may agree, 17, 1228

Ascertainment of balances, 17, 1229

Compound interest, 17, 1231

In excess of capital contributed, 17, 1227

Misconduct of Partner, 17, 1230

Balances in hands of co-partner, 17, 1230

Before balance is struck, 17, 1230

Concealing amount due, 17, 1231

Mingling assets, 17, 1231

Misappropriating of assets, 17, 1231

Understating amount due, 17, 1231

On profits, 17, 1229

Payment of debts after dissolution, 7, 1229

Profits as Interest on and Payment of Loans and Advances, 17, 850

Device to evade liability, 17, 853

Loan made in consideration of future partnership, 17, 850

Money not returnable in any event, 17, 852

United States courts, 17, 852

Usurious contract, 17, 852

What constitutes a loan, 17, 852

Whether partnership as to third persons, 17, 851

Whether payment of profits as interest on loan invested in a business constitutes a partnership, 17, 850

Right to interest on capital, 17, 1227

Sums withdrawn by consent, 17, 1230

Unreasonable delay in winding up, 17, 1228

When allowable, 17, 1228

Where one partner contributes entire capital, 17, 1227

Where one partner has not brought in his stipulated amount, 17, 1228

Public Officers

Upon public moneys detained by him, 19, 481

Purchaser at sheriff's sale, 11, 390**Rate, 11, 411; 17, 1232**

Accounting, 11, 415

After Maturity, 11, 415, 416

Construction of words in written obligation, 11, 417

In general, 11, 415

Change in form of security, 11, 415

Contracts in writing, 11, 414

Effect of change in statute, 11, 413

General rule, 11, 411

In absence of statute, 11, 414

In absence of usury statute, 11, 414

In Alabama, 11, 411

- In Arizona, 11, 411
- In Arkansas, 11, 411
- In California, 11, 411
- In Colorado, 11, 411
- In Connecticut, 11, 411
- In Dakota, 11, 411
- In Delaware, 11, 412
- In District of Columbia, 11, 412
- In Florida, 11, 412
- In Georgia, 11, 412
- In Idaho, 11, 412
- In Illinois, 11, 412
- In Indiana, 11, 412
- In Iowa, 11, 412
- In Kansas, 11, 412
- In Kentucky, 11, 412
- In Louisiana, 11, 412
- In Maine, 11, 412
- In Maryland, 11, 412
- In Massachusetts, 11, 412
- In Michigan, 11, 412
- In Minnesota, 11, 412
- In Mississippi, 11, 412
- In Missouri, 11, 412
- In Montana, 11, 412
- In Nebraska, 11, 412
- In Nevada, 11, 412
- In New Hampshire, 11, 412
- In New Jersey, 11, 412
- In New Mexico, 11, 412
- In New York, 11, 412
- In North Carolina, 11, 412
- In Ohio, 11, 412
- In Oregon, 11, 412
- In Pennsylvania, 11, 412
- In Rhode Island, 11, 412
- In South Carolina, 11, 412
- In Tennessee, 11, 412
- In Texas, 11, 412
- In Utah, 11, 413
- In Vermont, 11, 413
- In Virginia, 11, 413
- In Washington, 11, 413
- In West Virginia, 11, 413
- In Wyoming, 11, 413
- Liability to pay legal, 11, 411
- Recovery of more than legal interest, 11, 415
- Trust, 11, 415
- What law governs, 11, 418
- Real covenants, 19, 1015, 1017
- Receivers**
 - Interest on balances in receiver's hands, 20, 177
 - When Receiver Chargeable with**, 20, 188
 - Examples, 20, 188, 189
 - Failure to account at proper time, 20, 189
 - In general, 20, 188
 - Where receiver has been guilty of improper conduct, 20, 188
 - Where receiver has collected interest, 20, 188
 - Where principal is not due, 11, 381
 - Separate action for principal where interest is not due, 11, 381
 - Set-off, 22, 229
- States**, 23, 79
 - Against state, 23, 79
 - In favor of state, 23, 79
 - Treasurer, 23, 110
 - Statutory origin, 11, 380
- Stock**
 - Preferred dividends, 23, 613
- Stock Bearing Interest**, 23, 615
 - Guaranteeing interest on par value of stock, 23, 616
 - In general, 23, 615
 - Payment out of surplus, 23, 616
 - Validity of stock, 23, 615
 - When invalid, 23, 616
- Stockholders**, 23, 813
 - Calls by court, 23, 814
 - In England, 23, 813
 - Interest on calls, 23, 813
 - When call is made by director, 23, 813
- Succession Taxes**, 24, 469
 - Discharge of surety by change in interest, 24, 841
 - Interest on public moneys, 24, 888
 - Interest upon taxes for delay in payment, 24, 486
- Payment as Consideration**
 - Extension of time, 24, 827
- Taxation**, 11, 388; 25, 13
 - Abatement of taxes, 25, 246
 - Penalties for non-payment, 25, 304
 - State suit against county, 11, 388
 - When interest begins to run, 25, 303
- Tender**, 25, 911
 - Effect of tender, 25, 926
- Trespass, 26, 675
- Tribunal assessing damages, 11, 394
- Trover**, 26, 848
 - Examples, 26, 848, 849
 - In general, 26, 848
- Trusts and Trustees**
 - Balances, 11, 839
 - Commingling trust funds with his own, 11, 835
- Compound Interest**, 11, 840
 - Breach of trust, 11, 840
 - Illegal commissions, 11, 840
 - Refusing to account, 11, 840
 - Sums withheld from court, 11, 840
- Delay**, 11, 834, 835
- Necessity of demand, 5, 528²⁰
- Time from which interest will be charged, 5, 528²¹
- Trustee neglecting to pay over within reasonable time, 5, 528²⁰
- When Liable**, 5, 528²⁰
 - For compound interest, 5, 528²¹
 - Where they have used trust money, 5, 528²⁰
 - Where trustee has used trust money, 5, 528²⁰
- Ultra vires, 27, 382
- United States**, 27, 530
 - Claim against a state, 27, 531
 - Implied obligation, 27, 530
 - In general, 27, 530
 - When government liable, 27, 530

INTEREST—Cont'd**United States Courts**

Judgment, 27, 626

Judgment of court of claims, 27, 677

Upon notes payable in installments, 2, 397

Upon what grounds allowed, 11, 380

Usages and Customs, 11, 381

Knowledge of usage to charge interest, 27, 752

Usury

Effect of Usury, 27, 942

Examples, 27, 942, 943

Executory contracts, 27, 942

Forfeiture, 27, 942, 943

In general, 27, 942

Verdict, 11, 394

Allowance of Interest by Verdict, 28, 320

American authorities, 28, 322

Amount not readily ascertainable, 28, 329

Arrears of rent, 28, 324

At common law, 28, 320

Contract providing for interest, 28, 320

Contract stipulating for, 28, 324

Course of dealings between parties, 28, 320, 324

Defendant guilty of fraud or injustice, 28, 320, 321

Discretion of court or jury, 28, 320

Discretion of jury, 28, 325

Distinction between England and the United States, 28, 326

Distress for rent, 28, 324

In general, 28, 320

Interest as a standard of damages, 28, 326

Interest follows the principal as the shadow the substance, 28, 323

Interest presumed, 28, 320

Maritime torts, 28, 324

New York rule, 28, 328

Open accounts, 28, 327

Rate After Maturity, 28, 330

Absence of contract to pay interest, 28, 330

Contract, 28, 330

Contract or legal rate, 28, 331-333

Contract rate higher than legal rate, 28, 331

Contract rate lower than legal rate, 28, 333

Examples, 28, 330-338

In general, 28, 330

Interest in the nature of damages, 28, 330

Legal rate, 28, 337

Notes, 28, 330

Rate of interest, 28, 331

Replevin, 28, 325

Trespass, 28, 325

Trover, 28, 325

Unliquidated demands, 28, 328

Usage, 28, 320, 324

Amendment, 28, 368

On Amount of Verdict, 11, 391; 28, 317

In general, 28, 317

Interest-bearing claims, 28, 318, 319

Non-interest-bearing claims, 28, 318

Statutes, 28, 319, 320

Where party delays rendition of judgment, 28, 317

War, 28, 605

Warrants of municipality, 11, 388; 15, 1216

When open to mutual cash account, 5, 528²⁵

Whether included in execution, 11, 391

INTERESTED, 11, 422**INTERESTS IN FUTURE, see EXPECTANCY; REMAINDERS AND EXECUTORY INTERESTS; REVERSIONS.****INTERFERE, 11, 425****INTERFERING PATENTS, see PATENTS.****INTERIM, 11, 426**

Interim curator, 11, 426

Interim factor, 11, 426

INTERIOR, 11, 426**INTERLINEATIONS, see ALTERATION OF INSTRUMENTS.****INTERLOCUTORY, 11, 427**

Interlocutory and final distinguished, 11, 427

INTERLOCUTORY DECREES, see DECREE.**INTERLOCUTORY JUDGMENTS, see JUDGMENT.****INTERMEDDLE, 11, 429****INTERMEDIATE, 11, 430**

Intermediate orders, 11, 430

Intermediate tolls, 11, 430

INTERNAL, 11, 430**INTERNAL COMMERCE, see INTERSTATE COMMERCE.****INTERNAL REVENUE, see REVENUE LAWS.****INTERNATIONAL LAW, 11, 431***See* ADMIRALTY; ALIENS; CHINESE; CONFLICT OF LAWS; COUNSELS AND AMBASSADORS; EXPATRIATION; EXTRADITION.*See generally, MILITARY LAW.**See* INSURRECTION; NATURALIZATION; SHIPPING; TREATIES; WAR.*Blockade, see BLOCKADE.*

Application of natural law, 11, 433

Armistice, 11, 474

Belligerent, 2, 165

Belligerent Rights, 11, 357; 28, 602

Civil war, 28, 603

Examples, 28, 602-604

Exemptions from civil responsibility, 28, 602

In general, 28, 602

Capitulation, 11, 475

Capture of Enemy's Property, 15, 417*See* INSURRECTION.

Constitutional power to confiscate, 15, 420

Cotton, 15, 419

Government's title to captured property, 15, 419

- Liability of officer or soldier, 15, 421, 422
 - Private property, 15, 417
 - What property may be seized, 15, 417
 - When property is "captured on land," 15, 420
 - Captures on navigable waters, 11, 478
 - Cartel, 11, 475
 - Common or customary, 11, 435
 - Communication between belligerents, 11, 474
 - Contraband of War**, 11, 476
 - Character, 11, 476
 - Contraband Articles**, 11, 477
 - Absolute and conditional contraband, 11, 477
 - Articles declared contraband, 11, 477
 - Gunpowder and other articles used in process of war, 11, 477
 - Impliments and munitions of war, 11, 477
 - Provisions, 11, 477
 - Forfeiture, 11, 476
 - Judicial notice, 12, 192
 - Jurisdiction of neutral state, 11, 477
 - Contracts with the enemy, 11, 461
 - Conventional Law**, 11, 436
 - See* TREATIES.
 - Confederacy, 11, 437
 - Customs, 11, 437
 - Definition, 11, 436
 - Equality, 11, 437
 - Declaration of War**, 11, 455
 - Beginning of war, 11, 455
 - Commerce suspended, 11, 456
 - Conditional, 11, 455
 - Disuse, 11, 455
 - Fact of war should be certain, 11, 456
 - Notification of war, 11, 455
 - War indicated, 11, 456
 - Whether war exists a political question, 11, 455
 - Definition, 11, 431
 - Divisions, 11, 432
 - Embargo Laws**, 11, 450
 - Confiscation of cargo, 11, 451
 - Construction and effect, 11, 452
 - Forfeiture for contravention, 11, 451
 - Intent to violate statute, 11, 451
 - Jurisdiction of admiralty, 11, 451
 - Nature, 11, 450
 - Necessity excusing violation, 11, 450
 - Reprisal, 11, 450
 - Equality, 11, 442
 - High seas*, *see infra*, JURISDICTION.
 - Insurgent**
 - See* INSURRECTION.
 - Acts of, 11, 355
 - Acts of war, 11, 355
 - Recognition, 11, 355
 - Subject of hostile state, 11, 355
 - International Fisheries**, 8, 28
 - Custom of Greenland as to whale fisheries, 8, 31
 - General usages of whale fisheries, 8, 31
 - Jurisdiction over sea, 8, 28
 - Navigable Waters**
 - Cannon shot, 8, 28
 - Jurisdiction over sea, 8, 28
 - Strikes whale first, 8, 31
 - Treaty between England and France, 8, 28
 - Treaty between United States and Dominion of Canada, 8, 29
 - Whale fisheries, 8, 30
 - What waters the treaties apply to, 8, 29
 - International intercourse, 11, 442
 - Judicial notice, 12, 162
 - Jurisdiction Over Sea**, *see* HIGH SEAS; NAVIGABLE WATERS.
 - Bays**
 - Chesapeake Bay, 8, 29
 - Cannon shot, 8, 28
 - Marine territory in general, 8, 29
 - Jurisdiction Over Tidal Waters**, 16, 247
 - Between enclosing headlands, 16, 248
 - Qualifications of the doctrine, 16, 247
 - Statutory extension, 16, 247
 - Where coast is indented, 16, 248
 - Letters of Marque and Reprisal**, 13, 265
 - Citizens of another state taking letters from one of the belligerents, 13, 266
 - Constitution of the United States, 13, 266
 - Definitions, 13, 265
 - Disuse, 13, 266
 - Municipal law, 13, 265
 - Preliminary to war, 13, 265
 - Treaties, 13, 265
 - Whether pirates, 13, 266
- Natural law**, 11, 433
- Natural right**, 11, 434
- Nature and effect**, 11, 434
- Neutrality**, *see* BLOCKADE.
- See infra*, CONTRABAND OF WAR.
- Neutrality Laws**, 11, 449, 466
 - Aiding belligerents, 11, 449
 - Breaking blockades, 11, 466
 - Charge and lade belligerent merchant vessel, 11, 468
 - Condemnation of vessels, 11, 449
 - Contraband trade, 11, 466
 - Fitting out vessels in contravention, 11, 449
 - Flag and pass of an enemy on neutral ship, 11, 466
 - Forfeiture for contravention, 11, 449
 - Impartiality to be observed, 11, 466
 - Neutral vessel chartered by enemy, 11, 466
 - Presumption against goods found on enemy's ships, 11, 466
 - Privateers, 11, 449
 - Vessel carrying enemy's property, 11, 466
 - Vessel fitted out and armed in neutral country, 11, 449
- Non-Intercourse Laws of United States**, 11, 452
 - Domestic insurrections, 11, 452
 - Later non-intercourse laws, 11, 453
 - License trade by president, 11, 452

INTERNATIONAL LAW—Cont'd**Non-Intercourse Laws of United States—
Cont'd**

Neutrals, 11, 453

President's authority, 11, 452

Secretary of treasury's authority, 11, 452

Transactions through agents, 11, 452

Passports, 11, 475; 18, 19

Piracy, 18, 461

Prize, 11, 484

Bonding prizes, 11, 487

Bringing prizes in, 11, 484

Capture of public vessels, 11, 484

Court ordering sale, 11, 487

Jurisdiction, 11, 485

Neutral state, 11, 485

Prize court sitting in belligerent country, 11, 486

State courts, 11, 486

Territorial nature of the military occupation, 11, 486

United States courts, 11, 486

Monition, 11, 489

Naval captures on land, 11, 488

Oath of prize master, 11, 485

Prize adjudications, 11, 485

Prizes in court, 11, 486

Prize statutes, 11, 488

Right in vessels captured rests in government, 11, 485

Sale, 11, 487

Shares and prize money, 11, 484

Testimony, 11, 489

Testimony in Preparatorio, 11, 489

Enemy character alone sufficient to condemn her, 11, 489

Further proof, 11, 489

Interrogatories to officers, 11, 489

Officers of captured vessel, 11, 489

When further proof is required, 11, 489

Public law, 19, 377

Ransom, 11, 475

Right of Search, 11, 467

Concealment of papers, 11, 468

Spoliation of papers, 11, 468

Rights of Property in Public War, 11, 457

Civil war, 11, 457, 458

Confiscation by criminal proceedings, 11, 461

Enemy's property in general, 11, 462

Enemy's property seized on land, 11, 458

Government's title, 11, 462

Neutral's partnership with enemy, 11, 463

Neutral's property, 11, 462

Practice of modern nations as to property on land, 11, 458

Question of confiscation for congress, 11, 459, 460

Right to appropriate enemy's property, 11, 457

Right to confiscate property in United States, 11, 458

Standing of enemy in court, 11, 461

Slave Trading, 11, 492

Statutory provision, 11, 492

Transportation, 11, 493

Treaties, 11, 492

Vessel prepared but not yet having engaged, 11, 493

When crime is complete, 11, 493

Sources of, 11, 438

Sovereignty, 11, 439

Attributes of, 11, 439

Definition, 11, 439

Of sovereign state, 11, 442

Equality and independence, 11, 442

Equity between sovereign states, 11, 440

Exercise of, 11, 440

Federation, 11, 440

Internal and external, 11, 440

In United States, 11, 439

Moral obligations, 11, 442

Organized people, a state, 11, 441

Qualification of, 11, 441

Rights of self-defense and preservation, 11, 442

"State" and "sovereignty," 11, 440

States in the Union, 11, 439

When a state is sovereign, 11, 439

Statutes

Construction of statutes to avoid conflict, 23, 349

Statute binding persons beyond territorial jurisdiction, 23, 348

Statute in conflict with, 23, 389

Trade Licenses, 11, 453, 463

Assignability, 11, 454

Due authority to issue, 11, 454

Fraud on part of trader, 11, 454

General and special license, 11, 453

Non-intercourse laws, 11, 452

Of vessels, 11, 454

Ship licensed to import specified goods, 11, 454

Strict compliance with, 11, 454

Violation of license, 11, 454

Voluntary law, 11, 436**War, see WAR.**

Debts, 11, 463

Enemy has no judicial standing, 11, 464

Intercourse under truce, 11, 465

No trade with enemy's allies, 11, 465

When neutral may recover his property wrongfully condemned as hostile, 11, 465

INTER PARTES, 17, 467**INTERPLEADER, 11, 494***See FORTHCOMING BOND; INTERVENTION.*

Affidavit, 11, 503

Auctioneer claiming commission, 11, 502

Bailment, where third person claims title to goods, 2, 62

Bill in nature of a bill of interpleader, 11, 506

Bill of, 6, 767

Affidavit, 6, 768

- Bringing property into court, 6, 768
 Demurrer, 6, 789
 In general, 6, 767
 Prayer, 6, 768
 Relief where bill cannot be sustained, 6, 769
 Vendee of personal property, 6, 768
 What should appear in bill, 6, 768
 When they lie, 6, 767
 Circumstances, 11, 499
 Claimants must claim adversely, 11, 501
 Collusion, 11, 503
 Conventional depositary compelling, 3, 577
 Costs, 4, 318
 Definition, 11, 494
Garnishment
 Assignee of bill or note, 8, 1178
 Ignorance as to validity of respective titles, 11, 501
 Justice of the peace, 12, 499
Parties, 11, 496
 Must Claim Same Thing, 11, 499
 Claims not necessarily co-extensive, 11, 500
 General rule, 11, 499
 Instances of different subject-matter, 11, 500
 Interpleader as to part of claim sued on, 11, 500
 Party seeking, acknowledging other claimant's title, 11, 501
 Party seeking, claiming interest in himself, 11, 501
 Plaintiff confessedly a wrongdoer, 11, 498
 Plaintiff must be in danger of having to discharge liability twice, 11, 499
Practice, 11, 502
 Affidavit against collusion, 11, 503
 Alleged ignorance as to validity of claims, 11, 502
 Bill in equity, 11, 502
 Costs, 11, 504
 Discharge of plaintiff, 11, 504
 Inquiry as to rights of claimant, 11, 504
 Judgment by default, 11, 504
 Motion at common law, 11, 502
 Necessity of affidavit, 11, 503
 Offer to pay or deliver subject-matter into court, 11, 503
 Stating applicant's rights, 11, 502
 Stating claims against applicant, 11, 502
 When application should be made, 11, 502
 Where defendants fail to interplead, 11, 504
 Res judicata, 21, 137
 Separate liability to both claimants, 11, 501
Sheriff's Interpleader, 11, 496
 In England, 11, 496
 In New York, 11, 496
 In North Carolina, 11, 496
 In Pennsylvania, 11, 496
Practice, 11, 505
 Conclusiveness of judgment, 11, 505
 Discretion of court as to issue, 11, 505
 Existence of a lien, 11, 505
 Failure of defendants to appear, 11, 505
 Necessity of actual claim, 11, 505
 Prompt action by sheriff, 11, 505
 Sale of goods, 11, 505
 Schedule of goods, 11, 505
Statutory Interpleader, 11, 495.
 In Alabama, 11, 495
 In America, 11, 495
 In England, 11, 495
 In Pennsylvania, 11, 495
 What is an action within meaning of the act, 11, 496
 Use at common law, 11, 494
Use in Equity, 11, 494
 How the equity originates, 11, 495
 Where claim is legal, 11, 495
 Where one claim is equitable and other is legal, 11, 495
 Where there are several independent claims, 11, 495
 Warehouse and warehouseman, 28, 661
 When not allowed, 11, 499
 Where claim has already been paid to one party, 11, 499
 Where judgment has been recovered on claim, 11, 499
Who May Be Made Defendants, 11, 497, 498
 Agents, 11, 498
 Foreigner outside jurisdiction, 11, 499
 General rule, 11, 497, 498
 Legates and devisees, 11, 498
 Tenants, 11, 498
Who May Have, 11, 496
 In general, 11, 496
 Instances, 11, 496
 Person other than party holding property, 11, 497
INTERPOSE, 11, 506
INTERPRETATION, 3, 762; 11, 507
 See EJUSDEM GENERIS; INTENT; WORDS AND PHRASES.
 "And" read "or" and vice versa, see AND.
 Construction of will and codicil, see CODICIL.
 Contract, see CONTRACTS.
 Deeds, see DEEDS.
 For construction of constitutions, see CONSTITUTIONS.
 Indemnity contracts, see INDEMNITY CONTRACTS.
 Insurance policy, see INSURANCE.
 Of bill of lading, see BILL OF LADING.
 Of bonds, see BONDS.
 Patents, see INFRINGEMENT.
 Shelley's case, see SHELLEY'S CASE.
 Statutes, see STATUTES.
Suretyship
 Contract of, see SURETYSHIP.
 Trusts, see TRUSTS AND TRUSTEES.
 Verdict, see VERDICT.

INTERPRETATION—*Cont'd**Warranty*, see **WARRANTY**.*Wills*, see **WILLS**.

Affidavits, 1, 314

Competency, 11, 525

Condition of Parties and Surrounding

Circumstances, 11, 512

General rule, 11, 512

Two interpretations, 11, 513

Construction of charter-party, 3, 150

Constructive delivery, 21, 550

Constructive possession, 18, 842

Covenant, 4, 469See **REAL COVENANTS**."And" to mean "or," and vice versa,
4, 470Construction should be favorable to
party in whose favor covenant is
made, 4, 470

Grammatical sense, 4, 470

In general, 4, 469-471

Intention of the parties to be ascer-
tained from instrument itself, 4, 470Practical interpretation by parties
themselves, 4, 470

Punctuation, 4, 470

Regard to be had to situation and cir-
cumstances of parties, 4, 470Subject to same rules of construction
as deed itself, 4, 471

Void for uncertainty, 4, 470

Where covenant may inure in several
ways, 4, 470

Where words are repugnant, 4, 470

Whether dependent or independent
depending upon intention of parties,
4, 476

Whether joint or several, 4, 508

Definition of interpretation, 11, 507

Effect given to every expression in in-
strument, 11, 515

Exceptional construction, 23, 417

Exemption from execution, 7, 130

Intention of the Parties, 11, 511See **INTENT**; and see various refer-
ences at the head of this title.

Common intent, 11, 512

General rule, 11, 511

Objects which the writing was to ac-
complish, 11, 512Prevail over particular words, 11,
511The language of a writing ambiguous,
11, 512**Law Governing**, 11, 520Contract made in one place to be per-
formed in another, 11, 521Instrument affecting personal property,
11, 521

Intention of parties, 11, 520

Law of domicile, 11, 521

Law of place where instrument was
made, 11, 520

Letter of credit, 13, 250

Libel and Slander, 13, 378, 383

After verdict, 13, 381

Circumstances of case, 13, 384

Circumstances under which words
were uttered, 13, 378

Considering words as a whole, 13, 384

Doctrine of *mitiori sensu*, 13, 381

Equivocal words, 13, 380

Examples, 13, 378-386

Function of judge and jury, 13, 381

Generally, 13, 378, 379

Hieroglyphics, 13, 383

Intent of Speaker, 13, 385

Ambiguous language, 13, 385, 386

Whether material, 13, 385

Intricate illusions, 13, 383

Jest, 13, 385

Question for judge, 13, 381

Question for jury, 13, 379

Reading whole libel to jury, 13, 384

Sense in which words would natu-
rally be understood, 13, 379Upon motion of arrest of judgment, 13,
381Words capable of two constructions,
13, 379

Words clear and unambiguous, 13, 382

Words not in English, 13, 383

Words taken in their ordinary mean-
ing, 13, 378**Marriage Settlements**, 14, 550, 567

Examples, 14, 550

Favor of issue, 14, 549

Intent of parties, 14, 550

Postnuptial settlements, 14, 567

Noscitur a sociis, 16, 751

Of by-laws, 2, 711

Of Grants, 9, 45

General rule, 9, 45

Intent of parties, 9, 45

Necessity of the word "grant" in a
deed, 9, 45Public grants construed in favor of
public, 9, 45, 56Whether construed more strongly
against grantor, 9, 45**Ordinances**, 17, 264Contemporaneous construction, 17,
265

General welfare, 17, 264

In favor of effect, 17, 265

In favor of validity, 17, 265

Limitation of corporate authority, 17,
265

Penal ordinances, 17, 264

Reasonable construction, 17, 264

Same as for the construction of stat-
utes, 17, 264

Title, 17, 265

Void in part, 17, 265

Pardon, 17, 329**Parol Evidence**, 17, 450

Explaining illegible writing, 17, 450

Explaining Meaning of Terms, 17, 450

Evidence to rebut an equity, 17, 453

Examples, 17, 450, 452

Explaining circumstances of the
case, 17, 452

In general, 17, 450

Limitation, 17, 452

- Popular words in a different sense, 17, 451
- Scope of the rule, 17, 451
- Special meaning attached to a word, 17, 451
- Subsequent acts of parties, 17, 453
- Subsequent declarations of parties, 17, 453
- Where language has a fixed meaning, 17, 453
- Word having well understood meaning, 17, 451
- Words of arts or trades, 17, 451
- Words of technical or local signification, 17, 451
- Partnership Articles, 17, 904**
- As between the parties, 17, 904
- Binding effect of change, 17, 905
- Change by express agreement, 17, 905
- Change by usage, 17, 905
- Construction of Particular Provisions, 17, 906**
- Absence on account of sickness, 17, 907
- Agreement to advance partnership property, 17, 907
- Annuity to widow, 17, 908
- Division of profits, 17, 906
- Executor's right to investigate state of partnership, 17, 908
- Inability to pay debts, 17, 911
- Insolvency, 17, 911
- Inventory, 17, 911
- Liability of executor, 17, 908
- Losses by fire or otherwise, 17, 907
- No dissolution in case of death, 17, 908
- Penalty, 17, 910**
- As liquidated damages, 17, 910
- Enforcement, 17, 910
- Important provisions, 17, 910
- What covered by, 17, 910
- Profits**
- Meaning of the Term "Profits," 17, 906
- Expenditures, 17, 907
- Gross profits, 17, 907
- Net profits, 17, 906
- Provision for Expulsion of Partner, 17, 910**
- Accounting, 17, 910
- Necessity of express provision, 17, 910
- Opportunity to explain, 17, 910
- Strictly construed, 17, 910
- Who may exercise the power, 17, 910
- Provision that neither party shall sell without the consent of all others, 17, 911
- Provision that partners bear their own expenses, 17, 908
- Provision that shares may be taken by co-partner, 17, 911
- Right to carry on other business, 17, 907
- Sale of shares, 17, 911
- Stipulation for the withdrawal of funds, 17, 907
- Submission of Disputes to Arbitration, 17, 908**
- Agreement to that effect, 17, 908
- Assumption of indebtedness, 17, 909
- Dissolution, 17, 909
- Effect, 17, 908, 909
- Payment of indebtedness, 17, 909
- Revocation, 17, 909
- Whether pendency is a defense in equity, 17, 909
- Winding up, 17, 909
- Where one partner furnishes the capital, 17, 907
- In general, 17, 904
- Intent of parties, 17, 905
- Interpretation by conduct of parties, 17, 905
- Notice of opportunity to be heard, 17, 905
- Provisions not acted upon, 17, 905
- Waiver, 17, 904
- Patent Law**
- Assignment, 18, 132
- Powers, 18, 895**
- Examples, 18, 895
- General and particular intent, 18, 895
- General rules of appointment, 18, 895
- Illegal or impossible estate, 18, 896
- In general, 18, 895
- Instances of construction, 18, 896
- Intent of donor, 18, 895
- Purpose to be accomplished, 18, 895
- Practical construction, 11, 518; 19, 1
- Public grants, 9, 45, 56
- Punctuation as a means of interpretation, 11, 521
- Questions of Law and Fact, 11, 241; 19, 646**
- Contracts, 11, 241
- Deeds, 11, 241
- Parol contracts, 11, 242
- Records, 11, 241
- Spoken Language, 19, 656**
- Functions of court, 19, 657
- Functions of jury, 19, 656
- In general, 19, 656
- Legal effect of words, 19, 657
- When for the judge, 11, 241
- When for the jury, 11, 241
- Where written contract requires parol explanation, 11, 241
- Whether error to submit written contract to jury, 11, 241
- Wills, 11, 241
- Written Language, 19, 646**
- Abbreviations, 19, 652
- Ambiguities, 19, 652
- Appointments, 19, 651
- Awards, 19, 651
- Blanks, 19, 655
- Bonds, 19, 650
- By-laws, 19, 648
- C. O. D., 19, 952
- Collateral facts, 19, 652, 654

INTERPRETATION—Cont'd**Questions of Law and Fact—Cont'd****Written Language—Cont'd**

- Constitutional provisions, 19, 647
- Contracts, 19, 648
- Deeds, 19, 650
- Effect of instrument, 19, 652
- Extrinsic circumstances, 19, 653
- Foreign laws, 19, 647
- Function of court, 19, 646
- Functions of jury, 19, 653
- Illegible writing, 19, 655
- Inferences, 19, 654
- Instructions upon legal effect of instrument, 19, 653
- Leases, 19, 651
- Legal terms, 19, 652
- Meaning of ordinary words and phrases, 19, 651
- Miscellaneous writings, 19, 651
- Omissions, 19, 655
- Ordinances, 19, 648
- Parol evidence, 19, 653
- Pleadings, 19, 648
- Receipts, 19, 651
- Records, 19, 648
- Statutes, 19, 647
- Submission to jury, 19, 646
- Sunday laws, 19, 647
- Technical terms, 19, 652
- Treaties, 19, 648
- Whether deed absolute as a mortgage, 19, 650
- Wills, 19, 651
- Rules of evidence, 11, 508
- Rules of grammar, 11, 516
- Rules of interpretation of a contract, 3, 561
- Statutes distinguished from wills, 11, 522
- Statute*, see **STATUTES**.
- Synonymous with construction, 11, 507
- Technical Words**, 11, 515
 - Expert and opinion evidence, 7, 513
- The Law of the Land**, 1, 510
 - Contracts construed in accordance with, 11, 510
 - Law in force at time the writing was entered into, 11, 511
 - Legal preferred to illegal interpretation, 11, 511
 - Writings construed in accordance with, 11, 510
- Where instrument is free from doubt, 11, 511
- Whole Writing to Be Considered**, 11, 513
 - Agreements made at the same time, 11, 514
 - General rule, 11, 513
 - Identification of another paper by parol evidence, 11, 515
 - Reference to another paper, 11, 514
- Words Construed Most Strongly Against Party Using Them**, 11, 517
 - Examples, 11, 517
 - General rule, 11, 517
 - Party stipulating payment of debt, 11, 517

- Words to be taken in their ordinary or popular sense, 11, 515
- Written words controlled by printed, 11, 516

INTERPRETER, 11, 523

- Acknowledgment**, 1, 149
 - Examination of married women, 1, 166
- Appointment**, 11, 523
 - By court, 11, 524
 - Unreviewable, 11, 524
- Between parties, 11, 525
- Deaf and dumb person, 11, 525
- Definition, 11, 523
- Depositions, 5, 598
- Foreign commissions, 11, 524
- Judicial power, 11, 526
- Necessity that translations be under oath, 11, 524
- Next friend as, 11, 525
- Oath, 29, 766
- Privileged communications, 11, 526
- Statutes providing for appointment, 11, 523
- Whether accuracy may be impeached, 11, 525
- Whether an agent or witness, 11, 525
- Wife as, 11, 525
- Witness as interpreter before grand jury, 11, 525

INTERROGATORIES, 11, 526

- See **BILL IN EQUITY**; **BILL OF DISCOVERY**; **BILL TO TAKE TESTIMONY DE BENE ESSE**; **GARNISHMENT**.
- See *generally*, **DEPOSITIONS**.
- See **LETTERS ROGATORY**.
- As to open commission in *New York*, see **OPEN COMMISSION**.
- At Law, 11, 534
 - Compelling answers, 11, 535
 - Default, 11, 535
 - Evasive answer, 11, 537
 - In Alabama, 11, 535
 - Interrogatories bad in part, 11, 536
 - Order dismissing plaintiff's suit for failure to answer, 11, 535, 536
 - Ordering non-suit, 11, 535
 - Substantial answer, 11, 537
 - Vague or irrelevant interrogatories, 11, 536
- Bill in Equity**
 - Appended to, 1, 602
 - Necessity of answering, 1, 602
- Definition, 11, 526
- Demurrer to, 5, 564
- In contempt proceedings, 3, 792
- In Equity, 11, 527
 - Averments necessary as bases, 11, 528
 - Coinciding with charging part of bill, 11, 528
 - Compelling discovery of distinct matters, 11, 528
 - Cross suits, 11, 532
 - Defendant answering though not bound to do so, 11, 528
 - Evasion by literal answers to bill, 11, 527
 - Filing and serving, 11, 531

- In Cases of Demurrer or Amendment to Bill**, 11, 530
 Filing interrogatories after amendment, 11, 531
 New defendants, 11, 531
 Re-answering interrogatories, 11, 531
 Special application for leave to interrogate original defendants, 11, 531
 Whether demurrer will relieve plaintiff of filing interrogatories, 11, 530
 In England, 11, 532
Matter Material to Plaintiff, 11, 534
 In foreclosure bills, 11, 534
 In general, 11, 534
 Stenographic notes in evidence, 11, 534
Matter Relating to Defense, 11, 534
 Stenographers, 11, 534
 Stenographic notes in evidence, 11, 534
 Matters incidental to facts alleged in bill, 11, 528
 Must relate to some fact charged in bill, 11, 528
 Necessity of interrogatories, 11, 530
 Necessity of order of court, 11, 531
 Origin, 11, 527
 Printed bill, 11, 531
 Purpose, 11, 527
 Refreshing respondent's recollection, 11, 527
 Second set of interrogatories, 11, 531
 Statement in bill inserted merely as evidence, 11, 529
 Subject-matter, 11, 534
 Supplying defects in charging part of bill, 11, 528
 Where time has expired, 11, 531
 Master in chancery, 14, 926
Who May Be Interrogated, 11, 532
 English practice as to criminalizing matter, 11, 533
 Guardian ad litem, 11, 532
 Matters within knowledge of party's servant, 11, 533
 Parties criminalizing themselves, 11, 533
 Usury, 11, 533
INTERRUPT, 11, 538
INTERRUPTION, 11, 538
INTERSECT, 11, 538
 Equivalent to cross, 4, 905
INTERSECTION
 Distinguished from crossing, 19, 868
INTERSTATE COMMERCE, 11, 539
See FREIGHT; RAILROAD COMMISSIONERS; SLEEPING CARS.
Commercial Travelers
License, see COMMERCIAL TRAVELERS.
Shipping regulations, see SHIPS AND SHIPPING.
State regulation of railroads, see RAILROADS.
 Admiralty jurisdiction, 1, 195
 Among the several states, 11, 539
 Bill of lading, 11, 544
 Bills of exchange, 11, 544
Bridges Over Navigable Waters, 11, 542, 560
 Whether power of congress exclusive, 11, 546
Connecting Carriers, 8, 965; 11, 561
 Fast freight line, 8, 965
 Meaning of term "same line," 8, 965
 Violation of long and short haul clause, 8, 965
 Constitutionality of statutes forbidding importation of cattle supposed to be diseased, 1, 587; 11, 558
 Contracts, 11, 545
Definition, 11, 539
 Among the several states, 11, 539
 Examples of interstate commerce, 11, 540
Discrimination, see generally, FREIGHT.
Between Particular Localities, 8, 957
 How reasonableness of rates determined, 8, 958
By State, 11, 548
 Requiring license as to merchandise grown or manufactured without state, 11, 548
 Taxing peddlers, 11, 548
 Depending upon distance goods are carried, 8, 960
 Express companies, 7, 580; 13, 523
Federal Control of Railroads, 19, 894
 Congressional power over specific railroads, 19, 894
 Examples, 19, 894, 895
 In general, 19, 894
 Rendering services to federal government, 19, 894
 Sinking fund, 19, 895
Ferries, 11, 542
 Constitutionality of license law, 13, 526
Foreign Corporation, 8, 368; 11, 548
See infra, TAXATION.
 Exclusion of, 11, 548
 In Alabama, 11, 548
 In Iowa, 11, 548
 Police regulations, 8, 368
 Whether insurance companies are within law, 8, 368
Game Laws, 8, 1029; 11, 558
 In Illinois, 8, 1029
 In Massachusetts, 8, 1030
 In Michigan, 8, 1031
 In New York, 8, 1030
 Possession of game within prohibited period, 8, 1029-1031
 Prohibiting sales of game within state, 8, 1029
 Statute prohibiting transportation of game from one state to another, 8, 1029
 Insurance, 8, 368, 373; 11, 544
Interstate Commerce Act, 11, 559
 "Arrangement," 11, 561
 Bridge company, 11, 560

INTERSTATE COMMERCE—Cont'd**Interstate Commerce Act—Cont'd**

- Carrier by water, 11, 559
- Carriers subject to its jurisdiction, 11, 559
- Commission authorizing rates, 11, 563
- Competition**, 8, 963
 - Act not intended to destroy, 8, 964
 - Canadian competition, 8, 965
 - Limitation upon prohibition of statute, 8, 964
 - Of the long haul, 8, 964
 - One railroad longer than other, 8, 964
 - Possible water, 8, 964
 - Railroads subject to statute, 8, 963
 - With carriers by water, 8, 963
 - With foreign or other railroads, 8, 963
 - With railroad not subject to interstate commerce act, 8, 964
- Connecting lines, 8, 965; 11, 561
- Constitutionality of the act, 11, 559
- "Control," 11, 560
- Definition, 11, 541
- Discretion of the commission, 11, 563
- Discrimination, 11, 561
- Duties of commission, 11, 564
- Exceptions to the act, 11, 561
- Express carriers, 11, 559
- Facilities to other companies, 11, 562
- Foreign carriers, 11, 560
- Grouping of stations, 11, 563
- "Other carriers," 11, 559
- Pleading, 11, 562, 564
- Preferences, 11, 562
- Prejudice, 11, 562
- Provisions of the act, 11, 559-564
- "Railroad," 11, 560
- Rebates, 11, 561
- Schedules, 11, 563
- Special rates, 11, 561
- "Substantially similar circumstances and conditions," 11, 563
- The commission not a court, 11, 564
- "Transportation," 11, 560
- Unjust discrimination, 11, 561
- Unreasonable rates of carriage, 11, 561
- Intoxicating Liquors**, 11, 558, 603
 - Discrimination, 11, 604
 - Discrimination against imported wine, 11, 605
 - Effect of state law, 11, 603
 - Exclusive power of congress, 11, 603
 - Home products, 11, 604
 - Illegal discrimination, 11, 605
 - License to sell issued only to residents of state, 11, 605
 - Local option, 11, 621
 - Manufacturer intending to export into other states, 11, 604
 - Ordinances of municipality, 11, 629
 - Prohibiting the introduction of imported liquors, 11, 603
 - Sale in original package, 11, 603
 - Separating unconstitutional from constitutional part of law, 11, 605
- Original package, 17, 275

Passes, 25, 1101

- Examples, 25, 1101
- Family of employee, 25, 1101
- Illegal pass, 25, 1101
- In general, 25, 1101
- Provisions of the act, 25, 1101
- Police Power**, 18, 761
 - Original package decision, 18, 761
 - Wilson bill, 18, 762
- Power of Congress**, 11, 540
 - Bills of exchange, 11, 544
 - Bills of lading, 11, 544
 - Bridges over navigable waters, 11, 543
 - Character of goods, 11, 543
 - Commerce transacted by corporations, 11, 544
 - Commerce transacted by individuals, 11, 544
 - Contracts, 11, 545
 - Control of Vessel**, 11, 542
 - See SHIPS AND SHIPPING.
 - Ferries, 11, 542
 - Genuineness of goods, 11, 543
 - Manner in which goods are put up for transportation, 11, 543
 - Navigable waters, 11, 542
 - Navigation, 11, 541
- Over Interstate Commerce**
 - Constitutional provision, 11, 540
 - In general, 11, 540
 - Policies of insurance, 11, 544
 - Railroads, 11, 543
 - Regulation of contracts of a particular business or trade, 11, 541
 - Scope of term "interstate commerce," 11, 541
 - Telegraph lines, 11, 543; 25, 818
 - Traffic, 11, 544
- When Exclusive and When Not**, 11, 545
 - Bridges over navigable waters, 11, 546
 - Communication, 11, 546
 - Effect of non-exercise of power, 11, 546
 - National subjects, 11, 545
 - Subjects of local importance, 11, 546
 - Things which admit of one uniform system only, 11, 545
 - Traffic, 11, 546
 - Transportation, 11, 546
- Prohibition against levying duties upon imports or exports, 3, 704
- Quarantine, 19, 595
- Railroad pools, 19, 962.
- Railroads**, 11, 543
 - See *infra*, **FEDERAL CONTROL**.
- Regulations by State**, 11, 557
 - As to game, 8, 1029; 11, 558
 - As to health, 11, 558
 - As to inspection, 11, 558
 - Carriage between points in same state, by route lying in another state, 11, 553
 - Carrier operating entirely within one state although a means of interstate commerce, 11, 553

- Confined to distance traveled within state, 11, 555
- Discriminating in favor of vessels of another state, 11, 552
- Examples of regulations as to railroads, 11, 557
- Examples of state regulations, 11, 556
- Granting monopolies, 11, 552, 554
- Grant of ferry license, 11, 556
- Importation of cattle, 1, 587; 11, 558
- Interference by state, 11, 554
- Laws incidentally affecting interstate commerce, 11, 555
- License, 13, 520
- Liquor traffic, 11, 558, 603
- Matters of a local nature, 11, 555
- Matters subject to exclusive control of congress, 11, 552
- Police power of state, 11, 554
- Sunday laws, 11, 554; 24, 532, 536
- The granger cases, 8, 918; 11, 553
- Wharves, 11, 556
- Right of interstate travel, 3, 709
- State Freight Statute as Affecting**, 8, 918
 - Exclusive power of congress, 8, 919
 - Goods consigned and delivered within limits of a state, 8, 919, 920
 - Granger cases, 8, 918; 11, 553
 - In absence of legislation of congress, 8, 919
 - Police regulations, 8, 921
 - Proportionate to freight, 8, 920
- Regulation of Corporation**, 8, 920, 921
 - Of state's own creation, 8, 920, 921
- State corporation in interstate commerce, 8, 919-921
- Where carrier does not cross state line, 8, 921
- Where carrier limits his responsibility to state line, 8, 921
- Where part only of carriage was within state, 8, 920
- Sunday, 11, 554; 24, 532, 536
- Taxation**, 11, 548; 25, 27
 - After passengers arrived at port of destination, 25, 30
 - Business and privilege tax, 11, 549; 25, 28
- Capital Stock Taxes**
 - Interstate corporations, 25, 644
- Capital within jurisdiction of taxing power, 25, 38
- Commercial intercourse with foreign nations, 25, 28
- Delayed or interrupted transit, 25, 30
- Direct taxation upon property as such, 25, 38
- Discrimination between property engaged in interstate commerce and other property, 25, 38, 39
- Drummer's license tax, 11, 549; 25, 28
- Foreign corporations, 25, 660
- Generally, 25, 27
- How long exemption continues, 25, 30
- Imposing taxes on interstate commerce, 11, 549
- Indian tribes, 25, 30
- In proportion to distance traveled in states by passengers, 11, 551
- Instruments of commerce, 25, 38
- License of foreign corporation, 8, 373; 11, 549
- Mode in which tax is laid, 25, 28
- Navigation, 25, 28
- Occupation, business, and privilege taxes, 11, 550; 25, 479
- Of Foreign Corporations**, 8, 369; 25, 33
 - Corporate shares of non-residents, 8, 370
 - Foreign insurance companies, 8, 373; 11, 544
 - Franchise taxes of railroad companies, 8, 374
 - General liability, 8, 369
 - General rule as to regulations of interstate commerce, 8, 371
 - Goods and merchandise in transportation, 8, 371
 - Kentucky act, 8, 373
 - Licensing foreign corporations, 8, 373; 11, 549
 - Locomotive engineers, 8, 372
 - Method of assessment, 8, 369
 - Passenger traffic, 8, 371; 25, 31
 - Scope of limitations and state's power, 8, 371
 - Sewing machine companies, 8, 373
 - Statutory liability of agent, 8, 371
 - Stockholder's interest in shares, 8, 370
 - Taxation upon a different principle than that applied to domestic corporations, 8, 370
 - Taxes upon rolling stock, 8, 374
 - Transmission of telegrams, 8, 371, 372
- Of property of individual or corporation engaged in interstate commerce, 11, 552
- Of receipts, 11, 551
- Passenger Taxes**, 8, 371; 25, 31
 - Coming into the state, 25, 31
 - Going from state to state, 25, 31
 - In general, 25, 28
 - Leaving the state, 25, 31
 - Passing through the state, 25, 31
 - Specific tax upon passenger carriers, 25, 31
 - Unconstitutional, 25, 31
- Police laws, 25, 29
- Power of national government, 25, 27
- Property in the original package, 25, 30
- Property not actually shipped, 25, 30
- Property that has acquired situs for taxation, 25, 40
- Railroads, 25, 28, 33, 658
- Regulations of internal commerce, 25, 29
- Requirement that bonus should be paid by corporation to state, 25, 29
- Rolling stock, 25, 655
- Sales by sample, 11, 549

INTERSTATE COMMERCE—Cont'd**Taxation—Cont'd**

Ships, 25, 28

Sleeping and parlor cars, 11, 552

State tax on railroad gross receipts, 11, 551

Taxes Upon Freight, 25, 31

Constitutionality, 25, 31, 32

Examples, 25, 31

In general, 25, 31

Taxes Upon Privileges, Franchises, Gross Receipts, Capital of Corporations, etc., 8, 369; 25, 33

Apportionment of taxation upon gross receipts, 25, 36

Attempt by state to evade constitutional restrictions, 25, 33, 34

Avocations and employments pursued in the state, 25, 34

Business itself outside the state, 25, 35

Business relating to interstate commerce, 25, 35

Franchise tax measured by capital stock, 25, 37

Franchise tax measured by gross receipts, 25, 37

Gross receipts earned partly within and partly without the state, 25, 36

Gross receipts received from interstate commerce, 25, 35

In general, 25, 33

Mercantile agencies, 25, 35

Relay of tax upon interstate commerce, 25, 34

Stipulation inserted in charter, 25, 33
Where subjects of taxation can be separated, 25, 37

Where the franchise exists because of the interests of commerce, 25, 34

Taxes upon the means by which interstate commerce is transacted, 11, 552; 25, 28, 32

Tax on capital of corporation proportionate to capital, 25, 39

Tax upon carrier, 25, 28

Tax upon goods carried, 11, 549

Tax upon messages sent to or from other states, 11, 550

Tax upon passengers, 11, 549

Tax upon the property, 25, 28

Telegraph and Telephone, 25, 32, 871

Examples, 24, 871-873

Government business, 25, 873

Privilege license tax, 25, 873

Property of company, 25, 873

Tax cannot be collected by injunction, 25, 874

Tax on capital stock, 25, 874

Tax upon all messages, 25, 871

Tax upon gross receipts, 25, 872

Whether the sending of messages from one state to another is commerce, 25, 871

Telegraph and telephone communications, 11, 550; 25, 28

Toll for the use of improvements, 25, 39

Transportation of persons, 25, 28

Transportation of property, 25, 28

Unconstitutional exercise by state of power to tax, 25, 27

Vessel engaged in interstate commerce, 11, 552

When exemption attaches, 25, 30

Where domestic commerce is subject to same tax, 11, 549

Where property has no taxable situs, 25, 39

Telegraphs and Telephones, 8, 374; 11, 543; 13, 523; 25, 32, 769, 818, 871*See infra*, **TAXATION**.**Interstate Messages****Liability of Company**, 25, 818

Action by addressee, 25, 818

Breach of duty occurring in another state, 25, 818

Initial and terminal point in the same state, 25, 819

Initial or terminal point in different state, 25, 818

Liability for negligence, 25, 818

Recovery of damages, 25, 818

Statutory penalty, 25, 818

Jurisdiction of state, 25, 769

Regulation of charges, 25, 772

Rules in general, 25, 769

INTERVAL, 11, 565**INTERVENE**, 11, 565**INTERVENING DAMAGES**, 11, 565**INTERVENTION**, 17, 633*See* **INTERPLEADER**.**Actions**

Affecting real property, 17, 641

Against officer for property attached, 17, 645

At law, 17, 633

In equity, 17, 633

To recover real or personal property, 17, 637

Adequacy of remedy by intervention, 17, 640

Appeal, 17, 648

Assignees, 17, 643

Assignees pendente lite, 17, 633

Assignor retaining an interest, 17, 643

At common law, 17, 633

Attachment

Actions against officers, 17, 645

Proceedings, 17, 643

Creditors in an action against their debtors, 17, 644

Demurrer, 17, 648

Deposit in savings bank, 17, 636

Dismissal of petition, 17, 649

Dismissal of suit, 17, 649

General intervention by statute, 17, 639

In absence of express statutes, 17, 634

In absence of statutory provisions, 17, 634

In actions against sheriffs, 17, 635

In actions for money or chattels, 17, 635

In Louisiana, 17, 637

- In Massachusetts, 17, 636
 In Texas, 17, 639
 Interest of intervenor defined, 17, 639
 Interpleader, 17, 641
 Intervenor must bring himself within the statute, 17, 641
 Intervention bound by record, 17, 646
 Intervention of third party in attachment, 17, 636
 Intervention under procedure acts, 17, 634
 Mortgages of personalty, 17, 642
 Motion to dismiss, 17, 648
 Necessity of intervenor being interested in the subject of the action, 17, 637
 Notice of, 17, 647, 648
 Owner of claim sued upon, 17, 644
 Partners, 17, 644
 Petition, 17, 647
Proceedings to Enforce Liens, 17, 642
 Other lienors, 17, 642
 Parties claiming title, 17, 642
 Simple creditors, 17, 642
 Quo warranto, 17, 640
 Res adjudicata, 17, 645; 21, 137
 Simple creditors, 17, 643
 Statute of limitations, 17, 647
 Statutes upon subject, 17, 634
 Stipulation (in admiralty), 23, 580
 Substitution, 17, 641
 Summary of statutes, 17, 635-639
 Sureties, 17, 644
Taxpayers, 17, 644
 Proceedings by and against municipality, 17, 644
 Proceedings to enjoin collection of taxes, 17, 644
 Time when party may intervene, 17, 647
 Title to realty directly involved, 17, 641
 Under attachment or execution proceedings, 17, 635
 Waiver, 17, 648
 Warrants, 17, 644
What Intervenor May Not Do, 17, 646
 Changing form of proceedings, 17, 646
 Delaying suit, 17, 646
 Objecting to regularity of proceedings, 17, 646
 Raising new issues, 17, 646
 What intervenor may do, 17, 646
 Whether discretionary, 17, 648
 Whether existence of another remedy a bar to, 17, 640
 Whether statutes compulsory, 17, 640
INTER VIVOS, see GIFTS.
INTESTACY, see ESCHEAT; SUCCESSION.
INTESTATE, 11, 665
INTESTATE LAWS, see SUCCESSION.
IN THE VICINITY, 25, 520
INTIMATE, 11, 565
INTIMIDATION, 11, 565
 See DURESS; THREATS.
INTIMIDATION OF VOTERS, see ELECTIONS.
INTO, 11, 566
 Into court, 11, 566
 Into port, 11, 566
 Into the state, 11, 566
 Into, through, or under, 11, 566
INTOXICATING LIQUORS, 11, 567, 571
 See CIVIL DAMAGE ACTS; DRUNKENNESS; HABITUAL DRUNKARDS; LOCAL OPTION; TIPPLING HOUSE.
As to the recovery of damages from sellers by family of drunkard or other persons injured by drunkard, see CIVIL DAMAGE ACTS.
 Adulteration, 11, 739
Agency
 Liability of principal, 1, 412; 11, 718
 Sale to minors, 11, 718
 Aiders and abettors, 11, 718
 Alcohol, 11, 579
 Ale, 11, 578
 Conflict of authority, 11, 578, 579
 Mixture, 11, 579
 Whether intoxicating, 11, 578
 Whether spirituous, 11, 578
Appeal
 License, 11, 664
 General rule, 11, 664
 Issue, 11, 667
 Jurisdiction, 11, 664
 Nature and effect of appeal, 11, 666
 Parties, 11, 666
 Provision for appeal provided by statute, 11, 665
 Remand, 11, 667
 Right of appeal, 11, 664
 Service of notice, 11, 666
 Supersedeas, 11, 666
 Virginia statute, 11, 665
 What will be considered, 11, 667
 Where record is without fault, 11, 664
 Whether action reviewed on appeal, 11, 664, 665
Who May Appeal, 11, 666
 Citizens, 11, 666
 Party entitled to license, 11, 666
 Signers of counter petition, 11, 666
 Revocation of license, 11, 679
Application of Statute
 To particular localities, 11, 612
 To particular times, 11, 612
 To retail and wholesale business, 11, 611
Appointment of excise commissioners, 11, 652
Article
 Not capable of being used as an intoxicating drink, 11, 576
 Of food, 11, 578
 Sold not changed in character, 11, 577
Beer, 11, 579
 Definition of, 2, 161
 Fermented beer, 11, 580
 Judicial notice by court, 11, 580
 Presumption, 11, 580
 Strong, 11, 580
 Where statute does not mention beer, 11, 580
 Whether intoxicating, 11, 579

INTOXICATING LIQUORS—Cont'd**Beer—Cont'd**

Whether it falls within the words
"strong or spirituous liquors," 11,
579

Bill of particulars, 11, 770

Bitters, 11, 574, 577

Blackberry wine, 11, 582

Bonds, 11, 679

See infra, LICENSE.

Acceptance, 11, 680

Approval, 11, 680

Condition precedent to issuance of
license, 11, 679

Damages for breach, 11, 682

Discharge of sureties, 11, 682

Druggists, 11, 679

Form, 11, 680

How avoided, 11, 682

Keeping open on Sunday, 11, 681

Liability of sureties, 11, 682

Necessity, 11, 679

Payable to state, 11, 680, 681

Penalty in blank, 11, 681

Restraints additional to those imposed
by statute, 11, 681

Validity, 11, 680

What constitutes a breach, 11, 681

Whether acceptance can be compelled
by mandamus, 11, 680

Bottles, 2, 482

Distinguished from demijohn, 2, 482

Brandy peaches, 11, 578

Building

What is within the statutes, 2, 602

Burden of Proof, 2, 653; 11, 599

Where sale without license is alleged,
2, 653

Carriers, 11, 741

Certain per cent. of alcohol, 11, 572

Certiorari

License, 11, 664

Refusal to hear remonstrance, 11,
664

When writ may be awarded, 11,
664

Where no objection was raised at
time of granting, 11, 664

Champagne wine, 11, 582

Cider, 11, 578, 581

Civil action, 11, 757

Clubs, 9, 929; 11, 727; 22, 810

As a device for evading revenue laws,
11, 728; 22, 811

Conflict of authority, 22, 810-813

Liability of members, 22, 810

Liability of officers, 11, 727; 22, 810

Whether liable, 22, 810

C. O. D. deliveries, 11, 741, 742; 21, 511

Complaint, *see infra*, INDICTMENT.

In criminal form, 11, 757

Setting out names of parties to whom
liquor is sold, 11, 406

Condition in deed, 13, 782

Conflict of Laws, 3, 556; 9, 924; 11, 740

Contract for sale of intoxicating liquors,
3, 556

Intent of purchaser and knowledge and
aid of vendor, 3, 557; 9, 925

Sale valid by laws of state where made,
but invalid by laws of state where
delivered, 3, 556

Where sale is not completed in state
where it is made, 3, 558

Where transaction is completed in one
state, where sale is legal, 3, 557

Constitutionality of Statutes, 11, 592

See infra, REGULATION AND CON-
TROL BY STATE; TAXATION.

Local and special laws, *see* LOCAL
OPTION.

Absolute prohibition of manufacture of
liquor, 11, 583

Absolute prohibition of sale, 11, 583

Compensation, 11, 602

Constitutionality of state regulations,
11, 583

Constitutionality of statutes control-
ling, 11, 583

Cumulative penalty, 11, 594

Defective title, 11, 593

Defense of unconstitutionality, 11, 592

Designating individuals, 11, 605

Due Process of Law, 11, 584, 595

Examples, 11, 596

Examples of unconstitutional laws,
11, 597

General rule as to constitutionality
of statutes, 11, 595

Prohibiting manufacture, 11, 596

Whether prohibition deprives, 11, 595

Equal protection of laws, 11, 584

Excessive fines, 11, 594

Ex post facto laws, 7, 529; 11, 593

Forfeiture, 11, 594

Fourteenth amendment, 11, 584

Increased punishment for second of-
fense, 11, 594

In general, 11, 592

Local option, 11, 617

Not generally uniform, 11, 606

Notice, 11, 598

Nuisance, 11, 750

Ohio amendment, 11, 584, 585

Original package, 11, 603, 740; 18,
761

Presumptions, 2, 653; 11, 599

Drinking on premises, 11, 600

Reputation of place, 11, 600

Statute providing that notorious
character of a building should be
evidence, 11, 599

Throwing burden of proof upon
owner of liquor, 11, 600

Prohibiting sale by certain persons,
11, 605

Property Rights Generally, 11, 602

Compensation, 11, 602

Police power, 11, 602

Whether prohibition without com-
pensation conflicts with the United
States constitution, 11, 602

Regulation of Commerce, 11, 603

Discrimination, 11, 604

- Discrimination against imported wine, 11, 605
 Effect of state law, 11, 603
 Exclusive power of congress, 11, 603
 Examples, 11, 603-605
 Home products, 11, 604
 Illegal discrimination, 11, 605
 License to sell issued only to residents of state, 11, 605
 Manufacturer intending to export into other states, 11, 604
 Prohibiting introduction of imported liquors, 11, 603
 Sale in original package, 11, 603, 740; 18, 761
 Separating unconstitutional from constitutional part of law, 11, 605
 Requirements as to amending statutes, 11, 594
 Retrospective laws, 11, 593
 Rhode Island amendment, 11, 585
Right and Property in Liquors Generally, 11, 585
 Nature of licenses to sell intoxicating liquors, 11, 586
 Right to sell not protected by federal legislation, 11, 587
Right to Trial by Jury, 11, 597
 Constitutional guaranty, 11, 597
 Examples, 11, 598
 Nuisance, 11, 598
Searches and Seizures, 3, 716; 11, 601; 21, 964
 Particular description of place in search warrant, 11, 601
 Removal of screen, 11, 601
 Seizure without warrant, 11, 601; 21, 975
 Statutes forbidding sale to minors, 11, 583
 Statutes prescribing remedy, 11, 594
Statutes Relating to Evidence, 11, 599
 Drinking on premises, 11, 600
 Reputation of place, 11, 600
 Statute providing that notorious character of a building should be evidence, 11, 599
 Throwing burden of proof upon owner of liquor, 11, 600
 Statutes void or unconstitutional in part, 11, 610
 To whom defense of unconstitutionality available, 11, 592
 Validity and effect of particular constitutional amendment, 11, 584
 Construction of statutes, 11, 608
 Cordials, 11, 573
 Dealer, 5, 123
 Decoctions, 11, 572, 574
Defenses
 Inability to procure license, 11, 636
 Revocation of license without opportunity to be heard, 11, 678
 Definition, 11, 571
 Disguise as medicine, 11, 572, 577
 Disorderly conduct, 11, 570
Druggists, 6, 33; 11, 576, 692, 732, 738
 Absolute prohibition against sale, 11, 733
 Belief that medicine was not intoxicating, 11, 733
 Bonds, 11, 679
 Disguising, 11, 576
 Giving away, 11, 738
 Indictment, 11, 763
 In Indiana, 11, 734
 In Iowa, 11, 734
 In Kansas, 11, 734
 In Missouri, 11, 734
 In Nebraska, 11, 735
 In North Carolina, 11, 734
 Liability, 11, 575
License
 Fee, 11, 670
 For mixing with other ingredients, 11, 576
 Necessity and right to, 6, 33; 11, 642, 736
 Place of sale, 11, 738
Prescription
 Keeping intoxicating liquors to mix with other ingredients, 11, 737
 Necessity, 11, 736
 Necessity of writing, 11, 737
 Physicians, 11, 732
 Prescription by physician who is also a druggist, 11, 738
 Recording, 11, 739
 Sale of pure alcohol, 11, 738
 Separate prescription for each sale, 11, 737
 Sufficiency, 11, 736
 When physician's prescription not a defense, 11, 733
 When prescription no defense, 11, 737
 Sale as a beverage, 11, 736
 Sale as a medicine, 11, 575, 576
Sale by Drug Clerks, 11, 717
 Clerk having no license, 11, 717
 Responsibility of druggists, 11, 717
 Sale for medicinal purposes, 11, 717
 Sale by druggists who are also physicians, 11, 738
 Sale by druggist without license, 11, 735
 Sale to be drunk upon the premises, 11, 736
 Sunday sales, 11, 692
 Verbal or written prescription, 11, 732
 Where article cannot be used as an intoxicating drink, 11, 576
Due Process of Law, 6, 53
 Ordinances of municipality, 11, 629
 Effect of prohibitory laws upon brewery and distillery property, 5, 70
Election Days, 11, 689
 Entire day of any election, 11, 689
 Examples of sales, 11, 689, 690
 Municipal election, 11, 689
 What constitutes the offense, 11, 689
 "Employment," 6, 637
 "Essence of cinnamon," 11, 574

INTOXICATING LIQUORS—Cont'd

Exporting and Importing, 3, 556; 9, 924;
11, 740

Knowledge that purchaser intends to
resell in violation of law, 11, 740

Manufactured for export, 11, 740

Original package, 11, 603, 740

Whether person, not himself an im-
porter, may sell in original package,
11, 740

Whether sale of liquor for exportation
is forbidden, 11, 740

Ex post facto laws, 7, 529; 11, 593

Express companies, 7, 579, 741; 11, 741

Fermented liquors, 7, 940

Forbidding Sale to Minors

Constitutionality of statutes, 11, 583

Form and nature of proceedings, 11, 757

General application of laws, 11, 612

Gin, 11, 581

Given Away, 11, 752

See *infra*, **HABITUAL DRUNKARDS;**
MINORS.

Private residence, 11, 752

Whether disposing of liquors includes
giving, 11, 752

Whether offense in general, 11, 752

Good faith, 11, 575, 577

Good repute, 11, 655

Grower, see *infra*, **MANUFACTURERS**
AND GROWERS.

Guest at inn, 11, 13

Gum camphor, 11, 578

Gum camphor and alcohol mixed, 11, 573

Habitual Drunkards, see *infra*, **INDICT-**
MENT, and see **HABITUAL DRUNK-**
ARDS.

Sale by agent, 11, 720

Sale of Liquor to, 11, 704

Effect of want of knowledge, 11, 707

Evidence to show habitual drunken-
ness, 11, 706

Joint sale to intoxicated and third
persons, 11, 708

Notice to dealer of intemperate hab-
its of purchaser, 11, 705

Penalties, 11, 705

"Sober and temperate," 11, 706

Statutes forbidding, 11, 705

Sufficiency of notice, 11, 707

Treating, 11, 701, 702

What constitutes offense, 11, 705

When want of knowledge no de-
fense, 11, 706

Who are persons of intemperate
habits, 11, 705

Who is a drunkard, 11, 706

Honest belief, 11, 575, 577

Hour of closing saloon, 15, 1188

Husband and wife, see *infra*, **SALE.**

Illegal, 11, 750

Illegal contracts, 9, 882

Illegal Transportation

By carriers, 11, 741

By express companies, 7, 579, 741; 11,
741

Mere messenger, 11, 741

Penal statutes of foreign states, 11, 742

Receiving for transportation, 11, 740

Sale of liquor to be transported to or
delivered in another town or state,
11, 741

Sending goods C.O.D., 11, 741; 21,
511

The offense in general, 11, 740

Violation of license by filling order
from another town, 11, 741

Imprisonment or Commitment, 11, 771

Controlled by statute, 11, 771

In default of paying fine, 11, 772

Where punishment is merely fine, 11,
771, 772

Indians, 11, 704

Indictment, 11, 757, 758

Allegation

As to information and belief, 11,

759

As to intent, 11, 767

As to knowledge, 11, 767

As to price, 11, 769

Allegations as to Prior Convictions or

Acquittal, 11, 760

As to value, 11, 769

Describing time or court, 11, 761

Description of offense of which con-
victed, 11, 761

Miscellaneous matters, 11, 760

Necessity of alleging number of

offenses, 11, 760

No complaint for search and seizure,
11, 761

"Selling a quantity of liquor," 11,
761

Setting forth record, 11, 760

Averments as to Ownership, 11, 767

Indictment for selling to be drunk on

premises, 11, 767

Information for search warrant, 11,
769

Certainty and Particularity, 11, 762

As to payment of special tax, 11,
763

General rules, 11, 762

Keeping for sale with intent to sell,
11, 764

Sales during prohibited hours, 11,
763

Sales on prohibited days, 11, 763

Sales to be drunk on premises, 11,
764

Sales to druggists, 11, 763

Sales to drunkards, 11, 763

Sales to minors, 11, 763

Sales without license, 11, 762

Statutory language, 11, 765

Violation of city ordinances, 11, 764

Violation of local option laws, 11,
764

Clerical errors, 11, 759

Clerical omission, 11, 759

Conclusions, 11, 759

Conformity between complaint and
information, 11, 759

Continuance, 10, 590

- Describing Sales and Offenses**, 11, 761
 Charging unlawful sales, 11, 761
 "Indictment for unlawful retailing," 11, 761
 Keeping place for sale, 11, 762
 Keeping with intent to sell, 11, 762
 Necessity generally, 11, 761
 Nuisance, 11, 762
 Sale without license, 11, 761
 Selling during prohibited hours, 11, 762
 Selling on prohibited days, 11, 762
 Violation of screen law, 11, 762
 What sufficient charge of unlawful sale, 11, 761
- Describing Time of Sale**, 11, 766
 Alleging impossible date, 11, 767
 Averments as to day or hour, 11, 767
 Blanks, 11, 767
 Divers other days, 11, 767
 Keeping for sale, 11, 767
 Omissions, 11, 767
 Sale on Sunday, 11, 767
 "Then and there," 11, 767
- Description of Liquors and Place of Sale**, 11, 765
 Describing place, 11, 766
 Describing time of sale, 11, 766
 Kind and quality of liquor sold, 11, 765
 Necessity of description of liquors, 11, 765
 Quantity of liquor manufactured and kept, 11, 766
- Description of Persons**, 11, 769
 Amendment, 11, 770
 Describing persons to whom sold, 11, 769
 Occupation of defendant, 11, 770
 "Persons unknown," 11, 770
 Sales on election day, 11, 769
 Sales on Sunday, 11, 769
 Sales to minors, 11, 770
 Sales without authority, 11, 769
 Sales without license, 11, 769
 Sunday sales, 11, 770
 Unlawful sales generally, 11, 769
 What description sufficient, 11, 770
 Where penalty is forfeiture, 11, 770
- Exceptions**, 11, 767
Indorsement, 11, 759
Jurat, 11, 760
Negation and defenses, 11, 767
Of commissioners, 11, 653
Record, 11, 759
Second offense, 10, 570
Signature, 11, 759
Verification, 11, 760
- Infants*, see *infra*, **MINORS**.
Information, 11, 757
Informers, 11, 753
In general, 11, 571
Injunction, 11, 664
 See *infra*, **NUISANCE**.
 Erroneous grant of license, 11, 664
 Restraining commissioners, 11, 664
- Inns and Innkeepers**, 11, 642, 691, 725
 Common victualler keeping public bar, 11, 726
 Common victuallers, 11, 725
 Examples, 11, 725, 726
 Keeping liquor in refreshment room, 11, 726
 Liability for sale, 11, 725
 License, 11, 639
 Necessity of license to inn, 11, 653
 Prevailing doctrine, 11, 691
 Restaurant keepers, 11, 725
 Sale to guest, 11, 692
 Sale without license, 11, 725
 Sunday, 11, 691
 What included in innkeeper's license, 11, 644
 Instruction, examples of, 11, 268-274
- Interstate Commerce**, 11, 358
 Local option, 11, 621
 Ordinances of municipality, 11, 629
- Jeopardy**, 11, 946
 Illegal sale of intoxicating liquors, 11, 946
 Where same act constitutes several offenses, 11, 938
- Judgments**, 11, 770
 Judicial notice, 12, 196; 29, 517
- Jurisdiction**, 11, 756
 Circuit court, 11, 757
 Court of common pleas, 11, 757
 District court, 11, 757
 Justice's court, 11, 757
 Mayor's court, 11, 757
 Municipal and superior courts, 11, 757
- Jurors**, 12, 372
 How intoxication of juror shown, 12, 379
 Intoxicated juror, 12, 372
 Moderate use, 12, 372
 Whether moderate use will vitiate verdict, 12, 372
- Keeping for Unlawful Sale**, 11, 746
 Liquors deposited where their presence cannot be known to public, 11, 747
 Retaining possession with intention to deliver under an unlawful contract, 11, 746
 When within the statute, 11, 746
 Where liquor is not exposed for sale, 11, 746
- Keeping Place for Illegal Sale**, 11, 747
 See *infra*, **INDICTMENT**.
 What constitutes a nuisance, see *infra*, **NUISANCES**.
 Distinct offense from selling, 11, 747
 Finding presumptive evidence of keeping for sale, 11, 747
 Keeping report of manufacture and sale, 11, 755
- Label**, 11, 754
- Landlord and Tenant**, 11, 723
 Consent of landlord, 11, 723, 724
 Dow liquor law, 11, 723
 Evidence, 11, 725
 Forfeiture of lease, 11, 724
 In Indiana, 11, 723

INTOXICATING LIQUORS—Cont'd**Landlord and Tenant—Cont'd**

In Ohio, 11, 723

Knowledge of landlord, 11, 723, 724

Landlord as aider and abettor, 11, 724

Lease for lawful purpose, 11, 724

Reservation of control, 11, 725

Statutes, 11, 723

What constitutes offense, 11, 724

License, 11, 634*See infra*, SALE WITHOUT LICENSE.*As to sales to be drunk on premises contrary to license, see infra*, SALES.*Bonds, see infra*, BONDS.*Forfeiture, see infra*, REVOCATION.*To distil liquors, and trade in liquors and tobacco, see REVENUE LAWS.*

Agent or servant of one licensed, 11, 646

Agent's authority to sell, 11, 646, 647

Assignment, 11, 647

Authority to sell by agent, 11, 647

Change of place of business, 11, 639

Closing on Sunday, 11, 638

Conditions of, 11, 638

Confers right which did not exist, 11, 635

Constitutionality where issued only to residents of state, 11, 604

County and town, 11, 635

Definition, 11, 634

Designation of building, 11, 639

Designation of place, 11, 639

Effect of inability to obtain upon right to sell, 11, 636

Effect of refusal to obtain upon right to sell, 11, 636

Effect of repeal as to existing license, 11, 612

Form of, 11, 638

Grant by one jurisdiction does not excuse from obtaining of another, 11, 635

Granted to partners, 11, 646

Granted to two partners jointly, 11, 646

Granting, 11, 648**By Whom Granted, 11, 651**

Excise commissioners, 11, 652

Judicial officers, 11, 651

Ministerial officers, 11, 651

Municipal officers, 11, 651

Compliance with statute, 11, 648

Consent of commissioners, 11, 648

Discretion to Grant or Refuse, 11, 649*See infra*, APPEAL; CERTIORARI.

INJUNCTION; MANDAMUS.

Generally, 11, 649

In Connecticut, 11, 650

In Georgia, 11, 650

In North Carolina, 11, 650

In Pennsylvania, 11, 650

In Virginia, 11, 650

Whether discretion arbitrary, 11, 651

Duty of court to grant, 11, 649

Ground of Granting or Refusing, 11, 652

Applicant's former violation of law, 11, 652, 653

Covenant prohibiting sale of intoxicating liquors, 11, 653

General disorder of neighborhood, 11, 653

Hotel, 11, 653

Personal inspection of officer, 11, 652

Repeated violation, 11, 653

Indictment of commissioners, 11, 653

In general, 11, 648

Limited to grant or refusal of licenses, 11, 648

Petition, see infra, PETITION.

Power of commissioners generally, 11, 648

Proceedings on Application, 11, 660

Burden of proof on applicant's fitness, 11, 661

Day for hearing, 11, 660

Issuance without hearing, 11, 660

Remonstrance, see infra, REMONSTRANCE.

Term of court, 11, 653

Time of granting, 11, 653

Inability to obtain as a defense, 11, 636

Inns and taverns, 11, 639

License of county does not excuse from obtaining license of state, 11, 635

Life of, 11, 643

Mandamus to compel issuance, 11, 637

Necessity of obtaining license, 11, 635

Not a contract, 11, 586

Ordinances relating to, 11, 629

Parol, 11, 638

Permit to druggists, 11, 634

Place of Sale Authorized, 11, 644

Adjoining premises, 11, 645

Adjoining rooms, 11, 645

Designating particular place, 11, 645

Other place in same town, 11, 645

Two bars in same establishment, 11, 645

Where business may be conducted, 11, 644

Who covered by prohibitory law, 11, 645

Power of legislature to regulate, 11, 591

Premature sale, 11, 636

Provision against granting, 11, 610

Recovery of Illegal or Excessive Payment

Payment under protest, 11, 674

Refusal of commissioners, 11, 637

Repeal of revocation, 11, 630

Revocation, 11, 674

Appeal, 11, 679

Complaint, 11, 678

Conviction of offense, 11, 675

Discretion, 11, 677

Form of complaint, 11, 678

Jurisdiction, 11, 677

Keeping within terms of license, 11, 674

- Legislative power to revoke a license, 11, 676
- Necessity of jury, 11, 678
- Necessity of legal proof, 11, 677
- Notice to licensee, 11, 678
- Number of offenses necessary, 11, 677
- Opportunity to be heard, 11, 678, 679
- Power and authority, 11, 674
- Proceedings, 11, 677
- Recovery in civil suits, 11, 675
- Removal from district, 11, 675
- Review, 11, 679
- Strictness of proof required, 11, 677
- Summary proceedings, 11, 677
- What violations will work, 11, 674
- Whether ipso facto revoked by conviction of an offense, 11, 675
- Whether license a contract, 11, 676
- Whether want of opportunity to be heard is a defense to proceedings for unlawfully keeping liquors, 11, 679
- Right to sell before giving bond, 11, 637
- Right to sell before issuance of license, 11, 637
- Right to sell before license is delivered, 11, 637
- Right to sell before payment of money, 11, 637
- Sale near school, 11, 647
- Taking out,** 11, 641
 - Ale and beer, 11, 641
 - Building used for amusement, 11, 641
 - Druggists, 11, 642
 - In England, 11, 642
 - In Indiana, 11, 642
 - In Minnesota, 11, 642
 - Innkeeper, 11, 642
 - License to sell ale or beer, 11, 641
 - Qualifications governed by particular statute, 11, 642
 - Retail dealer, 11, 642
 - Saloonkeeper, 11, 642
 - Special clubs, 11, 643
 - Special stamp holders, 11, 642
 - Whether authorities are bound to grant, 11, 641
 - Who is entitled to license, 11, 641
 - Wholesale dealer, 11, 642
- Tax by general assembly of business, 11, 634
- Term of duration, 11, 643
- Two bars in same establishment, 11, 645
- United States Revenue,** 21, 319
 - Beer brought by the case, 21, 320
 - Capacity of distillery, 21, 320
 - City, 21, 320
 - Construction of license laws, 21, 321
 - Dissolution of partnership, 21, 322
 - Examples, 21, 320
 - How amount of taxes estimated, 21, 320
 - Lien of government on distillery, 21, 321
 - Meaning of the word "proprietor," 21, 319
 - Organization of retail liquor dealers, 21, 320
 - Requirement that statement shall be filed describing stock, 21, 322
 - Sale by druggist, 21, 329
 - Sale by physician, 21, 329
 - Sale in another place, 21, 329
 - Statutory provisions, 21, 319
 - Stockholders of corporation, 21, 320
 - Where property is leased, 21, 320
 - Work in a distillery without a sign, 21, 329
- Validity and Effect,** 11, 639
 - Antedating, 11, 640
 - At what time license takes effect, 11, 640
 - General rule as to validity, 11, 639
 - Informal license amended and new license granted for unexpired term, 11, 640
 - Obtained through fraud, 11, 639
 - Of assignment, 11, 647
 - Relation back, 11, 640
 - Whether subsequent license legalizes unlawful sale, 11, 640
- What constitutes a, 11, 634
- What Rights or Privileges Are Included in,** 11, 643
 - Eating houses, 11, 644
 - Selling for other purposes than those named in license, 11, 643
 - Selling on Sunday, 11, 644
 - Tavern keeper, 11, 644
 - Whether a contract, 11, 676
 - Whether United States license protects seller, 11, 755
 - Written, 11, 638
- License Fees and Taxes,** 11, 667
 - Action to restrain collection, 11, 672
 - Cancellation of license, 11, 673
 - Custody of license moneys, 11, 671
 - Disposition of license moneys, 11, 671
 - Double taxation, 11, 668
 - Fixing amount, 11, 668
 - In general, 11, 667
 - License fee distinguished from taxation, 11, 667
 - Lien for taxes, 11, 671, 672
 - Local option, 11, 668
 - Necessity of payment prior to issue of license, 11, 670
 - Payments, 11, 670
 - Rating, 11, 668
- Recovery of Illegal or Excessive Licenses**
 - Complaints, 11, 674
 - Voluntary payment, 11, 673
- Recovery of illegal or excessive payment, 11, 673
- Refunding money collected, 11, 673
- State and municipal taxation, 11, 668
- Suit for recovery of sums due, 11, 673
- Who Are Liable to Pay Taxes,** 11, 669
 - Brewer, 11, 669
 - Druggists, 11, 670
 - Home-grown materials, 11, 670

INTOXICATING LIQUORS—Cont'd**License Fees and Taxes—Cont'd****Who Are Liable to Pay Taxes—Cont'd**

- Manufacturer, 11, 669
- Retail dealers, 11, 669
- Social clubs, 11, 670
- Wholesale dealer, 11, 669

Liens

- Restricted to guest, 11, 12
- "Liquors," 11, 571
- Local option, 13, 990
- Making report of manufacture and sale
11, 755

Mandamus

- License, 11, 637, 662
 - Arbitrary exercise of discretion, 11, 663
 - Exercise of discretion, 11, 662
 - General rule, 11, 662
 - Refusal to hear testimony, 11, 663

Manufacture

- Indictment, 11, 766
- Keeping and making reports, 11, 755
- Manufacturer intending to export from
state, 11, 604
- Power to prohibit, 11, 588
- Prohibition without compensation, 11, 602
- Whether intoxicating liquors may be
lawfully manufactured for export,
11, 740

Manufacturers and Growers, 11, 731

- Distillers, 11, 731
- Manufacturer, 11, 731
- Products of the farm, 11, 732
- Whether common seller is included in
statute, 11, 731
- Wine grower, 11, 731

**Medical purpose, see *infra*, DRUGGISTS;
PHYSICIANS AND SURGEONS.****Medicines, 11, 574****Medicines and articles of food, 11, 573****Minors, 11, 694, 723****See *infra*, INDICTMENT.**

- Aiding or abetting sale, 11, 702, 704
- Allegation, 11, 697
- Bartering, 11, 703
- Bitters, 11, 699
- Cider, 11, 699

Consent of Parent or Guardian, 11, 700

- Statutes, 11, 700, 701
- Written consent of parent, 11, 700
- Defendant's intention, 11, 695
- Domestic wine, 11, 699
- Each sale a separate offense, 11, 695
- Effect of knowledge as defense or
justification, 11, 698
- Exchanging, 11, 704
- General rule, 11, 696
- Giving away liquor to minor, 11, 701
- Giving distinguished from selling, 11, 702
- Honest belief, 11, 698
- Inquiry of purchaser as to his age,
11, 698
- Intent, 11, 719
- Intoxicated person, 11, 708

- Joint sale to minor and adult, 11, 701
- Kind and character of liquor, 11, 699
- Knowledge and belief as to minority
of purchaser, 11, 635, 719
- Knowledge and consent to sale, 11, 696
- Liability of one purchasing for minor,
11, 702
- Liability of partners, 11, 723
- Materiality of license, 11, 700
- Ownership of liquors, 11, 696
- Personal appearance, 11, 697, 699
- Presumption, 11, 696
- Proof of, 11, 697
- Purchase by third person for minor,
11, 702
- Reasonable belief, 11, 696
- Sale by agents, see *infra*, SALE BY
AGENTS TO MINORS.*
- Sale for mechanical purposes, 11, 703
- Sale for medicinal purposes, 11, 703
- Sale for sacramental purpose, 11, 703
- Sale to**
 - Power of legislature to prohibit, 11, 590
- Sale to minor for use of another, 11, 702
- Sale to minor for use of parent, 11, 703
- Showing good faith and due care,
11, 699
- Statutes prohibiting sale, 11, 694
- Treating minor, 11, 701
- Vendor selling at his peril, 11, 697
- Whether indictable, 11, 695
- Whether misdemeanor, 11, 695
- "Mixed liquors," 11, 573
- Mixtures, 11, 572, 574
- Municipal Corporations**
 - Hour of closing saloon, 15, 1188
- Municipal Regulation and Control, 11, 614**
 - See LOCAL OPTION.**
 - Abrogating general law of state, 11, 631
 - Closing at certain hour in evening, 11, 617
 - General statute repeals ordinances, 11, 632, 633
 - Ordinance does not repeal statute, 11, 631
 - Police power of cities, 11, 614
 - Possession of intoxicating liquors, 11, 617
 - Power of city council, 11, 614, 615
 - Power of city to authorize, 11, 615
 - Power of city to grant licenses, 11, 616
 - Power of city to prohibit the traffic,
11, 615
 - Prohibiting sale to particular places,
11, 617
 - Prohibition on particular days, 11, 617
 - Regulations as to general law of state,
11, 614
 - Sunday closing ordinances, 11, 617
 - Ten o'clock ordinances, 11, 617, 618
- Nuisance, 11, 591, 598, 748, 756**
 - Abatement, 11, 749
 - Adjoining rooms, 11, 748

- Appendage, 11, 749
 Constitutionality of statutes, 11, 749
 Good faith, 11, 748
 House not kept in a disorderly manner, 11, 762
 Indictment, 11, 762
 Injunction as to the future, 11, 750
 Keeping open on Sunday, 11, 691
 Mere keeping, 11, 748
 Ordinances of town declaring, 11, 627
 Power of legislature to declare liquor kept for sale a nuisance, 11, 591
 Power to authorize abatement, 11, 591
 Presumption as to, 11, 598
 Proceedings to restrain, 11, 749
 Right of trial by jury, 11, 598
 Selling without a license, 11, 748
 Temporary injunction, 11, 749
 What constitutes, 11, 748
 Whether selling essential, 11, 748
Offenses and Proceedings, 11, 683
See infra, SALE.
 Operation and effect of various statutes, 11, 611
Ordinances, *see infra*, INDICTMENT.
 Reasonableness, 17, 249
Original Package, 11, 603, 740; 18, 761
 Decision, 18, 761
 Knowledge that purchaser intends to sell in violation of law, 11, 740
 Sale by importer, 11, 740
 Sale by person not an importer, 11, 740
 Wilson bill, 18, 762
 Partnership, 17, 1074
 Permitting disorderly conduct, 11, 750
Petition, 11, 654
 Affidavit of petition, 11, 654
 Description of premises, 11, 655
 Failure to state good repute of petitioner, 11, 655
 "Good repute," 11, 655
 Necessity of, 11, 654, 656
 Notice, 11, 659
 Oath of petitioner, 11, 654
 Prerequisite, 11, 656
 Recommendation of householders, 11, 657
 Register voter, 11, 657
 Reputable freeholder, 11, 657
 Residence, 11, 657
Signing, 11, 656
 Judicial ascertainment of validity and effect of signature, 11, 658
 Mark, 11, 657
 Necessity of personal signature, 11, 657
 Necessity of signature in ink, 11, 657
 Sufficiency and effect of signature, 11, 658
 Statement as to liquors, 11, 655
 Statement as to qualification of petitioner, 11, 655
Physicians and Surgeons, 11, 575
As to the necessity of prescription for sale by druggists, *see infra*, DRUGGISTS.
 Sale by druggist who is also physician, 11, 738
Sale by Physicians, 11, 739
 Administering liquor as a medicine, 11, 739
 Fact that seller is a physician no defense, 11, 739
 Physician who is also a druggist, 11, 738
Pleading
 Negating exceptions, 4, 753
 Police power, 11, 576, 583, 588; 18, 751
 Pop, 11, 582
 Porter, 11, 582
 Port wine, 11, 582
Power of Legislature to Regulate Sale of, 11, 576
See infra, REGULATION AND CONTROL BY STATE.
 Premises, 19, 5
 Products of the farm, 11, 732
 Prohibited times and hours, 11, 752
Prohibition
 Granting or refusing to grant license, 11, 664
 Necessity of compensation, 11, 602
Property Rights, 11, 602
 Compensation, 11, 602
 Ordinances of municipality, 11, 629
 Police power, 11, 602
 Whether prohibition without compensation conflicts with United States constitution, 11, 602
Prosecutor, 11, 758
 In name of state, 11, 758
 Mayor, 11, 758
 Private persons, 11, 758
 Special constable, 11, 758
 Prospective operation, 11, 611
 Public place, 19, 565
 Punishment, 11, 771
 Question for the jury, 11, 572, 573
Regulation and Control, 11, 583, 587
See infra, CONSTITUTIONALITY OF STATE STATUTES.
 Federal regulation, 11, 587
 Generally, 11, 583
 Validity of statutes as to exercise of police power, 11, 576, 583; 18, 751
Regulation and Control by State, 11, 587, 589
 Declaring liquor selling a nuisance, 11, 589
 Espionage and search, 11, 589
 Extent of power, 11, 589
 Police power, 11, 576, 583, 588; 18, 751
 Power to authorize abatement of nuisance, 11, 591
 Power to prohibit ownership and sale, 11, 590
 Power to prohibit sale on election days, 11, 591
 Power to prohibit sale on Sunday, 11, 590
 Power to prohibit sales to minors, 11, 590

INTOXICATING LIQUORS—Cont'd**Regulation and Control by State—Cont'd**

Power to regulate and restrict generally, 11, 587

Regulation as to licensing, 11, 591

Regulation as to taxing, 11, 591

Restricting manufacture of intoxicating liquors, 11, 588

Remonstrance, 11, 653, 659

Before whom remonstrance must be filed, 11, 659

Burden of proof, 11, 661

Compliance with statute, 11, 659

Effect of failure to file, 11, 659

Hearing, 11, 660

Immorality, 11, 660

Unfitness of applicant, 11, 660

Verification, 11, 660

Repeal, 11, 612

Report of manufacture and sale, 11, 755

Restaurant, 11, 726

Resemblance of trade, 9, 894

"Roller," 11, 756

Retrospective operation, 11, 611

Revocation, see *infra*, LICENSE.

Right and Property in Liquors Generally, 11, 585

Nature of licenses to sell intoxicating liquors, 11, 586

Right to sell not protected by federal legislation, 11, 587

Rum, 11, 582**Sale, 9, 929**

See *infra*, INNS AND INNKEEPERS; LICENSE; MANUFACTURER; MINORS; SUNDAY.

As to the constitutionality of the provision, see *infra*, CONSTITUTIONALITY OF STATE STATUTES.

By druggists, see *infra*, DRUGGISTS.

By physician, see *infra*, PHYSICIANS AND SURGEONS.

By servants, see *infra*, SALE BY AGENTS.

During prohibited hours, see *infra*, INDICTMENT.

In original package, see *infra*, ORIGINAL PACKAGE.

Keeping place of illegal sale, see *infra*, ILLEGAL SALE.

On prohibited days, see *infra*, ELECTIONS; INDICTMENT; SUNDAY.

To be drunk on premises, see *infra*, INDICTMENT.

To habitual drunkards, see *infra*, HABITUAL DRUNKARDS.

To Prohibited Persons, see *infra*, MINORS.

Indians, see *infra*, INDIANS.

Without license, see *infra*, INDICTMENT; LICENSE.

Adjoining premises, 11, 751

C. O. D., 11, 741, 742; 21, 511

Devices, 11, 685, 687, 728

Brandy peaches, 11, 687

Delivery in small quantities, 11, 688

Examples, 11, 687-689

General rule, 11, 687

Sale of merchandise, 11, 688

Drunk on adjoining land, 11, 751

Duty to ascertain purpose of purchaser, 11, 683

For resale in another state, 9, 929

For Unlawful Use in Another State, 9, 924, 929; 11, 740

Knowledge of vendee, 9, 924

When vendor aids vendee, 3, 557; 9, 925; 11, 740

Husband and Wife, 11, 720

Husband's knowledge and consent, 11, 721

Husband's liability for sale by wife, 11, 720

Liability of wife, 11, 722

Married woman carrying on separate business, 11, 722

Sale without license, 11, 721

Wife delivering liquor sold by husband, 11, 722

Wife owning property, 11, 721

Joint and Several Sales, 11, 685

Common seller, 11, 686

Joint purchase, 11, 686

Number of sales necessary, 11, 686

Proof of one sale, 11, 686

Proof of two sales, 11, 686

Proof of three sales, 11, 686

Proof of four or more sales, 11, 687

Sale at same time to two distinct persons, 11, 685

Whether more than one sale is required, 11, 686

Keeping and making reports, 11, 755

Knowledge of intoxicating qualities, 11, 683

Liability of Partner for Sale by Co-Partner, 11, 722

General rule, 11, 722

Knowledge of co-partner, 11, 723

Sale to minor, 11, 722, 723

On Prohibited Days, 11, 689

Holidays, 11, 690

On water, 11, 755

Power of legislature to prohibit, 11, 590

Power to prohibit, 11, 588

Public street or alley, 11, 751

To Be Drunk on Premises Contrary to License, 11, 750

Appurtenances, 11, 751

Nature of offense, 11, 750

Proof that liquor is actually drunk on premises, 11, 750

Seller's control over place, 11, 750, 751

What constitutes offense, 11, 750

To informers, 11, 753

To intoxicated persons, 11, 704

Violation of license law, 9, 929

What Constitutes, 9, 929; 11, 684

Barter, 11, 685

Device to evade the law, 11, 685

In general, 11, 684

Procurement for another, 11, 684

- Where sale made or completed, 11, 741
- Whether payment of revenue tax protects, 11, 755
- Whether the term sale includes barter or gift, 21, 464
- Whether United States license protects, 11, 755
- Without License**, 11, 683
- Bargain for sale, 11, 684
- By druggists, 11, 735
- Discharge of indebtedness, 11, 685
- Druggist keeping intoxicating liquors to mix with other ingredients, 11, 737
- Exchange for services, 11, 685
- Indictable, 11, 683, 684
- Inns and innkeepers, 11, 725, 726
- Misdemeanor, 11, 683
- Necessity of actual delivery, 11, 684
- Necessity of completed sale, 11, 684
- Necessity that title passes, 11, 684
- Physician's prescription where there is no license, 11, 736
- Presumption upon delivery, 11, 685
- Procurement for another, 11, 684
- What acts and agreements constitute a sale, 11, 684
- Sale by Agents**, 11, 711
- Delivery in another state, 11, 744
- General authority to sell unlawfully, 11, 714
- Liability of Agent**, 11, 714-716
- Agent in general control personally present for only a short time, 11, 716
- Both principal and agent liable, 11, 715
- Carrying beer in saloons, 11, 716
- Defense of agency, 11, 715
- Drug clerks, 11, 717
- Examples, 11, 714-716
- Necessity of authority for sale, 11, 715
- Participating in an unlawful purpose, 11, 716
- Presence and supervision of employer, 11, 716
- Whether necessary defendant should own the liquor, 11, 714
- Liability of Principal**, 11, 711-714
- Consent of principal, 11, 711
- In general, 11, 711
- Intent, 11, 712
- Knowledge of principal, 11, 711
- Michigan doctrine, 11, 713
- Necessity of defendant's assent, 11, 712
- Sale by agent *prima facie* sale by principal, 11, 711
- Sunday, 11, 712
- Unlawful sale by servant, 11, 712
- Presumption of jury, 11, 713
- Sale in disobedience to orders, 11, 713, 714
- To habitual drunkards, 11, 720
- To Minors**, 11, 718
- Bartender's liability, 11, 719
- Deception practiced by minors, 11, 719
- In Arkansas, 11, 718
- In Georgia, 11, 718
- In Indiana, 11, 718
- In Maryland, 11, 718
- In Massachusetts, 11, 718
- Intent, 11, 719
- Intent a question of fact for jury, 11, 719
- Knowledge of minors, 11, 719
- Liability of principal, 11, 718
- Without license, 11, 714
- Sale near Schools**, 11, 708
- Ascertainment of distance or locality, 11, 709
- Educational institutions, 11, 708
- Examples, 11, 709, 710
- Statutes prohibiting, 11, 708
- What sales are illegal, 11, 709
- What sales constitute the offense, 11, 709
- Sale of Liquors to Be Transported to or Delivered in Another Town or State**, 3, 556; 9, 924; 11, 741
- See infra*, CONFLICT OF LAWS.
- Agent receiving order in prohibition state, 11, 745
- Delivery by agent, 11, 744
- Delivery by agent of seller, delivery by seller, 11, 744
- Delivery to common carrier, delivery to consignee, 11, 743
- Expressage C. O. D., 11, 741, 742; 21, 511
- Force of statutes of one state beyond limits of another state, 11, 742
- Generally, 11, 741
- In which state sale is completed, 11, 742, 744
- Place of delivery, 11, 72
- Sale by agent, 11, 744
- Sale by traveling salesman, 11, 745
- Where sale completed, 11, 742
- Where sale made, 11, 742
- Sale to minors by agent*, *see infra*, SALE BY AGENTS TO MINORS.
- Screen Law**, 11, 753
- Curtain upon window, 11, 754
- Examples, 11, 753, 754
- Guest at inn, 11, 13
- Indictment, 11, 762
- Neglect to keep door closed, 11, 753
- Partitions between front and rear rooms, 11, 754
- Screen interposed by agent, 11, 753
- Walls of the premises, 11, 754
- Searches and Seizures**, 11, 601; 21, 964
- See* SEARCHES AND SEIZURES.
- Construction of statutes, 21, 964
- Description of offense in complaint, 11, 761
- Due process of law, 3, 716
- In general, 21, 964

INTOXICATING LIQUORS—Cont'd**Searches and Seizures—Cont'd****Liability to Seizure, 21, 966**

Liquor held by carrier as agent for consignee, 21, 966

Liquor in hands of one intending to sell in violation of law, 21, 965

Liquor in hands of warehouseman, 21, 966

Local statutes, 21, 964

Notice to Claimants, 21, 976

Appearance as waiver of defects, 21, 976

Examples, 21, 976, 977

In general, 21, 976

Necessity, 21, 976

Notice of seizure and trial, 21, 976

Ordinances of municipality, 11, 629

Power of state, 11, 589

Search Warrant, 11, 601

Allegation of probable cause, 21, 970

Description of Liquors, 21, 972

Examples, 21, 972, 973

In general, 21, 972

"Intoxicating liquors," 21, 972

Quantity of liquors, 21, 973

Seizure of other kinds of liquors than those specified, 21, 973

Variance, 21, 973

Description of Place, 21, 970

Certainty required, 21, 970

Command to search "dwelling house," 21, 971

Directing search of several different places, 21, 971

Examples, 21, 970-972

Sufficient descriptions, 21, 971

Variance, 21, 972

Generally, 21, 969

Inventory of liquor seized, 21, 970

Names of complainants, 21, 969

Oath, 21, 969

Requirements, 21, 969, 970

Return, 21, 974

Examples, 21, 974

Sufficiency, 21, 974

What must appear from the return, 21, 974

Service, 21, 973

Arrest of person, 21, 974

At night, 21, 973

Forcible entry, 21, 973

Seizure of vessel containing liquor, 21, 973

Who may serve warrant, 21, 974

Whether complainants must be summoned as witnesses, 21, 970

Seizure Without Warrant, 11, 601; 21, 975

Duty of officer to procure warrant after having seized liquor, 21, 975

Examples, 21, 976

In absence of statutory authority, 21, 975

Officer's liability as trespasser, 21, 975

Statutes providing that officer may seize liquor, 21, 975

Statutes conforming to constitution, 21, 964

Status of Liquors After Seizure, 21, 976

In custodia legis, 21, 977

Replevin by owner, 21, 977

State and federal courts, 21, 977

The Complaint, 21, 967

Affirmation, 21, 969

Complaint after seizure, 21, 968

Description of place, 21, 968

Examples of necessary allegations, 21, 967, 968

In general, 21, 967

Necessary allegations, 21, 967

Oath, 21, 969

Subscription by party making, 21, 969

Whether allegations must be in language of the statute, 21, 967

Who authorized to make complaint, 21, 968

Trial, 21, 977

Appeal, 21, 980

Evidence, 21, 978

Allegation of complaint, 21, 978

Allegation of place, 21, 978

Character of liquors as intoxicating, 21, 979

Declaration of wife, 21, 979

Former proceedings, 21, 978

Reasonable doubt, 21, 978

Supporting complaint, 21, 978

Judgment, 21, 979

Jurisdiction, 21, 977

Examples, 21, 977, 978

Omission to summon complainants as witnesses, 21, 978

Value of the liquors, 21, 977

What liquors within the jurisdiction of court, 21, 977

Verdict, 21, 979

Whether proceeding is criminal or civil, 21, 965

Whether proceedings are in rem or in personam, 21, 965, 966

Selling in Particular Places and Localities, 11, 708

As to schools, see infra, SALE NEAR SCHOOLS.

Agricultural fair, 11, 710

Churches, 11, 710

Near railroad during construction, 11, 711

Places of amusement, 11, 710

Places of exhibition, 11, 710

Public buildings, 11, 710

Sentence, 11, 771

Amount of fines, 11, 771

Conviction under two or more counts, 11, 771

Number of fines, 11, 771

Separate, 11, 771

Social clubs, 11, 643

Societies and Clubs, 11, 727; 22, 810

Bona fide distribution among members, 11, 727

- Club as a device, 11, 728; 22, 811
 Club member giving money in return, 11, 727
 Liability of officers and servants, 11, 727; 22, 810
 Sale by agent, 11, 727
 Steward, 11, 727
 Sunday laws, 11, 727
 "Spirit" or "spirituous," 11, 572
 Spirituous liquors, 11, 571; 29, 516
- Statutes**
 Constitutional Provisions Requiring that Subject Shall Be Expressed in Title, 23, 260
 Acts of corporation, 23, 261
 Charters of municipal corporations, 23, 260
 Damages from sale, 23, 261
 Examples, 23, 260-262
 In general, 23, 260
 Insufficient titles, 23, 262
 License tax, 23, 261
 Private corporations, 23, 260, 261
 Sufficient titles, 23, 261
 What may be embraced under title to regulate sale of liquor, 23, 261
 Constitutional provisions that statute shall contain no more than one subject, 23, 273
 "Strong and spirituous liquors," 11, 571
Sunday, 11, 690, 727; 24, 540
See infra, INDICTMENT.
 Adjoining rooms, 11, 693
 Clubs, 11, 727
 Examples, 21, 690-694
 Giving away liquor, 11, 692
 Keeping place open, 11, 693
 Kinds and qualities of liquors, 11, 694
 Indictable offenses, 11, 691
 Inn and hotel keepers, 11, 691
 Liability for maintaining nuisance, 11, 691
 License, 11, 644
 Not necessary to convict, 11, 690
 Particular hours, 11, 694
 Part of premises, 11, 693
 Power of legislature to forbid, 11, 590
 Sale by druggists, 11, 692
 Sale to guest at inn, 11, 692
 Saloon, 11, 693
 Tippling houses, 11, 693
 "Sun-smile," 11, 573
Supervision, *see infra*, SUPERVISION AND CONTROL.
Taxation, 11, 607
See infra, LICENSE FEES AND TAXES.
 Bars on steamboats, 11, 608
 Discrimination as to imports, 11, 607
 License fees, 11, 607
 Power of legislature, 11, 591
 Statutes violative of constitutional prohibitions, 11, 609
 Statutes void or unconstitutional in part, 11, 610
 Taxing power and legislation generally, 11, 607
- Texas bell punch law, 11, 608, 609
 Uniformity, 11, 608
 Texas bell punch law, 11, 608, 609
- Treating**
 Minors, 11, 701
 United States license, 11, 755
 Unlawful assemblages, 11, 750
 Unlawful sale working a forfeiture of lease, 3, 261
 Verdict, 11, 770
 Vinous liquors, 11, 571
 What bitters are intoxicating, 11, 578
What Liquors Are Intoxicating and Prohibited, 11, 571
 Alcohol, 11, 579
 Ale, 11, 578
 Conflict of authority, 11, 578, 579
 Mixture, 11, 579
 Whether intoxicating, 11, 578
 Whether spirituous, 11, 578
 Article not capable of being used as an intoxicating drink, 11, 576
 Articles of food, 11, 578
 Articles sold not changed in character, 11, 577
Beer, 11, 579
 Fermented, 11, 580
 Judicial notice by court, 11, 580
 Presumption, 11, 580
 Strong, 11, 580
 Where statute does not mention beer, 11, 580
 Whether intoxicating, 11, 579
 Whether it falls within the words "strong or spirituous liquors," 11, 579
 Bitters, 11, 574, 577
 Blackberry wine, 11, 582
 Brandy peaches, 11, 578
 Certain per cent. of alcohol, 11, 572
 Champagne wine, 11, 582
 Cider, 11, 578, 581
 Cordials, 11, 573
 Decoctions, 11, 572, 574
 Disguise of medicine, 11, 572, 577
 "Essence of cinnamon," 11, 574
 Gin, 11, 581
 Good faith, 11, 575, 577
 Gum camphor, 11, 578
 Gum camphor and alcohol mixed, 11, 573
 Honest belief, 11, 575, 577
 In general, 11, 571
 "Liquors," 11, 571
 Medicines, 11, 574
 Medicines and articles of food, 11, 573
 "Mixed liquors," 11, 573
 Mixtures, 11, 572, 574
 Pop, 11, 582
 Porter, 11, 582
 Port wine, 11, 582
 Question for the jury, 11, 573
 Rum, 11, 582
 "Spirit" or "spirituous," 11, 572
 Spirituous liquors, 11, 571
 "Strong and spirituous liquors," 11, 571

INTOXICATING LIQUORS—Cont'd

What Liquors Are Intoxicating and Prohibited—*Cont'd*

"Sun-smile," 11, 573

Vinous liquors, 11, 571

What bitters are intoxicating, 11, 578

Whiskey, 11, 582

"Whiskey cock-tail," 11, 573

Wine, 11, 582

Whether prohibitory laws impair obligation of contracts, 3, 747

Whiskey, 11, 582

"Whiskey cock-tail," 11, 573

Wine, 11, 582

INTOXICATION, 11, 566

See DRUNKENNESS.

As a Defense to Contracts, *see* DRUNKENNESS.

Rescission, 21, 42

Intoxication as a defense to crime, see CRIMINAL LAW.

INTRINSIC, 11, 779**INTROMISSION, 11, 779****INTRUDE, 11, 779****INTRUSION, 11, 779****INVALID, 11, 780****INVASION, 11, 780**

See FIRE INSURANCE.

INVEIGLE, 11, 780**INVENTION, 11, 780**

See DEDICATION OR ABANDONMENT OF AN INVENTION; PATENT LAW.

Aggregation, see infra, COMBINATION.

Carrying Forward of Old Idea, 11, 800

Convenience, 11, 800

Difference of degree, 11, 800

Examples, 11, 800

Improvement, 11, 801

New idea distinct, 11, 801

Same means producing better results, 11, 800

Change in Form, 11, 783

Device more useful, 11, 784

Difference in application of an invention, 11, 784

Difference in mode of operation, 11, 784

Formal change, 11, 783

General rule, 11, 783

Improvement, 11, 783

New and useful results, 11, 784

Where form is the substance of invention, 11, 784

Change in Size, 11, 787

Enlargement of mechanism of a combination, 11, 787

Enlargement of part of machine, 11, 787

Examples, 11, 787

In proportion of combination, 11, 787

Mere enlargement of machine, 11, 787

New and improved results, 11, 787

Reduction of size, 11, 787

Small articles, 11, 787

Change of Location of Parts, 11, 788

Examples of changes held inventions, 11, 789

Examples of transfers held not inventions, 11, 788

General rule, 11, 788

New device, 11, 789

New result obtained, 11, 789

Transfer of a peculiar shape from one part to another, 11, 788

Transfer of one of the parts whereby it performs double functions, 11, 788

Change of Material, 11, 785

Cheapening machines, 11, 785

Cheapness, 11, 786

Difference of kind rather than degree, 11, 786

Durability, 11, 786

Examples, 11, 785, 786

Generally not invention, 11, 785

General rule, 11, 785

New and useful result produced, 11, 785

New properties of manufactured article, 11, 786

Changing Number of Parts of a Device, 11, 789

Leaving out useless part, 11, 789

Multiplying parts, 11, 789

New result obtained, 11, 789

Combination and Aggregation, 11, 795

Cheapening old result, 11, 797

Co-action, 11, 796, 797

Combinations held not patentable, 11, 797

Co-Operation, 11, 796

Of elements, 11, 796

Device superior in appearance, 11, 798

Device superior in utility, 11, 798

Distinguished, 11, 796

Examples of aggregation, 11, 797

Examples of devices held not aggregation, 11, 798

General test of patentable combination, 11, 796

More useful result, 11, 797

Old elements, new combination, 11, 795

Omission of part of combination, 11, 798

Production of new force or effect, 11, 796

Production of new results, 11, 796

Test to distinguish, 11, 796

Use in succession of well-known instruments, 11, 798

Definition, 11, 781

Mechanical skill, 11, 781

Distinction between form and idea, 11, 781

Distinction Between Invention and Unpatentable Discovery, 11, 806

Definition of unpatentable discovery, 11, 806

Subjects of Discovery, 11, 806

Discovery of principle, 11, 807

Effect or result, 11, 809

Embodiment of principle in machine, 11, 807

- Embodiment of principle in process, 11, 807
- Examples of discovery, 11, 806
- Force of law acting upon matter, 11, 806
- How far principle may become patentable, 11, 807
- Idea, 11, 807
- Invention distinguished from principle, 11, 808
- Only means by which principle can be used, 11, 808
- Original cause or motive, 11, 807
- "Principle," 11, 806
 - Of nature, 11, 806
- Double Use**
 - A change of device from one manufacture to another, 11, 791
 - Application of old device to new thing, 11, 790
 - Changing the subject of a device, 11, 792
 - Composition of matter, 11, 793
 - Examples of application of double use to materials, 11, 794
 - Examples of application of this rule, 11, 791
 - Fire extinguisher and soda water fountain, 11, 792
 - Greater utility for use, 11, 790
 - Limitations of Doctrine of Double Use,** 11, 794
 - Different results, 11, 795
 - Examples of change of material from one use to another, 11, 794
 - Extension of applicability, 11, 794
 - Improvements, 11, 795
 - Material, 11, 695
 - New principle, 11, 795
 - New process produced, 11, 795
 - New purpose, 11, 795
 - Suggestiveness of prior device, 11, 794
 - Machine or device, 11, 790
 - Material used in manufacture, 11, 794
 - Mechanism transferred to analogous machine, 11, 791
 - New and useful result, 11, 793
 - New use of composition, 11, 793
 - New use of material, 11, 793
 - Of material, 11, 793
 - Old device to analogous use, 11, 790
 - Old machine to analogous use, 11, 790
 - Old process to new stage of manufacture, 11, 792
 - Old process to new subject, 11, 793
 - Old process to produce new result, 11, 793
 - One kind of steam engine to another, 11, 792
 - Product of old process, 11, 793
 - Putting a cut in a different place, 11, 792
 - Slight modifications of the rule, 11, 790
- Employees of patent office, 18, 24
- Improvement, 11, 790, 801
- Instances of what are not inventions, 11, 781
- Joint Invention,** 11, 809
 - Definition, 11, 809
 - Employer and employee, 11, 810
 - Examples, 11, 809, 810
 - Invention a separate part of device, 11, 810
 - Suggestion,** 11, 810
 - Effect upon patent, 11, 810
 - Rendering patent void, 11, 811
 - When given entire right to invention, 11, 811
 - When suggestor is inventor, 11, 810
- Materiality of Amount of Invention in Device,** 11, 805
 - Accidental making, 11, 806
 - Degree of inventive skill, 11, 805
 - Degree of mental labor, 11, 805
 - Inability to duplicate accidental device, 11, 806
 - Simplicity, 11, 806
 - Slightness of labor, 11, 806
- Mechanical Skill,** 11, 781
 - Means of distinguishing from inventive skill, 11, 783
- Mechanical Skill Not Patentable,** 11, 782
 - Cases in which invention was held to be shown, 11, 783
 - Study does not show invention, 11, 782
- Mere improvement, 11, 800
- Partnership, 17, 937
- Principle,** 11, 806
 - See infra*, DISTINCTION BETWEEN INVENTION AND UNPATENTABLE DISCOVERY.
- Property Right in an Unpatented,** 18, 23
 - Assignment, 18, 23
 - Discoverer's right, 18, 23
 - Effect of patenting, 18, 23
 - Exclusive use, 18, 23
 - In general, 18, 23
 - Knowledge obtained of invention in good faith, 18, 23
 - Protection, 18, 23
- Putting Two Old Things Side by Side Without Change of Function,** 11, 799
 - Examples, 11, 799, 800
 - Parts previously used for the same purpose, 11, 799
 - Statement of rules and reasons, 11, 799
 - Two old elements in combination, 11, 799
 - Two or more old things, 11, 799
- Result,** 11, 809
 - As Evidence of Invention,** 11, 801
 - Both novelty and superior utility, 11, 802
 - Device in general use, 11, 804
 - Doubtful cases, 11, 804
 - Driving out prior inventions, 11, 803
 - General acceptance by the public, 11, 803
 - General and extensive use of device as acknowledgment of invention, 11, 803
 - Imitations by others, 11, 803

INVENTION—Cont'd**Result—Cont'd****As Evidence of Invention—Cont'd**

Ineffectual attempts by former experimenters, 11, 804

Length of time of experiments, 11, 804

Modification of former device, 11, 804

New and useful results, 11, 801

New mode of operation, 11, 802

Novelty and utility, 11, 801

Rearranging the combination, 11, 802

Whether conclusive, 11, 804

Substituting for a Device Its Equivalent, 11, 789

Examples, 11, 790

General rule, 11, 789

Machine for hand power, 11, 790

INVENTORY, 11, 812

Whether within bills of sale acts, 8, 863

INVESTIGATE, 11, 812**INVESTITURE, 11, 812****INVESTMENT, 11, 813**

See EXECUTORS AND ADMINISTRATORS; GUARDIAN AND WARD; TRUSTS AND TRUSTEES.

At Common Law

Liability of trustee for contravention, 11, 838

Directions in Trust Instruments

Liability of trustee for contravention, 11, 838

Interest

On balances, 11, 839

Trustee commingling trust funds with his own, 11, 835

Liability of Trustee, 11, 833, 834, 838

Commingling Trust Funds with His Own, 11, 835

By taking mortgage in trustee's own name, 11, 836

By taking title in trustee's own name, 11, 836

Commingling of funds in any way, 11, 835

Devastavit, 11, 836

Investment in trustee's own name, 11, 836

Liability for interest and loss, 11, 835

Using trust funds in his own business, 11, 835

Compound Interest, 11, 840

Breach of trust, 11, 840

Illegal commissions, 11, 840

Refusing to account, 11, 840

Sums withheld from court, 11, 840

Delay in Investing, 11, 833

Interest and loss, 11, 835

Interest during delay, 11, 834

Reparation for losses, 11, 835

Six months or less, 11, 834

What investment should be made, 11, 833

What is reasonable time, 11, 834

Within a year, 11, 834

Holding Trust Property in His Own Name, 11, 836

By taking mortgage in trustee's own name, 11, 836

By taking title in trustee's own name, 11, 836

Devastavit, 11, 836

Investment in trustee's own name, 11, 836

How balances should be ascertained, 11, 839

Interest and loss, 11, 835

Interest during delay, 11, 834

Interested Trustee Acting for Others Interested, 11, 838

Trustee creditor paying himself, 11, 838

Trustee representing co-parties in litigation, 11, 838

Speculating with Trust Funds, 11, 837

Profits inure to cestui que trust, 11, 837

Purchases may be taken by cestui que trust, 11, 837

Speculating purchases, 11, 837

To pay interest on balances, 11, 839

When liable for interest on balances, 11, 839

When Trustees Not Liable, 11, 841

Depreciation in securities without fault, 11, 842

Fraud of agents, 11, 842

Losses beyond trustee's control, 11, 842

Loss of mortgage, 11, 842

Premiums on bonds, 11, 842

When authorized by cestui que trust, 11, 841

When trustees have done their duty, 11, 842

Savings Banks, 21, 718

Generally, 21, 718

In Maine, 21, 719

In Massachusetts, 21, 718

In New Jersey, 21, 719

In New York, 21, 718

In Texas, 21, 719

Liability of directors for violating law regarding, 21, 725

Speculating with trust funds, see *infra*, LIABILITY OF TRUSTEE.**Statutory Directions**

Liability of trustees for inhibition, 11, 838

Trusts and Trustees

Discretionary powers, 27, 149

Losses on Unauthorized Investments, 11, 838

In disregard of legal directions in the trust instrument, 11, 838

Investments made in contravention of common law, 11, 838

In violation of statutory inhibition, 11, 838

INVESTMENT OF TRUST FUNDS, see

EXECUTORS AND ADMINISTRATORS.

See generally, CHARITIES.*See* GUARDIAN AND WARD; TRUSTS AND TRUSTEES.**INVINCIBLE**

Invincible necessity, 13, 373

INVOICE, 11, 104

Invoice price, 14, 332

INVOLUNTARY, 11, 843**INVOLUNTARY TRUSTS**, see IMPLIED TRUSTS.**INVOLVED**, 11, 843**I. O. U.**, 11, 843

Abbreviations, 1, 17

As an account stated, 1, 120

As note, 2, 322

IRON

Manufacture of iron, 14, 260

IRONSTONE, 15, 501**IRREGULAR**

Irregular process, 11, 844

Regular and irregular conventions, 21, 997

IRREGULARITY, 11, 843

Distinguished from nullity, 16, 1005

IRRELEVANT, 11, 845**IRREPARABLE DAMAGE**

Adequate remedy at law, 10, 877, 878

Injunction of legal right of parties, 10, 880

Official oppression, 10, 879

Personal trespass, 10, 880

Plaintiff's title in dispute, 10, 880

Temporary injunction till defendant's title is adjudicated, 10, 880

Temporary trespass, 10, 879

Threatened trespass, 10, 801

What included under the term, 10, 877

Where damage cannot be estimated, 10, 877

IRREPARABLE INJURY, see INJUNCTION.**IRRESISTIBLE VIOLENCE**, 11, 845**IRRIGATION**, 11, 846*See* DAMS; SURFACE WATERS; WATER AND WATER COURSES.**American Doctrine**, 11, 851

Controlling circumstances, 11, 852

Reasonable use and return of surplus, 11, 851

Rights of other proprietors, 11, 851

Approximation to general view, 11, 847

Beneficial use by all riparian owners, 11, 856

Bonds, 11, 846

Controlling circumstances, 11, 852

Definition, 11, 846

Diversion of water course, 11, 847

Eminent Domain

A public use, 6, 527

For the exercise of eminent domain generally, see EMINENT DOMAIN.**English Doctrine**, 11, 849

Inapplicability to different climate, 11, 850

Statement, 11, 849

Estoppel, 11, 861

Extent of proprietor's right, 11, 848

Extraordinary purposes, 11, 859

French law, 11, 851

In general, 11, 846

Injurious diminution, 11, 854

Instances of unwarranted diversion, 11, 857

Liberal view of right to water, 11, 846

Natural and Artificial Wants, 11, 857

Distinction between, 11, 857

Ordinary and extraordinary purposes, 11, 857

Obstruction by dam, 11, 848

Ordinary purposes, 11, 857

Pacific Coast Doctrine, 11, 852

Circumstances governing, 11, 852

Diminution of flow as affecting other proprietors, 11, 853

In general, 11, 852

Prior appropriators, 11, 853

Reasonable use, 11, 852

Riparian rights, 11, 853

Summary of principles, 11, 853

Present law of irrigation, 11, 847

Prior appropriation, 11, 863

Reasonable appropriation, 11, 856

Reasonable Use, 11, 851, 858

Doctrine concerning, 11, 858

Question of degree depending upon circumstances, 11, 859

Relative character, 11, 859

Test of reasonable use of water course, 11, 859

Return of Surplus, 11, 852, 861

Action for failure to return, 11, 861

Governing principle, 11, 861

Rights of other proprietors, 11, 852

Riparian Proprietors and Appropriators, 11, 861

Allegation of riparian ownership, 11, 863

Colorado doctrine, 11, 863

Diversion of water, 11, 863

Estoppel, 11, 861

Extent of use of water from spring, 11, 862

Prescriptive right, 11, 862

Presumption by proprietor, 11, 864

Prior appropriation, 11, 863

Subsequent homestead entry, 11, 864

Vested rights, 11, 863

Riparian right in irrigating ditch, 12, 614

Subordinate to rights of co-proprietor, 11, 846

Total Consumption, 11, 860

Explanation of law, 11, 860

Not detrimental to adjoining proprietors, 11, 860

Total diversion, 11, 856

When a natural right, 11, 848

ISLANDS, 11, 865; 26, 1

Accretion, 1, 138

Belonging to the United States, 11, 866

In unnavigable rivers, 11, 868

Minerals under islands, 11, 866

Newly discovered, 11, 866

ISLANDS—Cont'd

States' right to, 11, 865

Statutes, 11, 866

Title to, 11, 865

In islands arising out of the sea, 11, 865

United States' right to, 11, 865

ISSUE, 11, 868*See* GRANDCHILD.*See generally*, LEGACIES AND DEVISES.

After his decease, 11, 906

"And" Construed "Or"

Unmarried and without issue, 11, 910

Before marriage and without, 11, 909

Children, 11, 873, 902

Collateral, 3, 310

Construction of statutes, 11, 919

Construed children, 11, 872

Deeds, 11, 876

Default of Such Issue, 11, 891

As to personality, 11, 892, 894

As to Realty, 11, 892, 896

Definite number of sons only, 11, 896

Devise in tail male, 11, 897

Devise of reversion, 11, 898

Devise subject to contingency, 11, 897

Executory trusts, 11, 897

Failure of issue male, 11, 896

Implied estate tail, 11, 897

Sons taking for life only, 11, 896

"Such" issue, 11, 892, 896

When means in default of children, 11, 896

General rule, 11, 891

Personal estate, 11, 891, 892, 894

Real estate, 11, 892, 896

Such issue, 11, 892, 893, 896

"Such" rejected, 11, 893

When failure of issue restricted to failure at ancestor's death, 11, 895

When refers to objects of that gift, 11, 894

Whether it imports a definite or indefinite failure of issue, 11, 891

Definite and indefinite failure of issue, 11, 899

Definite failure of, 5, 517

Definition, 11, 869

Descendants equivalent to, 5, 641

Devise of real estate, 11, 872

Die before having issue, 11, 902

Die under twenty-one, 11, 909

Die without leaving, 11, 905

Dying Without, 11, 891, 899*See* WILLS.*See infra*, DEFAULT OF ISSUE.**"And" construed "or,"** 11, 910

Application of rule to personal property, 11, 901

Application of rule to real property, 11, 901

As to personality, 11, 894, 901

As to Realty, 11, 896, 901

Definite number of sons only, 11, 896

Devise in tail male, 11, 897

Devise of reversion, 11, 898

Devise subject to contingency, 11, 897

Executory trusts, 11, 897

Failure of issue male, 11, 896

Implied estate tail, 11, 897

Sons-taking for life only, 11, 896

"Such" issue, 11, 896

When means in default of children, 11, 896

Before he has any issue, 11, 902

Before period of distribution, 11, 912

Before possession, 11, 912

Bequest of perishable goods, 11, 916

Bequest of personality, 11, 911

Bequest of power of appointment, 11, 917

Construed to mean indefinite failure of issue, 11, 899

Context controlling, 11, 901

Definite and indefinite failure of issue, 11, 899

Devise to first taker in tail, 11, 909

Die before marriage, 11, 909

Die under twenty-one, 11, 909

Die unmarried, 11, 909

Die without leaving issue behind him, 11, 905

Direction to pay money, 11, 915

Distinction between realty and personality, 11, 901

Effect of alternative limitations, 11, 918

Failure at any time after death, 11, 899

Failure at death, 11, 899

Failure of issue confined to period of distribution or possession, 11, 918

Failure of testator's own issue, 11, 917

General rule, 11, 891, 899**Gift Over Expressly Limited to Take Effect On, At, or After Decease of First Taker**, 11, 906**"After,"** 11, 906Effect of the word **"then,"** 11, 908Effect of the word **"then"** in regard to personality, 11, 908Effect of the word **"then"** where aided by the context, 11, 908**On**, 11, 906, 907**"On, at, or after,"** 11, 906Gift over for life where original estate devised is *pur autre vie*, 11, 916

Gift over if A survives B and dies without issue, 11, 911

Gift over if A survives B and dies without issue, or in case the issue dies under age, 11, 911

Gift over in case issue dies under age, 11, 911

Gift over to person named, 11, 912

Gift Over to Survivors or to Persons Then Living, 11, 912

General rule, 11, 912

Gift to persons then living, 11, 913

In England, 11, 913

- In the United States, 11, 914
- Others, 11, 914
- Personal estate, 11, 912
- Realty, 11, 912
- Reasons for the rule, 11, 912
- Remainder, 11, 914
- Rest, 11, 914
- Survivor, 11, 915
- In default of issue, 11, 891
- In lifetime of person living at testator's
decease, 11, 912
- Issue alive, 11, 902
- Issue surviving, 11, 902
- Issue who shall attain twenty-one, 11,
902
- Leaving, 11, 905
- "Leaving no issue," 11, 904
- Meaning of "unmarried," 11, 911
- "Or" construed "and," 11, 910
- Personal estate, 11, 891, 892
- Personal trust, 11, 915
- Real estate, 11, 892
- Referred to Death in Lifetime of Testa-
tor**, 11, 919
 - As to what limitations will be held
substitutional, 11, 920
 - Evidence of contrary intent, 11, 920
 - Examples, 11, 920, 921
 - General rule, 11, 919
 - In the United States, 11, 920
- Statutory Changes**, 11, 918
 - Construction of the statutes, 11, 919
 - In Alabama, 11, 919
 - In California, 11, 919
 - In Dakota, 11, 919
 - In England, 11, 918
 - In Georgia, 11, 918
 - In Idaho, 11, 919
 - In Kentucky, 11, 919
 - In Maryland, 11, 918
 - In Michigan, 11, 919
 - In Minnesota, 11, 919
 - In Mississippi, 11, 919
 - In Missouri, 11, 919
 - In Montana, 11, 919
 - In Nevada, 11, 919
 - In New Jersey, 11, 918
 - In New Mexico, 11, 919
 - In New York, 11, 918
 - In North Carolina, 11, 918
 - In South Carolina, 11, 918
 - In Tennessee, 11, 919
 - In Virginia, 11, 918
 - In West Virginia, 11, 918
 - In Wisconsin, 11, 919
- Such issue, 11, 892, 893
- "Such" rejected, 11, 893
- Supplying the word "leaving," 11, 905
- Survivor, 11, 917
- Then living, 11, 917
- Trust to sell, 11, 915
- When failure of issue restricted to fail-
ure at ancestor's death, 11, 895
- When refers to objects of that gift, 11,
894
- Whether it imports a definite or indefi-
nite failure of issue, 11, 891
- Whether statutory rule yields to con-
trary intent of testator, 11, 919
- Without children, 11, 902
- Without having issue, 11, 902
- Without leaving husband or wife, 11,
910
- Without Leaving Issue**, 11, 904
 - At time of death, 11, 906
 - Personalty, 11, 904
 - Realty, 11, 904
 - "Surviving," 11, 902
- Effect of Limitation Over Upon Preceding
Limitation**, 11, 921
 - Devise to A and his heirs, 11, 922
 - Examples, 11, 921-924
 - Exceptions, 11, 922
 - Gifts to issue by way of remainder, 11,
922
 - Limitation to A and his issue, 11, 924
 - Where failure of issue is definite, 11,
924
 - Where failure of issue is indefinite, 11,
921
- Explained by children, 11, 872
- Heirs of the body, 11, 869
- Issue alive, 11, 903
- Issue co-relative with parent, 11, 875
- Lawfully begotten by A, 11, 874
- Leaving, 11, 905
- Leaving no, 11, 904
- Limitation to A for Life and After His De-
cease to His Issue When No Gift Over**
 - As to personality, 11, 890
 - Living at death, 11, 901
 - Marriage settlements, 14, 551
 - Natural heirs, 16, 223
 - Objections to distribution per capita, 11,
871
 - Offspring, 11, 874; 17, 178
 - On his decease, 11, 906
 - Others, 11, 914
- Per Capita**, 11, 871
 - Objections to distribution, 11, 871
- Per stirpes, 11, 871
- Remainder, 11, 914
- Rest, 11, 914
- Sibley v. Perry, 11, 875
- Statutes**, see *infra*, DYING WITHOUT IS-
SUE.
 - Construction, 11, 919
- Survivor, 11, 914
- Take per capita, 11, 871
- "Then," 11, 908
- "Then living," 11, 912
- Unmarried, 11, 909, 911
- Used in one clause as children, 11, 872
- When issue takes per stirpes, 11, 871
- Whether issue includes adopted children,
11, 870
- Whether issue includes descendants, 11,
870
- Whether issue includes stepchildren, 11,
870
- Whether Words of Purchase or Limitation**,
11, 876
 - In deeds, 11, 876
 - In marriage articles, 11, 876

ISSUE—Cont'd

**Whether Words of Purchase or Limitation—
Cont'd**

In Wills, 11, 877

Rule in Shelley's case, see SHELLEY'S CASE.

Bequest of personal estate to A for life, after his decease to his issue, 11, 889

Child en ventre sa mere, 11, 880

Construed as word of purchase, 11, 877

Descriptive of devisees, 11, 879

Devise to A, and after his decease to his issue and their heirs, 11, 889

Devise to A and his issue living at his death, 11, 884

Direction to settle lands by way of executory trusts, 11, 880

Effect of cy pres doctrine, 11, 891

Estate tail, 11, 879

Examples, 11, 877, 878

Executory trusts, 11, 877

General principles, 11, 877

Intention of testator, 11, 877

Issue compared with heirs of the body, 11, 877

Issue in esse, 11, 881

Limitation to A and his issue; when no gift over, 11, 879

Personalty, 11, 880

Prima facie word of limitation, 11, 877

Quantity and quality of estate, 11, 895

Superadded Words, 11, 885

Of limitation change course of descent, 11, 889

Where there are no issue, 11, 885

Time when existence or non-existence of issue is important, 11, 884

When a bequest to A and his issue, they take concurrently, 11, 881

When issue takes as purchaser in fee, 11, 887

Words of distribution and limitation, 11, 885, 887

Words of distribution referred to first takers, 11, 889

Without having, 11, 902

Without issue, see infra, DYING WITHOUT ISSUE.

Without Leaving, 11, 904; 13, 2

At time of death, 11, 908

Living at death of the first taker, 13, 4

Personalty, 13, 4

Posthumous child, 13, 5

Realty, 13, 4

Without leaving a husband or wife, 11, 910

"ISSUED," 15, 1282

ITA LEX SCRIPTA EST, 13, 285

ITEM, 11, 925

JACTITATION OF MARRIAGE, 14, 532

JAIL, 11, 926

See HOUSE OF REFUGE AND CORRECTION; PRISONS.

As house of correction, 10, 198

Jail Limits

See PRISONS.

Bond for jail limits, 10, 205

Confined Within

Constitutes imprisonment, 10, 197

Right to discharge, 10, 205

JAILER

Extortion, 7, 584

False imprisonment, 7, 685

Surrender by bail, 24, 973

JAIL LIBERTIES, see PRISONS.

JAIL LIMITS, see PRISONS.

JEOPARDS, 11, 926

See AMENDMENTS.

Cure by verdict, see VERDICT.

Change the form or ground of action, 3, 89

JEOPARDY, 1, 787; 10, 477; 11, 926

See RES JUDICATA.

Acquittal

Of accessories, 4, 792

Of lower crime, 15, 362, 363

Of robbery bars prosecution for larceny, 10, 478

Upon invalid or insufficient indictment, 4, 796

What is, 1, 171

Acquitted, 1, 172

Adjournment, 11, 952

See infra, DISCHARGE OF JURY.

Arraignment, 11, 932

Arrest of judgment, 10, 479

Arson, 11, 943, 944

Assault, 4, 792; 9, 652; 11, 937, 943; 15, 366

Assaulted party dying after conviction for assault, 11, 946

Examples, 11, 941

Murder

Attempt to kill, 11, 941

Robbery and assault, 11, 945

Autrefois acquit, see infra, PLEADING.

Burden of proof, 11, 967

Burglary, 4, 792; 11, 943, 945; 15, 362, 368

Civil law, 11, 926

Co-defendant, 4, 788; 11, 957

Common law, 11, 926

Compared with res judicata, 21, 138

Constitutional provisions, 4, 795; 11, 927

Contempt, 4, 792; 9, 217; 11, 937

Conviction, 4, 143, 790; 10, 478

Conviction of larceny as acquittal to burglary, 11, 943, 945; 15, 368

Conviction of lower crime, 15, 362, 363

Conviction of lower grade of crime, 15, 362

Court of Competent Jurisdiction, 4, 797; 11, 928

Acquittal by justice, 11, 929

Change of venue, 11, 929

Court has no jurisdiction of the offense, 11, 928

Court having no power to determine cause, 11, 928

- Courts of concurrent jurisdiction, 11, 929
- Information of offender, 11, 929
- Judgment of inferior court, 11, 929
- Territorial limits, 11, 929
- Unauthorized terms, 11, 930
- Unconstitutional court, 11, 930
- Defective proceedings, 4, 797
- Defense**
 - How made, 11, 964
- Definition, 11, 926
- Demurrer**
 - To indictment, 4, 791; 10, 479; 11, 948, 966
- Determination of the issue, 11, 969
- Different courts, 11, 935
- Disagreement of jury, 11, 953
- Discharge**
 - By committing magistrate, 11, 947
 - Upon overruling demurrer, 10, 479; 11, 966
- Discharge of Jury**, 4, 797; 11, 950
 - Absolute necessity, 11, 950
 - Consent of accused, 11, 950, 953; 12, 364
 - Disagreement, 4, 797
 - Discharge after three hours' deliberation, 11, 954
 - Discharge, an absolute necessity, 11, 950, 951
 - Discharge in presence of accused, 11, 955
 - Discharge of individual juror, 12, 365
 - Discretion of court, 11, 954, 955
 - Ending of term of court, 11, 952, 954
 - General rule as to effect of, 11, 950
 - Inability to agree, 11, 953; 12, 365
 - Incapacity of witness, 11, 952
 - Incompetency of juror, 11, 952
 - Individual jurors, 12, 365
 - Manner of discharge, 11, 955
 - Misconduct of juror, 11, 953
 - Reasonable time to agree, 11, 955
 - Record showing reason for discharge, 11, 955
 - Sickness of judge, 11, 952
 - Sickness of juror, 11, 952
 - Sickness of prisoner, 11, 952
 - Sickness of witness, 11, 952
 - Withdrawal of juror without consent of defendant, 11, 953; 12, 364
 - Without consent of defendant, 11, 950
- Discharge of whole jury where discharge of one juror is necessary, 12, 365
- Discretion of court as to discharge, 11, 955
- Dismissal on Defendant's Motion**, 11, 960
 - Judgment arrested on motion of defendant, 11, 960
 - New trial granted upon defendant's motion, 11, 960
 - Prosecution for higher degree of same offense, 11, 962, 963
 - Reversal on defendant's motion, 11, 960, 961
 - Reversal upon appeal, 11, 961
- Verdict set aside on motion of defendant, 11, 960
- End of term during trial, 11, 952, 954
- Erroneous acquittal, 4, 797
- Evidence**, 11, 966
 - Burden of Proof**, 11, 967
 - As to identity of offenses, 11, 967
 - Indictment in docket entries, 11, 967
 - Of identity, 11, 967
 - Parol, 11, 967
 - Presumption as to same offense, 11, 968
 - Presumption of identity, 11, 967, 968
 - Record of previous trial, 11, 966
 - Record unaccompanied by other evidence, 11, 968
- Examination**
 - Before committing magistrate, 11, 947; 12, 419
 - Before grand jury, 11, 948
- Finding of a new bill of indictment for the same felony, 10, 477
- Forgery, 4, 792; 11, 938, 943, 945
- Former Conviction**, 4, 790; 10, 478
 - When a bar, 4, 790
 - When no bar, 4, 791
 - Where judgment has not been given, 4, 790
- Fraud on defendant's part, 11, 963
- Fraudulent acquittal, 11, 963
- Fraudulent procurement of defendant, 11, 963
- General rule, 10, 477
- Greater or lower offenses*, see *infra*, SAME OFFENSE.
- Homicide**, 9, 652
 - See *infra*, MURDER.
 - Conviction of assault and battery, 9, 653
 - Conviction of lower degree of offense, 9, 652
 - Conviction of manslaughter, 9, 653; 11, 940, 941
 - Discharge of jury before verdict, 9, 653
 - General rule, 9, 652
 - Lack of jurisdiction, 9, 653
 - Special plea, 9, 653
- How defense made, 11, 964
- Identity**
 - Allegations in plea, 11, 965
 - Burden of proof, 11, 967
 - Presumption, 11, 967, 968
 - Replication, 11, 966
- Incest, 11, 944
- Indictment quashed, 10, 479
- Indictment*, see *infra*, SUFFICIENCY OF INDICTMENT.
- Information*, see *infra*, SUFFICIENCY OF INDICTMENT.
- Instruction that there is no evidence to support, 11, 969
- Intoxicating Liquors**, 11, 938, 946
 - Illegal sale of intoxicating liquors, 11, 946
- Issue joined on plea, 4, 794
- Judgment**
 - Acquittal without judgment, 4, 788

JEOPARDY—Cont'd**Judgment—Cont'd**

- Conviction without judgment, 4, 788
- Of respondeat ouster, 11, 970
- Reversed, 4, 793
- Upon overruling, 11, 970

Jury, 11, 933**Jury Charged with Prisoner, 11, 933**

- Putting in a plea, 11, 933
- Verdict, 11, 934
- When jeopardy attaches, 11, 933
- When jury said to be charged, 11, 933

Justice, 11, 947**Killing several persons, 11, 944****Larceny, 4, 792; 10, 478; 11, 938, 942**

- Burglary and, 11, 943, 945
- Different, 11, 945
- Grand and petit, 11, 942
- Robbery and, 11, 942

Legal jury, 11, 933**Life and limb, 11, 927****Misdemeanors, 11, 927****Murder, see *infra*, HOMICIDE.**

- Conviction of lower degree of murder, 11, 944
- Death of party after conviction of assault, 11, 946
- Killing several persons, 11, 944
- Murder and intent to kill, 11, 944

New trial, 4, 818; 16, 603**Nolle Prosequi, 4, 792, 795; 11, 945; 16, 710**

- After jury is impaneled, 11, 949
- Demanding verdict, 11, 950
- Entry before jury is impaneled, 11, 949
- Entry by leave of court, 11, 950
- Statute authorizing, 11, 949
- Waiver by defendant, 11, 950

Offenses Against Different Jurisdictions, 11, 958

- City ordinance and state law, 11, 958
- Jeopardy in another state, 11, 959
- Prosecution in one county and indictment in another, 11, 958
- United States and state, 11, 958

Ordinances and statutes, 11, 958**Pleading, 11, 964**

- Allegations of Plea, 11, 964**
 - Accuracy, 11, 964
 - Assault and battery, 11, 965
 - Facts constituting jeopardy, 11, 965
 - Former indictment, 11, 965
 - Identity of the person, 11, 965
 - Jurisdiction upon former trial, 11, 964
 - Lawful conviction or acquittal, 11, 965
 - Result of former trial, 11, 965
 - Same offense, 11, 965
 - Setting out a former conviction, 11, 964

- Jeopardy, and not guilty at the same time, 4, 794

- Necessity of pleading, 4, 789, 793; 11, 964

Replication, 11, 966

- Overruling demurrer, 11, 966
- Traversing identity, 11, 966
- Striking out plea, 11, 966

Plea of

- Guilty, 11, 949
- Where Sustained, 4, 788

- Instances where plea has been held bad, 4, 788

Preliminary examination, 11, 947; 12, 419**Presentment of another indictment, 10, 476****Proof of issue, 4, 794****Province of judge and jury, 11, 969****Putting in plea, 11, 933****Question for jury, 11, 969****Regularity of the proceedings, 4, 797****Rendition of verdict, 11, 956****Reversal of judgment, 10, 479****Robbery, 11, 943, 945****Same Offense, 4, 792; 11, 934, 965**

- Burden of proof, 11, 967
- Different court, 11, 935
- Discharge under habeas corpus, 11, 935

Examples, 11, 934**General rule, 11, 934****Greater and Lesser Offenses, 11, 939;****15, 362, 363****Constitutionality of statutes, 11, 941****Convicted of greater offense, 11, 941; 16, 603****Conviction of inferior offense, 7, 789; 11, 940****Conviction of misdemeanor, prosecution for felony, 11, 942****Different grades of offense, 9, 625; 11, 940****Greater including the lesser, 11, 939****Indictment consisting of several counts, 11, 940, 941****Indictment for lesser offenses, 11, 939****Misdemeanor, 11, 942****Murder, conviction of manslaughter, 9, 653; 11, 940, 941****New trial upon reversal of conviction of inferior court, 11, 940****Instances, 4, 792****Offense called by different name, 11, 935****Offense charged not the same, 11, 934****Offenses covering the same period, 11, 939****Offenses of the Same Genus, 11, 942****Adultery and incest, 11, 944****Arson, 11, 943, 944****Assault, 4, 792; 11, 943, 944****Assault and robbery, 11, 945****Burglary, 4, 792****Burglary and larceny, 11, 943, 945****Burglary and theft, 11, 945****Death of assaulted party, after conviction of assault, 11, 946****Different larcenies, 11, 945**

- Examples of crimes and misdemeanors, 11, 946
- Forgery, 4, 792; 11, 943, 945
- Illegal sale of intoxicating liquors, 11, 946
- Incest and adultery, 11, 944
- Intoxicating liquors, 11, 946
- Killing in different way, 11, 944
- Killing several persons, 11, 944
- Larceny**, 4, 792; 11, 942
 - And burglary, 11, 943, 945
 - And robbery, 11, 943
 - Of several different articles, 11, 943
 - Separate acts, 11, 943
- Murder, 4, 792
- Murder and attempt to kill, 11, 944
- Offenses, essential element of later charge, 11, 942
- Passing counterfeit money, 4, 792
- Petit and grand larceny, 11, 942
- Rape, 4, 792
- Robbery, 4, 792
- Robbery and assault, 11, 945
- Robbery and larceny, 11, 942
- Separate and distinct acts, 11, 943
- Uttering forged instruments, 11, 945
- Presumption, 11, 968
- Test as to identity of offenses, 11, 947
- Variation in name, 11, 935
- Where Same Act Constitutes Several Offenses**, 11, 936
 - Assault and battery, 11, 937
 - Assault with intent to commit felony, 11, 937
 - Bigamy, 11, 938
 - Contempt of court, 11, 937
 - Conviction of assault after acquittal of murder, 11, 937
 - Crime against several persons, 11, 936
 - Disorderly house, 11, 938
 - Forgery, 11, 938
 - Intoxicating liquors, 11, 938
 - Larceny, 11, 938
 - Several different crimes, 11, 936
- Sufficiency of Indictment**, 11, 930
 - Arraignment, 11, 932
 - Illegally organized grand jury, 11, 931
 - Insufficient indictment, 11, 930
 - Invalid indictment, 11, 930
 - Misdescription, 11, 932
 - Mistake in allegation of time, 11, 932
 - No legal crime, 11, 930
 - Or information, 4, 797
 - Proceedings on a second indictment, 11, 932
 - Quashed indictment, 11, 931
 - Test of sufficiency, 11, 931
 - Validity of indictment, 11, 930
 - Voidable indictment, 11, 931
- Term**, 11, 952-954
- To what jeopardy applies, 11, 927
- Trial of the issue, 11, 959
- Trial upon the merits, 11, 957
- Trying person on second indictment, 10, 477
- Twice punished for same offense, 3, 736
- Universality of the principle, 11, 926
- Verdict**, 11, 934, 956; 28, 432
 - Irregular, 11, 956
 - Set aside, 4, 797
 - Trial upon the merits, 11, 957
 - Where no judgment can be rendered upon it, 11, 956
 - Where there is no judgment upon the verdict, 11, 956
- Waiver**, 11, 959
 - Consent to withdrawal of jury, 11, 960
 - Defendant voluntarily absenting himself, 11, 959
- Dismissal on Defendant's Motion**, 11, 960
 - Judgment arrested on motion of defendant, 11, 960
 - New trial granted upon defendant's motion, 11, 960
 - Prosecution for higher degree of same offense, 11, 962, 963
 - Reversal on defendant's motion, 11, 960, 961
 - Reversal upon appeal, 11, 961
 - Verdict set aside on motion of defendant, 11, 960
 - Effect of defendant's concurrence, 11, 959
 - Fraudulent procurement of defendant, 11, 963
- What constitutes, 4, 789
- When jeopardy begins, 4, 795; 11, 933, 949
- Where court had no jurisdiction, 4, 795
- Where jury has been impaneled, 4, 796
- Where proceedings are void or court has no jurisdiction, 4, 796
- Where two entered the plea of guilty, 4, 796
- Whether defense must be considered on motion to arrest judgment, 11, 964
- Whether United States provision applies to the states, 11, 927
- Withdrawal of juror without consent of defendant, 11, 953
- JETSAM**, 11, 970
 - See JETTISON.
 - Flotsam, 8, 72
- JETTISON**, 11, 970
 - See BILL OF LADING; WRECK.
 - As to basis of general average, see GENERAL AVERAGE.
 - Abandoning a boat, 11, 971
 - Cargo**, 8, 1297, 1305; 11, 971, 976
 - Liability of owner of vessel, 11, 980; 22, 761
 - Common danger, 11, 975
 - Common-law rule, 11, 972
 - Condition in bill of lading, 2, 235
 - Consulation**, 11, 976
 - Binding effect on master, 11, 976
 - Necessity of, 11, 976
 - Cutting a cable, 11, 971
 - Cutting away mast, 11, 971
 - Deck Cargo**, 8, 1297, 1305; 11, 976
 - Duty of ship under deck, 11, 976
 - General rule, 11, 976

JETTISON—Cont'd**Deck Cargo—Cont'd**

Liability of shipowner in absence of usage, 11, 976, 971

Ships and Shipping, 11, 983

Consent of shipper, 11, 981

Liability of shipowner, 11, 976

Shipowner's liability, 11, 980; 22, 761

Statutory provisions in England, 11, 978

Usage, 11, 979

Consent, 11, 980, 981

Custom of underwriter not to pay, 11, 979

Early English law, 11, 978

Effect of usage to carry on deck, 11, 978

Further usage that underwriter should not be liable, 11, 979

Liability of Shipowner, 11, 978

In England, 11, 980

Liability of Underwriter, 11, 978

In Australia, 11, 979

In Canada, 11, 979

In United States, 11, 979

Owner of under-deck cargo, 11, 983

Shipowner, 11, 980

To carry on deck, 11, 976

Underwriter's notice of, 11, 979

Where clean bill of lading is given, 11, 977

Whether bill of lading works an estoppel, 11, 977

Definition, 11, 970

Extreme necessity, 8, 1297

Instances, 11, 971, 972

Jetsam, 11, 970

Kinds of, 11, 970

Abandoning a boat, 11, 971

Cargo, 11, 971

Cutting a cable, 11, 971

Cutting away mast, 11, 971

Destruction of cargo, 11, 971

Instances, 11, 971, 972

Removing of cargo, 11, 971

Sacrificing a cargo, 11, 971

Ship's stores, 11, 971

Voluntary destruction of vessel, 11, 971

Voluntary injury of vessel, 11, 971

Voluntary scuttling, 11, 971

Voluntary stranding, 11, 971

Merchant's risk, 15, 311

Order, 11, 976

Ownership of property jettisoned, 11, 976

Peril

Article itself a source of, 11, 975

Common danger, 11, 975

Danger resulting from negligence, 11, 973

Expert evidence to prove, 11, 974

Imminent danger, 11, 973

Negligence, 11, 973

To save life, 11, 975

Removing of cargo, 11, 971

Sacrificing a cargo, 11, 971

Ship stores, 11, 971

To save life, 11, 973, 975

Unseaworthiness of vessel, 8, 1297, 1298

Voluntary destruction of vessel, 11, 971

Voluntary injury of vessel, 11, 971

Voluntary scuttling, 11, 971

Voluntary stranding, 11, 971

When Justifiable, 11, 972

See *infra*, PERILS.

Article itself a source of danger, 11, 975

Common danger, 11, 975

To prevent article from falling into enemy's hands, 11, 973

To save cargo, 11, 973

To save life, 11, 975

To save lives of crew, 11, 973

To save lives of passengers, 11, 973

To save lives of persons not passengers, 11, 973

To save ship, 11, 973

Who May, 11, 975

Crew, 11, 975

Master, 11, 975

Passengers, 11, 976

JEWEL, 11, 984

JEWELRY, 11, 984

JEWS

Sunday, 24, 546

JOB, 11, 985

JOBBER, 11, 986; 23, 702

JOINDER, 11, 986, 997

See INTERPLEADER; JOINDER OF ACTIONS; JOINDER OF OFFENSES.

Joinder of parties, see JOINDER OF PARTIES.

JOINDER OF ACTIONS AND CAUSES OF ACTION, 11, 1015^m

As to pleading several distinct pleas, see PLEADING.

Abolition of distinction between forms of action, 11, 997

Actions in different rights, see *infra*, ASSIGNEES; EXECUTORS AND ADMINISTRATORS; GUARDIANS; HUSBAND AND WIFE; PARTNERSHIP; UNDER CODES.

Actions in rem and in personam, 1, 202

Amendments, 11, 1015²

Assignees, 11, 1015^v

Bills and notes, 1, 184a; 11, 1015^b; 17, 562

Bonds, 11, 1015^k; 17, 562

Causes of Action by and Against Different Parties, 11, 1014

Distinct causes of action against different defendants, 11, 1015

Distinct causes of action in favor of same plaintiff, 11, 1015

Examples in which joinder was held not admissible, 11, 1015, 1015a

Guarantors, 11, 1015^b

Individual and assigned causes, 11, 1015

Indorsers, 11, 1015^b

In Georgia, 11, 1015^c

Makers of notes, 11, 1015^b

- Mechanic's lien, **11**, 1015
 Several plaintiffs against same defendant, **11**, 1014
 Sureties, **11**, 1015^b
Causes of Action in Louisiana, **11**, 1015²^a
 By and against parties in the same right, **11**, 1015²^a
 Different parties, **11**, 1015²^a
 Different reliefs, **11**, 1015²^a
 Election, **11**, 1015²^a
 Remedy for misjoinder, **11**, 1015²^a
Causes of Action in the Same Class, **11**, 1004, 1005
See infra, SAME TRANSACTION.
Contracts, **11**, 1004
 Arising "out of same transaction," **11**, 1004
 Causes accruing after suit brought, **11**, 1005
 Causes belonging to more than one of the same class, **11**, 1004
 Causes must be consistent, **11**, 1004
 Covenants, **11**, 1005
 Effect on real estate, **11**, 1004
 Election between counts, **11**, 1005
 Expressly implied, **11**, 1005
 Inconsistent causes, **11**, 1004
 Damages in addition to mesne profits, **11**, 1006
 Ejectment, mesne profits, and damages, **11**, 1006
 Eminent domain, **11**, 1007
Foreclosure of Liens and Personal Judgment, **11**, 1010
 Liens on realty and personal liability, **11**, 1011
 Parties liable for debt secured by mortgage, **11**, 1012
 Personal judgment with mortgage foreclosure, **11**, 1011
 Proceedings to establish mechanic's lien, **11**, 1011
 Provisions not compulsory, **11**, 1014
 Same transaction, **11**, 1011
 Several proceedings to foreclose, **11**, 1010
 Statutes authorizing joinder of liens on realty and personal liability, **11**, 1011
 Statutory provisions authorizing personal judgment, **11**, 1012
 Subsequent purchasers from mortgagor, **11**, 1013
 Vendor's lien, **11**, 1013
 In Illinois, **11**, 1006
 In Maine, **11**, 1005
 In Pennsylvania, **11**, 1006
 Injuries to character, **11**, 1008
 Injuries to person, **11**, 1008
 Injuries to property, **11**, 1008
 Malicious prosecution and false imprisonment, **11**, 1008
 Mesne profits, **11**, 1005
 Mesne profits and assignment of dower, **11**, 1006
 Partition, **11**, 1007
 Recovery of personalty, **11**, 1008
Recovery of Real Property, **11**, 1005
 Damages in addition to mesne profits, **11**, 1006
 Ejectment, mesne profits, and damages, **11**, 1006
 Eminent domain, **11**, 1007
 In Illinois, **11**, 1006
 In Maine, **11**, 1005
 In Pennsylvania, **11**, 1006
 Mesne profits, **11**, 1005
 Mesne profits and assignment of dower, **11**, 1006
 Partition, **11**, 1007
 Separate action for mesne profits, **11**, 1006
 Statutory provisions, **11**, 1005
 Taxes, **11**, 1007
 Waste, **11**, 1006
 Separate action for mesne profits, **11**, 1006
 Slander and malicious prosecution, **11**, 1008
 Statutory provisions, **11**, 1005
 Taxes, **11**, 1007
 Trespass, **11**, 1008
 Trusts, **11**, 1008
 Waste, **11**, 1006
Consolidation, **1**, 184^a
 At common law, **11**, 1015²
 By order of court, **11**, 1015²
 By referees, **11**, 1015²
 Causes accruing subsequent to the bringing of earlier suits, **11**, 1015²¹
 Causes of action which might have been joined, **11**, 1015²¹
 Distinct causes of action, **11**, 1015²¹
 Ousting jurisdiction of court, **11**, 1015²²
 Practice when consolidated, **1**, 184^a
 Promissory notes, **1**, 184^a
 Suits upon infringement of patent, **1**, 184^a
 Trial by same jury, **11**, 1015²²
 Two writs of scire facias to revive two several executions, **11**, 1015²²
 Under statutes, **11**, 1015²
 Union of legal and equitable demands, **1**, 184^a
 Contribution, actions of sureties against co-sureties for, **4**, 2
Corporations, **11**, 1015^w
 Corporate officers, **11**, 1015^w
 Statutory liability of stockholders, **11**, 1015^w
 Stockholders, **11**, 1015^w
 Court determining manner of trial, **11**, 1015²
 Definition, **11**, 986
 Demurrer, **18**, 497
Different Causes of Action, **11**, 990
 Admissibility in general, **11**, 990
 Assumpsit and case, **11**, 993
 Assumpsit and covenant, **11**, 994
 Assumpsit and trespass, **11**, 994
 Assumpsit and trover, **11**, 994
 Case and debt, **11**, 994
 Case and trespass, **11**, 994
 Case and trover, **11**, 994

JOINDER OF ACTIONS AND CAUSES OF ACTION—Cont'd**Different Causes of Action—Cont'd**

- Cause of action of the same nature, 11, 991
- Common and special counts in assumpsit, 11, 991
- Common and special counts on promissory notes, 11, 992
- Count in one form of action with count in another form of action, 11, 993
- Counts construed to be in the same form, 11, 996
- Covenant, 11, 992
- Covenant and case, 11, 994
- Debt, 11, 992
- Debt and detinue, 11, 995
- Different counts in case, 11, 992
- Different promissory notes, 11, 991, 992
- Forcible entry and unlawful detainer, 11, 994
- General principles, 11, 990
- General rule as to personal action, 11, 990
- In mixed actions, 11, 996
- In real actions, 11, 996
- Joined with either counts in assumpsit or case, 11, 995
- Personal actions at common law, 11, 990
- Replevin, 11, 993
- Scire facias, 11, 993
- Trespass, 11, 993
- Trespass and trover, 11, 994; 26, 807
- Trover, 11, 993
- Trover and detinue, 11, 994

Divorce

- Action for absolute divorce with cause for limited divorce, 5, 776
- Collateral suit, 5, 776
- Suit for other ancillary relief, 5, 776
- Two or more causes for same kind of, 5, 776

Effect of modifications in changes in forms of action, 11, 996

Ejectment, 6, 214; 11, 1006

- In California, 6, 214
- In Colorado, 6, 214
- In Georgia, 6, 214
- In Kentucky, 6, 215
- In Louisiana, 6, 215
- In New York, 6, 215
- In North Carolina, 6, 215
- In Ohio, 6, 215
- In Oregon, 6, 215

Election, 6, 249; 11, 1015², 1015³

See ELECTION,

Causes of actions in the same class, 11, 1005

In Louisiana, 11, 1015³

Under the code, 11, 1015⁴

Eminent domain, 6, 611; 11, 1007

Entire rights of action, 1, 184^b

Executors and Administrators, 7, 367, 379;

11, 1015⁴, 1015^m

Account stated, 11, 1015^o

Actions against, 11, 1015^p

Actions by, 11, 1015ⁿ

Causes accruing in individual and representative capacity, 11, 1015^o

Charging executor personally, 11, 1015^q

Count for funeral expenses with count on promises by decedent, 11, 1015^g

Defendant executor for two estates, 11, 1015^s

Examples, 11, 1015^p, 1015^q

General rule, 11, 1015^m, 1015^r

General rule against, 11, 1015^p

History of the rule, 11, 1015ⁿ

Judgment de bonis decedentis, 11, 1015^p

Promises by testator and promises by executor, 11, 1015^q

Promises to executor, 11, 1015^o

Promises to testator and decedent, 11, 1015^o

Several and joint promises, 11, 1015^r

Several bonds given by representative, 11, 1015^l

Trespass quare clausum fregit, 11, 1015^o

When counts may be joined, 11, 1015^m

Where sum recovered would be assets, 11, 1015^m

False imprisonment, 7, 687

False Pretenses

With larceny, 7, 764

Forgery, 8, 526

Guardians, 11, 1015^v

History of changes in pleading, 11, 997

Husband and Wife, 11, 1015^s

See HUSBAND AND WIFE.

Actions against, 11, 1015^u

Cause of action accruing in representative capacity, 11, 1015^s

Cause of action accruing to husband alone, 11, 1015^s

Personal injuries to wife with claim for loss of services, 11, 1015^s

Statutory Modifications, 11, 1015^t

In England, 11, 1015^t

In Indiana, 11, 1015^u

In Iowa, 11, 1015^t

In Louisiana, 11, 1015^t

In Maryland, 11, 1015^t

In Missouri, 11, 1015^u

In Wisconsin, 11, 1015^u

Personal judgment against wife, 11, 1015^u

Suits by husband for injury to wife, 9, 832

Imprisonment for debt, 10, 232

In Actions on Bonds and Recognizances, 11, 1015^k; 17, 562

Actions on several bonds, 11, 1015^k

Different breaches on the same bond, 11, 1015^k

Only causes under the bond, 11, 1015^k

Several appeal bonds, 11, 1015^l

Several attachment bonds, 11, 1015^l

Several bonds given by one administrator, 11, 1015^l

- Successive bonds given by public officer, 11, 1015¹
- In demurrer, 11, 1015¹²
- In issue, 11, 1015¹²
- In Alabama, 11, 997
- In Arkansas, 11, 999
- In Connecticut, 11, 999
- In Delaware, 11, 997
- In Florida, 11, 997
- In Georgia, 11, 997
- In Illinois, 11, 997
- In Indiana, 11, 999
- In Maine, 11, 997
- In Maryland, 11, 997
- In Massachusetts, 11, 998
- In Michigan, 11, 998
- In Mississippi, 11, 998
- In New Hampshire, 11, 998
- In New Jersey, 11, 998
- In New Mexico, 11, 999
- In Ohio, 11, 999
- In Pennsylvania, 11, 998
- In Tennessee, 11, 998
- In Vermont, 11, 999
- In Virginia, 11, 999
- In West Virginia, 11, 999
- Joinder of Counts in Trespass, 26, 627**
- De bonis asportatis and quare clausum, 26, 628
- Examples, 26, 627, 628
- In general, 26, 627
- Vi et armis and quare clausum, 26, 628
- Joint obligation, 11, 1015^u, 1015^v
- Justice of the peace, 12, 448, 451
- Libel and Slander, 13, 458**
- Assault and battery, 13, 458
- Counts, 13, 459
- Declaration containing more than one count, 13, 459
- False imprisonment, 13, 458
- Injury to real property, 13, 458
- Malicious prosecution, 13, 458
- Slander of title, 13, 458
- Mandamus, 14, 219, 225
- Misjoinder, see infra, REMEDY FOR MISJOINDER.**
- Cured by nolle prosequi, 11, 1015³
- Justice of the peace, 12, 448
- Waiver, 11, 1015³
- Where not fatal, 11, 1015³
- Whether fatal error, 11, 1015³
- Non-Joinder, 5, 360**
- Instances, 5, 360
- Of counties, 11, 1015¹²
- Of distinct causes of action in bill in equity, 2, 214
- Order to try cases which cannot be tried by same jury, 11, 1015²
- Ousting jurisdiction of court, 11, 1015²
- Petition, 11, 1007
- Partnership, 11, 1015^u**
- General rule, 11, 1015^u
- Surviving partner, 11, 1015^u
- Where partners of two firms are the same, 11, 1015^u
- Public officers, 11, 1015^w
- Remedy for Misjoinder, 11, 1015²**
- Arrest of judgment, 11, 1015², 1015³
- At common law, 11, 1015²
- Cured by nolle prosequi, 11, 1015³
- Demurrer to one count, 11, 1015³
- General demurrer, 11, 1015²
- In Louisiana, 11, 1015⁹
- Misjoinder fatal in error, 11, 1015²
- Under codes, see *infra*, UNDER CODES.
- Under the code, 11, 989
- Waiver of error, 11, 1015⁴
- When objection must be taken, 11, 1015⁴
- Where the misjoined count was not relied upon, 11, 1015³
- Replevin**
- Trover, 20, 1094
- Same Cause in Different Counts, 11, 987**
- At common law, 11, 978, 987
- Combining all common counts in one count, 5, 359
- Common and special counts, 5, 358
- Counts against two or more in same action, a count against one defendant alone, 5, 360
- Counts containing no inconsistent averments, 5, 359
- Counts requiring different pleas, 5, 360
- Counts which unite in distinct demands, 5, 360
- Examples of joinder, 5, 359
- Form of counts stating same cause of action at common law, 11, 988
- General rule, 5, 359
- Quantum meruit and count of special contract, 5, 358
- Stating same cause of action, 11, 987
- Statutory and Code Modifications, 11, 988**
- Code statutes in general, 11, 988
- Exceptions, 11, 989
- In England, 11, 988
- In Massachusetts, 11, 989
- In Mississippi, 11, 989
- In Pennsylvania, 11, 989
- In Tennessee, 11, 990
- Remedy for misjoinder, 11, 989
- Same cause in different counts, 11, 988
- Same cause stated differently under codes in the United States, 11, 989
- Variation in counts stating same cause of action, 11, 987
- Same Transaction, 11, 1004, 1009**
- Examples, 11, 1009
- Local and transitory cause of action, 11, 1010
- One subject of action, 11, 1010
- Proceedings connected with the sale of land, 11, 1009
- Subject of action, 11, 1009
- Transaction connected with same subject of action, 11, 1009
- Unity of time, 11, 1010
- Several different rights, 11, 1015^w
- Several rights of actions, 11, 184^b

JOINDER OF ACTIONS AND CAUSES OF ACTION—*Cont'd***Splitting Cause of Action****Res Judicata****Actions Ex Contractu, 21, 206**

Book accounts, 21, 207

Claims arising under any single contract, 21, 206

Continuous or continuing contract, 21, 208

Contract conditional, 21, 208

Contract in alternative, 21, 208

Defenses, 21, 208

Distinction between entire and distinct demands, 21, 209

Divisible contracts, 21, 209

Judgment omitting to give or giving credit through mistake, 21, 208

Leases, 21, 212

Notes or bonds in series, 21, 211

Payments on installment plan, 21, 208

Running accounts, 21, 207

Suit for wages, 21, 210

When decree is bar to further accounting, 21, 207

When issue considered indivisible, 21, 206

Where compromise is entered into, 21, 206

Actions Ex Delicto, 21, 212

Continuing damages in tort, 21, 214

Examples, 21, 212-216

In general, 21, 212

Permanent or occasional trespass or nuisance, 21, 216

Statutory and Common Law Actions, 11, 1015^l**Debt**Counts in debt for statute penalties, and money had and received, 11, 1015^mGeneral rule, 11, 1015^lPenalties, 11, 1015^mSeveral penalties, 11, 1015^mStatute providing for damages, 11, 1015^mStatutory liability of a corporation in common-law liability, 11, 1015^mTrespass with penalty under statute, 11, 1015^m**Statutory Changes in Forms of Action, 11, 996***See infra*, JOINDER UNDER THE CODES.

Abolition of distinction between forms of action, 11, 997

Effect of modification, in changes in forms of action, 11, 996

History of changes in pleading, 11, 997

In Alabama, 11, 997

In Arkansas, 11, 999

In Connecticut, 11, 999

In Delaware, 11, 997

In Florida, 11, 997

In Georgia, 11, 997

In Illinois, 11, 997

In Indiana, 11, 999

In Maine, 11, 997

In Maryland, 11, 997

In Massachusetts, 11, 998

In Michigan, 11, 998

In Mississippi, 11, 998

In New Hampshire, 11, 998

In New Jersey, 11, 998^o

In New Mexico, 11, 999

In Ohio, 11, 999

In Pennsylvania, 11, 998

In Tennessee, 11, 998

In Vermont, 11, 999

In Virginia, 11, 999

In West Virginia, 11, 999

Tax actions, 25, 320

Trespass, 11, 993; § 6, 627

De bonis asportatis and quare clausum, 26, 628

Examples, 26, 627, 628

In general, 26, 627

Vi et armis and quare clausum, 26, 628

Trover and trespass, 11, 993; 26, 607

Under Codes, 11, 1000**Actions at Law and in Equity, 11, 1015^d**Ejectment and foreclosure, 11, 1015^fInjunction to restrain future damage, 11, 1015^fInstruments canceled, 11, 1015^dInstruments reformed and enforced, 11, 1015^dJoinder not compulsory, 11, 1015^fPrinciples preserved, 11, 1015^dReconveyance enforced and debt proved, 11, 1015^eReconveyance of trust property and liability of trustee established in the same suit, 11, 1015^eRe-execution of deeds, 11, 1015^fSeparately stating the claims, 11, 1015^gSpecific performance, 11, 1015^fSurrender of deeds, 11, 1015^fUnited States courts, 11, 1015^g**Actions Ex Contractu and Actions Ex Delicto, 11, 1015^c**Generally, 11, 1015^cIn Iowa, 11, 1015^c**Actions in Different Rights, 11, 1015^x**Effect of code decisions, 11, 1015^xExpress enactment authorizing joinders, 11, 1015^xIn Iowa, 11, 1015^xIn New York, 11, 1015^xWhere the codes have made no change of the common law, 11, 1015^xCause of action defined, 11, 1015^h*Causes of action by and against different parties*, see *infra*, CAUSES OF ACTION BY AND AGAINST DIFFERENT PARTIES.

Chattels, 18, 495

Claim arising from same transaction, 18, 495

Generally, 18, 495
 In Arkansas, 11, 1000
 In California, 11, 1000
 In Colorado, 11, 1000
 In Connecticut, 11, 1000
 In Dakota, 11, 1001
 In District of Columbia, 11, 1003
 In Florida, 11, 1003
 In Idaho, 11, 1001
 In Indiana, 11, 1001
 In Iowa, 11, 1002
 In Kansas, 11, 1002
 In Kentucky, 11, 1002
 In Maryland, 11, 1003
 In Minnesota, 11, 1002
 In Mississippi, 11, 1003
 In Missouri, 11, 1002
 In Montana, 11, 1002
 In Nebraska, 11, 1002
 In Nevada, 11, 1002
 In New York, 11, 1002
 In North Carolina, 11, 1002
 In Ohio, 11, 1003
 In Oregon, 11, 1003
 In South Carolina, 11, 1003
 In Texas, 11, 1003
 In Utah, 11, 1003
 In Washington, 11, 1003
 In Wisconsin, 11, 1003
 In Wyoming, 11, 1003
 Injuries to real property, 18, 495
 Libel and slander, 18, 495
 Misjoinder, 18, 496
 Personal injuries, 18, 495
 Real property in ejectment, 18, 495
Remedy for Misjoinder, 11, 1015²⁴
 Allegation of specific ground for demurrer, 11, 1015²⁵
 Answer, 11, 1015²⁵
 Demurrer, 11, 1015²⁴, 1015²⁵
 Demurrer waived, 11, 1015²⁷
 Different causes of action erroneously joined in complaint, 11, 1015²⁵
 Division of action, 11, 1015²⁷
 Erroneous overruling of the demurrer, 11, 1015²⁷
 Error in overruling demurrer, 11, 1015²⁷
 Form of demurrer, 11, 1015²⁶
 In Arkansas, 11, 1015²⁶
 In California, 11, 1015²⁴
 In Connecticut, 11, 1015²⁶
 In Indiana, 11, 1015²⁵, 1015²⁷
 In Iowa, 11, 1015²⁶
 In Kentucky, 11, 1015²⁶
 In Missouri, 11, 1015²⁴
 In Texas, 11, 1015²⁶
 Inconsistent causes of action, 11, 1015²⁴
 Misjoinder actions against different parties, 11, 1015²⁷
 Motion, 11, 1015²⁴
 Motion to elect, 11, 1015²⁴
 Plea in abatement, 11, 1015²⁶
 Same cause of action set forth in two or more counts, 11, 1015²⁴

Statutory provisions, 11, 1015²⁵
 Two causes of action joined in one paragraph, 11, 1015²⁴
 Waiver of misjoinder in one paragraph, 11, 1015²⁵
 When demurrer not allowed, 11, 1015²⁶
 Same cause of action stated differently, 11, 989
 Separate statement, 11, 1015²⁴
 Upon contract express or implied, 18, 495
What Constitutes One Cause of Action, 11, 1015²⁴
 Different items of count, 11, 1015²⁴
 Fraudulent conveyances, 11, 1015²⁴
 One gravamen of action, 11, 1015²⁴
 Relief distinguished from cause of action, 11, 1015²⁴
 Several promissory notes, 11, 1015²⁴
 Sufficiency of counts, 11, 1015²⁴
 Various breaches of contract, 11, 1015²⁴
 Whether compulsory, 11, 1015²⁴
 United States courts, 27, 630
Verdict
 Cure by, 28, 429
 When causes of action may be joined generally, 1, 184^b
 When compulsory, 11, 1015²⁴
JOINDER OF COUNTS, see **JOINDER OF OFFENSES**; **JOINDER OF ACTIONS**.
JOINDER OF OFFENSES
 Burglary
 Larceny, 12, 827
 False imprisonment and malicious prosecution, 14, 16
Indictment, 4, 742, 754, 755, 756
 Charge in alternative, 10, 599^c
Charging Distinct Offenses in Same Count, 10, 599^c
 Cumulative offenses, 10, 599^c
 Distinct felonies of the same character and degree, 10, 599^c
 Offenses, 10, 599^c
 Surplusage, 10, 599^d
 When one offense implied another, 10, 599^c
 Charging same offense in different way, 10, 599^b
 Conjunctive averments, 10, 599^d
 Describing offenses, 10, 599
 Different felonies, 10, 599^b
 Disjunctive averments, 10, 599^d
 Duplicity in a count, 4, 755
 Felony and misdemeanor, 10, 599^b
 General matters, 10, 599
Joint Indictment of Husband and Wife
 Acquittal of one and conviction of other, 4, 703
 Of a felony and misdemeanor, 4, 755
 Of felonies of same degree, 4, 756
 Of misdemeanors, 4, 756
 One good count, 10, 599
 Several acts or offenses growing out of same transaction, 10, 599^b
 Several misdemeanors, 10, 599^a

JOINDER OF OFFENSES—Cont'd**Indictment—Cont'd**

Several offenses in different counts,
10, 599^a

Use of "or" instead of "and," 10,
599^e

Larceny, 12, 826

Burglary, 12, 827

Conspiracy to defraud, 12, 827

Discretion of court, 12, 827

Election, 12, 827

Embezzlement and larceny, 6, 498^f

Nolle prosequi, 12, 828

Receiving stolen property and theft,
10, 599^f; 12, 826; 20, 451

Several larcenies, 12, 827

Malicious prosecution and false imprisonment, 14, 16

Malicious prosecution and slander, 14, 16

Malpractice, 14, 83

Mayhem, 14, 996

Misdemeanor and complaint, 12, 412

Rape, 19, 954

Assault and rape, 19, 954

Carnal knowledge of child, 19, 954

Conviction of attempt or assault on
indictment for rape, 19, 954

Whether prosecutor may be compelled
to elect, 19, 954

Receiving Stolen Goods

Larceny, 10, 599^f; 12, 826, 827; 20, 451

Slander and malicious prosecution, 14, 16

JOINDER OF PARTIES

Actions by sureties, 17, 569

Actions Ex Contractu, 17, 561

See *infra*, STATUTORY MODIFICATIONS.

Defendants, 17, 573

Allegation of a several contract supported by proof of a joint obligation, 17, 578

Allegation of joint obligation, proof of several, 17, 578

Arbitrators, 17, 573

Code provisions, 17, 574

Co-obligors, 17, 576

Death of co-defendant, 17, 580

Death of co-obligor, 17, 580

Discontinuance, 17, 576

Statute, 17, 576

Where contract is joint, 17, 576

Where defendants have a personal defense, 17, 576

Where law allows imprisonment for debt, 17, 577

Distinct contracts, 17, 573

Dormant partners, 17, 575

Implied assumpsits, 17, 577

Indiana law, 17, 581

In general, 17, 573

Joint and several obligations, 17, 574

Joint obligors, 17, 575

Maker and indorser, 17, 573

Obligee also an obligor, 17, 576

Persons liable on several contracts,
17, 573

Pleading death of co-obligor, 17, 580

Principal and guarantor, 17, 574

Principal and surety, 17, 574

Statute changing rule as to personal representative, 17, 581

Statutory changes, 17, 578, 579

Whether common-law principles are not altered by statute, 17, 574

Whether personal representatives may be joined, 17, 580, 581

Whether plaintiff can recover against one of several joint defendants,
17, 578

Plaintiffs, 17, 561

Death of joint obligee, 17, 565

Dormant partners, 17, 564

In general, 17, 561

Interested person not a party, 17, 565

Joinder of obligees joining, 17, 564

Joint covenantees failing to execute the deed, 17, 563

Joint obligees, 17, 562

Nominal plaintiffs, 17, 565

Number of obligees in a joint contract, 17, 562

Obligee in a bond, 17, 562

Obligee not interested, 17, 563

Optional right of interested party,
17, 565

Party authorized to sue by contract,
17, 564

Party who fails to execute the contract, 17, 563

Payees in a note, 17, 562

Rights of action arising out of several and distinct contracts with the joint obligor, 17, 561

Several rights of action arising out of the same contract, 17, 561

Use plaintiffs, 17, 565

Where cause of action is joint, 17, 562

Whether a Contract Is Several or Joint, 17, 566

Actions by arbitrators for their fees, 17, 570

Actions by sureties, 17, 569

Collateral contracts, 17, 570

Contract construed to be several,
17, 566

Contract joint though obligees have several interests, 17, 571

Implied contracts, 17, 568

Implied contracts, joint, 17, 569

Implied contracts, several, 17, 568

Question of construction, 17, 566

Several contracts not made joint by joinder of parties, 17, 570

Several contracts not made joint by subsequent proceedings, 17, 571

Severance by defendant, 17, 573

Statutory actions, 17, 568

Subsequent severance of interest,
17, 572

Where there are several obligees,
17, 566

Actions Ex Delicto, 17, 598

See *infra*, STATUTORY MODIFICATIONS.

- Defendants**, 17, 602
 Co-partners, 17, 603
Discontinuance
 Whether plaintiff can discontinue as to any of the defendants, 17, 576
 In general, 17, 602
 Joint act of dogs or other animals owned severally, 17, 604
 Jointly guilty of negligence, 17, 602
 Joint tort feassors severally liable, 17, 604
 Libel, 17, 603
 Principal and agent, 17, 603
 Principal and surety, 17, 603
 Several acts resulting in one injury, 17, 604
 Torts arising out of contracts, 17, 605
 Trove and conversion, 17, 603
 Where tort has been committed by joint act, 17, 602
Plaintiffs, 17, 599
 Assault and battery, 17, 601
 Fraud, 17, 601
 General rule, 17, 599
 Injured in a joint interest, 17, 601
 Injuries to ships, 17, 599
 Joint owners of property, 17, 599
 Libel and slander, 17, 601
 Malicious prosecution, 17, 601
 Separate injuries, 17, 601
 Several owners, 17, 600
 Trespass, 17, 600
 Trove and conversion, 17, 600
Amendment
 Joint tenants and tenants in common, 11, 1141
Arbitrators, 17, 570, 573
Assignments
 Partial assignments, 17, 535
 Contracts, see *infra*, ACTIONS EX CONTRACTU.
Corporation and individual joined in an action of tort, 4, 254
Death of co-defendant, 17, 580
Death of co-obligors, 17, 580
Demurrer, 5, 354; 18, 497
Discontinuance, 17, 576
 Statute, 17, 576
 Where contract is joint, 17, 576
 Where defendants have a personal defense, 17, 576
 Where law allows imprisonment for debt, 17, 577
 Whether plaintiff can discontinue as to any of the defendants, 17, 576
Dormant partners, 17, 564, 575, 576
Ejectment, 5, 244; 6, 207
 In Iowa, 6, 207
 In Missouri, 6, 207
 In New Jersey, 6, 207
 In New York, 6, 207
 In Ohio, 6, 207
 In Tennessee, 6, 207
 In Texas, 6, 207
 In Virginia, 6, 207
 In Wisconsin, 6, 207
Executors and Administrators, 11, 1021;
 17, 580, 581, 650
 Actions against executors, 11, 1033
 At common law, 11, 1033
 In equity, 11, 1033
Garnishment, 8, 1100
Husband and wife, see MARRIED WOMEN; HUSBAND AND WIFE.
Implied Contracts
 Whether joint or several, 17, 568, 569
Indictment, 10, 599e
 See *infra*, RAPE.
 Accessories before and after the fact, 10, 599f
 Charging for different offenses in different counts, 10, 599f
 Charging the act collectively, 10, 599f
 Description of count, 10, 599f
 Description of particular offense, 10, 599f
 Generally as to who may be joinder, 10, 599e
 General rule, 10, 599e
 Joint indictment of husband and wife, 4, 702, 703
 Principal and accessory, 10, 599g
 Sufficiency and effect of joinder, 10, 599f
 Who may be, 10, 599e
Joint Tenants and Tenants in Common, 6, 206; 11, 1135
Defendants, 11, 1141
 Trespass, 11, 1141
 In Illinois, 6, 206
 In Maine, 6, 206
 In Maryland, 6, 206
 In Massachusetts, 6, 206
 In Missouri, 6, 206
 In Pennsylvania, 6, 207
 In Rhode Island, 6, 207
 In Wisconsin, 6, 207
Plaintiff
 Action for rent where contract was joint, 11, 1140
 Amendment, 11, 1141
 How misjoinder taken advantage of, 11, 1141
Joint Tenant, 11, 1135
 Action for injuries to real property, 11, 1136
 Action for recovery of chattel, 11, 1135
 For possession of land, 11, 1135
 In South Carolina, 11, 1136
 Recovery of possession of common property, 11, 1136
 Rental of real property, 11, 1135
Tenants in Common, 11, 1136
 Action for recovery of personal property, 11, 1138
 Action for rent, 11, 1140
 Action to recover value of personal property, 11, 1139
 Against trespasser, 11, 1137
 Damages for injury to common property, 11, 1136

JOINDER OF PARTIES—Cont'd**Joint Tenants and Tenants in Common—Cont'd****Plaintiff—Cont'd****Tenants in Common—Cont'd**

Property sold under execution, 11, 1139

Real action, 11, 1136

Recovery of undivided share, 11, 1137

Suit alone, 11, 1140

Tenant entitled to sole possession, 11, 1140

Tenant suing entitled to sole possession, 11, 1139

Trespass quare clausum fregit, 11, 1139

Trespass to try title, 11, 1138

Whether compelled to sue separately, 11, 1138

Limited partnership, 13, 837

Makers and indorsers, 17, 573

Mechanics' liens, 15, 169, 170

Mutual insurance, 16, 99

Necessary and Proper Parties Distinguished, 17, 649*In equity*, see EQUITY PLEADING.

Agents, 17, 653

Assignors and assignees, 17, 652

Cestui que trust, 17, 651

Code procedure, 17, 649

Corporations, 17, 653

Creditors, 17, 653

Definition of necessary parties, 17, 649

Definition of proper parties, 17, 649

Enforcement of liens, 17, 655

Examples, 17, 650-656

Executors and administrators, 17, 650

Generally, 17, 656

Heirs, 17, 650

Injunction, 17, 656

Parties to contracts, 17, 653

Partners, 17, 652

Proceeding to avoid a lien, 17, 656

Receivers, 17, 653

Rescission of contracts, 17, 654

Stockholders, 17, 653

Suits to reform deeds, 17, 654

Suits to reform mortgages, 17, 655

Suits to remove clouds on titles, 17, 654

Suits to set aside deeds, 17, 654

Third parties not liable to plaintiff though liable to defendant, 17, 653

Trustees, 17, 651

Nonsuit for misjoinder of plaintiffs, 16, 738

Parcenary, 17, 315

Partition, 17, 704

Partnership

Necessity of pleading non-joinder, 17, 1065

Parties Defendant, 17, 1243

Amendment, 17, 1246

Bankruptcy of partner, 17, 1246

Death of partner pendente lite, 17, 1245

Dormant Partner, 17, 1244

Whether he may be joined, 17, 1244

Whether his non-joinder can be objected to, 17, 1244

Who may be treated as dormant partner, 17, 1244

Effect of non-joinder, 17, 1243

How non-joinder taken advantage of, 17, 1246

Necessity of joinder, 17, 1243

Necessity of revivor, 17, 1245

Nominal partner, 17, 1245

Plea in abatement, 17, 1246

Priority of debt, 17, 1245

Statute provisions, 17, 1243

Parties Plaintiff, 17, 1236

Actions between partners for balances, 17, 1270

Actions for tort, 17, 1242

Amendment, 17, 1243

Bill or note made payable to single partner, 17, 1239

Contract entered into by agent, 17, 1238

Covenant to firm, 17, 1240

Damages for private injury, 17, 1242

Damages to firm's business, 17, 1243

Death pendente lite, 17, 1243

Dissolution through bankruptcy or insolvency, 17, 1241

Dormant partner, 17, 1237

Matters outside of scope of partnership, 17, 1239

New promise by debtor, 17, 1241

Nominal partner, 17, 1237

Partner excluded from participation in partnership business, 17, 1264

Partnership in fact the contracting party, 17, 1239

Partners too numerous to be brought into court, 17, 1241

Partner taking assignment from co-partner, 17, 1240

Real party in interest, 17, 1241

Sealed instrument, 17, 1240

Separate action for damages growing out of tort, 17, 1242

Solvent partner and assignee of insolvent, 17, 1241

Substitution of a new creditor, 17, 1241

Tort against one partner, 17, 1242

Trustee, 17, 1242

Where debtor did not know he was dealing with partnership, 17, 1238

Where partner can sue alone, 17, 1239

Whether all partners must join, 17, 1236

Whether in an action to recover property wrongfully disposed of by a partner the wronger should be joined, 17, 1247

Receiver, 17, 1298

Surviving Partner and Personal Representatives, 17, 1172

Action in favor of partnership, 17, 1172

Actions upon contract, 17, 1172

Amendment, 17, 1174

Co-defendant, 17, 1176

In an action against the representative, 17, 1178

Remedy of firm creditors, 17, 1175

Patent law, 18, 72

Principal and guarantor, 17, 574

Principal and surety, 17, 574

Quo Warranto, 19, 678

Examples, 19, 678

Information against corporations, 19, 678

Statute of Anne, 19, 678

Rape, 19, 953

As principals, 19, 953

Examples, 19, 953

In general, 19, 953

Who may be joined, 19, 953

Statutory Modifications*See infra*, UNDER CODES.

Code provisions, 17, 585

Code Provisions Construed, 17, 587**Bringing in New Parties, 17, 586, 595**

Amendment of pleadings, 17, 598

Disclaimer of interest, 17, 598

Equitable actions, 17, 595

Illustrations, 17, 595

In general, 17, 595

Non-resident, 17, 598

Notice to defendants, 17, 598

Notice to new parties, 17, 598

Parties not affected by judgment, 17, 597

Special code provisions, 17, 598

Whether applicable to legal actions, 17, 595

Defendant, 17, 585, 590

Common-law rules prevail unless expressly changed, 17, 592

In Connecticut, 17, 590

Joinder refused, 17, 591

Right to relief existing in the alternative, 17, 591

Unwilling plaintiff made a defendant, 17, 592

Where liability is not joint, 17, 591

Who may be joined as defendants, 17, 591

In general, 17, 585

One Suing or Defending for Many, 17, 593

Description of parties not joined, 17, 595

Examples, 17, 593, 594

Presumption as to consent, 17, 595

When parties are definitely known, 17, 594

Where interest is common, 17, 593

Where number is not definitely known, 17, 593

Where question at issue is one of common or general interest, 17, 593, 594

Plaintiff, 17, 585, 587

Actions for recovery of money only, 17, 588

All parties having a common interest must join, 17, 590

Equitable actions, 17, 587

Having distinct causes of action, 17, 588

Indiana statute as to limitations, 17, 590

Interest in subject-matter, 17, 588

Joinder of plaintiffs refused, 17, 588

Legal actions, 17, 587

Party entitled to share in proceeds, 17, 589

Replevin, 17, 587

Restraining collection of taxes, 17, 587

Summary of the provisions, 17, 585, 586

Unwilling plaintiff, 17, 586

Unwilling Plaintiff Made a Defendant, 17, 592

Co-administrators, 17, 592

Co-partners, 17, 592

General rule, 17, 592

Illustrations, 17, 592

Joint obligee, 17, 592

Withdrawal of co-plaintiff, 17, 593

What court may determine, 17, 586

Who may be made defendants, 17, 585

Executors and administrators, 17, 580, 581

General code provisions, 17, 574

In general, 17, 582

Persons Severally Liable on Same Instruments, 17, 582

In Alabama, 17, 583, 584

In California, 17, 583, 584

In Connecticut, 17, 584

In Dakota, 17, 582

In District of Columbia, 17, 582

In Georgia, 17, 582

In Idaho, 17, 582

In Illinois, 17, 583

In Indiana, 17, 583

In Louisiana, 17, 573

In Michigan, 17, 583, 584

In New Mexico, 17, 582

In New York, 17, 583, 584

In Pennsylvania, 17, 582

In Texas, 17, 583

In Utah, 17, 583

In Virginia, 17, 584

In Washington, 17, 583

In Wisconsin, 17, 582

In Wyoming, 17, 583

Joinder of maker and legal representatives of indorser, 17, 584

Where contract is joint and several, 17, 587

JOINDER OF PARTIES—Cont'd**Statutory Modifications—Cont'd**

Whether common law is altered, 17, 574

Whether joint or several, 17, 568, 569

Whether Plaintiff Must Recover Against

All Defendants, 17, 578

Amendments, 17, 579

Examples, 17, 578, 579

In general, 17, 578

Stockholders

Action to Enforce Stockholder's Liability, 23, 896

Examples, 23, 896

In general, 23, 896

Jointly and severally liable, 23, 896

Partnership liability, 23, 896

Statute, 23, 896

Individual liability of stockholder, 14, 310

Joinder of corporation as party defendant where the suit is by stockholder, 282

Torts, see infra, ACTIONS EX DELICTO.

Trespass

Co-trespassers, 26, 682, 683

Trustees

Beneficiaries, 27, 286, 287

Cestuis que trustent, 27, 284, 286, 287

Co-trustee, 27, 281, 285

Under Codes, 11, 1014

See infra, STATUTORY MODIFICATIONS.

Distinct causes of action against different defendants, 11, 1015

Distinct causes of action in favor of same plaintiff, 11, 1015

Examples in which joinder was held not admissible, 11, 1015, 1015a

Guarantors, 11, 1015b

Individual and assigned causes, 11, 1015

Indorsers, 11, 1015b

In Georgia, 11, 1015c

Makers of notes, 11, 1015b

Mechanic's lien, 11, 1015

Several causes of action, 18, 495

Several plaintiffs against same defendant, 11, 1014

Sureties, 11, 1015b

United States courts, 27, 630

Use plaintiffs, 17, 565

JOINT

For joint or joint and several bonds, see BONDS.

Joint and Several

Bills and notes, 2, 335

Joint bond, 2, 464

Joint lives, 13, 930

Jointly and severally, 2, 460

JOINT EXECUTORS AND ADMINISTRATORS, 11, 1016, 1018

Actions by and against co-executors, see EXECUTORS AND ADMINISTRATORS.

Actions by co-executor, 11, 1033

Act of One Is Act of All, 11, 1016

Assigning mortgage, 11, 1017

Cases in Which Executors Must Join, 11, 1018, 1020

Confession of judgment, 11, 1020

Conversion of realty into personality, 11, 1018

Conveyances, 11, 1018

Executors who do not qualify, 11, 1019

Sale of land under statute, 11, 1019

Sale of real estate under power in will, 11, 1018

Subsequent ratification of sale, 11, 1019

When all executors must join, 11, 1018

Where executor has resigned or been discharged, 11, 1019

Where one of the executors refuses the trust, 11, 1019

Compromise without knowledge of co-executor, 11, 1017

Effect of admissions, 11, 1020

Equity enforcing unjust contract, 11, 1018

General rule, 11, 1016

Investment of assets, 11, 1017

Payment, 11, 1017

Preventing co-executor from taking possession of assets, 11, 1017

Probate of one is probate for all, 11, 1017

Release of debt, 11, 1017

Release of mortgage, 11, 1017

Satisfaction, 11, 1017

Selling or disposing of assets, 11, 1018

Submitting to arbitration, 11, 1017

Taking possession of assets, 11, 1017

Transferring notes held by decedent, 11, 1017

Admissions, 11, 1020

Creating new liability, 11, 1021

Effect of new promise upon statute of limitations, 11, 1020

General rule, 11, 1020

Instances, 11, 1020, 1021

Made in character of executor, 11, 1020

Agent's misconduct, 11, 1028**Arrangement to Divide the Administration**

Power of executor to make, 11, 1029

Responsibility of both, 11, 1029

Cases in Which Executors Must Join, 11, 1018

Confession of judgment, 11, 1020

Conversion of realty into personality, 11, 1018

Conveyances, 11, 1018

Executors who do not qualify, 11, 1019

Further acts in regard to assets, 11, 1021

Sale of land under statute, 11, 1019

Sale of real estate under power in will, 11, 1018

Subsequent ratification of sale, 11, 1019

- When all executors must join, 11, 1018
 Where executor has resigned or been discharged, 11, 1019
 Where one of the executors refuses a trust, 11, 1019
 Where they have joined in regard to particular assets, 11, 1021
Commissions, 4, 440, 441
Confession of judgment, 11, 1020
Constitutes but one person, 11, 1016
Conversion of realty into personality, 11, 1018
Conveyances, 11, 1018
Definition, 11, 1016
Effect of Joint Receipts and Accounts, 11, 1029
 As evidence that assets were under control of both, 11, 1029
 Evidence that assets are actually on hand, 11, 1030
 Joining in signing receipt making all liable, 11, 1029
 Old rule, 11, 1029
 Whether more than prima facie evidence, 11, 1030
Executors who do not qualify, 11, 1019
Handing Over Assets to Executor, 11, 1028
 Appointment of one of several as acting executor, 11, 1027
 Cases in which an executor can give assets to co-executor, 11, 1028
 Liability, 11, 1026
 Where executor would be justified in employing agent, 11, 1028
Liability of Co-Executors for Each Other, 11, 1022, 1029
 Agent's misconduct, 11, 1028
 Arrangements to divide administration, 11, 1029
 Assets received by co-executor, 11, 1022
 Cases in which executor can give assets to co-executor, 11, 1028
 Concurrence on part of injured party, 11, 1032
 Delivery over to another co-executor, 11, 1022
 Difference between liability both at law and in equity, 11, 1031
 Effect of joint receipts and accounts, 11, 1029
 Enabling co-executor to obtain possession of assets, 11, 1026
 General rules, 11, 1022
 Joint bonds, 11, 1031
 Knowledge of misappropriation, 11, 1022
 Liability of co-executor's estate, 11, 1032
 Misrepresentation of co-executor, 11, 1022
 Negligence or Bad Faith, 11, 1023
 Agent jointly selected, 11, 1028
 Appointment of one representative as acting representative, 11, 1027
 Arrangement to divide the administration, 11, 1029
 Assets applied properly, 11, 1028
 Cases in which an executor can give assets to co-executor, 11, 1028
 Examples in which executor is not held guilty of negligence, 11, 1024, 1025
 Examples of negligence, 11, 1023, 1024
 Executor enabling his co-executor to obtain possession of assets, 11, 1026
 Executor privy to misappropriation, 11, 1023
 Exercise of personal supervision, 11, 1024
 Following directions of will, 11, 1026
 General rule 11, 1023
 Handing over assets to pay debts, 11, 1028
 Inaction on part of representative, 11, 1027
 Permitting use of funds in private business, 11, 1024
 Responsibility for proceeds of joint sale, 11, 1025
 Selling land to co-executor without taking security, 11, 1024
 What constitutes negligence, 11, 1023
 Where executor doubts solvency of his co-executor, 11, 1023
 Not following directions in will, 11, 1026
 Notice to one is notice to all, 11, 1033
 Possession of assets, 11, 1022
 Trustees as well as executors, 11, 1023
 Waste committed after death, 11, 1032
 Where there is a distinction between the liability of a co-executor and that of a legatee, 11, 1031
 Whether terms of will affect executor's liability, 11, 1031
Negligence, see *infra*, **LIABILITY OF CO-EXECUTORS AND ADMINISTRATORS FOR EACH OTHER**.
 Notice to one is notice to all, 11, 1033
 Sale of land under statute, 11, 1019
 Sale of real estate under power in will, 11, 1018
 Subsequent ratification of sale, 11, 1019
 When all executors must join, 11, 1018
 Where executor has resigned or been discharged, 11, 1019
 Where one of the executors refuses a trust, 11, 1019
JOINT STOCK COMPANIES, 3, 366; 11, 1036
 See generally, **LIMITED PARTNERSHIPS; SOCIETIES AND CLUBS; STOCK EXCHANGE; TRADE, BOARDS OF**.
 See **JOINT PARTNERSHIPS; STOCK-HOLDERS**.
 Car trusts, see **CAR TRUSTS**.
 Mining companies, see **MINES AND MINING CLAIMS**.
 Bubble acts, 11, 1042

JOINT STOCK COMPANIES—Cont'd

- Compared with produce exchange, 11, 1037
- Compared with stock exchange, 11, 1037
- Definition, 11, 1036
- Dissolution, 11, 1055
 - By acts amounting to dissolution, 11, 1056
 - By equitable proceedings, 11, 1055
 - By mutual consent, 11, 1055
 - Death, 17, 1099
 - Transfer of shares, 11, 1055
- Distinguished from corporations, 11, 1039; 25, 625
- Distinguished from ordinary partnerships, 11, 1038
- Governed by general law of partnership, 11, 1038, 1039
- In California, 11, 1046
- In New York, 11, 1045
 - Actions Against, 11, 1052
 - By members, 11, 1052
 - In general, 11, 1052, 1053
 - In name of president, 11, 1052
 - Claim against individual members, 11, 1045
 - Remedy against individual members, 11, 1045
 - Resort to joint property first, 11, 1045
 - Statutory provisions, 11, 1045
 - Surviving members, 11, 1045
 - In Virginia, 11, 1046
 - In Wisconsin, 11, 1047
- Land company, 11, 1038, 1040, 1049
- Liability**
 - Of executor and administrator, 7, 342
 - To taxation, 11, 1038
- Liability of Members**, 11, 1048
 - As between themselves, 11, 1049
- Debts of the Association**
 - Liability of partners, 11, 1038
 - For deeds of company, 11, 1039
 - Individual liability, 11, 1048
 - To the public, 11, 1048
 - When liability begins, 11, 1048
- Liability of social clubs*, see SOCIETIES AND CLUBS.
- Libel and slander, 13, 448
- Officers**, 11, 1050
 - Responsibility of company for their acts, 11, 1050
 - Responsibility of officers to the company, 11, 1051
- Pennsylvania Act**
 - Limited partnerships, 11, 1045
 - Schedule of property contributed, 11, 1044
 - Strict compliance with act, 11, 1043
 - Recognized at common law, 11, 1041
- Rights and privileges of members governed by articles of agreement, 11, 1049
- Rights as between themselves, 11, 1049
- Rights of members as between themselves, 11, 1049, 1050
- Scire facias, 21, 871

Societies and Clubs

- Distinguished from, 22, 805
- Statutory Enactments**, 11, 1042
 - See *infra*, IN CALIFORNIA; IN NEW YORK; IN PENNSYLVANIA; IN VIRGINIA; IN WISCONSIN.
 - In England, 11, 1042
 - In United States, 11, 1043
 - Nature of statutes, 11, 1043
 - Pennsylvania act, 11, 1043
- Stock, 23, 585
- Suit by member against company, 11, 1049, 1053
- Suits by or Against**, 11, 1051, 1053
 - In Foreign Jurisdiction, 11, 1054
 - As quasi corporations, 11, 1054
 - Where organized by statute, 11, 1054
 - In Local Jurisdiction, 11, 1051
 - In name of individual members, 11, 1051
 - In New York, 11, 1052
 - Suits by members against company, 11, 1053
 - Where not organized by local statute, 11, 1051
 - Where organized under local statutes, 11, 1052
- Title to real estate, 11, 1050
- Trading in land, 11, 1038
- Transfer of Shares**, 11, 1055
 - Stockholder's right, 11, 1055
 - Whether it works a dissolution of company, 11, 1055
- Whether Partnerships**, 17, 863
 - Consent of directors to transfer of shares, 17, 864
 - Co-operative stores, 17, 866
 - Examples, 17, 863-866
 - In absence of statute, 17, 863
 - Organization of company, 17, 864
 - Purchasers of shares, 17, 864
 - Signature of the subscription, 17, 864
 - Transferable shares, 17, 864
 - Where articles have not been signed, 17, 864

JOINT TENANTS AND TENANTS IN COMMON, 11, 1057, 1076

- See CONTRIBUTION.
- See generally, PARCENARY.
- See MUNICIPAL CORPORATION; PARTITION.
- As to tenancy by entirety*, see HUSBAND AND WIFE.
- ¶us accrescendi*, see SURVIVORSHIP BETWEEN JOINT TENANTS.
- Ships*, see SHIPS AND SHIPPING.
- Accounting, 11, 1131
- Action by Tenant Against Third Party**, 11, 1135
 - Joinder, 11, 1135
- Actions at Law**, 11, 1122
 - Action for damages for conversion, 11, 1128; 12, 1126
- Assumpsit**, 11, 1128
 - For advances to remove incumbrances, 11, 1129

- For co-tenant's share of property sold, 11, 1128
 For profits for improvements, 11, 1129
 For rents and profits, 11, 1128
 Conversion, 11, 1128; 12, 1126
 Common law, 11, 1122
 Detention of common property, 11, 1126
 Ejectments, 11, 1122
 Evidence, 11, 1130
 Forcible entry and detainer, 11, 1123
 For ouster, 11, 1123
 General rule, 11, 1122
 Measure of damages for conversion, 11, 1127
 Measure of recovery, 11, 1130
 Pleading, 11, 1130
Replevin, 11, 1123; 20, 1050
 In North Carolina, 11, 1124
 Trespass on the case, 11, 1125
Trespass Quare Clausum Fregit, 11, 1124
 Detinue will lie, 11, 1125
 Detinue will not lie, 11, 1125
Trover, 11, 1126; 12, 1126
 Destruction, 11, 1126
 Exclusive use of common property, 11, 1126
 When conversion will keep action, 11, 1127
 Waste, 11, 1125, 1129
Actions Between Co-Tenants, 11, 1122
 General rule as to, 11, 1122
Actions in Equity, 11, 1130
 Partition, see **PARTITION**.
 Accounting, 11, 1131
 Adequate remedy at law, 11, 1134
 Appointment of receiver, 11, 1134
 Bill of complaint, 11, 1135
 Contribution for payment of common charge, 11, 1132
 Contribution for repairs, 11, 1132
 Expenses disbursed for estate, 11, 1132
 Joint waste, 11, 1134
 Rents and profits, 11, 1131
 Rents and profits for improvements, 11, 1132
 What are allowed under accounting, 11, 1132
 When equity will entertain jurisdiction, 11, 1130
 Admissions of tenants in common, 9, 343
Adverse Possession, 11, 1112; 17, 707, 710
 Conveyance by co-tenants, 1, 234
 Conveyance of property in adverse possession of co-tenant, 11, 1119
 Effect of ouster, 11, 1119
 Evidence of ouster between co-tenants, 1, 235; 11, 1116, 1119
 Examples, 11, 1121
 Husband and wife, 11, 1121
 North Carolina doctrine, 11, 1121
Of Tenants in Common, 1, 232; 11, 1081
 Denying tenure, 11, 1082
 Notorious act of ouster, 11, 1081
 Presumption as to, 11, 1080, 1081
 When it becomes adverse, 11, 1082
Ouster and Disseisin, 11, 1113
 As to personal property, see *infra*, **CONVERSION**.
 Acts amounting to ouster, 11, 1117
 Acts inconsistent with rights of co-tenant, 11, 1117
 Acts which amount to ouster between landlord and tenant, 11, 1118
 Conveyance of whole property, 11, 1114
 Evidence of ouster, 1, 235; 11, 1116, 1119
 Exclusive possession for great length of time, 11, 1116
 Exclusive receipt of rents and profits, 11, 1115
 Levy by creditor, 11, 1114
 Purchase of outstanding title, 11, 1114
 Refusal to allow co-tenant to occupy, 11, 1117
 Unequivocal act of exclusion, 11, 1116
 Whether one co-tenant may oust his fellow, 11, 1113
 Ouster question for jury, 11, 1119
 Proving ouster, 1, 235; 11, 1116, 1119
 Right of entry between co-tenants, 11, 1120
 Statute as bar to co-tenant, 11, 1120
Title by Adverse Possession, 11, 1120
 In general, 11, 1120
 When statute of limitation begins to run, 11, 1112, 1120
What Constitutes, 1, 235; 11, 1112
 Actual disseisin, 11, 1112
 Actual ouster, 11, 1112
 Exclusive possession, 11, 1113
 Husband and wife, 11, 1113
 Infant co-tenant, 11, 1113
 In general, 11, 1112
 Notice of hostile occupation, 11, 1112
 Peaceable possession of co-tenant, 11, 1112
 Silent possession of co-tenant, 11, 1112
 Unequivocal act indicating an intention to hold adversely, 11, 1112
 When statute of limitation begins to run, 11, 1112, 1120
Agreements
 Concerning Common Property, 11, 1095
 Action for breach, 11, 1095
 As to possession, 11, 1096
 As to sales, 11, 1096
 Examples of agreement, 11, 1095, 1097
 Validity of agreement, 11, 1095
 What agreements are valid, 11, 1096
 One tenant occupying common property, 11, 1103
 To pay co-tenant for his care and management of property, 11, 1111

JOINT TENANTS AND TENANTS IN COMMON—Cont'd**Agreements—Cont'd****To Sever Relationship**

By verbal division, 11, 1143

In general, 11, 1143

Assumpsit, 11, 1128

Binding estate of co-tenant, 11, 1090

Care and management of property, 11, 1111

Collateral inheritance tax, 24, 472

Compensation for services, 11, 1074

Contribution, 11, 1086

Assumpsit, 11, 1129

Equitable Remedy, 11, 1131

Improvements, 11, 1132

Incumbrances, 11, 1110; 13, 601

Payment of common charge, 11, 1132

Repairs, 11, 1132

Conversion, 11, 1118; 12, 1126

Refusal to make partition, 11, 1118

Sale of common property, 11, 1118

Trove, 11, 1126

What constitutes between, 11, 1118

Conveyance by one joint tenant of whole property, 11, 1114

Conveyance by One of Specific Part, 11, 1092

Acquiescence of co-tenants, 11, 1094

Confirmation by co-tenants, 11, 1094

Conveyance by metes and bounds, 11, 1092, 1093

Coöperation by co-tenant, 11, 1094

Effect as to co-tenants, 11, 1092, 1093

Effect of, 11, 1092, 1093

Validity as between parties, 11, 1093

Conveyance of Undivided Share, 11, 1092

Form of conveyance to co-tenant, 11, 1092

Form of conveyance to stranger, 11, 1092

Possession, 11, 1092

Reserving an easement, 11, 1092

Right to convey, 11, 1092

To a co-tenant, 11, 1092

To a stranger, 11, 1092

Conveyance of Whole Property, 11, 1090

By one co-tenant alone, 11, 1090

Conveyance by deed, 11, 1090

Co-tenants joining, 11, 1090

Ratification of sale, 11, 1091

Seller in possession of personal property, 11, 1091

Where sale by one co-tenant is void, 11, 1091

Corporation holding with a natural person, 4, 231

Cost, 11, 1142

Co-tenancy in a safe, 21, 441

Creation of Joint Tenancy, 11, 1059

Constitutionality of statutes, 11, 1061

Conveyances to trustees, 11, 1062

Conveyance to two or more as joint tenants, 11, 1059

Devise to husband and wife, 11, 1060

Disseisin, 11, 1062

Examples of words held to create joint tenancy, 11, 1059

Extrinsic evidence of intention, 11, 1061

In Personal Property, 11, 1061

Presumption, 11, 1061

Whether joint tenancy or tenancy in common, 11, 1061

Whether there may be, 11, 1061

Joint purchase, 11, 1059

Legislative enactments as to presumption, 11, 1060

Not favored by court, 11, 1060

Presumption as to intention, 11, 1060

Purchase for purpose of improvement, 11, 1060

Statute providing that an estate shall be construed as estates in common, 11, 1060

What words create, 11, 1059

Wording of conveyance, 11, 1059

Creation of Tenancy in Common, 11, 1062, 1070, 1097

Acquiring rights in property from different sources, 11, 1072

By purchase, 11, 1062

Confusion of goods, 11, 1068

Confusion of goods by fault of one of the parties, 11, 1068

Confusion of goods without fault, 11, 1068, 1075

Contract to convey, 11, 1065

Conveyance of Undivided Part, 11, 1066

Description of part conveyed, 11, 1066

Examples, 11, 1066

General rule, 11, 1066

Cropper, 11, 1067, 1069, 1075

Designation of particular part, 11, 1063

Destruction of joint tenancy, 11, 1066

Equal division, 11, 1063

Examples, 11, 1064-1066, 1072

Exchange, 11, 1067

Executions by two creditors, 11, 1066

Executions by two joint creditors, 11, 1071

Gift per stirpes, 11, 1063

Manufactured articles, 11, 1068

Mortgage of share of crop, 11, 1067

Mortgage to secure debts in severalty, 11, 1063

Partnership real estate, 11, 1065

Part owners of cargo, 11, 1073

Personal property, 11, 1061, 1065

Purchase of equity redemption, 11, 1071

Purchasing interest of one tenant, 11, 1072

Redeeming land, 11, 1066

Redemption, 11, 1071

Reservation in deed, 11, 1071

Right of selection, 11, 1071

Sale by joint tenants, 11, 1067

Shipowners, 11, 1065, 1073

Simultaneous conveyances, 11, 1065

Statutes declaring estates to be tenancies in common unless otherwise expressed, 11, 1070

- Statutes Providing that Conveyance Shall Be Construed to Pass Estates in Common Rather than Joint Estates,** 11, 1060
 Constitutionality of statutes, 11, 1061
 In Massachusetts, 11, 1060
 In Mississippi, 11, 1061
 In New Jersey, 11, 1061
 In South Carolina, 11, 1061
 In Vermont, 11, 1061
Statutes providing that conveyances shall be taken in common, 11, 1063
 Storing in warehouse, 11, 1068
 Unequal division, 11, 1063
 Words purporting a division, 11, 1062
Croppers, 11, 1067, 1069, 1075
Crops, 11, 1103
 Dedication of common property, 11, 1090
Definition, 11, 1057
Definition of joint tenants, 11, 1058
Definition of tenants in common, 11, 1058
Disseisin, see *infra*, ADVERSE POSSESSION.
Distress, 12, 7577
División
 Tenants in common, 17, 683
Dower, 5, 890
 In common property, 11, 1087
 In Estate, 5, 893
 In common, 5, 893
Doweress, 11, 1075, 1076
Duties and Liabilities, 11, 1098
 As to rents and profits, see *infra*, RENTS AND PROFITS.
Ejectment, 6, 244, 245; 11, 1123
 Co-Tenants as Parties in Ejectment, 6, 206
 In Arkansas, 6, 206
 In Colorado, 6, 206
 In Georgia, 6, 206
 In Indiana, 6, 206
 In Iowa, 6, 206
 In Kansas, 6, 206
 In Michigan, 6, 206
 In Minnesota, 6, 206
 In Missouri, 6, 206
 In Nebraska, 6, 206
 In New Jersey, 6, 206
 In New York, 6, 206
 In Ohio, 6, 206
 In Oregon, 6, 206
 In Tennessee, 6, 206
 In Virginia, 6, 206
 In West Virginia, 6, 206
 In Wisconsin, 6, 206
Eminent Domain
 Who entitled to damages, 6, 589
Entry and possession of one for benefit of all, 11, 1078
Entry, writ of, 6, 654
Exclusive occupation, see *infra*, RENTS AND PROFITS.
Exclusive possession, see *infra*, ADVERSE POSSESSION.
Execution, 11, 1142
 Execution against all co-tenants, 11, 1142
 Execution against one co-tenant, 11, 1142
 Sale of interest of one tenant, 11, 1142
 Undivided interests of tenants in common, 9, 35
Executors and Administrators
 Whether joint estate passes to, 7, 246
Expenses
 Disbursed for estate, 11, 1132
Fixtures, 8, 54
Forcible Entry and Detainer
 Action by, 8, 135
 Action by tenant in common against his co-tenant, 8, 136
Foreclosure of Mortgages
 When tenants in common should be made parties, 8, 225
History, 17, 677
 Advantages of chancery court, 17, 679
 At common law, 17, 677
 Compelling conveyance of legal title, 17, 680
 Equitable remedies, 17, 679
 Inadequacy of oral remedies, 17, 679
 Jurisdiction assumed by chancery courts, 17, 679
 Necessity of consent of all tenants at common law, 17, 678
 Pecuniary compensation for owelty of partition, 17, 679
 Personal property, 17, 681
 Practice, 17, 679
 Relationship of co-parceners, 17, 678
 Statute of Henry VIII., 17, 678
 Whether relationship can be dissolved at common law, 17, 678
Homestead, 9, 431, 456; 11, 1089
Husband and Wife
 Adverse possession, 11, 1121
 General rule, 11, 1070
 In Connecticut, 11, 1070
 Personal property, 11, 1070
 Statutes declaring all estates tenancies in common unless otherwise expressed, 11, 1070
**Improvements, see *infra*, REPAIRS AND IMPROVEMENTS.
 Rents and profits, 11, 1132
 Improving property, 11, 1088
Incumbrances, 11, 1110
 Contribution, 11, 1110; 13, 601
 Lien of tenant who has paid off an incumbrance, 11, 1110
 Where one mortgagor has paid his share of mortgage, 11, 1110
 In farming utensils, 11, 1074
Injunction, 11, 1133
 Insurance of tenant's interest, 11, 1088
Joinder, 11, 1135
 Defendants, 11, 1141
 Trespass, 11, 1141
Joinder of Co-Tenants in Ejectment, 6, 206
 In Illinois, 6, 206
 In Maine, 6, 206
 In Maryland, 6, 206
 In Massachusetts, 6, 206
 In Missouri, 6, 206**

JOINT TENANTS AND TENANTS IN COMMON—Cont'd**Joinder of Co-Tenants in Ejectment—Cont'd**

In Pennsylvania, 6, 207

In Rhode Island, 6, 207

In Wisconsin, 6, 207

Joinder of parties, 17, 599

Joint Tenancy, 3, 168; 6, 891; 11, 1076

Alienation, 6, 892

Conveyance, 6, 892

Definition, 6, 891

How created, 6, 892

Per my et per tout, 11, 1076

Release, 6, 892

Unity of interest, 11, 1076

Unity of Time, 11, 1076

In excess of devises, 11, 1076

In excess of use, 11, 1076

Unity of title, 11, 1076

What is meant by unity of interest, 11, 1076

What is meant by unity of time, 11, 1076

What is meant by unity of title, 11, 1076

Joint Tenants, 11, 1079

Distraining for rent, 5, 707

Entry and possession of one for benefit of all, 11, 1078

Payment of taxes by one joint tenant, 11, 1079

Purchase of tax title, 11, 1079

Title Acquired by One Inures to All, 11, 1078, 1079

Payment of taxes by one joint tenant, 11, 1079

Purchase of tax title, 11, 1079

Judgment, 12, 96**Judgment lien**, 12, 110**Landlord and Tenants**, 12, 665

Absence of contract, 12, 665

Agreement between tenants, 12, 666

Cultivation of land on shares, 12, 666

Examples, 12, 666

Payment of definite part of crop, 12, 666

Relationship appearing from lease, 12, 666

Lease, 11, 1094; 12, 1000

Authority of tenant in common, 12, 1000

Ejectment, 11, 1095

Execution of lease without consent of co-tenant, 11, 1094

Joint distress, 11, 1095

Joint lease, 11, 1095

Of mining claims, 15, 595

Receiving rent, 11, 1095

Renewal inured for benefit of all, 12, 1009

Whether action for rent should be joint, 12, 1000

Liability for negligence, 12, 719

License

Logs and lumber, 13, 1031

Licensing acts upon common property, 11, 1095

Licitation, 2, 721

Lien for Improvement, 13, 601

At common law, 13, 601

Contribution, 11, 1110; 13, 601

Creditor's priority, 13, 602

Discharge of mortgage, 13, 602

Notice of repair, 13, 601

Partition, 13, 602

Permanent repairs, 13, 602

Property liable to decay, 13, 601

Rents, 13, 602

Repairs, 13, 601

Limitation of Actions, 13, 687*See infra*, ADVERSE POSSESSION.

Statute running against co-tenant, 11, 1138

Losses, *see infra*, SHARING BURDENS AND LOSSES.**Mechanics' Liens**

Tenants in common, 15, 63

Mills, 15, 486**Partition**, 15, 486

Examples, 15, 487

Statutes, 15, 487

Use assigned alternately, 15, 487

Whether allowable, 15, 486

Repairs, 15, 486

At common law, 15, 486

Statutes, 15, 486

Mortgages, 11, 1097

Assignments, 15, 849

Redemption, 20, 613

Municipal corporations, 15, 1058

Ouster, *see infra*, ADVERSE POSSESSION.**Partnership**, 17, 859

Real property, 17, 949, 950

Whether Partnership Exists, 17, 859-862

Copyright, 17, 861

Joint ownership of land, 17, 860

Joint utilization of property, 17, 859

Land purchased jointly, 17, 859

Patent, 17, 861

Property procured for carrying on business, 17, 860

Purchase made as an investment only, 17, 859

Receipt and division of rents, 17, 860

Ship, 17, 861*See SHIPS AND SHIPPING.*

Partners in her earnings, 17, 862

Shipowners and cargo owners, 17, 862

Tenants in common, 17, 861

Whether a vessel is subject to partnership, 17, 862

Whether joint ownership constitutes a partnership, 17, 861

Where income is divided, 17, 859

Whether a joint ownership constitutes a partnership, 17, 859

Patent Law, 18, 129

Accounting, 18, 129

Conveyances, 18, 129

Estoppel, 18, 129

Liability, 18, 129

License, 18, 129

- Profits, 18, 129
 Whether partners, 18, 129
 Whether tenants in common, 18, 129
 Payment of taxes by tenants in common, 11, 1081
 Per my et per tout, 11, 1076
 Personal property, 11, 1061
 Pews, 18, 416
Possession, see *infra*, ADVERSE POSSESSION; RIGHT OF POSSESSION.
 Purchase at foreclosure sale, 11, 1104
Purchase-Money, 11, 1111
 Lien of co-tenant who has paid more than his share, 11, 1111
Purchase of Outstanding Title by Tenant in Common, 11, 1082
 Acquisition under United States laws, 11, 1084
 Contribution where tax title is purchased, 11, 1086
 How tenancy created, 11, 1082
 Inures to benefit of all, 11, 1082
 Necessity of confidential relationship, 11, 1082
 Purchase after period of redemption has expired, 11, 1086
 Purchase of land at tax sale, 11, 1085
 Purchase under judicial sale, 11, 1083, 1084
 Sale by co-tenants, 11, 1084
 Source from which acquired, 11, 1082
 Title by descent, 11, 1082
 Titles acquired by different means, 11, 1082
 Purchase of tax title, 11, 1085
 Quare clausum fregit, 11, 1124
 Ratification of sale, 11, 1091
Reception, 19, 1097
 Right of one tenant to enter upon another's land to take the chattel, 19, 1104
 "Received," 19, 1131
Receivers, 11, 1134; 20, 52
 Partition suits, see *PARTITION*.
 Estate not of equitable character, 20, 53
 Exclusion from enjoyment of the property, 20, 53
 In general, 20, 52
 Mines, 20, 53
 Timber lands, 20, 53
 Recording acts, 20, 575
 Recovery for care and management of property, 11, 1111
 Redemption, 11, 1097
Release, 20, 749, 754
 Release for trespass to the land, 20, 749
 Release of rent, 20, 749
 Trespass, 20, 765
 When co-tenant bound, 20, 749
 Religious societies, 20, 807
 Removal of timber, 11, 1089
Rents and Profits, 11, 1098; 12, 734
 Accounting, 11, 1131
 Caused by improvements, 11, 1132
 Compensation for exclusion, 11, 1101
 Crops grown by one tenant, 11, 1103
 Deductions for repairs, etc., 11, 1099
 Exclusive receipt as ouster, 11, 1115
 Interest, 11, 1103
 Leased premises, 11, 1100
 Liability, 12, 735
 Liability for excess of his share, 11, 1098
 Liability for excluding co-tenant, 11, 1099
 Liability for exclusive use, 11, 1101
 Liability for exclusive use of land improved by himself, 11, 1102
 Liability for improved lands, 11, 1102
 Liability for use and occupation, 11, 1099
 Liability to account, 11, 1098
 Liable only for money actually received, 11, 1099
 Liens for contribution, 11, 1105, 1106
 Measure of accountability for exclusive use, 11, 1101
 Measure of damages, 11, 1103
 Occupation under agreement, see *infra*, AGREEMENT.
 Refusal to occupy, 11, 1100
 Sales, 11, 1104
 Where there is a lien upon property, 11, 1099
Repairs and Improvements, 11, 1104
 Agreement for lien, 11, 1106
 Assumpsit, 11, 1129
 Consent or request of co-tenant, 11, 1104
 Deductions from rents and profits, 11, 1099
 Improvements at the request of co-tenant, 11, 1106
 Improvements by lessee, 11, 1105
 Interest, 11, 1106
 Lien for failure of contribution, 11, 1105
 Necessity of previous request to join in repairs, 11, 1105
 Necessity of repairs, 11, 1104
 Permanent improvements, 11, 1105
 Recovery from co-tenant, 11, 1104
 Set-off for claim for repairs against use and occupation, 11, 1105, 1107
Replevin, 11, 1123; 20, 1050
 In general, 11, 1123
 In North Carolina, 11, 1123
Right of Possession, 11, 1087
 Acquiring possession by stealth, 11, 1088
 Against others than co-tenant, 11, 1089
 Ejectment of co-tenant, 11, 1087
 Equal right of possession, 11, 1087
 Improving property, 11, 1088
 Insurance of interest, 11, 1088
 Joint tenants, 11, 1087
 Pro rata share of rents and profits, 11, 1089
 Removal of timber, 11, 1089
 Right to manage common property while in possession, 11, 1088
 Tenants in common, 11, 1087

JOINT TENANTS AND TENANTS IN COMMON—Cont'd

Settling with trespasser, 11, 1097

Severance, 22, 492

Severance by Acts of Parties, 11, 1143*Adverse possession*, see ADVERSE POSSESSION.

Abandonment, 11, 1143

Covenant to sell by joint defendant, 11, 1143

Mortgage executed by co-tenant, 11, 1143

Sale by tenant in common, 11, 1143

Severance by Agreement, 11, 1143

By verbal division, 11, 1143

In general, 11, 1143

Severance of relation, 11, 1142

Sharing Burdens and Losses, 11, 1107

Conversion, 11, 1109

Damages recovered for injury to common property, 11, 1109

Damages recovered for injury to common property inure to all, 11, 1109

General rule, 11, 1107

Loss through error in judgment, 11, 1108

Loss through negligence, 11, 1108

Willful wrong, 11, 1108

Sheriffs

Co-tenant as purchaser, 22, 599

Sheriff's Sales, 22, 630

Examples, 22, 630

Levy upon joint property, 22, 630

Purchaser's rights, 22, 630

Statute of limitations, 11, 1103

Stockholders

Whether stockholders are tenants in common, 23, 783

Subrogation, 24, 236

Co-tenant paying taxes, 24, 248

One of two joint purchasers of land, 24, 236

When co-tenant entitled to subrogation, 24, 236

Where one of several tenants in common pays off a lien, 24, 236

Survivorship, see SURVIVORSHIP BETWEEN JOINT TENANTS.

Choses in action, 7, 263

Taxation

Assessment, 25, 215

Contribution of co-tenant, 25, 279, 280

Forfeiture, 25, 404

Right to notice of sale, 25, 380

To whom common property is taxed, 25, 111, 123

Taxes and incumbrances, 11, 1109

Tax Titles**Whether Tenants in Common May Acquire Tax Titles, 25, 708**

After expiration of time of redemption, 25, 709

Effect of adverse possession, 25, 708

Examples, 25, 708, 709

Grantee of tenant in common, 25, 708

Husband of tenant in common, 25, 708

In general, 25, 708

Tenancy in Common, 6, 892; 11, 1079*When possession becomes adverse*, see *infra*, ADVERSE POSSESSION.

Action to recover possession from co-tenant, 6, 893

Contribution, 6, 894

Definition, 6, 892

Distraint for rent, 5, 707

Entry and possession by one inures to all, 11, 1080

Entry of one tenant upon the land of another to take the chattel, 19, 1104

Equality of shares, 11, 1086

Fiduciary relation to each other, 6, 893

In chattels, 3, 168

Incidents, 11, 1080

In crops, 4, 896

Of live stock, 11, 1074

Payment of an incumbrance, 11, 1081

Payment of taxes by one tenant, 11, 1081

Possession of one the possession of all, 11, 1081

Purchase of outstanding incumbrances by one of the tenants, 6, 893

Purchase of Outstanding Title, 11, 1082

Acquisition under United States laws, 11, 1084

Contribution where tax title is purchased, 11, 1086

How tenancy created, 11, 1082

Inures to benefit of all, 11, 1082

Necessity of confidential relationship, 11, 1082

Purchase after period of redemption has expired, 11, 1086

Purchase of land at tax sale, 11, 1085

Purchase under judicial sales, 11, 1083, 1084

Sale by co-tenants, 11, 1084

Source from which acquired, 11, 1082

Title by descent, 11, 1082

Titles acquired by different means, 11, 1082

Redemption, 11, 1081

Right to possession, 6, 892

Sheriffs levying on third party, 22, 539

Survivorship, 11, 1079

Take by distinct moieties, 11, 1079

Tenure, 11, 1081, 1082

To sue severally, 6, 893

Unity of possession, 11, 1080

Waste, see *infra*, WASTE.**Trespass**

Trespass to try title, 11, 1124; 26, 687

Trover

Action by joint owner, 26, 750

Conversion

Action for damages for conversion, 11, 1127

Destruction of common property, 11, 1126

- Detention of common property, 11, 1126
- Exclusive use of common property, 11, 1126
- Measure of damages, 11, 1127
- Sales, 11, 1128
- Total destruction of common property, 11, 1127
- Detention by co-owner, 26, 727
- Election between assumpsit and trover, 26, 794
- Joinders, 11, 1411; 26, 799
- Liability in**, 26, 787
 - American rule, 26, 788
 - Appropriation by tenant in common, 26, 788
 - Claim to exclude the ownership, 26, 789
 - Destruction of chattel by co-tenant, 26, 787
 - Destruction or loss of the property, 26, 788
 - English rule, 26, 787
 - Examples, 26, 787-790
 - Precluding co-tenant from future enjoyment, 26, 788
 - Property of a severable character, 26, 789
 - Purchaser from co-tenant, 26, 790
 - Sale of chattel by one of two joint tenants, 26, 787
 - Sale of severable property, 26, 789
 - Sale of the entire property, 26, 788
- Officer's liability for selling entire interest, 26, 791
- Unity of interest, 11, 1076
- Unity of possession, 11, 1081
- Unity of Time**, 11, 1076
 - In excess of devises, 11, 1076
 - In excess of use, 11, 1076
- Unity of title, 11, 1076
- Use and occupation*, see *infra*, RENTS AND PROFITS.
- Vendor and Purchaser**, 28, 79
 - In general, 28, 79
 - Purchaser of adverse interest, 28, 80
 - Validity of contract, 28, 79, 80
- Waste**, 11, 1125
 - Assumpsit, 11, 1129
 - Injunction, 11, 1134; 28, 930
- Tenant in Common**, 28, 895
 - At common law, 28, 895
 - Examples, 28, 895, 896
 - Injunction, 11, 1134; 28, 930
 - Mines, 28, 896
 - Statutes, 28, 895
 - Timber, 28, 895
 - Treble damages, 28, 920
- Watercourses**, 28, 1037
 - Deeds of release, 28, 1038
 - Diversion of water by tenant in common, 28, 1039
 - Implied partition, 28, 1038
 - In general, 28, 1037
 - Partition, 28, 1037
 - Relief in equity, 28, 1039
- What is meant by unity of interest, 11, 1076
- What is meant by unity of time, 11, 1076
- What is meant by unity of title, 11, 1076
- What May Be Held in Common**, 11, 1068
 - Compensation for service, 11, 1074
 - Estate for life, 11, 1068
 - Estate in fee, 11, 1068
 - Farming utensils, 11, 1074
 - Farm products, 11, 1069
 - Inchoate right, 11, 1068
 - Lease for years, 11, 1069
 - Legacies, 11, 1069
 - Live stock, 11, 1074
 - Patent right, 11, 1069
 - Personality, 11, 1068
 - Possession of land, 11, 1068
 - Promissory notes, 11, 1069
 - Realty, 11, 1068
 - Stock, 11, 1068
- When receiver will be appointed, 20, 52
- Who Are Not Tenants in Common**, 11, 1074
 - Distinguishable interest, 11, 1074
 - Doweress, 11, 1075, 1076
- Who May Be Joint Tenants**, 11, 1069
 - Corporations, 11, 1069
 - Co-trustees, 11, 1069
 - Husband and wife, 11, 1069
 - Infants, 11, 1070
 - Natural persons, 11, 1069, 1070
 - Survivorship, 11, 1069
- Who May Be Tenants in Common**, 11, 1070
 - Corporations, 11, 1070
 - Stockholders, 11, 1070
- Wills, 29, 258
- Witnesses, 11, 1123, 1137; 29, 580
- JOINT TORT FEASOR**, see TRESPASS.
- JOINTURE**, see DOWER.
- JOURNALIST**
 - Libel and slander, 13, 313
- JOURNALS**
 - Of legislature, see STATUTES.
- JOURNEYS ACCOUNT**, 12, 1
- J. P.**, 12, 1
- JUBILEE**, 12, 1
- JUDGE**, 12, 2
 - See BILL OF EXCEPTION; CHANGE OF VENUE; JUSTICE OF THE PEACE; QUESTIONS OF LAW AND FACT.
 - See generally, NEW TRIAL; PUBLIC OFFICERS.
 - Adjournment of court, see ADJOURNMENT.
 - Docket, see MINUTES.
 - Judge charging jury, see INSTRUCTIONS.
- Abolition or Change of Courts**
 - Constitutional offices, 12, 19
 - Division of jurisdictional districts, 12, 19
 - Legislative offices, 12, 19
 - Power of legislature in general, 12, 19
 - Public offices not contracts, 12, 19
 - Territorial jurisdiction of justices of the peace, 12, 19
- Appeal and bills of exception, 12, 11
- As component part of court, 4, 447

JUDGE—Cont'd**Attendance at Trial, 12, 11**

Absence for one day from murder trial, 12, 11

Bribing, 2, 533

Buying at judicial sale, 12, 10

Canal commissioners, 12, 3

Chambers, see *infra*, POWERS AT.

Change of Venue

Ordering upon his own motion, 3, 94, 95

Charge to Jury, 3, 121

See INSTRUCTIONS.

Charging Grand Jury, 9, 8

Necessity of, 9, 8

Necessity that all jurors should hear charge, 9, 8

What is proper, 9, 8

Commission of, 12, 17

Cannot change tenure, 12, 17

Commission does not confer office, 12, 17

Governor acting ministerially, 12, 17

Inquiry into evidence on which it was issued, 12, 17

Mandamus to compel issuance, 12, 17

Official act good till commission is declared void, 12, 17

Prerequisite to qualification, 12, 17

Primary proof of title, 12, 17

When objection to should be made, 12, 17

Communication with jurors out of court, 12, 373, 374

Constitutional Law, 12, 3

See *infra*, SPECIAL JUDGE.

As to encroachments by and upon judiciary, see CONSTITUTIONAL LAW.

Assigning additional officers, 12, 5

Changing name of office, 12, 5

Conferring ministerial duties upon judges, 12, 5-9

Conferring unjudicial power upon court, 12, 7, 8

Dividing duties, 12, 5

Legislative power respecting term, 12, 19

Ministerial officers, 12, 5

Strictly followed, 12, 4

Criminal liability, 19, 504

Custody of records, 12, 11

Death of judge, new trial, 16, 618

Decrees after expiration of term, 12, 13

Decree signed after resignation but before acceptance, 12, 17

De Facto, 5, 103; 12, 23

See DE FACTO OFFICERS.

Special or substitute judges, see SPECIAL JUDGE.

Appointment by constitutional authority, 12, 23

Attack by writ of error, 12, 23

Attack upon judgment by appeal, 12, 23

Attack upon judgment by habeas corpus, 12, 23

Collateral attack upon jurisdiction, 12, 23

Definition, 12, 23

Necessity of quo warranto, 12, 23

Special or substitute judge, 12, 24

Suit for salary, 12, 24

Validity of judgment, 12, 23

Whether protected from liability, 12, 24

Writs of error, 12, 23

Definition, 7, 45; 12, 2

Definition of alcalde, 1, 454

Delegation of Authority, 12, 3, 11; 19, 462

Special judge, 12, 30

Deposit of trust funds, 12, 11

"Disinterested," 5, 690

Disqualification, 12, 40, 148e

Absolute as to some proceedings, directory as to others, 12, 44

As Ground for Change of Venue, 3, 93

See CHANGE OF VENUE.

Bias or prejudice, 3, 93

Judge acting upon his own knowledge, 3, 94

Pecuniary interest, 3, 93

When counsel for either of parties before he was elevated to bench, 3, 94

At common law, 12, 41

Burden of proof of incompetency, 12, 57

By reason of sickness, 4, 449

By statute, 12, 42

Constitution not providing for hearing elsewhere, 12, 41

Counsel, 4, 449; 12, 47, 55

Common law, 12, 42, 55

Criminal case, 12, 57

Divorce, 12, 56

Formal orders, 12, 57

General retainer, 12, 56

Gratuitous service, 12, 55

Incompetency of attorney, 12, 55

Judge recusing himself of own motion, 12, 55

Magistrate draws up affidavit, 12, 56

Matters not pending in court, 12, 55

Meaning of term "cause," 12, 56

"Party of interest," 12, 56

Purchase at chancery sale, 12, 55

Statutes, 12, 55

Where former client has dropped out of the case, 12, 57

Doctrine of necessity, 12, 41

Estates of Decedents, 12, 51

Appointment of auditors, 12, 51

Interest as debtor, 12, 52

Interest as distributee, 12, 52

Judge put down in accounts as creditor, 12, 51

Relationship to creditor, 12, 51

Surrogate, 12, 51; 19, 163; 24, 994

General principle, 12, 40

In own case, 12, 40

Interests, 4, 448; 12, 41, 46

See *infra*, ESTATES OF DECEDENTS.

Action of whole court when one judge is disqualified, 12, 46

As citizen, 12, 46

- As Corporation Stockholder**, 4, 449;
 12, 46
 Consent, 12, 47
 Former interest as stockholder,
 12, 47
 Judge sitting when corporation is
 a party, 12, 46
 Legislative removal of disqualifi-
 cation where the interest was
 that of a corporator in a munic-
 ipal corporation, 4, 448
At common law, 12, 41
 Character of disqualification, 12, 45
 Construed to mean "pecuniary in-
 terest," 12, 46
 Execution of, disqualified, 12, 47, 48
 Generally, 12, 45
 In question but not in cause, 12, 48
 Legal disqualification extended to
 physical causes, 12, 46
 Minute, 12, 46
 Must be immediate and direct, 12, 48
 No necessary interest, 12, 48
 Not necessary party, 12, 48
 Objection of interest in appellate
 court, 4, 448
 Of property in state, 12, 46
 Pecuniary, 12, 46
 Performance by judge of mere formal
 or ministerial acts, 4, 448
 Power of legislature, 12, 42
 Probate, 12, 15; 19, 163; 24, 994
 Prohibition, 19, 272
 Question whether the legisla-
 ture can permit one interested in the con-
 troversy to act judicially, 4, 448
 Remotely, 12, 46
 Speculative possibility, 12, 48
Surrogate, 12, 15; 19, 163; 24, 994
 Acting as attorney, 24, 994
 Examples, 24, 994-998
 In general, 24, 994
 Relation of parties interested, 24,
 994
 Taxpayer, 12, 46
 That would have disqualified witness
 or juror, 12, 41
 Town or municipality as party, 12,
 46
 Voidability of judgment where one
 judge is interested, even though,
 excepting him, the proper number
 concurred in the result, 4, 448
 What interest disqualifies, 12, 47
 What interest does not disqualify,
 12, 48
 Necessity of objection, 12, 57
 Not interested, 12, 41
 Personal interest formed the only
 ground at common law, 12, 42
Power of Legislature, 12, 42
 To make judge arbiter in own cause,
 12, 41
Prejudice, 12, 52
 Affidavit of, 12, 53
 Authority of legislature to disqualify
 for, 12, 53
 Examples, 12, 52
 In absence of statutory provisions,
 12, 52
 Judge retiring of own will, 12, 53
 Judge sitting in higher court and re-
 viewing his own decision in lower
 tribunal, 12, 53
 Legislature authorizing change of
 venue, 12, 53
 Not based on property interest, 12,
 52
 Presiding in former trial, 12, 53
 Scope of word "prejudice," 12, 53
 Presiding in former trial, 12, 53
Relationship, 4, 449; 12, 42
 Affinity must extend to judge himself,
 12, 54
 At common law, 12, 42
 Disqualification same as that of juror,
 12, 54
 Equal relationship to both parties,
 4, 449; 12, 55
 Formal matters, 12, 50
 Husband and wife, 12, 55
 In equal degrees to both parties, 12,
 48
Meaning of Term "Party," 12, 47
 Whether including other than
 party on record, 12, 42
 Whether including stockholder or
 corporation, 12, 47
 Mode of counting degrees, 12, 54
 To party interested as trustee, 12, 42
 To stockholders, 12, 42, 47
 Voluntary retiring, 12, 54
 Whether confined to parties of rec-
 ord, 12, 42
Removal, 12, 50
 Consent of parties, 12, 45, 50
 Dismissing suit as to those to whom
 he is related, 12, 50
 Disqualification before being sworn,
 12, 50
 Generally, 12, 50
 In Arkansas, 12, 51
 In Missouri, 12, 51
 Incompetency by reason of relation-
 ship, 12, 50
 Joint and several liability, 12, 50
 Necessity of objection, 12, 51
 Necessity of waiver being in writing,
 12, 51
 Waiver, 12, 45, 50
 When objections must be made, 12,
 51
 Scope of term "party," 12, 42
 Statute construed liberally, 12, 42
 Statutory removal of, 12, 43
To Whom Applicable, 12, 44
 Appraiser of land, 12, 44
 Commissioners of highways, 12, 45
 County commissioners, 12, 44
 Fence viewers, 12, 44
 Justice of the peace, 12, 44
 Notary public, 12, 44
 Overseers, 12, 45
 Police courts, 12, 44

JUDGE—Cont'd**Disqualification—Cont'd****To Whom Applicable—Cont'd**

- Referee, 12, 44
- Road cases, 12, 45
- Superintendent of the poor, 12, 45
- Surety, 12, 44
- Surrogate, 12, 44

Void or Voidable, 12, 43, 48

Waiver by parties, see infra, REMOVAL OF DISQUALIFICATION.

- At common law, 12, 48
- Change in common-law rule, 12, 43, 44

Collateral question, 12, 44

Counsel, 12, 44

Formal order, 12, 50

Interest, 12, 46

Judgment by confession, 12, 44

Ministerial acts, 12, 49

Officer of court, 12, 50

Prohibition, 12, 49

Proper remedy at common law, 12, 48

Where act is really that of litigant, 12, 49

Whether judge's authority is prohibited, 12, 44, 45

Waiver by parties, see infra, REMOVAL OF DISQUALIFICATION.

Whether constitutional provision applies to legislative courts, 12, 43

Double duties, 12, 9

Exemption from militia duty, 15, 480

Exemption from service of process, 22, 162

Exercising power of court as judges, 19, 455

False Imprisonment by, 7, 668

Acts in absence of jurisdiction, 7, 668

Arrest upon complaint void on its face, 7, 670

Civil arrests upon defective affidavits, 7, 669

Complaint on information and belief, 7, 670

Contempts, 7, 669, 671

Courts of limited jurisdiction, 7, 669

General rules, 7, 671

Malice, 7, 670

Presumption as to jurisdiction, 7, 669

Quasi judicial tribunal, 7, 671

Responsibility for judicial acts, 7, 669

Superior courts, 7, 668

Federal judge and state laws, 12, 14

Functions of, in divorce cases, 5, 764

General power and duty, 12, 3

Holding over, 19, 562*p*

Impeachment, 9, 959; 12, 32

Incompatible offices, 19, 562*x*, 562*y*

Information as to Disqualification

Whether reversible, 12, 57

Interest, see infra, DISQUALIFICATION.

Intoxication, 16, 520

Judge's minutes, see MINUTES.

Judge's Notes

To prove testimony given at former trial, 9, 337

Judge Signing Minutes

Provisions, mandatory or directory, 23, 460

Judgment**By Confession**

Disqualification of judge, 12, 44

Conclusive in favor of judge, 7, 79

Justice and judge, 12, 3

Justice of the peace, 12, 3

"Legal disqualifications," 12, 46

Legislature requiring opinions, see OPINIONS OF JUDGES.

Legislature requiring opinions to be in writing, 12, 14

Legislature requiring opinions to be syllabized, 12, 14

Legislature's power over term, 12, 18

Legislature's power to abolish, 12, 18

Liability, 12, 148*f*

As Affected by Jurisdiction

Inferior Courts, 12, 33

Action under unconstitutional statute, 12, 35

Affidavit, 12, 36

Attachment, 12, 36

Commitment for contempt, 12, 37

Complaint must be insufficient, 12, 36

Contempt of court, 12, 33

Doubt as to sufficiency of affidavit, 12, 36

Imposing heavier fine, 12, 35

Inferior judges affirmatively established jurisdiction, 12, 34

In Vermont, 12, 34

Judge acting without any jurisdiction, 12, 33

Maintaining order, 12, 37

Mistake of facts, 12, 37

Necessity of complaint, 12, 35

Order of probate judge, 12, 37

Presumption as to jurisdiction, 12, 33

Process of seizure, 12, 36

Reasons for distinction between superior courts and inferior courts, 12, 34

Refusing to accept appeal, 12, 37

Reinstating case, 12, 37

Requirement of security from guardian, 12, 37

Striking attorney's name from roll, 12, 37

Taking bail, 12, 37

Taking recognizance, 12, 37

When case is no longer before the officer, 12, 36

For act and opinions, 12, 32

For an erroneous judicial opinion, 4, 449

For Fraud and Corruption, 12, 39

Conspiracy, 12, 40

General rule, 12, 40

Impeachment, 12, 39

Slandorous words, 12, 40

For wrongful exercise of a ministerial duty, 4, 450

- Judges Within General Rule**, 12, 38
 Arbitrators, 12, 38
 Boards of health, 12, 39
 Church wardens, 12, 39
 Coroners, 12, 38
 County commissioners, 12, 39
 Court of limited jurisdiction, 12, 38
 Damage commissioners in eminent domain, 12, 39
 Election officers, 12, 38
 Equity judges, 12, 38
 Inspectors of goods, 12, 39
 Jurors, 12, 38
 Justice of the peace, 12, 38
 Miscellaneous, 12, 39
 Persons acting in judicial capacity, 12, 38
 Tax commissioners, 12, 39
- Ministerial Act**, 12, 38
 Award of execution, 12, 38
 Entering up a judgment, 12, 38
 Issue of execution, 12, 38
 Liquor license, 12, 38
 Making return of appeals, 12, 38
 Marriage licenses, 12, 38
 Stay of execution, 12, 38
 When judge can protect, 12, 38
- What Are Judicial Acts**, 12, 37
 Commitment for contempt, 12, 37
 Maintaining order, 12, 37
 Order of probate judge, 12, 37
 Refusing to accept appeal, 12, 37
 Reinstating case, 12, 37
 Requirement of security from guardians, 12, 37
 Striking attorney's name from the roll, 12, 37
 Taking bail, 12, 37
 Taking recognizance, 12, 37
- Libel and Slander**, 13, 310, 312
 Privilege, 13, 407
- Mandamus**, 14, 127
 Admissibility of evidence, 14, 129
 Case in which writ will lie, 14, 128
 Case in which writ will not lie, 14, 129
 Contempt, 14, 129
 In general, 14, 127
 Ministerial duties, 14, 127
 Motion for new trial, 14, 128
 Rehearing, 14, 129
 Search warrant, 14, 129
 Settle case for appeal, 14, 128
 Signing judgment, 14, 129
 Statement on motion for new trial, 14, 128
 Supersedeas bond, 14, 129
 To accept bond, 14, 128
 To compel judge to preside, 12, 3
 To issue warrant to county treasury, 14, 129
 Where judge has no jurisdiction, 14, 130
- Ministerial Acts**, 12, 5
See infra, LIABILITY.
 County courts, 12, 6
 Custody of records, 12, 11
 Disqualification of judge, 12, 49
 Distinguished from judicial acts, 12, 5
 Exercise of nonjudicial acts, 12, 6
 In Kansas, 12, 6
 When exercised as commissioner, 12, 9
- New Trial**, 16, 515
 Death of trial judge, 16, 515
 Going out of office of trial judge, 16, 515
 Officer to hear motion, 12, 12
 Transfer of case, 12, 13
- Party**
 Counsel, 12, 57
 Whether including other than party to record, 12, 42
 Whether including stockholder, 12, 47
- Personal nature of duties**, 12, 3
Physical inability, 12, 46
- Powers at Chambers**, 12, 15
 Cannot go beyond jurisdiction of court, 12, 16
 Definition of chambers, 12, 15
 Duties, 12, 16
 Jurisdiction incidental to jurisdiction of court, 22, 15
 Minutes of court in Louisiana, 12, 16
 Statutory regulations, 12, 16
- Powers During Vacation**, 12, 14
 Change in members of court, 12, 15
 Consent or agreement, 12, 14
 Discharge a garnishee, 12, 15
 Examples of what a judge may or may not do during vacation, 10, 15
 Exercising judicial functions, 12, 14
 Infants, 12, 15
 Power not authorized by statute, 12, 14
- Practice at law by**, 12, 10
- Privileged Communications**, 19, 124
 Consultations of judges, 19, 124
 Examples, 19, 124
 Matters in general, 19, 124
 Matters in open court, 19, 124
- Privilege from arrest**, 1, 725; 10, 235; 22, 162
- Property under court's control**, 12, 11
 Purchase at sheriff's sale, 12, 222
- Qualification**, *see infra*, DISQUALIFICATION.
 Age, 19, 402
 Special judge, 12, 27
- Quo warranto**, 6, 387; 12, 11
- Record**
 Report of facts by trial judge, 20, 489
 Referee, whether he may be, 20, 681
 Refusing to sit of own will, 12, 53-55
- Rehearing**
 Most of court new members, 12, 57
 Report of facts by trial judge, 20, 489
 Retirement upon the age of seventy, 19, 402
 Reviewing his own decision in lower tribunal, 12, 53
- Review of Decisions**, 12, 10
 Certiorari, 12, 10
 Collateral control, 12, 10
 Discretionary matters, 12, 10
 Judge of co-ordinate jurisdiction, 12, 10
 Rights and relation to office, 12, 17

JUDGE—Cont'd

Right to give instructions, 19, 616

Signature of judge to judgments, 12, 71

Special, 12, 24

Action involving the judge's right to office, 12, 26

Appointment

By governor, 12, 30

By parties, 12, 30

By regular judge, 12, 30

Consent of parties, 12, 30

Election by the bar, 12, 30

Mandatory, 12, 30

Special judge appointing substitute, 12, 30

Special judge declining, 12, 31

Who may appoint, 12, 30

Change of venue, 12, 27

Constitutional Law, 12, 30

Power of legislature to provide for, 12, 25

Selection by bar, 12, 26

Substitute judge from another court, 12, 25

When constitution prescribes a mode of selection of a substituted or special judge, 12, 25

Criminal cases, 12, 27

Definition, 12, 24

Delegation of authority, 12, 30

Disqualifies for certain acts, 12, 27

Divorce proceedings, 12, 26

Election by the bar, 12, 30

Equity cases, 12, 27

Limitation of power, 12, 26

Motion for receiver, 12, 26

Not to be considered as arbitration, 12, 26

Oath, 12, 28

Personal interests of appointing judge, 12, 31

Power and duties, 12, 23

Proceedings by administrator for sale of real estate, 12, 26

Proceedings supplementary to execution, 12, 26

Proof of Authority, 12, 28

Appear affirmatively on record, 12, 28

Appointment in writing, 12, 29

Denial of the record, 12, 29

Indiana, 12, 29

Notice of substitute judge, 12, 29

Oath, 12, 28

Presumption, 12, 28

As to consent, 12, 29

Of regularity of proceedings, 12, 28

Setting forth regular judge's disability, 12, 28

Texas, 12, 29

Waiver of objection by parties, 12, 29

When objection to regular judge ought to be made, 12, 29

Where appointment is entered of record, 12, 29

Provision that only one judge can sit at a time, 12, 26

Regular judge and special judge cannot hold court at same time, 12, 26

Settlement of bill of exceptions, 12, 26

Signing bills of exceptions, 12, 26

Waiver of objection by parties, 12, 29

When special judge can act, 12, 26

When Special Judge Cannot Act, 12, 27
Acknowledgment of sheriff's deed, 12, 27

Additional judgeship, 12, 27

Miscellaneous, 12, 28

Newspaper attack upon regular judge, 12, 27

Rendition of judgment, 12, 28

Sentencing of convicted person, 12, 28

Writs of error or appeal, 12, 26

Statutes requiring judge's charges to be in writing, 3, 121

Stockholders, see *infra*, **INTEREST.****Successor**

New trial, 16, 618

Suggesting compromise verdict, 11, 258

Tenure of Office, 12, 18

Legislature making terms of unreasonable length, 12, 19

Office created by constitution, 12, 18

Power of legislature to abolish a judgeship, 12, 18

Power of legislature to alter, 12, 18

Power of legislature to enlarge, 12, 19

Stare decisis, 12, 18

Statutory office within control of legislature, 12, 18

Territorial limitations of powers, 12, 9

Territories

Appointment and removal, 25, 966

The term "court" used in the sense of judge or judges, 4, 447

Threats, 25, 1064

Title of office quo warranto, 12, 11

United States Courts, 27, 571

Appointment, 27, 571

Civil liability for his judgments, 27, 573

De facto and de jure, 27, 571

Duties, 27, 571

Impeachment, 27, 571

Ministerial duties, 27, 573

Powers, 27, 571, 572

Practice of law, 27, 572

Removal, 27, 571

Rulings, 27, 572

Summing up evidence, 27, 571, 572

Term of office, 27, 571

Vacancies, 12, 20

Age limitation, 12, 21

Incumbent holds until his successor qualifies, 12, 21

In office and not in term, 12, 20

Meaning of term in common law, 12, 20

Newly created office, 12, 20

Offices for legislature to appoint, 12, 20

Provisions of choice for "next election by the people," 12, 23

- Temporary appointment, 12, 23
 "Term of office," 12, 22
 What necessary to confine beginnings of all full length terms to certain regular periods, 12, 21
 Whether appointee holds unexpired term only, 12, 21
 Whether appointee to fill vacancy holds for full time, 12, 21
 Whether power to fill vacancies embraces power to fix term, 12, 21
Vacation, 12, 297
 See infra, POWER DURING.
Void or Voidable
 Formal order, 12, 57
Waiver of incompetency of
 Habeas corpus, 9, 203
Weight of evidence, 7, 48
Whether included in the term "person,"
 18, 404
Witnesses, 12, 31; 19, 124; 29, 604
 Arbitrators, 12, 32; 29, 604
 As to what took place at another trial,
 12, 32; 29, 604
 Case in which judge is not presiding,
 12, 31
 Grounds for objecting, 12, 31
 In general, 29, 604
 Judge's decision, 12, 32
 Prove evidence given on former occasion, 12, 32; 29, 604
 Referee, 12, 32
 To prove his notes, 12, 32
 Where judge is sitting with others, 29, 604
 Whether error for judge to take stand,
 12, 31
 Whether judge loses jurisdiction, 12, 31
JUDGMENT BOOK, 20, 493
JUDGMENT NOTES, *see* CONFESSION OF JUDGMENT; WARRANT OF ATTORNEY.
JUDGMENTS, 12, 58
 See ARREST OF JUDGMENT; AUDITA QUERELA; CONFLICT OF LAWS; DECREE; DEFAULT; EXECUTIONS; FINAL JUDGMENT AND DECREE; FOREIGN ATTACHMENT; FORTHCOMING BOND; JUDICIAL SALE; LIS PENDENS; MERGER; PARTY TO ACTION; RECORD; RELATION; RES JUDICATA; RETRAKIT; SCIRE FACIAS; SENTENCE; SHERIFF'S SALES; WARRANT OF ATTORNEY.
 Action on sister states' judgments, *see* JUDGMENTS OF SISTER STATES.
 Against executors and administrators, *see* EXECUTORS AND ADMINISTRATORS.
 As to judgment by default, *see* DEFAULT.
 By confession, *see* CONFESSION OF JUDGMENTS.
 Direct impeachment of judgment, *see* AMENDMENT; ARREST OF JUDGMENT; REVERSAL; VACATION.
 Final, *see* FINAL JUDGMENT AND DECREE.
 Final judgments, *see* DECREE; FINAL JUDGMENT.
 For deficiency upon foreclosure of mortgages, *see* FORECLOSURE OF MORTGAGES.
 Foreign judgments of sister states, *see* DIVORCE; JUDGMENTS OF SISTER STATES.
 In forcible entry and detainer, *see* FORCIBLE ENTRY AND DETAINER.
 In garnishment proceedings, *see* GARNISHMENT.
 Judgment by Default, *see* DEFAULT.
 For assessment of damages, *see* DAMAGES.
 Judgment in eminent domain, *see* EMINENT DOMAIN.
 Judgment notes, *see* WARRANT OF ATTORNEY TO CONFESS JUDGMENT.
 Judgment roll, *see* RECORD.
 Mistake, *see* VACATION.
 Non obstante veredicto, *see* VERDICT.
 Non pros, *see* NON PROSEQUITUR.
 Nonsuit, *see* NONSUIT.
 Person bound by lis pendens, *see* LIS PENDENS.
 Revivor, *see* SCIRE FACIAS.
 Service of process by publication, *see* NOTICE.
 Tax proceedings, *see* TAXES.
 Trespass, *see* TRESPASS.
 Usury, *see* USURY.
 Abbreviations in, 1, 18
 Action on, 12, 149j
 Appeal pending, 12, 149l
 Court in assignee's name, 12, 149n, 149o
 Debt upon, 5, 169
 Final judgments, 12, 149j
 For what judgment action may be maintained, 12, 149j
 Leave of court, 12, 149k
 Proof of issue of execution, 12, 149k
 Scire facias pending to revive, 12, 149l
 Suit in assignor's name, 12, 149n, 149o
 Want of Jurisdiction
 Action on foreign judgment, 3, 521
 Where right to execution is suspended, 12, 149k
 Where time has not expired in which execution may be brought, 12, 149j
 Writ of error pending, 12, 149l
 Affirmance, 7, 971
 After expiration of judge's term, 12, 13
 Against extinct corporation, 12, 87
 Against Foreign Corporations, 8, 390
 Discretionary power of courts, 8, 392
 Enforcement of judgment under penalties in United States court, 8, 392
 Examining into jurisdiction of court rendering service upon officer casually in state, 8, 391
 Full faith and credit under the United States constitution, 8, 391
 Judgment obtained upon publication only, 8, 391

JUDGMENTS—Cont'd**Against Foreign Corporations—Cont'd**

Legal effect of, 8, 390

Service of process, 8, 390

Against married women, 12, 89

Against trustees, 12, 92

Amendments, 1, 554*See infra*, ENTRIES NUNC PRO TUNC.

Adding clause to give effect to judgment, 12, 123

After execution satisfied, 12, 124

After judgment has been affirmed on appeal, 12, 124

After Term, 12, 120

Clearly not the judgment of court, 12, 122

In general, 12, 120

Judgment as to costs, 12, 121

Judgment entered not the one rendered, 12, 121

Judgment not authorized by law, 12, 121

Judgment not the one attorney intended to have entered, 12, 120

Power of court to make judgment entry conform to judgment rendered, 12, 121

Appeal pending, 12, 124

Application by motion, 12, 125

Clerical error, 12, 122

Computing amount due upon note, 12, 122

Directing amount of recovery or sentence, 12, 121

Error in name, 12, 121

Ex parte application, 12, 124

Judgment entry clearly not correct judgment, 12, 122

Mistake, 12, 122

Notice to adverse party, 12, 124

Power of courts to make judgment entry conform to judgment rendered, 12, 121

Principal and surety, 12, 124

Prompt application, 12, 124

Protecting third parties, 12, 124

Replevin, 20, 1119

To include matter which would have been granted as a matter of course, 12, 123

Upon What Evidence Must Be Based, 12, 123

English rule, 12, 123

Judge's notes, 12, 123

Necessity of record evidence, 12, 123

Satisfactory evidence, 12, 123

Writ of error pending, 12, 124

Arrest of, see ARREST OF JUDGMENT.**Assignment of, 6, 662; 12, 149m***See* ASSIGNMENTS.

Assignee suing in own name, 12, 149m, 149o

Assignment of cause of action, 12, 149m

Assignment of judgment as assignment of cause of action, 12, 149m

Assignment on part of judgment, 12, 149m

Equities existing between parties, 12, 149o

Equity existing in favor of third person, 12, 149o

Intent to assign, 12, 149m

Judgment founded upon tort, 12, 149m

Jurisdiction of judgment, 12, 149m

Necessity of seal, 12, 149m

Necessity of writing, 12, 149m

Notice of assignment, 12, 149p

Payment, 12, 149y

Payment of judgment, 12, 149p

Power of attorney to assign, 12, 149q

Right of judgment creditor to enforce satisfaction, 12, 149n

Set-off, 12, 149o

Statute governing name in which suit should be brought, 12, 149o

Statutory method, 12, 149m

Suit in name of assignor, 12, 149o

Two or more assignees, 12, 149q

Waiver of execution of judgment, 12, 149n

Whether one of several joint judgment debtors may take assignment, 12, 150b

Assumpsit

To recover money paid upon erroneous judgment, 1, 886

Bailor and bailee, 12, 93

Bankruptcy, effect upon, 2, 77

Bill in Equity

Assignor as party to, 2, 217

Bill of discovery after, 2, 204

By Default, see DEFAULT.

Effect of default, 5, 63

Classes of

Cassetur breve, 12, 62

Contradictory judgments, 12, 62

De melioribus, 12, 62

In error, 12, 62

In personam, 12, 63

In rem, 12, 63

Judgments in personam, 3, 527

Judgments in rem, 3, 527

Judgments in several actions, 12, 61

Nihil dicit, 12, 61

Nil capiat per breve, 12, 61

Nolle prosequi, 12, 61

Non pros., 12, 61

Nonsuit, 12, 62

Non sum informatus, 12, 61

Pro retorno habendo, 12, 62

Quod partitio facto firma et stabilis in perpetuum, 12, 62

Quod recuperet, 12, 61

Respondet ouster, 12, 61

Retraxit, 12, 62

Cognovit actionem, 3, 307

Collateral Attack, 12, 147j*Sister state judgments*, see JUDGMENTS OF SISTER STATES.**Action Against Judges, 12, 148f**

How want of jurisdiction must be shown, 12, 148f

- Judges of inferior court, 12, 148^f
 Judges of superior court, 12, 148^f
 Mistake of judge, 12, 148^f
 Action against plaintiff for damages, 12, 147^u, 148^g
 Actions on judgments, 12, 147^k
By Parties and Privies, 12, 147^o
 Bankruptcy, 12, 147^v
 Coverture, 12, 147^u
 Death before rendition of judgment, 12, 147^u
Errors and Irregularities, 12, 147^o
 Claim barred by statute of limitations, 12, 147^r
 Construction of statute, 12, 147^p
 Decision in appellate court, 12, 147^s
 Errors in amount of judgment, 12, 147^q
 Errors in law, 12, 147^p
 Errors in tax costs, 12, 147^r
 Irregularities in practice, 12, 147^p
 Judgment entered too soon, 12, 147^r
 Judgments of courts of inferior jurisdiction, 12, 147^p
 Judgments of courts of superior jurisdiction, 12, 147^p
 Judicial sale, 12, 147^r
 No issue joined, 12, 147^r
 Tax cases, 12, 147^q
 For want of jurisdiction, 12, 147^o
Fraud, 12, 147^s
 Action for damages, 12, 147^u
 As equitable defense, 12, 147^t
 Code states, 12, 147^t
 General rule, 12, 147^s
 In Illinois, 12, 147^t
 Judgment based upon paper fraudulently obtained, 12, 147^s
 Judgment being fraudulently used, 12, 147^s
 Money made on execution, 12, 147^u
 Where appeal lies from the judgment, 12, 147^s
 Infancy, 12, 147^u
 Insanity, 12, 147^u
 Want of jurisdiction to enter that particular judgment, 12, 147^o
By Stranger, 12, 148^g
 Amount of indebtedness, 12, 148ⁱ
 Errors and irregularities, 12, 148^h
 Executors and administrators, 12, 148ⁱ
 Fraud, 12, 148^h
 General rule, 12, 148^h
 Impeachment in bankruptcy, 12, 148ⁱ
 Judgment in personam, 12, 148^h
 Judgment in rem, 12, 148^h
 Participation in fraud by judgment plaintiff, 12, 148ⁱ
 Partners, 12, 148ⁱ
Sureties, 12, 148^j
 On administration bond, 12, 148^j
 On indemnity bond, 12, 148^k
 Upon bond conditioned upon result of litigation, 12, 148^j
 Usury, 12, 148ⁱ
 Defendant's indebtedness, 12, 148^h
 Definition, 12, 147^j
 Depend upon persons seeking to impeach them, 12, 147^l
 Domestic judgments, 12, 147^l
Ejectment, see *infra*, EJECTMENT.
Foreign Judgments, 12, 147^l
 See FOREIGN JUDGMENTS; JUDGMENTS OF SISTER STATES.
 Comity, 12, 147^l
 Defined, 12, 147^k
 Nonmerger, 12, 147ⁿ
 Nonrecognition, 12, 147ⁿ
 Obligation, 12, 147^l
 Prima facie or conclusive evidence, 12, 147^m
 Recognition of, 12, 147ⁿ
Statutory Provisions
 In Wisconsin, 12, 147^o
 Theories on which foreign judgments are enforced, 12, 147^l
Foreign Law
 Effect of, 12, 147^m
 Modified doctrine as to comity, 12, 147^l
Statutory Provisions, 12, 147ⁿ
 In California, 12, 147ⁿ
 In Maryland, 12, 147ⁿ
 Fraudulent action for damages, 12, 148^g
 Judgment by confession, 12, 148^u
 Judgment in rem, 12, 149^x
 Mechanics' liens, 15, 195
 Ministerial officer, 12, 148^f
Presumption as to Jurisdiction of Inferior Courts
 Citizenship, 12, 275
 Collateral attack upon record, 12, 274
 General rule as to inferior courts, 12, 274
 Jurisdiction must appear on record, 12, 274
 Petition, 12, 275
 Pleading judgment, 12, 275
 Preliminary examination, 12, 275
 Presumption of regularity, 12, 275
Presumption as to Jurisdiction of Superior Courts, 12, 271
 Appearance, 12, 273
 Averring jurisdictional facts, 12, 274
 Continuance of jurisdiction, 12, 273
 Discretionary jurisdiction, 12, 273
 Foreign judgments, 12, 273
 Jurisdictional facts, 12, 271
 Notice, 12, 272
 Oath of grand jury, 12, 272
 Record averment as to jurisdictional facts, 12, 272
 Record disclosing nothing, 12, 272
 Service of process, 12, 272
 Want of jurisdiction appearing on record, 12, 273

JUDGMENTS—Cont'd**Collateral Attack—Cont'd**

Presumption as to Jurisdiction of Superior Courts Exercising Special Statutory Powers, 12, 276

Actions in rem against vessels, 12, 279

Attachment Proceedings in State Courts, 12, 281

Affidavit, 12, 282

Petition, 12, 281

Presumption of regularity when jurisdiction is attached, 12, 282

Attachment proceedings in United States, 12, 280

Bankruptcy, 12, 279

Eminent domain, 12, 279

General rule, 12, 276

Insolvency, 12, 279

Judicial sale of decedent's real estate, 12, 278

Judicial sale of real estate, 12, 277

Judicial sales generally, 12, 278

Sale for taxes, 12, 277

Service by publication, 12, 280

Special, 12, 276

Summary, 12, 276

Summary remedy to establish lost note, 12, 279

Proceedings to revive judgment, 12, 147*k*

Want of jurisdiction, 12, 308

Conclusiveness

See infra, COLLATERAL ATTACK; EJECTMENT.

Court-martial, 15, 457

Confession of, *see* CONFESSION OF JUDGMENTS.

Conforming to verdict, 12, 73

Contract of record, 3, 830

Co-owners of property, 12, 96

Corporation and Stockholder

As evidence of existence of corporation, 12, 98

Judgment against corporation, 12, 97

Judgment against municipality, 12, 98

Court-martial, 15, 457

Creditor or assignee in attachment, 12, 103

Criminal conspiracy, 4, 641

Date, 12, 73

Presumption as to first day of term, 12, 73

Presumption as to last day of term, 12, 73

Death of party after, 5, 134

Debt, 5, 165

Decree distinguished from, 12, 63

Defects in venire, 12, 337

Definition, 7, 76; 12, 59

Awards of execution, 12, 60

Contract, 12, 60

Reasons given by court, 12, 59

Description of parties, 12, 75

Devisees, 12, 95

Disqualified Judge

Relief against judgment, 12, 142

Distress, 12, 757*q*

Docketing

Misnomer, 16, 133

Effect, 12, 82

See SCIRE FACIAS.

Against married women, 12, 89; 14, 661

Assignees, 12, 93

As to lunatics, 12, 90

Bailor and bailee, 12, 93

Co-owners of property, 12, 96

Corporations and stockholders, 12, 97

Creditor or assignee in attachment, 12, 103

Ejectment, 6, 245*x*; 12, 96

Executors and administrators, 12, 91, 92

Garnisher and garnishee, 12, 94

Heirs and devisees, 12, 95

Judgment against party in one capacity, whether binding upon him in another, 12, 90

Lessor and lessee, 12, 95, 100

Life tenant and remainderman, 12, 96

Married women, 12, 89; 14, 661

Officers and successors, 12, 96

Party not of record, 12, 97

Persons acting in representative capacity, 12, 90

Persons in privity, 12, 92

Principal and agent, 12, 93

Principal and surety, 12, 98

Real parties, 12, 97

Trustees, 12, 91

Upon infant, 12, 87

Upon Parties, 12, 82

As evidence, *see infra*, EVIDENCE.

Estoppels, 12, 84

Agents or attorneys, 12, 84

General expression relating to parties, 12, 83

General principles, 12, 82

Prosecution of one for all, 12, 83

Served under wrong name, 12, 82

Where parties are very numerous, 12, 83

Upon persons under disabilities, 12, 87

Vendees, 12, 93

Vendor and vendee, 12, 102

Want of jurisdiction, 12, 311

Warrantor and warrantee, 12, 103

Whether witness who testified in action is bound by, 12, 86

Ejectment, 6, 220, 245*x*; 12, 96

Against casual ejector, 6, 245*t*

By default, 6, 245*x*

Generally, 6, 245*t*

Growing crop, 6, 245*t*

In Alabama, 6, 220

In Arkansas, 6, 220

In Colorado, 6, 220

In Delaware, 6, 220

In Florida, 6, 220

In Georgia, 6, 220

In Illinois, 6, 220

In Indiana, 6, 220

In Iowa, 6, 220

In Maine, 6, 220

- In Maryland, 6, 220
- In Massachusetts, 6, 220
- In Michigan, 6, 220
- In Minnesota, 6, 220
- In Mississippi, 6, 220
- In Missouri, 6, 221
- In Nebraska, 6, 221
- In New Hampshire, 6, 221
- In New Jersey, 6, 221
- In New York, 6, 221
- In North Carolina, 6, 221
- In Oregon, 6, 221
- In Pennsylvania, 6, 221
- In South Carolina, 6, 221
- In Tennessee, 6, 221
- In Texas, 6, 221
- In Vermont, 6, 221
- In Virginia, 6, 221
- In West Virginia, 6, 221
- In Wisconsin, 6, 221
- Is admissible evidence in bar, 6, 245*
- Mesne profits, 6, 245*
- Party coming in pendente lite, 6, 245†
- Plaintiff's title terminating, 6, 245†
- States in which two judgments are required to bar action, 6, 220
- To what the recovery is confined, 6, 245*
- What interest may be recovered, 6, 245†
- When and When Not Conclusive**, 6, 245*, 245*
 - At common law, 6, 245*
 - In Louisiana, 6, 245*, 245*
 - In Maine, 6, 245*
 - In Minnesota, 6, 245*
 - In New Jersey, 6, 245*
 - In Pennsylvania, 6, 245*
 - In Tennessee, 6, 245*
 - In Wisconsin, 6, 245*
 - When conclusive, 6, 245*
- Enjoined in equity, 14, 662
- Entering**, 12, 70
 - Admissible in evidence before entry, 12, 70
- Date**, 12, 73
 - Construction, 12, 78
 - Describing parties, 12, 75
 - Description of property subject to judgments, 12, 75
 - Expression of numbers in words rather than figures, 12, 75
 - Idem sonans, 12, 76
 - Judgment for coin dollars, 12, 75
 - Judgment for money should specify amount, 12, 74
 - Judgments against plaintiffs or defendants generally without mention of names, 12, 75
 - Mere memoranda, 12, 76
 - Obscure judgment entry, 12, 76
 - Omission of clerk to sign, 12, 76
 - Ordering judgments during vacation, 12, 74
 - Presumption as to entry on first day of term, 12, 73
 - Presumption as to entry on last day of term, 12, 73
- Presumption when date does not appear, 12, 73
- Several judgments against joint defendants or plaintiffs, 12, 76, 77
- Showing nature of relief granted, 12, 73
- Specification of money in foreign coin, 12, 74, 75
- Validity of judgment when wrong party has been indicted, 12, 78
- When rendered, 12, 73
- Failure of judge to sign, 12, 71
- Filling blanks afterwards, 12, 75
- Mistake, 15, 675
- Reduced to writing, 12, 70
- Validity before entry, 12, 71
- Whether must be entered before close of term, 12, 71
- Entries Nunc Pro Tunc**, 12, 80
 - See generally, AMENDMENT.
 - Civil cases, 12, 80
 - Condition, 12, 82
 - Confession of, 12, 149*
 - Criminal cases, 12, 80
 - Death before judgment is entered, 5, 135; 12, 80
 - Death while motion of judgment is pending, 5, 135; 12, 80
 - Divorce, 5, 766
 - Executors and administrators, 7, 414
 - Jurisdiction of court has been withdrawn, 12, 82
 - Memorandum to show that judgment has been entered, 12, 81
 - Neglect or mistake of applicant for judgment, 12, 81
 - Notice of application, 12, 82
 - Parol evidence, 12, 82
 - Period within which amendment may be made, 12, 120
 - Power of court, 12, 80
 - Substituting right name, 12, 121
 - When judgment nunc pro tunc should be entered, 12, 80
 - Where clerk failed to enter, 12, 81
 - Where statute has been repealed, 12, 82
- Equitable Relief Against**, 12, 139
 - See BILLS OF REVIEW; INJUNCTION.
 - Laches, 12, 605
- Estoppel**, see ESTOPPEL; RES JUDICATA.
 - Agent or attorney, 12, 84
- Married Women**, 14, 638
 - Antenuptial contracts, 14, 639
 - Default, 14, 638
 - Examples, 14, 638
 - Judgment fairly obtained, 14, 638
 - Void judgment, 14, 638
 - Warrant of attorney, 14, 638
 - When not estopped, 14, 638
- Must be mutual, 12, 84
- Party accepting benefits of judgment, 7, 22
- Evidence**, 12, 149*
 - Foreign judgments, see FOREIGN JUDGMENTS; JUDGMENTS OF SISTER STATES.
 - How proven, see RECORD.

JUDGMENTS—Cont'd**Evidence—Cont'd**

- Admissible against parties, 12, 149*d*
- Admissible against privies, 12, 149*d*
- Admissible against stranger, 12, 149*d*
- Against parties claiming judgment debt, 12, 149*d*
- As an admission, 12, 149*e*
- As between strangers, 7, 77
- As to character of possession, 12, 149*d*
- Between parties and privies, 7, 77
- Conclusive in favor of judge, 7, 79
- Conclusive proof of their legaleffect, 7, 76
- Corporation and stockholders, 12, 97
- Decree in equity, 12, 83
- General rule as to admission, 12, 149*d*
- Hearsay evidence, 12, 149*e*
- Not pleaded as an estoppel, 7, 78
- Original parties permitted to withdraw, 12, 85
- Part of chain of title, 12, 149*d*
- Proving collusion, 7, 79
- Proving frauds, 7, 79
- Proving want of jurisdiction, 7, 79
- Record, 12, 149*e*
- Relation of creditor and debtor between parties, 12, 86
- Repute, 12, 149*e*
- Second action not including all former parties, 12, 84
- Stranger, 12, 84
- Stranger to action, 12, 84
- To prove existence of collateral facts, 2, 149*d*
- To prove fact of rendition, 12, 149*d*
- To prove former recovery, 12, 148*i*
- Where parties were not adversaries in former action, 12, 83

Executions, 7, 128**Executors and Administrators, 12, 91**

- Administrators de bonis non, 12, 91
- Creditors and legatees, 12, 91
- Effect as to other executor, 12, 91
- Executor or administrator who has qualified in another state, 12, 91
- Heirs or devisees, 12, 91
- Whether judgment against deceased is binding, 12, 91

Express Companies, 7, 578

- Definition, 7, 578
- For coin lost, 7, 578
- Merchandise, 7, 578

Filling blanks after entry, 12, 75**Foreign, see FOREIGN JUDGMENTS; JUDGMENTS OF SISTER STATES.****Interest, 11, 394****Requisites to the recognition of, 3, 527****Foreign attachment, 8, 307****Form of****By what law governed, 3, 579****Fraud upon courts, 8, 642****Gaming, 8, 1064****Garnishment, 12, 94****See GARNISHMENT.**

- Defendant showing that his claim is greater than amount of judgment, 12, 94

Garnishee failing to bring assignment to attention of court, 12, 95**Garnishee must avail himself of proper defense, 12, 95****Garnishee must take advantage of any defect in judgment, 12, 94****In sister states, 12, 95****Judgment against garnishee as barring action by defendant, 12, 94****Jurisdiction**

- When defendant is present, 12, 94
- Other creditors of defendant, 12, 95
- Showing judgment, 12, 94
- Showing that court had jurisdiction, 12, 94
- Showing that payment was not voluntary, 12, 94
- Voluntary payment, 12, 94
- Whether erroneous judgment discharges garnishee, 12, 94
- Whether judgment must have satisfied, 12, 94

Heirs, 12, 95**Impeachment, see *infra*, COLLATERAL ATTACK.****Impeachment of Record, 12, 147*v*****Record of Inferior Court, 12, 148**

- Admission of will to probate, 12, 148*c*
- Associations passing upon rights of members, 12, 148*e*
- Authority of judge, 12, 148*e*
- Citing jurisdictional facts, 12, 148*c*
- Commissioner of land office, 12, 148*f*
- Commissioner of patents, 12, 148*e*
- County commissioner, 12, 148*e*
- Errors affecting jurisdiction, 12, 148*a*
- Facts averred, 12, 148*c*
- Facts expressly found by court below, 12, 148*c*
- Finding as a matter of law, 12, 148*c*
- Foreign attachment, 12, 148*a*
- Impeachment, 12, 148
- Inferior court's record must show jurisdiction, 12, 148
- Insufficiency of affidavit, 12, 148*b*
- Irregularities in return of service, 12, 148*b*
- Jurisdictional facts supplied by evidence aliunde, 12, 148
- Loss of jurisdiction, 12, 148*b*
- Order of publication and proof of compliance, 12, 148*b*
- Other tribunals, 12, 148*e*
- Petition, 12, 148*d*
- Pleading judgment, 12, 148*e*
- Prima facie proof of facts averred, 12, 148*a*
- Proceedings by petition, 12, 148*d*
- Recitals of service by publication, 12, 148*b*
- Requisites, 12, 148
- Service by publication, 12, 148*b*
- Subject-matter not within jurisdiction, 12, 148*b*
- Surety of guardians, 12, 148*a*
- Technical defects, 12, 148*a*

- Record of Superior Court**, 12, 147^v
 Appearance by attorney, 12, 147^y
 Contradicted records showing jurisdiction in personam, 12, 147^x
 Contradiction of record, 12, 147^x
 Disputing attorney's authority, 12, 147^z
 In New York, 12, 147^y
 Inter alia, 12, 147^x, 147^y
 Jurisdiction in personam rebutting presumption, 12, 147^w
 Jurisdiction in rem rebutting presumption, 12, 147^x
 Jurisdiction of facts, 12, 147^v
 Parol evidence, 12, 147^x, 147^y
 Presumption, 12, 147^w
 Rebuttal of presumption, 12, 147^w
 Recital of jurisdictional facts, 12, 147^z
 Recitals control record, 12, 147^z
 Requisites of impeachment, 12, 147^v
 Service by publication, 12, 147^x
 Superior and inferior courts distinguished, 12, 147^v
What Are Superior Courts, 12, 147^v
 Justice's courts, 12, 147^v
 Orphans or probate court, 12, 147^v
In assumpsit, 1, 890
In audita querela, 1, 1005
In certiorari, 3, 66
In covenants, 4, 569
In detinue, 5, 657
Infants, 10, 636
Service of writ upon infant, see SERVICE OF PROCESS.
 Absolute decree against infant, 12, 87
 Between ages of seven and fourteen, 10, 698
 By confession, 12, 87
 By default, 12, 87
 Capacity to entertain criminal intent, 10, 697
 Command of parent or guardian, 10, 699
 Day in court, 12, 87
 Decree in equity, 10, 694
 Decree pro confesso, 10, 694
 Judgment by default, 10, 688
 Knowledge of right and wrong, 10, 698
 Person over fourteen, 10, 698
 Record showing that infant was made party to action, 12, 88
 Responsibility of child of seven, 10, 698
 Void or voidable, 12, 87
 When infant does not avail himself of opportunity to set aside, 12, 88
 Without appointment of guardian ad litem, 12, 87
Injunction, see INJUNCTIONS.
Attorney
 Collusion, 12, 147
 Fraud, 12, 147
 Ignorance of, 12, 147
 Misapprehension of, 12, 147
 Neglect of, 12, 147
 Unauthorized act in management of case, 12, 147
 Bona fide purchasers, 12, 147^a, 147^b
 Cases in which equity has refused to interfere, 12, 147^a
 Case tried at special term, 12, 142
 Compelling judgment creditor to submit to new trial, 12, 140
 Creditors fraudulently concealing facts, 12, 143
 Defendant privileged from service of process, 12, 141
 Defense which has arisen since judgment, 12, 147
 Diligence in discovering defense, 12, 145
 Diligence required in ordinary business of life, 12, 145, 146
 Direct defense in court of law, 12, 140
 Disqualification of judge, 12, 142
 Effect of fraud, 12, 143
 Equitable defense in action at law, 12, 145
 Error of law, 12, 147
 False returns by officer, 12, 140
 Fraud in cause of action, 12, 142
 Fraud practiced by co-defendant, 12, 143
 Fraudulently prevented from attending trial, 12, 144
 Gambling debts, 12, 146
 General rule, 12, 145
 Ignorance of law on part of judge, 12, 147
 Ignorant of existence of good defense, 12, 144
 Irregularities, 12, 147
 Judgment against infant, 12, 147^a
 Judgment at law, 12, 139
 Judgment fraudulently alleged, 12, 143
 Judgment in criminal action, 12, 139
 Judgment procured by fraud, 12, 142
 Judgment procured without service of process, 12, 140
 Jury tampered with, 12, 142
 Mistake in bringing in verdict, 12, 142
 Mistake in computing amount of judgment, 12, 144
 Mistake of clerk of court, 12, 142
 Mistake of fact by judge, 12, 144
 Mistake of fact by party to action, 12, 144
 Mistake of law on part of judge, 12, 147
 Newly discovered evidence, 12, 141
 Original bill and nature of bill of review, 12, 140
 Parties, 10, 797
 Payment of amount rightfully due to judgment, 12, 147^a
 Perjury, 12, 143
 Personal representative of deceased person, 12, 146
 Prevented from attending trial by force, 12, 144
 Promptness required in application, 12, 147^a

JUDGMENTS—Cont'd**Injunction—Cont'd**

Showing recital of service to be untrue,
12, 140

Sickness, 12, 144

Sister state judgment, 12, 149

Surprise, 12, 141, 144

Unauthorized appearance by attorney,
12, 141

Usury, 12, 146

Violation of agreement not to take judgment, 12, 143

Want of jurisdiction over defendant,
12, 141

When equity will not interfere, 12, 145

Where no attempt is being made to enforce judgment, 12, 147a

Where relief may be obtained at law,
12, 140

Where result of new trial would be different, 12, 141

Writing to attorney asking him to take charge of case, 12, 146

In personam, 10, 324

In Rem, 12, 149v

Decree in admiralty, see ADMIRALTY.

Marriage and divorce, see DIVORCE.

Probate decree, see DECREES.

Attachment, 12, 149w

Collateral impeachment of foreign judgments, 12, 149w

Collateral impeachment of fraud, 12, 149w

Conclusiveness, 12, 149v

Judgment void on its face, 12, 149w

Jurisdiction of court, 12, 149w

Pedigree, 12, 159w

Settlement of pauper, 12, 159w

When binding upon third persons, 12, 149v

Insanity, 12, 90

Insolvency, 11, 226

Interest, 11, 391

Foreign judgments, 11, 394

Interlocutory, 12, 64.

See FINAL JUDGMENTS.

Intervention of equity, 6, 694

Intoxicating liquors, 11, 770

"Judgment of his peers," 12, 60

Judgment quando, 7, 393

Judgments nunc pro tunc, see *infra*,
ENTRIES NUNC PRO TUNC.

Justice of the Peace

See DEFAULT.

Judgment void for want of jurisdiction, see JURISDICTION.

Jurisdiction, see JURISDICTION.

Abstracts of judgment for transfer, 12, 473

Alteration of judgment, 12, 472

Conclusiveness of judgment, 12, 469

Definition, 12, 468

"Entering" a ministerial act, 12, 474

Final judgments, 12, 475

"Forthwith," 12, 468

Immediately, 12, 468

Irregularities in judgment, 12, 472

Irregularities of proceedings, 12, 469

Judgment by confession, 12, 470

Judgment exceeding jurisdiction, 12, 472

Judgment of dismissal, 12, 469

Jury trial, 12, 468

Justice's duty, 12, 468

Lien, 12, 470, 473

Liens on land, 12, 474

Modification of judgments, 12, 472

"Rendering" a judicial act, 12, 474

Setting aside judgment by default, 12, 474

Time within which judgment must be rendered, 12, 469

Transcript, 12, 473

Transcript from, as evidence, 12, 472

When to be "rendered" and "entered,"
12, 468

Lessor and Lessee, 12, 95, 100

Judgment against lessee, 12, 95

Judgment against lessor, 12, 95

Lessee in possession when action commenced, 12, 95

Subsequent lessee, 12, 95

Where issue involves title to land, 12, 96

Lex fori, 13, 286

Lien of, 7, 143; 12, 104; 17, 959

As to judgment creditors, 12, 105

As to subsequent purchasers, 12, 105

Character of the cause of action, 12, 104

Compliance with law governing docking,
12, 105

Cost and damages, 12, 105

Creation of lien, 12, 104

Discharge, 12, 119

By death of judgment debtor, 12, 120

By payment in whole or in part of judgment, 12, 119

By reversal of judgment, 12, 120

By tender, 12, 119

Formation of new county, 12, 120

Docketing for too small a sum, 12, 106

Effect on lien after payment, 12, 119

Extension, 12, 117

By issue of execution, 12, 117

Diligence, 12, 117

Inability to execute process, 12, 117

Revival by scire facias, 12, 117

Stay of execution, 12, 117

Failure to enforce, 12, 118

Included judgment, 12, 105

Indexed in docket, 12, 105

Interest of judgment, 12, 105

Judgment against donee of power, 18, 987

Judgment by default, 12, 104

Judgment indexed under wrong letter,
12, 106

Judgment must be for specific sum of money, 12, 105

Judgment of federal court, 12, 104

Judgments entered on same day, 5, 89

Judgment that execution might issue on, 12, 104
 Lien of judgment against partnership on firm's realty, 17, 959
 Liens in general, 12, 104
 Name of debtor incorrectly spelled, 12, 106
 Nature of lien, 12, 104
 Necessity of final judgment, 12, 104
 On after-acquired land, 8, 988
Partnership, 17, 967, 1328
 Judgment given partner in whose name title stands, 17, 968
 Lien of judgment given one partner, 17, 967
 Purchase for partnership, 17, 1338
 Real estate, 17, 967
 Real property, 17, 1338
 Whether judgment of firm debt is lien on separate property, 17, 1328
 Whether judgment of separate creditor is lien on firm property, 17, 1329
Priority, 12, 110
 Advances to be made, 12, 115
 Costs incurred on judgment, 12, 116
 Debts due United States, 12, 116
 Judgment docketed on day real estate is sold under senior judgment, 12, 116
 Judgment entered on same day, 12, 116
 Lien of judgment rendered during same term, 12, 115
 Mortgage of real estate on day judgment lien attaches, 12, 116
 Prior equitable lien, 12, 110
 Purchase of real estate on day judgment lien attaches, 12, 116
 Superior equity where judgment is entered on same day, 12, 116
Vendor and Purchaser
 Bankruptcy, 12, 112
 Issuance to secure payment of purchase-money, 12, 114
 Land conveyed by mistake, 12, 114
 Lease of debtor, 12, 112
 Lien against vendee on day conveyance was made, 12, 114
 Lien of judgment against vendee, 12, 113
 Mortgage not for purchase-money given day of conveyance, 12, 114
 Real estate subsequently acquired by debtor, 12, 114
 Sale relating back to time judgment attached, 12, 113
 Sale under junior judgment, 12, 112
 Subsequent conveyance of debtor, 12, 111
 Subsequent mortgage of debtor, 12, 111
 Unrecorded deed, 12, 111
 Unrecorded deed where judgment creditor had no notice, 12, 111

Vendee under valid contract to purchase, 12, 113
 Vendee who has paid full purchase price, 12, 113
 Vendee without notice of existence of judgment, 12, 113
 Vendor of real estate, 12, 113
 Where vacated judgment is restored, 12, 118
 Whether judgment in foreclosure extinguishes mortgage lien, 12, 115
Wife's Dower Interest, 12, 110
 Judgment rendered after marriage, 12, 111
 Judgment rendered before marriage, 12, 111
Property Subject to Lien
 All interest in real estate, 12, 107
 At common law, 12, 107
 Attaches to precise interest of debtor, 12, 109
 Conveyance of homestead, 12, 109
 Easements, 12, 107
 Equitable estate, 12, 107
 Equity of redemption, 12, 108
 Estate in remainder or reversion, 12, 108
 Executors and administrators, 12, 110
 Fixtures, 12, 108
 Homestead, 12, 108
 Judgment against party after death, 12, 110
 Judgment debtor no real interest, 12, 109
 Land fraudulently conveyed by debtor, 12, 108
 Leasehold estate, 12, 108
 Liable at common law only as to equitable estate, 12, 107
 Officers of corporation, 12, 110
 Personal property, 12, 107
 Priority of lien, 12, 110
 Property exempt from execution, 12, 108
 Public lands, 12, 107
 Relinquishment of homestead claim, 12, 109
 Rents and profits, 12, 108
 Reservation of rent charge, 12, 108
 Subsequent occupation of premises as homestead, 12, 109
 Trustee, 12, 110
 Where evidence of debtor's interest has not been registered, 12, 109
 Real estate subject to execution, 12, 104
Relief in equity, 12, 117
Stay of Execution
 Effect of, 23, 549
 In general, 23, 548
 Priority, 23, 550
 Priority of subsequent creditors, 23, 550
 Statutory period of limitation, 23, 550

JUDGMENTS—Cont'd**Lien of—Cont'd****Suspension, 12, 117**

By agreement not to take out execution, 12, 118

By *capias ad satisfaciendum*, 12, 118

By stay of execution, 12, 118

United States courts, 27, 625

Whether it attaches before execution, 12, 107

Whether it may be limited to specific property, 12, 104

Life tenant and remainderman, 12, 96

Limitation of Actions

New promise, 13, 749

Limited partnership, 13, 839

Mandamus, 14, 112, 238

Compelling court to enter judgment, 14, 112

Directing particular judgment, 14, 113

Directing what judgment shall be rendered, 14, 113

Enforcing judgment, 14, 113

Justice of the peace, 12, 134

Municipal aid bonds, 14, 195

Municipal Corporations, 14, 182

Demand of levy, 14, 189

Duty to pay, 14, 188

Judgment obtained by fraud, 14, 190

Levying of taxes, 14, 188

Proceeds of taxation, 14, 188

United States courts, 14, 188

When writ lies, 14, 188, 189

When writ will not lie, 14, 190

Unreasonable delay, 14, 127

To compel entry of judgment, 14, 134

To compel inferior courts to proceed to judgment, 14, 117

Where judge has no jurisdiction, 14, 130

Where judgment has been erroneously entered, 14, 112

Married Women, 12, 89**Effect of Judgment, 14, 661**

Defective records, 14, 661

Enjoined in equity, 14, 662

Estoppel, 14, 662

Examples, 14, 662

Improperly sued, 14, 661

In general, 14, 661

Personal judgment, 14, 662

Record not disclosing fact of coverage, 14, 661

Suit not properly brought, 14, 661

Validity, 14, 661

Action commenced before marriage, 12, 90

Against separate estate of married women, 12, 89

Judgments against husband and wife, 12, 90

Personal judgment in absence of statute, 12, 89

Relief in equity, 12, 90

Warrant of attorney, 14, 667

Where married women are authorized to sue and be sued, 12, 89

Whether personal judgments are void, 12, 89

Whether personal judgments are voidable, 12, 89

Mechanics' Liens, 15, 191

Collateral attack, 15, 195

Complaint, 15, 194

Compliance with statutes, 15, 193

Corresponding with claim, 15, 194

Default, 15, 195

Erroneous Decree, 15, 195

Amount of judgment, 15, 195

Examples, 15, 196

Verdict, 15, 195

Generally, 15, 191

In Alabama, 15, 192

In Illinois, 15, 192

In New York, 15, 192

In Wisconsin, 15, 192

In Personam, 15, 191, 192

In general, 15, 192, 193

Scire facias, 15, 197

Subcontractor, 15, 193

What plaintiff must show, 15, 192

In rem, 15, 191, 193

Modification of decree, 15, 193

Operation of judgment, 15, 191

Owner's interest, 15, 194

Redemption, 15, 194

Reforming judgment, 15, 195

Scire Facias

When plaintiff entitled to, 15, 199

Separate buildings, 15, 195

Statutes, 15, 191

Waiver of judgment, 15, 196

When personal judgment may be rendered, 15, 192

Merger, 15, 351

Collateral security, 15, 351

In bankruptcy proceedings, 15, 351

Recovery in a different capacity, 15, 351

Merger and Extinguishment, 15, 334

See RES GESTÆ.

Bills and notes, 15, 342

Cause of action, 15, 336

Counterclaim, 15, 337

Garnishees, 15, 342

Indivisible Demands, 15, 343

Distinct cause of action, 15, 343

General rule, 15, 343

Recovery of part of demand, 15, 343

Set-off, 15, 344

Single contract, 15, 344

What constitutes indivisible contracts, 15, 344

Joint and Joint and Several Obligations, 15, 344

Co-partnership obligations, 15, 344

Joint and several obligations, 15, 345

Judgments against one jointly liable, 15, 344

Statutory modifications, 15, 344, 345

Judgment as a contract, 15, 338

Judgment regarded as a new debt, 15, 338

Judgment reversed, 15, 336

- Judgments against one joint maker of bills and notes, 15, 342
- Judgments of Other States and Countries,** 15, 340
- Full faith and credit provision, 15, 341
- In England, 15, 341
- United States courts, 15, 341
- When judgment is given no extra-territorial effect, 15, 340
- Where it is enforced by a final adjudication, 15, 340
- Letters of administration, 15, 338
- Merger in judgment, 15, 336
- Merger of one judgment in another, 15, 339
- Principal and agent, 15, 342
- Promissory notes, 15, 336
- Reasons for the doctrine of merger in judgments, 15, 339
- Set-off, 15, 336
- Statutory judgments, 15, 337, 340
- Stock companies, 15, 343
- Sureties, 15, 342
- Warrantors, 15, 342
- Misnomer,** 16, 132
- Christian name, 16, 133
- Docket entry of judgment, 16, 133
- Docketing under wrong letter, 16, 133
- Judgment against partnership, 16, 132
- Judgment against "the defendants," 16, 132
- Middle initials, 16, 133
- Omitting Christian name, 16, 133
- Partnership, 16, 132
- Variances, 16, 132
- Where party is not ascertainable, 16, 132
- Whether names of parties must be specified, 16, 132
- Mortgages**
- Purchase-money mortgages, 19, 578
- Motion for judgment*, see *MOTION*.
- Motions to correct, 15, 889, 891
- Municipal Securities,** 15, 1311
- Enforcement, 15, 1224
- Examples, 15, 1311
- In general, 15, 1311
- Limitation of indebtedness, 15, 1311
- Must Be Sustained by Pleadings,** 12, 71
- Examples, 12, 72
- Judgment in excess of sum claimed, 12, 71
- Naturalization,** 16, 231
- Conclusiveness, 16, 231
- Effect of, 16, 231
- Nihil dicit, 12, 61
- Nolle prosequi, 12, 61
- Non prosequitur, 16, 717
- Non sum informatus, 12, 61
- Nunc pro tunc*, see *ENTRIES NUNC PRO TUNC*.
- Of county commissioners, 4, 397
- Of federal courts, 3, 711
- Officers and agents of private corporations, 17, 177
- Officers and successors, 12, 96
- Of justice of the peace, 12, 466
- Of quod recuperet, 1, 11
- On Demurrer**
- At Law**
- Leave to amend, 5, 562
- Leave to amend after judgment, 5, 562
- Motion in arrest, 5, 562
- When interlocutory or final, 5, 562
- To information, 10, 709
- Opening a judgment, 17, 192
- Ordinances, 17, 268
- Parties**
- Who may be moved against, 15, 892
- Who May Move,** 15, 891
- Examples, 15, 891
- In general, 15, 891
- Party to record, 15, 891
- Persons having no interest, 15, 892
- Persons injuriously affected, 15, 891
- Parties not of record, 12, 97
- Partition,** 17, 767
- Final Judgment,** 17, 808
- Confirmation of report of commissioners, 17, 808
- Cost,** 17, 810
- Attorney's Fees,** 17, 814
- Adversary proceedings, 17, 815
- Reasonable counsel fees, 17, 814
- Whether taxable as costs, 17, 814
- Commissioner's fees, 17, 814
- Doweress, 17, 813
- Discretion of court, 17, 812
- Holder of life estate, 17, 813
- In absence of statutory enactments, 17, 812
- Necessary disbursements, 17, 814
- Proportionate to value of interests, 17, 812
- Statutory regulations, 17, 814
- Where actual partition is made, 17, 815
- Where one party has made unnecessary costs, 17, 812
- Where parties are found not entitled, 17, 713
- Where sale is had, 17, 815
- Directing officer to make conveyance where sale is made, 17, 810
- Direction that party shall execute mutual conveyance, 17, 808
- Disposition of proceeds of sale, 17, 810
- How construed, 17, 809
- In general, 17, 808-810
- Nature, 17, 808
- Necessity of subsequent conveyances, 17, 809
- Possession, 17, 810
- Public record, 17, 810
- Signature of judge, 17, 810
- Title relating back, 17, 809
- Vesting title, 17, 809
- What decree should contain, 17, 808
- When actual partition is made, 17, 808

JUDGMENTS—Cont'd**Partition—Cont'd****Final Judgment—Cont'd****When Valid and Binding, 17, 810**

Amendable defects, 17, 811

Bad in part, 17, 810

Costs, 17, 812

Error on part of commissioners,
17, 811

Fraud, 17, 810

Irregularities in proceedings lead-
ing up to decree, 17, 811

Mere irregularities, 17, 811

Mistake, 17, 811

Ratification of invalid decree, 17,
812Where all parties in interest were
not made parties, 17, 811**Interlocutory Judgment, 17, 748**

Account between the parties, 17, 750

Appeal or review, 17, 817

**Appointment of Commissioners, 17,
767**

Acting as judges, 17, 768

Allotment of portions to respective
co-tenants, 17, 771

A mill, 17, 769

Comparative value of several par-
cels, 17, 771

Dedication to the public, 17, 775

Division, 17, 768, 769

Division into town lots, 17, 775

Duty to apply to court for instruc-
tion, 17, 769Duty to be present at meetings,
17, 769Duty to report where division
would be prejudicial, 17, 769

Easements, 17, 774

Employment of surveyor, 17, 771

Equality, 17, 768

Evidence, 17, 771

Examining witnesses, 17, 771

Examples, 17, 768-775

Grantee by metes and bounds, 17,
772How allotment should be made,
17, 772

In general, 17, 768

Notice of their meeting, 17, 769

Owelty, 17, 774

Property consisting of several par-
cels, 17, 773Property contiguous to that of one
of the co-tenants, 17, 772

Right of way, 17, 774

Servitude, 17, 774

Violation of statute, 17, 768

Water power, 17, 773

Whether a majority may act, 17,
769Whether they may ascertain the
interests of the respective parties,
17, 770

Whole parcels, 17, 773

With reference to what division
must be made, 17, 770Direction as to execution of convey-
ance, 17, 750Directions as to manner of making
partition, 17, 749

In general, 17, 748

Province of the judgment, 17, 748

Questions Determined, 17, 749Allotment of particular sections
of tract, 17, 749

Co-tenancy of the parties, 17, 749

In general, 17, 749

Partition or sale, see *infra*, **SALE
INSTEAD OF DIVISION.**Shares belonging to unknown
owners, 17, 749Undivided shares to which parties
are entitled, 17, 749

Statutory directions, 17, 750

When judgment should be given,
17, 748**Whether a Final Judgment, 17, 750**

Altering or changing, 17, 750

Amendments, 17, 750

Discontinuance, 17, 750

In general, 17, 750

Lis pendens, 17, 750

Setting aside, 17, 750

Statutory right to appeal, 17, 751

Whether appealable, 17, 750

Partnership

Against part of the partners, 17, 1326

Confession

After dissolution, 17, 1145

In action on tort, 17, 1328

Judgment as evidence of partnership,
17, 1321**Lien, 17, 1328**Whether judgment of firm debt is
lien on separate property, 17, 1328Whether judgment of separate
creditor is lien on firm property,
17, 1329

Part of those served, 17, 1328

Penalties

Appropriation of penalty, 18, 282

Qui tam action, 18, 282Personal evidence to show that parties
not of record are real parties, 12, 97Persons purchasing property upon au-
thority of erroneous judgment, 6,
835**Pleading, 12, 149^f**See *infra*, **COLLATERAL ATTACK.**Administrators, 12, 149^hAlleging service of process, 12, 149^gAverment of facts conferring jurisdic-
tion, 12, 274Defense by one defendant operating for
all, 12, 149^mDefense of original action, 12, 149^lDemand, 12, 149^hDescription of judgment, 12, 149^hDomestic court, 12, 149^fEstoppel by record, 12, 149^jExecution of second judgment, 12,
149^lForeign judgments, 12, 149^f

- Fraud, 12, 149^l
- Inferior courts, 12, 276
- In name of legal owner, 12, 149^m
- Interest, 12, 149^k
- Joint judgment, 12, 149^m
- Judgment of court of record of another state, 12, 149^f
- Judgment of inferior court, 12, 148^e
- Judgment of justice of the peace, 12, 149^g
- Jurisdiction, 12, 149^f
- Jurisdiction of court not of record, 12, 149^g
- Matters in discharge, 12, 149ⁱ
- Nil debet, 12, 149ⁱ
- Nul tiel record, 12, 149^k
- Nul tiel record, court not of record, 12, 149ⁱ
- Particular, 12, 149^k
- Plea of former recovery, 12, 149ⁱ
- Record lost, 12, 149^l
- Showing want of jurisdiction under general issue, 12, 149^j
- Sister states' judgments, 12, 149^j
- Statute as to jurisdiction, 12, 149^g
- Variance, 12, 149^k
- Void judgments, 12, 149^l
- Want of personal service, 12, 149^l
- Pledge of, 18, 640
- Power of Appellate Court Over**, 6, 831
 - Restitution*, see *RESTITUTION*.
 - Final judgment by, 6, 831
 - Remittitur, 6, 832
- Power of legislature over, 3, 682
- Power of legislature to open, 3, 683
- Presentation of Claim**
 - Whether judgment of such claim as must be presented to executor or administrator, 5, 213
- Presumption of payment, 18, 210
- Privity, 12, 92
- Procured by a conspiracy, 4, 593
- Pronounced upon dies non juridicus, 5, 87
- Purchase-Money Mortgages**, 19, 578
 - Grantor, 19, 578
 - Priority in general, 19, 578
 - Priority where mortgage is not recorded, 19, 578
- Quod computet, 1, 131
- Quod computet, effect and conclusiveness of, 1, 132
- Quo Warranto**, 19, 683
 - Affect on corporation, 19, 684
 - At common law, 19, 683
 - Conclusiveness, 19, 684
 - Examples, 19, 684
 - In general, 19, 683
 - On information, 19, 683
 - Ouster, 19, 683
 - Ouster and seizure distinguished, 19, 684
 - Where term has expired, 19, 684
 - Where usurpation ceased before trial, 19, 684
- Receivers**
 - Judgments against receiver, 20, 253
- Recording Acts**
 - Abstract of judgment, 20, 543
 - In general, 20, 543
- Reformation of Instruments**, 15, 665
 - Default, 15, 666
 - Examples, 15, 665, 666
 - Fraud, accident, or mistake, 15, 666
 - In general, 15, 665
 - Proceedings at law, 15, 666
 - When equity will grant relief, 15, 665
- Remittitur**
 - On writ of error, 6, 833
- Remote judgment, 20, 971
- "Render,"**
 - Entering distinguished from rendering, 20, 1032
 - Statutes limiting time within which appeal may be taken or writ of error issued, 20, 1033
- Replevin**, 20, 1113
 - According to verdict, 20, 1113
 - Amendment, 20, 1119
 - Conclusiveness of judgment, 20, 1119
 - Conditional judgment, 20, 1119
 - Defendant, 20, 1117
 - Description of property, 20, 1118
 - Destroyed property, 20, 1115
 - Election, 20, 1115
 - Executors and administrators, 20, 1118
 - Finding of court, 20, 1113
 - Generally, 20, 1113
 - In Arkansas, 20, 1114
 - In Illinois, 20, 1116
 - In Iowa, 20, 1117
 - In Kansas, 20, 1115
 - In Michigan, 20, 1117, 1118
 - In Missouri, 20, 1116, 1117
 - In Nebraska, 20, 1116, 1117
 - In New Hampshire, 20, 1117
 - In New York, 20, 1117
 - In Pennsylvania, 20, 1114
 - In Wisconsin, 20, 1117
 - Insolvency, 20, 1116
 - In the alternative, 20, 1114
 - Joint property, 20, 1118
 - Joint suit, 20, 1118
 - Judgment for defendant, 20, 1115
 - Judgment for plaintiff, 20, 1114
 - Judgment for value of property, 20, 1117
 - Judgment in alternative, 20, 1119
 - Mistake in form of judgment, 20, 1119
 - Nonsuit, 20, 1116
 - Payment of money value, 20, 1119
 - Pleadings admitting property in another, 20, 1118
 - Possession of property, 20, 1114
 - Property in hands of officer, 20, 1116
 - Property vesting in defendant upon payment of judgment, 20, 1119
 - Satisfaction of judgment, 20, 1119
 - Tender of property, 20, 1119
 - Value of property, 20, 1114
- When Unnecessary**
 - Under statute, 5, 528^m
 - Where action dismissed, 20, 1116

JUDGMENTS—Cont'd**Replevin—Cont'd**

Where plaintiff acquires right after action brought, 20, 1114

Where possession of property is obtained at beginning of action, 20, 1117

Where return is not claimed in pleading, 20, 1118

Res Judicata, 21, 265

Demurrer, 21, 269

Dismissal in Equity, 21, 272

Dismissal as to one of two trustees, 21, 273

Dismissal as to two out of three defendants, 21, 273

Dismissal without prejudice, 21, 274

Examples, 21, 272, 273

In general, 21, 272

Set-off, 21, 274

Findings implied, 21, 265

Judgment by confession, 21, 267

Judgment by consent, 21, 267

Judgment by default, 21, 268

Judgment must be final, 21, 266

Judgment not on merits, 21, 266

Judgments in Rem, 21, 274**Conclusiveness, 21, 277**

As to effect as res judicata, 21, 277

Bankruptcy, 21, 278

Decree in admiralty, 21, 278

Examples, 21, 277, 278

In general, 21, 277

Taxes, 21, 278

Decrees in admiralty, 21, 276

Examples, 21, 274-277

Jurisdiction, 21, 276

Nature, 21, 274

Requisites, 21, 274

Upon whom binding, 21, 276

What are judgments in rem, 21, 274-277

Judgment without verdict, 21, 265

Premature action, 21, 272

United States courts, 21, 285

Respondéat ouster, 1, 11; 12, 61**Revenue Laws**

Collection, 21, 344

Reversal, 12, 125; 7, 971

See generally, APPEAL; ERROR, WRIT OR.

Purchase at sale under judgment, see JUDICIAL SALE; SHERIFF'S SALE.

Decision of incidental matter, 7, 972

Decree on cross-bill, 7, 973

Effect of, 12, 125

Effect of judicial sale, 12, 229

Entering judgment, 6, 833

In admiralty, 7, 972

Order awarding writ of restitution, 7, 974

Order quashing or refusing to quash execution, 7, 974

Orders resting in discretion of court, 7, 973

Peremptory mandamus, 7, 972

Process of, 12, 125

Recovery of money paid upon, 18, 223

Refusal to grant rehearing, 7, 974

Reversing or affirming interlocutory order, 7, 971

Right of third parties under erroneous judgment, 6, 833

When execution may be issued, 7, 972

Satisfaction of, 12, 149v

See *infra*, SUBROGATION.

Action of, 12, 149l

Effect of payment, 12, 149z, 150a

Entry of satisfaction fraudulently obtained, 12, 150f

Execution**Levy Under, 12, 150b**

Discharge of debtor taken under execution, 12, 150e

Effect of levy as to third persons, 12, 150c

Effect of levy where debtor regains property by fraud, 12, 150d

Levy defeated by prior liens, 12, 150d

Levy of execution on real property, 12, 150d

Plaintiff purchases at sale, 12, 150d

Return under elegit, 12, 150e

Sale under execution, 12, 150d

Sale where defendant had no interest in property whatever, 12, 150d

Sufficiency of property taken under execution, 12, 150c

Suspension of judgment by levy, 12, 150c

Taking person of debtor, 12, 150e

Taking person of debtor where there are joint debtors, 12, 150e

Third persons as satisfaction, 12, 150c

In what judgment may be paid, 12, 149y

Part payment, 12, 149y

Part payment to attorney, 12, 149z

Payment

Of one of joint judgment creditors, 12, 149y

To attorney, 12, 149y

To guardian, 12, 149y

To next friend, 12, 149y

To public officer, 12, 149y-149z

Under execution of instrument acknowledging satisfaction, 12, 149z

Under parol agreement to receipt in full, 12, 149y

Presumption of payment, 12, 150

Presumption of payment after less period than twenty years, 12, 150a

Presumption of payment after twenty years, 12, 150a

Presumption of payment rebutted, 12, 150a

Presumption of special circumstance, 12, 150a

Presumption to secure liabilities, 12, 150a

- Real party of interest, 12, 149^y
 Release of one joint debtor, 12, 150^e
 Sale under satisfied judgment, 12, 150^e
Set-Off, 12, 150; 22, 456
 By courts of equity, 12, 150
 By courts of law, 12, 150
 Entry of satisfaction, 12, 150
 Several judgments for same cause of action, 12, 149^z
 Tender, 12, 149^y
 What attorney may accept in payment, 12, 149^z
 Where judgment has assigned, 12, 149^y
 Seizure of intoxicating liquors, 21, 979
Set-Off, 12, 150
 Counterclaim, 22, 388
 In Alabama, 22, 349
 In Kentucky, 22, 347
 On Counterclaim, 22, 435
 Amount of offset, 22, 436
 Costs, 22, 436
 Counterclaim against assignee, 22, 437
 Counterclaim against trustee, 22, 437
 Damages, 22, 435
 Damages found in favor of defendant equal to demand of plaintiff, 22, 436
 Defendant found entitled to amount less than that due to plaintiff, 22, 435
 Defendant found entitled to nothing, 22, 436
 Defendant's judgment for excess, 22, 436
 For the excess, 22, 436
 Judgment for amount claimed to be due, and action continued as to amount in dispute, 22, 437
 Plaintiff's recovery wholly defeated, 22, 436
 Production of securities, 22, 436
 Relief other than money judgment, 22, 438
 When judgment should be for defendant, 22, 435
 Where affirmative relief was demanded by one defendant against another, 22, 438
 Recoupment in Alabama, 22, 349
 Recoupment in Arkansas, 22, 350
Set-Off of One Judgment Against Another, 12, 150; 22, 445, 451
 Assigned Judgments, 22, 456
 Assignee has no rights which assignor has not, 22, 457
 Assignee mere trustee for another, 22, 457
 Assignee's right, 22, 456
 Assignee takes judgment subject to rights of set-off, 22, 457
 Assignment before judgment is rendered, 22, 460
 Assignment previous to entry of judgment, 22, 459
 Assignment to attorney, 22, 458
 Assignment to attorney where plaintiff is insolvent, 22, 459
 Bona fide, 22, 457
 Bona fide assignee without notice, 22, 458
 Conditional purchase, 22, 457
 Fraudulent assignments, 22, 459
 In general, 22, 456
 Judgment held against judgment creditor where creditor has assigned to attorney, 22, 458
 Judgment not owned absolutely, 22, 457
 Purchasing judgment to set-off, 22, 457
 Claims not mutual before judgment, 22, 445
 Debt remaining mutual after verdict, 22, 445
 Demands which have passed into judgment, 22, 445, 452
 Entering satisfaction, 22, 445
 General rule, 22, 451
How Set-Off Enforced, 22, 464
 Action, 22, 464
 Attorney's lien, 22, 464
 Collateral attack, 22, 465
 In general, 22, 464
 In what court motions should be made, 22, 466
 Judgment in different courts, 22, 466
 Jurisdiction of court of law, 22, 464
 Neglecting an opportunity to set off a judgment upon trial, 22, 465
 Resort to equity, 22, 464
 When court of law refuses to interfere on motion, 22, 464
 When motion should be made, 22, 465
 When motion will be denied at law, 22, 464
 Where demand has not been liquidated by judgment, 22, 464
 Where motion should be made, 22, 465
 Whether chancery is precluded by decision of court of law, 22, 465
 In general, 22, 445, 451
Intervening Rights of Third Parties, 22, 462
 Attorney's Lien, 22, 462
 Adverse judgments in the same cause, 22, 463
 Adverse judgments in the same transaction, 22, 463
 Court sustaining lien of attorney, 22, 462
 Discretion of court, 22, 463
 Lien for costs and disbursements, 22, 462
 Right of parties to set off judgment, 22, 462
 Statutes, 22, 463
 When lien not paramount, 22, 463

JUDGMENTS—Cont'd**Set-Off—Cont'd****Set-Off of One Judgment Against Another—Cont'd****Intervening Rights of Third Parties—Cont'd****Attorney's Lien—Cont'd**

Whether equitable or legal rules

apply, 22, 463

Unliquidated claim of opposite party, 22, 464

Bona fide assignee of judgment, 22, 462

Equitable rights of third parties, 22, 462

In general, 22, 462

When set-off not allowed, 22, 462

Joint and several judgments, 22, 452, 453

Judgment against several founded upon a joint and several liability, 22, 452

Judgment against several jointly, and one due to one of them individually, 22, 453

Judgments for Costs, 22, 454

Against judgment for damages, 22, 454

Attorney's lien, 22, 455

Claims arising in the same cause of action, 22, 455

Examples, 22, 454-456

In general, 22, 454

Insolvency of defendant, 22, 455

One judgment for costs against another, 22, 454

Judgments in Different Courts, 22, 456

At law, 22, 456

Different districts of the same court, 22, 456

Federal and state courts, 22, 456

Foreign judgments, 22, 456

In equity, 22, 456

Judgment of inferior court, 22, 456

Judgments not founded on mutual debts, 22, 452

Judgments not in the same rights, 22, 452

Judgments Upon Which Executions Have Issued, 22, 459

Assignment of execution, 22, 461

Attorney's lien, 22, 461

Executions not between the same parties, 22, 461

Executions not in the same right, 22, 461

In general, 22, 460

Judgment debtor arrested under execution, 22, 460

Judgment debtor discharged by consent of complainant, 22, 460

Judgment debtor escaping, 22, 460, 461

Mutual executions, 22, 461

Officer requiring indemnity from the consequences, 22, 462

Representative capacity, 22, 461

Set-off of executions, 22, 461

Whether officer must set off execution when required, 22, 462

Whether set-off will be allowed where execution is issued on judgment, 22, 460

Mutuality of the debt, 12, 445, 451

Nominal parties, 22, 454

Power to Set Off Judgment, 22, 446

Appeal, 22, 448

Arbitrary abuse of discretion, 22, 448

Courts of equity, 22, 446

Courts of law, 22, 447

Discretion of court, 22, 447

Discretion of court of equity, 22, 447

Discretion of court of law, 22, 447

General power of courts, 22, 446

On motion in equity, 22, 447

Question of discretion, 22, 447

Remedy by appeal, 22, 448

Review of court's refusal to allow set-off, 22, 447, 448

Where relief is sought in a bill, 22, 447

Whether statutory, 22, 446

Representative capacity, 22, 452, 453

Requisites of the Judgments, 22, 449

Actual recovery, 22, 449

Dormant judgments, 22, 450

Exemption laws, 22, 450

In equity, 22, 451

In general, 22, 449

Insolvency, 22, 450

Jurisdiction, 22, 449

Pendency of appeal, 22, 450

Reviving judgment, 22, 450

Substituting judgments, 22, 449

Unsatisfied judgment, 22, 450

What judgments may be set off, 22, 449

Setting off a judgment against several joint debtors against a judgment against him in favor of one of such joint debtors, 22, 453

Several judgments set off against a joint judgment, 22, 453

To Whom Relief May Be Granted, 22, 448

Equitable owner, 22, 448

In general, 22, 448

Mere equitable interest, 22, 449

Nominal owner, 22, 449

Party not absolute owner, 22, 448

Trustee, 22, 453

When set-off allowed, 22, 445, 451

Where claims were not mutual before judgment, 22, 445

Where each is entitled to execution in his own right, 22, 452

Whether allowed, 22, 445

Withholding judgment until the other party has obtained his judgment, 22, 445

Setting Aside

Justice of the peace, 12, 468, 471, 474

Want of jurisdiction, 12, 307

Vol. I.

Several judgments against joint defendants, 12, 76

Signature by clerk, 12, 76

Signature of judge, 12, 71

Statute of frauds, 8, 696

Statutes

Effect of Repeal, 23, 513

Connected with, but independent of, repealed statutes, 23, 514

In general, 23, 514

Provisions regarding, mandatory or directory, 23, 459, 460

Stay of Execution

Effect of, 23, 548

Examples, 23, 548

In general, 23, 548

Merely suspending judgment, 23, 548

Whether it discharges debt, 23, 548

Whether it vacates judgment, 23, 548

Subrogation

Surety Paying Judgment, 12, 150a

Officer liable to judgment creditor for neglect, 12, 150b

Suit to Set Aside

Laches, 12, 605

General rule, 12, 605

Judgment obtained by fraud, 12, 605

Judgment void upon its face, 12, 605

Knowledge, 12, 605

Sunday, 24, 577

Suretyship

Receivers, see RECEIVERS.

Appeal bond, 12, 98

Bail, 12, 98

Contribution, 12, 100

Effect of judgment against principal or surety, 12, 98

Effect of Judgment Against Surety, 24, 786

Judgment by default, 24, 786

Where principal has notice of the suit, 24, 786

Where surety does not know that he has a defense, 24, 786

Where surety has made a reasonable defense, 24, 786

Executors and administrators, 12, 98

Guardians, 12, 99

Indemnitor not notified to defend, 12, 102

Indemnity, 12, 100

Injunction, 12, 98

Notice, 12, 100

Constructive, 12, 102

Knowledge of indemnitor of pendency of suit, 12, 102

Should be clear, 12, 102

To indemnitor, 12, 100

Where indemnitor appears in defense, 12, 102

Prima facie evidence against indemnitor, 12, 101

Replevin, 12, 98

Sheriffs, 12, 99

Surety in reference to judicial proceedings, 12, 98

Surety obtained by fraud or collusion, 12, 100

What prima facie evidence against surety, 12, 99

Without jurisdiction, 12, 100

Suspension, 12, 150c

See *infra*, SATISFACTION; STAY OF EXECUTION.

Title to property by, 3, 171

Under control of the court during term time, 1, 627

United States Courts, 27, 625

Amendment, 27, 627

Correction, 27, 627

Court of claims, 27, 676

Interest, 27, 626

Vacation, 27, 627

Vacation of, 12, 126

After Expiration of Term, 12, 126

Extension of time for taking appeal, 12, 130

Fraud or collusion, 12, 128

Inability to make defense, 12, 129

Judgment entered after death of party, 12, 128

Judgment not intended by court, 12, 129

Mere error or irregularity, 12, 129

Misapprehension on part of attorney, 12, 129

Neglect to defend action, 12, 130

Notice to parties, 12, 133

Practice in North Carolina, 12, 12, 128

Practice of courts, 12, 128

Statute, 12, 128

When judgment is void, 12, 128

Where court had no jurisdiction, 12, 127

Application obtained by fraud or collusion, 12, 130

Application of a third party, 12, 130

Application of party by, 12, 132

Audita querela, 12, 127, 131

By legislature, 12, 126

By superior courts, 12, 126

During term rendered, 12, 126

Effect of acts of an officer, 12, 133

Entry of second judgment, 12, 133

How long term continues, 12, 126

Infant appearing with guardian ad litem, 12, 127

In general, 12, 126

Insufficient service, 12, 127

Judgment recovered by attorney without knowledge of plaintiff, 12, 127

Judicial notice, 12, 188

Laches, 12, 131

Motion, 12, 132

Payment of costs and damages, 12, 134

Petition or complaint, 12, 132

Power exercised in open court, 12, 126

Practice, 12, 132

Procured judgment by default, 12, 128

Reviewed in appellate court, 12, 126

JUDGMENTS—Cont'd**Vacation of—Cont'd****Under Statutes for Mistake, 12, 133**

Absence from state, 12, 134

Affidavit of merits, 12, 138

Attorney forgetting day of trial, 12,

135

Attorney neglecting to file pleading,

12, 135

Defendant failed to make himself
acquainted with nature of process,

12, 135

Defendant not represented at trial,

12, 134

Discretion of court, 12, 133, 137

Discretion to be exercised in con-
formance with law, 12, 137

Error of law, 12, 137

Excusable neglect, 12, 134

Illustration, 12, 133-136

Illustration of excusable neglect, 12,

135

Inability to attend, 12, 134

Inexcusable neglect, 12, 135, 136

Judgment entered contradictory to
principles of court, 12, 138Judgment entered contrary to stat-
utes, 12, 138Judgment not barred by statute of
limitation, 12, 138

Laches, 12, 138

Mere irregularity, 12, 137

Merits in the case, 12, 137

Misfortune, 12, 133

Mistake or neglect of attorney, 12,

135

Order subject to review, 12, 137

Sickness, 12, 134

Time within which relief must be
asked, 12, 137

Unavoidable casualty, 12, 133

Unwritten stipulation, 12, 134

When court's order will be set aside,

12, 137

Wording of statute, 12, 133

Vacation on condition, 12, 133

Waiver of rights, 12, 131

What steps for taking appeal have
been perfected, 12, 126When defendant did not appear at
trial, 12, 134

When judgment may be vacated, 12,

126

Who may be, 12, 130

Valid till set aside, 10, 691

Variance in corporate names, 16, 141

Vendor and vendee, 12, 102

Verdict leaving part of issue undisposed
of, 12, 72

Void for want of jurisdiction, 12, 311

Waiver of judgment by legislature, 16, 616

Warrantor and Warrantee, 12, 103

Notice, 12, 103

When judgment prima facie evidence,
12, 103When warrantor is not concluded by
judgment, 12, 103

What are interlocutory judgments, 1, 618

When cloud upon title, 2, 299

When pleadings are lost, 12, 71

Whether contract is within the provision
against impairment, 3, 753

Writing, 12, 70

JUDGMENTS OF SISTER STATES, 12,

148k

Divorce, see *DIVORCE*.*Action*, 12, 148f

Amount of judgment, 12, 149c

Defenses

Counterclaim, 12, 149b

Defense good in state where ren-
dered, 12, 149aDefenses pleadable to original ac-
tion, 12, 149aDefenses subsequent to judgment,
12, 149a**Errors of Law, 12, 148z**

Errors of practice, 12, 148z

Fraud, 12, 149

Fraud in code state, 12, 149

Fraud in equity, 12, 149

Set-off, 12, 149b

Statute of limitation, 12, 149a, 149b

Want of Jurisdiction Appearing in**Record, 3, 531; 12, 148v**

Appearance of defendant, 12, 148w

Attachments, 12, 148w

Jurisdiction of plaintiff, 12, 148v

Jurisdiction of subject-matter, 12,

148v

Jurisdiction over defendant, 12,

148v

Necessity of record showing juris-
diction, 12, 148vPresumption as to jurisdiction,
12, 148vProcess served out of jurisdiction
of court, 12, 148w

Service by publication, 12, 148w

Service on duly authorized agent,
12, 148wServing summons at defendant's
residence, 12, 148w

Subsequent process, 12, 148w

Sufficiency of appearance, 12, 148w

Want of Jurisdiction Proved in Con-**tradiction of Record, 12, 148w**

Constructive service, 12, 148z

Contradicting records by parol
evidence, 12, 148w

Denial, 12, 148y

Execution of power of attorney,
12, 148yJurisdictional facts expressly found,
12, 148w

Recitals, 12, 148w

Right to contradict record, 12, 148z

Forms of

Declaration, 12, 148f

Interest, 12, 149k

Manner of Setting up Defenses, 12, 149b

By want of jurisdiction, 12, 149b

Nil debet, 12, 149b

Nul tiel record, 12, 149b

- When issue upon general issue, 12, 149^b
- Act of congress regulating proof of, 3, 542; 12, 148^s
- Authentication**, 3, 542; 12, 148^s, 149^e
- Attestation, 12, 148^t
- Certificates, 12, 148^t
- Lost papers, 12, 148^t
- Parol evidence, 12, 148^t
- Provisional revised statutes, 12, 148^s
- Records of justice's court, 12, 148^u
- Uncertified records, 12, 148^u
- Conflict of Laws**
- State Relaxing Congressional Requirements, 7, 482
- Record of private writing, 7, 482
- Constitutional and legislative provisions, 3, 531
- Constitutional provisions, 3, 710; 12, 148^k
- Courts Whose Judgments Are Subject to These Provisions**
- Federal Courts, 3, 711; 12, 148^k
- Domestic judgments, 12, 148^l
- Judgment of state courts, 12, 148^l
- State in which federal court sits, 12, 148^k
- In other federal courts, 12, 148^k
- State Courts**
- Justices' judgment, 3, 711; 12, 148^m, 505
- United States court sitting in another state, 12, 148^m
- Denial of the jurisdiction of the court rendering judgment, 3, 711
- Distinguished from domestic judgments, 12, 148^o
- Docket of Justice of the Peace**, 12, 503
- Proof at common law, 12, 503
- Proof under United States statute, 12, 503
- Errors of law or practice, 3, 533
- "Faith, credit, and effect," 6, 173
- Form of Action and Declaration**, 12, 148^t
- Allegation and declaration, 12, 148^u
- Allegation of general jurisdiction, 12, 148^u
- Allegation of jurisdiction, 12, 148^u
- Debt, 12, 148^u
- Pendency of appeal, 12, 148^u
- Fraud, 3, 532, 712
- How proven, 3, 542; 12, 148^s, 149^e
- Injunction, 12, 149
- Joint debtor not served in process, 12, 148^q
- Joint debtors, 12, 148^p
- Judgment against administrator, 12, 148^p
- Judgment by default against one of two joint debtors who is not served, 5, 475
- Judgment entered by prothonotary, 12, 148^q
- Judgments have same force in other states as in state in which they are made, 3, 531
- Jurisdiction, 12, 148^p
- Jurisdiction of court rendering, 3, 531
- Justice of the Peace**, 3, 711; 12, 148^m
- Authentication, 12, 505
- Transcript, 12, 505
- Legislative provisions, 12, 148^k
- Lis pendens, 3, 711; 12, 148^m; 13, 892
- Mistake, 3, 533
- Notice to appear and defend necessary, 5, 476
- Penal judgment, 12, 148^m
- Pleading, 12, 149^k
- Plea in Bar to Suit on Original Claim**, 12, 149^c
- Alleging want of jurisdiction of defendant, 12, 149^c
- Judgment against garnishee, 12, 149^c
- Judgment based on statute of limitation, 12, 149^c
- Pendency of appeal, 12, 149^c
- Replication, 12, 149^c
- Where action was begun before judgment was rendered, 12, 149^c
- Whether a plea in bar, 12, 149^c
- Plea of fraud, 3, 712
- Plea to the record, 3, 711
- Proving effect of judgment in another state, 12, 148^q
- Required to Be Within the Provisions**, 12, 148^m
- Concerning real estate, 12, 148ⁿ
- Errors, 12, 148^m
- Judgment must be certain, 12, 148^m
- Judgment must be final, 12, 148^m
- Penal judgment, 12, 148ⁿ
- Res Judicata**, 12, 148^r; 21, 281
- As evidence, 12, 148^r
- Assessments against stockholders, 12, 148^s
- Character of judgment, 12, 148^s
- Conclusiveness, 21, 283
- Construction of state constitution or statute, 12, 148^r
- Divorce, 21, 285
- Examples, 21, 283-285
- Facts, 12, 148^r
- Fraud, 12, 148^s; 21, 284
- Garnishment, 21, 285
- Inferior courts, 21, 285
- Jurisdiction, 21, 284
- Jurisdictional facts, 12, 148^s
- Probate proceedings, 21, 285
- Question of law, 12, 148^r
- Testamentary capacity, 12, 148^s
- Same effect as in state where rendered, 12, 148^o
- State Relaxing Congressional Requirements**, 7, 482
- Court of the United States, 7, 482
- Record of private writing, 7, 482
- Status and effect of judgments generally, 3, 534; 12, 148^o
- Status of creditor, 12, 148^p
- Statute of limitations, 3, 533, 713
- Suit against corporations, 3, 532
- Suit on default, judgment in sister state, 5, 477
- Summoning joint debtor on original cause of action, 12, 148^q

JUDGMENTS OF SISTER STATES—*Conf'd*

- Validity of judgment, 12, 148 ϕ
- Where defendant has not been served with process, 3, 712
- Whether judgment creditor, 12, 148 ϕ
- Whether merits can be inquired into when made the basis of an action, 3, 710

JUDICIAL NOTICE, 12, 151*See AUTHENTICATION.*

Abbreviations, 12, 167, 199, 206

Bill in Equity

- Need not allege any matters of which court takes judicial notice, 2, 212

Bills of exception, 12, 191

Boundaries, 12, 172; 28, 243

- Examples, 28, 243
- In general, 28, 243
- Proof of venue, 28, 244
- Surveys, 28, 243

Cases in Which Courts Have Refused to Take, 12, 200

- Abbreviations, 12, 206
- Charters of private corporations, 12, 201
- Deputy officers, 12, 205
- Duty of railroad companies, 12, 201
- Examples, 12, 200, 207
- Existence of city of specific name, 12, 203
- Foreign law, 12, 201
- Law of sister states, 12, 202
- Pendency of suit, 12, 205
- Rate of interest in another state, 12, 201
- Rules adopted by departments of United States government, 12, 201

Charter of municipal corporations, 3, 141

Circulating medium, 12, 199

C. O. D., 3, 290; 7, 571

Constitutional Law, 12, 161

- Amendments, 12, 156, 161
- Constitution of states, 12, 161
- Constitution of United States, 12, 161
- Conviction in municipal courts, 12, 169

Corporation, 12, 155, 201

- Authority of officers, 17, 143
- Customs, privileges, and proceedings, 12, 154

Days of grace, 2, 110; 5, 528zⁿ

Definition, 12, 151

Deputies, 12, 205

Discretion, 12, 207

Ecclesiastical law, 8, 435

Elections, 12, 154, 179

- Contested, 12, 154
- Of sheriff, 12, 180
- Question of public affairs, 12, 154
- Result of voting, 12, 154
- Selection of officers, 12, 179
- Time of holding general, 12, 179

Executive acts, 12, 153

Facts occurring in the usual course of human lives, 12, 199

Facts of Uniform Occurrence, 12, 196

- Chemical combinations, 12, 197

Examples, 12, 196-198

Intoxicating liquors, 12, 196

Law of gravitation, 12, 196

Mathematics, 12, 196

Facts of which court takes, 7, 82

Federal constitution, 8, 435

Foreign Laws, 8, 435; 12, 163, 202; 23, 289; 27, 976

Certificate of notary, 12, 164

Ecclesiastical law, 8, 435

Federal constitution, 8, 435

Federal statutes, 8, 435

General rule as to, 8, 436; 12, 163; 23, 289

Law merchant, 8, 435; 12, 164

Laws of nations, 8, 435

Maritime law, 8, 435

New states erected out of old ones, 8, 435; 436; 12, 163

Seal of notary, 12, 164; 16, 757

State laws, 8, 435

State laws by courts of another state, 8, 436; 12, 202

State laws by federal courts, 8, 435

States of the Union, 12, 163

United States Courts, 23, 291

State in which court was held, 23, 291

Supreme court of the United States, 23, 291

Territory ceded by other governments, 23, 291

What constitutes a crime, 12, 164

Where one state recognizes acts done in pursuance of laws of another state, 23, 290

Foreign sovereigns, 7, 83

Generally, 12, 151

Geographical Facts, 7, 83; 12, 169

Boundaries, 12, 172; 28, 243

Districts, 12, 172

Examples, 12, 169-171

Existence and names of counties, 12, 173

Extent of jurisdiction, 12, 172

Judicial notice in criminal cases that certain places are within county, 4, 856

Lakes, 12, 170

Legal subdivision of lands, 12, 171

Limits of cities, 12, 173

Local civil divisions of states, 12, 171

Navigability of streams, 12, 173; 16, 245

Position of towns, 12, 172

Public survey, 12, 171

Rivers, 12, 170

Situation of cities, 12, 173

Subdivisions, 12, 171

Tidal waters, 12, 173

Historical Facts, 12, 174

Controlling events of history of country, 12, 177

Currency during war, 12, 174

Examples, 12, 174-178

Facts in history of states, 12, 177

Matters affecting government, 12, 174

- Matters affecting whole people, 12, 174
- Principal actors, 12, 177
- Termination of war, 12, 174
- What facts noticed, 12, 174
- Informations for quo warranto, 12, 189
- International law, 12, 162
- Intoxicating liquors, 12, 196, 580; 29, 517
- Irregularities and reversals, effect on title, 12, 229
- Judicial act, 1, 173
- Judicial Proceedings**, 12, 182, 183; 18, 301
 - Appropriations made by law, 12, 187
 - Bills of exception, 12, 191
 - Contraband of war, 12, 192
 - Creation of trusts, 12, 193
 - Discretionary matters, 12, 185
 - Informations for quo warranto, 12, 189
 - Irregularities in office, 12, 192
 - Judgments, 12, 183
 - Jurisdiction, 12, 184
 - National banks, 12, 194
 - Officers, 12, 183
 - Proceedings for contempt, 12, 189
 - Qualifications for particular office, 12, 190
 - Records, 12, 183
 - Sessions of legislature, 12, 187
 - Signature of attorney and officers, 12, 186
 - Statute of limitations, 12, 194
 - Tender in court, 12, 193
 - Terms of court, 12, 182, 190
 - Waiver, 28, 587
 - Whether judgment was rendered in vacation, 12, 188
- Jurisdiction, 12, 182, 184
- Justice of the peace, 12, 182
- Law merchant, 8, 435; 12, 164
- Laws of nations, 8, 435
- Laws of sister states, 12, 163
- Legislative journals, 12, 160
- Limitation of action, 12, 194
- Mandamus, 14, 223
- Maritime law, 8, 435
- Meaning of words, 7, 84; 12, 167
- Municipal Corporations**, 12, 157
 - Charter, 12, 188
 - Classification, 13, 985
 - Conviction in municipal courts, 12, 169
- Natural and artificial division of time, 7, 84
- National banks, 12, 194
- National flag, 12, 152
- Navigable waters, 12, 173; 16, 245
- Necessity of proof, 7, 84
- Notary Public**
 - Jurisdiction of notary, 16, 757
 - Official character, 16, 757
 - Official character of notary, 16, 757
 - Seal, 1, 157, 164; 12, 164; 16, 757
- Notes of state banks, 12, 158
- Of an almanac, 1, 494
- Officers of court, 12, 183
- Official seals, 12, 181
- Of legislative journals, 3, 675
- Of location of a town, 4, 738
- Of particular and local customs of bank, 2, 110
- Ordinances, 12, 168; 17, 262
- Ordinary course of nature, 7, 83; 12, 195
- Origin and jurisdiction of inferior courts, 12, 182
- Patent Law**, 18, 103
 - Examples, 18, 103, 104
 - In general, 18, 103
 - Scientific matters of common knowledge, 18, 103
 - What courts will take judicial notice of in considering, 10, 745
- Place of sale, opportunity to inspect personal property, 12, 213
- President's proclamation, 12, 158
- Presumption that Foreign Law Corresponds to the Lex Fori**, 19, 46
 - Common law, 19, 47
 - Crimes malum in se, 19, 47
 - In general, 19, 46
 - Jurisprudence springs from a different source, 19, 46
 - Peculiar idiosyncrasies, 19, 46
 - Penal statutes, 19, 47
 - Statute law, 19, 47
- Private Statute**, 12, 158; 23, 288, 296
 - Containing clause declaring it to be a public act, 12, 158; 23, 288
 - Legislature requiring courts to notice, 12, 158
- Proceedings for contempt, 12, 189
- Proceedings of court, 12, 183
- Prosecuting officer, 10, 506
- Public institutions, 12, 161
- Public officers, 7, 83; 12, 152, 181
- Public seal, 7, 83; 12, 152, 183; 21, 908
- Public seal of a foreign sovereign, 3, 542
- Public Statutes**, 7, 83; 12, 154; 25, 286
 - Acts incorporating municipal corporations, 12, 157
 - Acts of Congress**, 12, 155
 - Examples, 12, 155
 - Amendment to constitution, 12, 156
 - General act applying to particular localities, 12, 157
 - Incorporation of railroad companies, 12, 158
 - Municipal charters, 12, 157
 - Notes of state bank, 12, 158
 - Laws of District of Columbia, 12, 156, 158
 - President's proclamation, 12, 158
 - Private statutes required by the legislature to be noticed, 12, 158
 - State act, 12, 154
 - State bank, 12, 158
 - State courts, 12, 154
 - Statute declared to be public, 12, 158
 - Statutes of state court, 12, 158
 - United States circuit courts, 12, 156
 - United States courts, 12, 156, 159

JUDICIAL NOTICE—Cont'd**Public Treaties**

- Extradition treaties, 12, 161
- With foreign powers, 12, 160
- With Indian tribes, 12, 160

Railroads

- Location, 19, 838

Rate of interest of another state, 12, 201

Regular course of seasons, 12, 195

Seals, 7, 83; 12, 152, 183; 21, 908

Admiralty courts, 21, 909

De facto government, 12, 152

Examples, 21, 908, 909

Foreign municipal courts, 21, 909

In general, 21, 908

Of a foreign court, 3, 542

Of government, 1, 1021

Of notary public, 1, 157, 164; 12, 164, 181; 16, 757

Of sister state, 3, 542

Presumption that seal was affixed by proper person, 21, 908

Private corporations, 21, 909

Sovereign state, 21, 908

Statutory regulations, 21, 909

Unacknowledged government, 21, 908

Sessions of parliament, 12, 154

Signature of public officers, 12, 182

Source of information, 12, 160

Speed of railroad trains, 12, 200

State laws; see *infra*, FOREIGN LAWS.

Statutory provisions, 12, 167

Sunday, 24, 579

Surveys, 24, 1013

Tender in court, 12, 193

Terms of Court, 12, 182, 190

Duration of term, 12, 183

Examples, 12, 182, 183

Time for holding courts, 12, 182

Tides, 12, 195

Time, 12, 196

Towns and Townships, 26, 101

As to whether township has been organized, 26, 101

Name of township, 26, 101

United States courts, 12, 156, 159; 23, 291

Unwritten laws, 7, 82

Usage for days of grace, 2, 110; 5, 528²¹

Usages and Customs, 7, 83; 12, 165; 27, 730

Abbreviations, 12, 167

Examples of general customs, 12, 165

Examples of local customs, 12, 166

General customs, 12, 165

In general, 27, 730

Local customs, 12, 165

Meaning of words, 12, 167

Usage of banks, 12, 167

Usages which have become established rules of law, 27, 730

Usual methods of business, 12, 166

Usual Course of Nature, 7, 83; 12, 195

Examples, 12, 195, 196

Usury

Foreign laws, 27, 976

Vacation, 12, 188

War, 13, 736

JUDICIAL RECORDS, see RECORD.**JUDICIAL SALES**, 12, 208

See FORECLOSURE OF MORTGAGES; PARTITION; SHERIFF'S SALES.

As to sale by receiver, see RECEIVERS.

Executors and administrators, see DEBTS OF DECEDENTS; EXECUTORS AND ADMINISTRATORS.

Sale of pledge and collateral security, see PLEDGE.

Tax sales, see TAXATION.

Adjournment of Sale, 12, 217

Discretion, 12, 217

No one present, 12, 217

Notice of adjournment, 12, 218

Proclamation of adjournment, 12, 218

Sale under decree, 12, 218

To prevent sacrifice, 12, 218

When duty of officer to adjourn, 12, 217

Advertisement of sale, 1, 306

Alien enemy, 17, 485

Auctioneer, 12, 209

Bona fide purchase, 12, 223

Bona Fide Purchaser

Attorney and execution creditor, 12, 224

Caveat emptor, 21, 570

Execution creditor, 12, 223, 224

Exempt property, 21, 570

Goods levied on not belonging to person against whom execution writ was issued, 21, 570

Informalities in sale, 21, 570

In general, 21, 570

Presumption of notice of irregularities, 12, 224

Prior claims, 12, 224

What is notice, 12, 224

Whether purchaser acquires title, 21, 570

Whether Purchaser at, Is, 16, 831

Effect of reversal, 16, 832

In general, 16, 831

Judgment creditor who purchases at sale under own judgment, 16, 831

Notice at or before entry of judgment, 16, 832

Notice at or before sale, 16, 832

When notice will affect the purchaser, 16, 832

Who is, 12, 223

Certificate of Sale, 12, 220

Effect as evidence, 12, 220

Chilling Bids, 8, 832

As grounds for vacating sales, 8, 832

Bill in equity, 8, 832

Combination of capital authorized, 8, 833

Title of purchaser at law, 8, 833

When the rule does not apply, 8, 833

Confirmation, 12, 219

By act of parties, 12, 220

Certificate as evidence, 12, 220

Certificate of sale, 12, 220

Chancery sales, 12, 219

Collateral attack, 12, 219

- Control of court until, 12, 219
- Court decides on legality, 12, 219
- Deed made before expiration of time, 12, 220
- Essentiality, 12, 219
- Execution sales, 12, 219
- Fraud, 12, 219
- Irregularities of, 12, 219
- Lack of jurisdiction, 12, 219
- Necessity of express, 12, 220
- Object to irregularities, 12, 220
- Probate sales, 12, 219
- Ratification by parties, 12, 220
- Related back to date of sale, 12, 219
- What necessary, 12, 219
- Contempt, 12, 234
- Court controls until confirmation, 12, 219
- Deeds**, 12, 221; 20, 730
 - Administrator's sale, 12, 221
 - "Apt words of conveyance," 12, 221
 - As quitclaim deed, 20, 758
 - Before confirmation, 12, 221
 - Before expiration of time for redemption, 12, 220
 - By whom executed, 12, 221
 - Defective description, 12, 221
 - Defects in form, 12, 221
 - Description of property, 12, 221
 - Form of deed, 12, 221
 - Guardian case, 12, 221
 - Identity of property uncertain, 12, 221
 - Immaterial mistakes, 12, 221
 - Necessity, 20, 730
 - Relation, see *infra*, RELATION.
 - Statutory form, 12, 221
 - Whether statutory form directory 12, 221
- Definition, 12, 208
- Deputy, 12, 210
- Distinguished from execution sales, 12, 208, 209
- Distinguished from sheriff's sales, 22, 572
- Effect of Judgment**, 12, 125
 - Assignees of judgment, 12, 125
 - Effect on purchaser's title, 12, 229
 - Purchase, 12, 125
 - Where plaintiff has purchased property, 12, 125
- Effect upon sale, of reversal of decree under which it was made, 5, 389
- Estoppel**, 12, 237
 - Subsequent acquired title, 7, 10
- Forcible Entry and Detainer**
 - Action of Purchaser at Judicial Sale, 132
 - In general, 8, 132
 - Possession necessary, 8, 133
 - Privity between the parties, 8, 132
- Fraud**, 12, 231
 - Setting aside, 12, 235
- Hour of sale, 12, 211
- Implied warranty, 10, 111
- Inadequacy of price, 12, 237
- Injunction, 10, 808
- Judgment which has been satisfied, 12, 150e
- Maritime Liens**
 - Effect of lien, 14, 449
 - Under state statutes, 14, 451
- Mechanics' Liens**, 15, 199
 - Distribution of proceeds, 15, 199, 200
 - Examples, 15, 199-203
 - In general, 15, 199, 200
 - Lien upon separate building, 15, 203
 - Nature of interest to be sold, 15, 200
 - Property of municipal corporations, 15, 202
 - Redemption, 15, 202
 - Sale of property subject to prior incumbrance, 15, 201
 - Separate appraisal, 16, 203
 - Stay of execution, 15, 203
 - What interest may be sold, 15, 200
 - When sale should be authorized, 15, 201
 - Who bound by sale, 15, 201
- Misrepresentation, 12, 231
- Mistake, 12, 235
- Notice**, 12, 210
 - Administrator's sale, 12, 213
 - Bona fide purchaser, 12, 224
 - By Publication, 12, 212
 - Certain number of weeks successively, 12, 212
 - Few days more than required, 12, 213
 - Manner, 12, 212
 - Time, 12, 212
 - What sufficient publication, 12, 213
 - Description of property, 12, 210
 - Descriptions held insufficient, 12, 211
 - Descriptions held sufficient, 12, 211
 - Examples of description of place of sales, 12, 212
 - Examples of description of property, 12, 211.
 - Guardian's sale, 12, 213
 - Immaterial mistakes, 12, 210
 - Irregularities, 12, 210
 - Minuteness required, 12, 210
 - Necessity, 12, 210
 - Object, 12, 210
 - Of adjournment, 12, 218
 - Place of sale, 12, 212
 - Statutory provisions as to length of time, 12, 212
 - Statutory provisions as to manner of giving notice, 12, 212
 - Terms of sale, 12, 212
 - Time of sale, 12, 211
 - Under decree of court, 12, 213
- Objection to Irregularities**
 - When taken, 12, 220
- Opening biddings, 17, 193
- Payment, 12, 217
- Payment in redemption, 12, 241
- Place of Sale**, 12, 213
 - County where property is situated, 12, 213
 - Improper time and place, 12, 214
 - Land situated in two counties, 12, 213
 - Notice, 12, 213
 - Personal property, 12, 213
 - View of personal property, 12, 213

JUDICIAL SALES—Cont'd

Possession, 12, 225
 Presumption as to jurisdiction, 12, 277,
 278

Private sales, 12, 214

Publicity of Sale, 12, 214

Directions in decree, 12, 214

Necessity of public sales, 12, 214

Private sale, 12, 214

Puffers, 8, 813, 815

Purchaser, see *infra*, BONA FIDE PURCHASER.

Rights of, 12, 229; 15, 773

Effect of decree in equity, 12, 229

Fraud or misrepresentation, 12, 231

Liability of officer, 12, 229

Recovery from defendant, 12, 230

Recovery of amount of bid paid
 upon plaintiff's judgment, 12, 230

Reference, 12, 231

Remedies generally, 12, 232

Rights generally, 12, 232

Silence, 12, 231

Subrogation of purchaser, 12, 231

Validity of title, 12, 229

When recovery may be had from
 parties, 12, 230

Where he cannot obtain title, 12, 229

Where he has paid purchase-money
 before discovering sale to be void,
 12, 229

Whether entitled to receive title free
 from equities, 12, 230

Title Acquired, 12, 225

After-acquired title, 12, 226

Caveat emptor, 12, 225

Effect of reversal on purchaser's
 title, 12, 228

Illustrations, 12, 226-228

Irregularities and reversals, 12, 228

Possession of defendant, 12, 225

Rent accruing after day of sale, 12,
 225

Title of complainant or defendant,
 12, 226

Title of execution debtor, 12, 225

Title of purchaser in particular
 cases, 12, 226

Who May Purchase, 12, 222

Administrators, 12, 222

Attorney, 12, 222

Guardian, 12, 222

Judge, 12, 222

Person making sale, 12, 222

Title, 12, 222

Trustee, 12, 222

Void or voidable, 12, 222

Purchaser's Liability, 12, 233

Action upon bonds, 12, 234

Action upon notes, 12, 234

Assumpsit, 12, 233

Commitment for contempt, 12, 234

Measure of damages, 12, 233

Mode of procedure generally, 12, 234

Property bringing less at second sale,
 12, 233

Refusing to pay, 12, 233

Resale, 12, 234

Reselling property, 12, 233

Sale under decree in chancery, 12, 234

Setting aside sale, 12, 234

Specific performance, 12, 234

Title in North Carolina, 12, 234

Ratification by parties, 12, 220

Redemption, 12, 239; 20, 634

Foreclosure of mortgages, see REDEMPTION.

Amount payable to effect redemption,
 20, 639

By what law governed, 20, 635

Cases interpreting local statutes, 20,
 634

Crops on land redeemed, 20, 640

Deed made before expiration of time,
 12, 220

Effect, 12, 243; 20, 639

By judgment creditor, 12, 243

Compelling reconveyances, 20, 639

Crops on land redeemed, 20, 640

Extinguishing rights of purchaser,
 20, 639

Redemption by creditor of execution
 debtor, 20, 640

Rent and profits of lands sold, 20, 640

Where sheriff's deed cannot be made
 until after the expiration of time,
 20, 639

Whether any new rights are con-
 ferred, 20, 639

Excuse for not redeeming, 20, 638

Generally, 12, 239

How right created, 20, 634

In general, 20, 634

Law in force at time of sale, 12, 239

Law of the forum, 12, 239

Manner of, 20, 638

Mechanics' liens, 15, 202

No new rights conferred by, 12, 243

Personal right, 12, 239

Real estate sold separately, 12, 239

Rents and profits of land sold, 20, 640

Statutory rights, 20, 634

Strict compliance with statute, 20, 634

Tender, 20, 639

Time and Manner of, 12, 241; 20, 638

First day of statutory period, 12, 241

Manner of payment, 12, 242

Offer to credit debtor, 12, 242

Payment to officer who made sale,
 12, 242

Redemption after statutory period,
 12, 241

Statute governing, 12, 241

To whom payment must be made,
 12, 242

Waiver of formalities, 12, 241

What to be accepted in payment,
 12, 242

What law governs, 12, 239

When and how made, 20, 638

**Who May Exercise the Right, 12, 240;
 20, 635**

Assignee of judgment creditor, 20,
 636

- Assignee or grantee, 20, 637
- Debtor's assignee, 20, 636
- Execution debtor, 12, 240; 20, 635
- Grantee of execution debtor, 12, 240
- In general, 20, 635
- Judgment against debtor after sale, 12, 240
- Judgment creditors, 12, 240; 20, 636
- Mortgage creditors, 20, 638
- Mortgage creditor when mortgage not recorded, 20, 638
- Whether judgment creditor can redeem from his own sale, 20, 637
- Reformation of instrument, 15, 659
- Relation**, 12, 221; 20, 727, 737
 - Amended or lost deed, 20, 729
 - Application of the doctrine, 20, 727
 - Attachment, 20, 727
 - Back to levy, 20, 728
 - Docketing of judgment, 20, 727
 - Doctrine as Affecting Possession**, 20, 730
 - Action for waste, 20, 730
 - Necessity of sheriff's deed, 20, 730
 - Rents and profits, 20, 730
 - Title, 20, 730
 - Effect from time lien attaches, 20, 727
 - In general, 20, 727
 - Issuing of execution, 20, 727
 - Levy, 20, 727
 - Redemption, 20, 729
 - Statutory enactments, 20, 727
- Rent, 12, 225
- Replevin**, 20, 1067, 1068
 - Necessity of demand, 5, 528k
- Resale, 12, 233, 234
- Retention of Possession**, 8, 882, 883
 - Property in Possession of Third Person**
 - In Pennsylvania, 8, 883
- Sale After Return Day**, 12, 218
 - Case of personal property, 12, 218
 - In case of real estate, 12, 218
- Sale for Cash**, 12, 217
 - Cash as essential requisite, 12, 217
 - Highest bidder for cash preferred, 12, 217
 - Resale, 12, 217
 - When title passes, 12, 217
- Sale in Parcels**, 12, 214
 - Adding parcels together until whole is offered in entirety, 12, 217
 - Administrator's sale, 12, 215
 - Duty of officer, 12, 215
 - Failure to sell in parcels, 12, 215
 - Illustrative cases, 12, 215
 - Inversed order of parcels, 12, 216
 - Offered for sale separately, 12, 214
 - Probate sales, 12, 215
 - Property susceptible to division, 12, 215
- Setting Aside and Resale**, 12, 234, 235
 - Accident, 12, 235
 - Acquiesced, 12, 239
 - Diligence, 12, 239
 - Duty of court, 12, 235
 - Estoppel, 12, 237
 - Examples of setting aside sales, 12, 236, 237
 - Fraud, 12, 235
 - Gross inadequacy of price, 12, 237
 - Inadequacy of price, 12, 235
 - Master in chancery, 14, 955
 - Mistake, 12, 235
 - Notice of motion, 12, 239
 - Order of court, 12, 235
 - Stranger in interest, 12, 238
 - When sales will be set aside, 12, 235
 - Who may have sale vacated, 12, 238
- Ships and Shipping**, 22, 738
 - Effect of, 22, 738
 - Examples, 22, 738-739
 - Passage of title, 22, 738
 - Ship sold for unseaworthiness, 22, 739
- Silence, 12, 231
- Specific performance, 12, 234
- Statute of frauds, 8, 672, 694
- Subrogation**, 24, 261
 - Delaying payment of purchase-money, 24, 268
 - Examples, 24, 261-269
 - Forced sale of homestead, 24, 267
 - Fraud on part of purchaser, 24, 268
 - Grantee of purchaser, 24, 266
 - In general, 24, 261
 - Invalid execution sale, 24, 268
 - Invalid sale, 24, 257, 258, 262
 - Purchaser at administrator's sale, 24, 262
 - Purchaser at foreclosure sale, 24, 261, 262
 - Purchaser at guardian's sale, 24, 262
 - Purchaser at judicial sale, 24, 262
 - Purchaser aware of invalidity of sale, 24, 268
 - Rights of purchasers, 24, 261, 262
 - Statute making an invalid sale of homestead a misdemeanor, 24, 268
 - Whether purchasers are volunteers, 24, 262
- Taxation**
 - Effect of Lien of Taxes**, 25, 277
 - Examples, 25, 277, 278
 - Foreclosure sale, 25, 277
 - Purchaser taking subject to lien, 25, 277
 - Sale for delinquent taxes, 25, 277
- Tenant in common as purchaser, 11, 1083, 1084
- Title**
 - Acquired, 12, 225
 - Rights of purchaser, 12, 229
 - Sale for cash, 12, 217
- Validity**
 - Signature of mortgagor, 15, 772
 - Waiver of formalities of redemption, 12, 241
 - What are, 12, 208
- What May Be Purchased**
 - Municipal corporations, 15, 1058
- Whether Champertous**
 - Where execution debtor has not possession, 3, 83
- Who May Make**, 12, 209
 - Death of sheriff, 12, 210
 - Employment of auctioneer, 12, 209

JUDICIAL SALES—Cont'd**Who May Make—Cont'd**

Expiration of sheriff's term, 12, 210

Person designated in decree, 12, 209

Sheriff execution-plaintiff, 12, 210

Sheriff's deputy, 12, 210

JUDICIARY, see CONSTITUTIONAL LAW; CONTEMPT; COURTS; JUDGE; JURISDICTION; UNITED STATES COURTS.

JUNK-SHOP, 12, 243**JURAT, PROOF OF**

Where it does not appear upon the face, 1, 311

JURISDICTION, 12, 244, 314, 756

See CONFLICT OF LAWS; CONTEMPT OF COURT; INJUNCTION; JEOPARDY; JUSTICE OF THE PEACE; PROHIBITION; SURROGATES' AND PROBATE COURTS; TERMS OF COURT.

As to conflict of jurisdiction in habeas corpus cases, see HABEAS CORPUS CASES.

Conflicts of jurisdiction, see CONFLICTS OF LAWS; CONSTITUTIONAL LAW; CRIMINAL PROCEDURE; HABEAS CORPUS; INTERNATIONAL LAW; JUDGMENT; NON-RESIDENTS; PARTITION; REMOVAL OF CAUSES.

Determined by values, see AMOUNT IN CONTROVERSY.

Effect of Acting with Jurisdiction

Effect on judgment, see JUDGMENT.

Effect of change of venue upon jurisdiction, see CHANGE OF VENUE.

Habeas Corpus

As to conflict of jurisdiction between state and federal courts, see HABEAS CORPUS.

Jurisdiction acquired and lost, see APPEAL; CHANGE OF VENUE; DEATH; DISCONTINUANCE; ERROR, WRIT OF; FOREIGN ATTACHMENT; NOTICE; REMOVAL OF CAUSES; SERVICE OF PROCESS.

Jurisdiction in specific actions, see BONDS; DIVORCE; EMBEZZLEMENT; HABEAS CORPUS; NON-RESIDENTS; PARTITION; PARTNERSHIP; QUO WARRANTO; RECEIVERS; TRUSTS.

Jurisdiction of respective tribunals and public officers, see ADMIRALTY; APPEAL; ARBITRATION; BANKRUPTCY; CONSULS AND AMBASSADORS; COURTS; CRIMINAL PROCEDURE; DEBTS OF DECEDENTS; EQUITY; ERROR, WRIT OF; JUSTICE OF THE PEACE; MILITARY LAW (for courts martial); UNITED STATES COURTS.

Navigable waters, see NAVIGABLE WATERS.

Restraint of action without jurisdiction, see PROHIBITION, WRIT OF.

Trusts and trustees, see TRUSTS AND TRUSTEES.

United States courts, see UNITED STATES COURTS.

Acquired by Consent

Over Persons, 12, 299, 305, 401

Appearance entered by mistake, 12, 300

Appearance for special purpose, 12, 299

Appearing and pleading to merits, 12, 299

Appellate courts, 12, 299

Consent, how expressed, 12, 299

General appearance, 12, 299

Merits, 12, 299

Minors, 12, 300

Restoration where lost, 12, 299

Service of process, acceptance of, 12, 300

Waiver of conditions essential to jurisdiction, 12, 300

Over Subject-Matter, 12, 301

Appellate courts, 12, 302

Cases stated, 12, 301

Change of venue, 12, 302

Controversy must be real, 12, 301

General rule, 12, 301

Waiver of defects, 12, 302

Waiver of lack of jurisdiction, 12, 302

Any other, 12, 314

Appellate, 12, 251

See APPEALS; UNITED STATES COURTS.

Arbitration stipulation in insurance policy, 1, 667; 12, 353

Assistant, 12, 251

Bigamy, 2, 198

Boundary rivers, 12, 296

By Consent, 12, 305

See *infra*, ACQUIRED BY CONSENT.

Consent of parties where court has no jurisdiction, 12, 401

Jurisdiction only given to judicial tribunals, 12, 303

Parties consenting to try case before other than judges, 12, 303

Unlawful term of court, 12, 303

By statute, 9, 620

Civil, 12, 251

Collusive Suits, 17, 502

Allegation that action is collusive, 17, 503

Cause of action assigned to give jurisdiction, 17, 503

Improper motive, 17, 502

Interest not bona fide, 17, 502

Joinder of parties, 17, 503

Presumption, 17, 504

Common law, 12, 314

Competent, 3, 380; 12, 314

Concurrent, 12, 251, 292, 314

United States courts and state courts, see UNITED STATES COURTS.

Concurrent and coördinate jurisdiction, 12, 292

Court first exercising jurisdiction, 12, 293

Courts of different states, 12, 293

- Generally, 12, 292
 In rem, 12, 295
Law and Equity Courts, 12, 293
 Action against receivers, see **RECEIVERS**.
 Restraining proceedings at law, see **INJUNCTIONS**.
 Fraud, 8, 651
 In general, 12, 293
Of State
 Boundary rivers, 12, 296
 Consolidated corporations, 4, 272*q*, 273
Constitutional Limitations as to, 11, 252
 See CONSTITUTIONAL LAW.
 Suit against United States, see **UNITED STATES**.
Executive Officers, 12, 253
 Discretionary powers, 12, 253
Judiciary Department Over Legislative, 3, 684; 12, 259
 Compelling legislation, 12, 257
 Incorporation of villages, 12, 259
 Political questions, 12, 258
 Regulations of secretary of the treasury, 12, 259
 Restraining legislation, 12, 257
 What are political questions, 12, 258
 Jurisdiction over president of United States, 12, 252
Legislative Over Executive and Judiciary Departments, 3, 681; 12, 258
 Congress of United States, 12, 260
 Imposing duties upon judges, 12, 261
 Jurisdiction of United States supreme courts, 12, 260, 261
 Power of state legislature over jurisdiction of United States courts, 12, 262
 Power of state legislature over state courts, 12, 264
 State statutes creating new cause for action, 12, 262
Construction of Statutes Affecting Jurisdiction, 23, 406
 Acts creating courts of limited jurisdiction, 23, 406
 Constitutional jurisdiction, 23, 406
 Ousting superior court of jurisdiction, 23, 353, 406
 Consultative, 12, 252
Corporations
 Jurisdiction of state courts over consolidated corporations, 4, 272*q*, 273
 Counterfeiting, 4, 334
Crime Begun in One County or State and Finished in Another, 3, 538; 4, 737, 786; 9, 620; 10, 531, 532; 12, 798; 20, 531, 594; 28, 202, 231, 232
 See infra, **RECEIVING STOLEN PROPERTY**.
 Accessory, 28, 235
 Attempts, 28, 234
 Begun in one county and executed in another, 28, 232
 Blow struck in one county, death in another, 4, 737; 9, 620; 10, 533
 Committed partly in one county and partly in another, 28, 232
 Crime composed of several elements, 10, 533
 Crime consummated within boundaries of state, 28, 231
 Death resulting in another county, 28, 237
 Examples, 28, 202, 203
 Extra-territorial offenses, 28, 236
 In England, 28, 202
 In general, 28, 202, 203, 232
 Larceny, 10, 532; 12, 796, 798, 820; 13, 797
 Letter to obtain money by false pretenses, 28, 237
 Libel, 28, 234, 237
 Perjury, 28, 234
 Poisoning, 10, 533
 Sending threatening letters, 10, 533
Crime Committed in Two Counties
 Forgery, 8, 523
Definition, 12, 244
 Comments upon, 12, 245-250
 Resulting from the latest cases, 12, 247-250
Effect of Acting Without, 12, 312
 See HABEAS CORPUS; JUDGE; JUDGMENT; JUSTICE OF THE PEACE; MALICIOUS PROSECUTION; SHERIFF.
 Bond entered in, 12, 312
 Costs, 12, 312
Exclusive, 12, 290
 Constitutional jurisdiction, 12, 291
 Effect of, 12, 290
 Effect of pending suit where exclusive jurisdiction is given to another court, 12, 304
 New offense created by statute, 12, 291
 New right created by statute, 12, 291
 Revenue laws, 12, 291
 When it must be expressly given, 12, 290, 291
 Final, 12, 314
Fraud
 When there is concurrent jurisdiction of law and equity, 8, 651; 21, 33
 When there is no concurrent jurisdiction of law and equity, 8, 651
 Further civil and criminal, 12, 315
 General and limited jurisdiction, see *infra*, **SUPERIOR AND INFERIOR COURTS**.
 Generally, 10, 530; 11, 756; 12, 251
Illegal Courts, 12, 312
 Courts of confederate states, 12, 313
 Indian lands, 10, 531
Inferior Courts
 Presumption of jurisdiction, 12, 401
In Personam and in Rem, 5, 751
 What it depends upon, 5, 751
Inquired Into
 By What Courts, 12, 307
 Collateral attack, see **JUDGMENT**.
 Appellate courts, 12, 307
 In first instance, 12, 307

JURISDICTION—Cont'd**Inquired Into—Cont'd****By What Courts—Cont'd**

Jurisdiction of appellate courts, 12, 307

In What Manner, 12, 309

Certiorari, 12, 310

Demurrer, 12, 309

Habeas corpus, 12, 311

Motion to dismiss, 12, 309

Motion to vacate, 12, 310

Plea in Abatement, 12, 309

Amount in controversy, 12, 309

Pointing out court which has jurisdiction, 12, 310

Want apparent on face of record, 12, 309

Where no court has jurisdiction, 12, 310

Prohibition, 12, 311

Objection to jurisdiction, 12, 309

When, 12, 306

After judgment, 12, 307

At any time, 12, 306

In appellate courts, 12, 307

Insurance

Limitation as to execution, 11, 353

Judicial notice, 12, 182, 184

Jurisdiction clause, 12, 317

Jurisdiction in Personam, 1, 200

See CRIMINAL PROCEDURE; EQUITY;

HABEAS CORPUS; NON-RESIDENTS;

SERVICE OF PROCESS.

Jurisdiction in Rem, 1, 200

See CRIMINAL PROCEDURE; EJECTMENT; EQUITY; FOREIGN ATTACHMENT; PARTITION.

Jurisdiction of the cause, 12, 315

Larceny, 12, 796

County where larceny is committed, 12, 796

Crime committed partly in one county and partly in another, 10, 532; 12, 796, 798, 820; 13, 797

Examples, 12, 797

Goods stolen in foreign countries, 12, 798

Property carried to another place, 12, 796

State into which thief has brought goods, 12, 796

Stealing in one state and bringing goods into another, 10, 532; 12, 796, 798, 820; 13, 797

Taking, 12, 798

Value, 12, 884

Libel and Slander, 13, 454

Inferior court, 13, 454

In general, 13, 454

Letter, 13, 454

Where words are published or uttered, 13, 454

Limitations as to

Examples of exercise of jurisdiction over executive officers, 12, 256

Executive Officers

Compelling payment of wages, 12, 254

Compelling state treasurer to deliver up bonds, 12, 256

Jurisdiction of state courts over state officers, 12, 256

Jurisdiction over state governor by consent, 12, 256

Ministerial powers, 12, 254

State courts over state governors, 12, 255

United States court over state officers, 12, 254

What are and what are not executive duties, 12, 256

Limited, 12, 251

Lis Pendens, 13, 881

Both of the res and the person, 13, 881

Claimant must be impleaded, 13, 882

General rule, 13, 881

Persons not made parties, 13, 882

Pleading, 13, 882

Malicious mischief, 14, 16

Malicious Prosecution, 14, 45

Want of, as a defense, 14, 58

Mandamus, 14, 101, 225

Mechanics' Liens, 15, 182

Error, 15, 184

In Arkansas, 15, 183

In California, 15, 183

In Colorado, 15, 183

In Illinois, 15, 183

In Indiana, 15, 183

In Maryland, 15, 183

In Michigan, 15, 183

In Missouri, 15, 183

In New York, 15, 183

In Pennsylvania, 15, 184

Justice of the peace, 15, 184

Residence of the parties, 15, 182

Statutes regulating, 15, 183

Nonsuit, 16, 740

Notary Public, 16, 756

Concurrent with justices of the peace, 16, 757

In general, 16, 756

Judicial notice, 16, 756

Local limits, 16, 756

Whether confined to his county, 16, 756, 757

Not taken away by consent, 12, 305

Of respective tribunals, 12, 244

Of the cause, 12, 251

Original jurisdiction, 12, 251; 17, 275

Ousted by consent, 12, 305

Ousting Courts of Jurisdiction

Agreement to waive right of removal, 20, 1010

By agreements to arbitration, 1, 667; 12, 353

Stock exchange, 23, 774

Out of the jurisdiction, 12, 315; 17, 290

Over persons, 12, 252

Over specific persons, see CONSULS AND AMBASSADORS; EXECUTORS AND ADMINISTRATORS.

Parties, 8, 206

Assignee or mortgagee, 8, 206

Who are necessary parties, 8, 206

Vol. I.

Partition, 17, 705**Effect of Title Coming in Question, 17, 709**

Adverse possession, 17, 710
 Agreement to submit, 17, 711
 Conflict of titles, 17, 709
 Construction of will, 17, 709
 Discretion of court, 17, 710
 In absence of statute, 17, 709
 In Tennessee, 17, 709
 Judgment in ejectment, 17, 710
 Legal title first established, 17, 709
 States in which title may be settled,
 17, 711, 712

Waiting determination of legal title,
 17, 710

When court will dispose of whole
 controversy, 17, 710, 711

Where equitable title is set up, 17, 710

In absence of statutory provision, 17,
 707

Of What Locality, 17, 707

Action local in its nature, 17, 707

County in which subject-matter is
 situated, 17, 707

Land situated in another state, 17,
 708

Residence of parties interested, 17,
 708

Statutory steps, 17, 708

Tract lying in its nature, 17, 708

Waiver of the right to object, 17, 708

Where situated in two or more coun-
 ties, 17, 707

Particular courts, 17, 705

Personal property, 17, 707

Probate Courts, 17, 712

As incident to general probate juris-
 diction, 17, 712

After settlement of estate, 17, 713

Decedent not dying seised, 17, 714

Dispute as to title arising after court
 has assumed jurisdiction, 17, 714

Only in intestacy, 17, 713

Statute, 17, 712

Title in dispute, 17, 714

Two estates held in common, 17, 713

Where an heir or devisee has trans-
 ferred his shares, 17, 713

Whether exclusive, 17, 714

Whether land was. subjected to
 dower, 17, 715

Who may invoke the jurisdiction,
 17, 714

Statutory enactments, 17, 705

Where jurisdiction is once attached,
 17, 707

Whether statutory jurisdiction is ex-
 clusive, 17, 705

Whether statutory remedies supplant
 equitable jurisdiction, 17, 706

Patent Law

State Courts, 18, 70

Examples, 18, 70

In general, 18, 70

Question arising out of contract,
 18, 70

Torts, 18, 70

United States Court, 18, 70

Infringements of letters patent, 18, 71

Validity of patent, 18, 70

Perjury, 18, 303; 28, 234

Indictment, 18, 314

Authority of person administering
 oath, 18, 314

Certainty required, 18, 314

Facts giving authority or juris-
 diction, 18, 315

Name of officer, 18, 315

Style of court, 18, 314

Pleading to, 18, 520

Demurrer, 18, 521

Distinguished from plea in abatement,
 18, 519, 520

Facts to be set out, 18, 521

First plea, 18, 520

In criminal suit, 4, 785

Local action in wrong forum, 18, 521

Order of pleading, 18, 520

Pleas of personal privilege, 18, 521

Showing what court has jurisdiction,
 18, 521

Verification, 18, 521

What plea must be shown, 18, 521

When proper, 18, 521

Presumption

As to Superior Court Exercising Special

Statutory Powers, 12, 276

Action in rem against vessels, 12,
 279

Attachment Proceedings in State
 Courts, 12, 281

Affidavit, 12, 282

Petition, 12, 281

Presumption as to regularity when
 jurisdiction is attached, 12, 282

Attachment proceedings in United
 States courts, 12, 280

Bankruptcy, 12, 279

Eminent domain, 12, 279

General rule, 12, 276

Insolvency, 12, 279

Judicial sale of decedent's real estate,
 12, 278

Judicial sale of real estate, 12, 277

Judicial sales generally, 12, 278

Sale for taxes, 12, 277

Service by publication, 12, 281

Special, 12, 276

Summary, 12, 276

Summary remedy to establish lost
 note, 12, 279

Courts of general jurisdiction, 19, 459

Courts of limited jurisdiction, 19, 461

Generally, 12, 270

Inferior Courts

Citizenship, 12, 275

Collateral attack upon record, 12,
 274

General rule as to, 12, 274

Jurisdiction must appear on record,
 12, 274

Justice of the peace, 12, 401

Petition, 12, 275

Pleading judgment, 12, 275

JURISDICTION—Cont'd**Presumption—Cont'd****Inferior Courts—Cont'd**

- Preliminary examination, 12, 275
- Presumption of regularity, 12, 275

Superior Courts, 12, 271

- Appearance, 12, 273
- Averting jurisdictional facts, 12, 274
- Continuance of jurisdiction, 12, 272
- Discretionary jurisdiction, 12, 273
- Foreign judgments, 12, 273
- Jurisdictional facts, 12, 271
- Notice, 12, 272
- Oath of grand jury, 12, 272
- Record averment as to jurisdictional facts, 12, 272
- Record disclosing nothing, 12, 272
- Service of process, 12, 272
- Want of jurisdiction appearing on record, 12, 273

Probate and Letters of Administration, 19, 162

Probate court, see **SURROGATE**.

Courts exercising jurisdiction, 19, 162

Domicile, 19, 164

- Abandonment of domicile, 19, 166
- As affecting jurisdiction, 19, 164
- Burden of proof, 19, 165
- Death in itinere, 19, 165
- Domicile of origin, 19, 166
- Domicile within limits of jurisdiction at time of death, 19, 164
- General rule, 19, 164
- In England, 19, 166
- Intention to settle in another domicile, 19, 165
- Place of destination, 19, 165
- Two domiciles, 19, 165
- What constitutes a domicile, 19, 165

Foreign Wills, 19, 173

- Ancillary, 19, 173
- In general, 19, 173
- Statutes, 19, 173
- Validity, 19, 173
- Valid under the law of his domicile, 19, 173

In America, 19, 162

In Great Britain, 19, 162

Interest of judge, 19, 163

Orphans' court, 19, 162

Situs of Property**Personal Estate, 19, 166**

- Between several courts in the same state, 19, 167
- Bills and notes, 19, 169
- Bond, 19, 169
- Cases in which administration has been refused, 19, 169
- Claim against insurance company, 19, 168
- Claim of damages for death, 19, 169
- Debtor settling in another jurisdiction, 19, 170, 172
- Debts, 19, 168
- Debts due by the state, 19, 168
- Examples, 19, 166-172

Goods brought into county after death of decedent, 19, 170

In general, 19, 166

Personal estate not in place of domicile, 19, 166

Shares, 19, 169

Specialty debt, 19, 169

Real estate, 19, 172

Receivers**Appointment, 20, 56**

At chambers, 20, 64

Chancery court, 20, 63

Circuit judges, 20, 63

Comity, 20, 65

Conflicting applications, 20, 65

Conflict of Jurisdiction Between State and Federal Courts, 20, 67

Bankruptcy cases, 20, 69

Concurrent jurisdiction, 20, 67

Court first obtaining jurisdiction, 20, 67-69

Doctrine disregarding receiver's possession, 20, 68

Foreclosure cases, 20, 70

Interference with possession, 20, 68

Proceedings in state court as contempt, 20, 68

Receiver appointed by federal court in whom title is vested, 20, 68

Receiver in possession, 20, 67

Receiver in possession from state court, 20, 68

Corporations, 20, 57

Court commissioner, 20, 63

Depending upon pendency of suit, 20, 60

Ejectment suits, 20, 57

Equitable jurisdiction, 20, 56

Extra-Territorial Jurisdiction, 20, 65

Auxiliary receiver in another jurisdiction, 20, 66

Comity, 20, 65, 67

Application of principles of comity, 20, 67

General rule, 20, 65

When recognized under, 20, 67

Defendant's residence in another state, 20, 66

Property controlled need not be within the jurisdiction, 20, 66

Qualification of statement, 20, 66

Railroad passing through two states, 20, 67

Whether receiver appointed by one jurisdiction is entitled to recognition by another, 20, 65

Foreclosure sale, 20, 57

In general, 20, 56

Inherent jurisdiction of court of equity, 20, 56

In Particular Cases, 20, 61

Against executor, 20, 61

At instance of judgment creditor, 20, 61

At instance of vendee of land, 20, 61

- Garnishment of pledged stock, 20, 62
- Under landlord and tenant act, 20, 62
- Partition suit, 20, 57
- Partnership cases, 20, 57
- Place Where Jurisdiction Exercised, 20, 63
 - Over corporations, 20, 63
 - Over railroads, 20, 64
- Priority of Jurisdiction, 20, 65
 - Court first taking cognizance, 20, 65
 - Exceptions to rule, 20, 65
 - General rule, 20, 65
 - Where there is no interference with receiver, 20, 65
- Questioning Jurisdiction of Court, 20, 61
 - By objection to bill, 20, 61
 - Objections barred by delay, 20, 61
- Sought in Another Co-ordinate Court, 20, 64
 - Appointment of receiver for same property, 20, 64
 - In general, 20, 64
 - Interference with receiver of another court, 20, 64
 - Previous appointment without jurisdiction, 20, 65
- Statutory Jurisdiction to Appoint, 20, 57
 - Authority to appoint when it appears just or convenient, 20, 57
 - Canadian judicature act, 20, 59
 - Controlling force of statute, 20, 60
 - English judicature act, 20, 57
 - Irish judicature act, 20, 59
 - In California, 20, 60
 - In Indiana statute, 20, 59
 - In Massachusetts, 20, 60
 - In Minnesota, 20, 60
 - In New York, 20, 59
 - "Just or convenient," 20, 57, 58
 - Various state statutes, 20, 59
- Vacation, 20, 64
- What Courts May Exercise Jurisdiction, 20, 62
 - Appellate court, 20, 62
 - County courts, 20, 62
 - Superior courts, 20, 63
- Jurisdiction Over Receivership, 20, 12
 - Court of equity, 20, 12
 - Examples, 20, 12, 13
 - In general, 20, 12
- Receiving Stolen Property, 20, 452
 - Court of county where goods were received, 20, 452
 - Goods stolen in another state, 20, 452
 - In absence of statute, 20, 453
- Record, 20, 476
- Reformation of instruments, 20, 719
- Replevin, 20, 1076
 - At common law, 20, 1076
 - Examples, 20, 1076
 - In Illinois, 20, 1076
 - In Indiana, 20, 1077
 - In Kansas, 20, 1077
 - In Massachusetts, 20, 1076
 - In Michigan, 20, 1076
 - In Minnesota, 20, 1075
 - In Mississippi, 20, 1076
 - In South Carolina, 20, 1076
 - In United States, 20, 1076
 - In Vermont, 20, 1076
 - In Wisconsin, 20, 1076
 - Pleading want of jurisdiction, 20, 1076
- Property in Custody of United States Marshal, 20, 1078
 - Conflict of authority between state and federal courts, 20, 1078
 - Consent of federal court, 20, 1078
 - In general, 20, 1078
 - Third party claiming the property as his own, 20, 1078
- Statutes, 20, 1076
- Value of property, 20, 1077
- Whether damages claimed are part of value, 20, 1077
- Rescission
 - Fraud, 8, 651
 - Concurrent jurisdiction of law and equity, 21, 33
 - Constructive fraud, 21, 34
 - When equity will grant relief, 21, 33, 34
- Res Judicata, 21, 259
 - As to the United States courts, see UNITED STATES COURTS.
 - Concurrent jurisdiction, 21, 259
 - Examples, 21, 259-262
 - Foreign judgments, 21, 279
 - Inferior court, 21, 261
 - Inferior courts in general, 21, 264
 - Judgments in rem, 21, 276
 - Judgments of sister states, 21, 284
 - Jurisdiction of subject-matter, 21, 260
 - Jurisdiction over persons, 21, 261
 - Presumption of jurisdiction, 21, 261
- Probate Courts, 21, 262
 - Birth of child, 21, 263
 - Decree claimed to be void for want of jurisdiction, 21, 262
 - Decrees for distribution, 21, 263
 - Examples, 21, 262, 263
 - In general, 21, 262
 - What matters are concluded, 21, 261
- Special Statutory Courts, 21, 263
 - In general, 21, 263
 - Jurisdictional facts appearing, 21, 264
 - Superior court, 21, 261
 - What is jurisdiction, 21, 259
- Salvage, 21, 707
 - Admiralty, 21, 707
 - Extent of admiralty jurisdiction, 21, 708
 - In general, 21, 707
 - State courts, 21, 708
- Set-Off, 22, 212
 - Amount in controversy, 22, 273
 - Effect of set-off on the jurisdiction, 22, 212

JURISDICTION—Cont'd**Set-Off—Cont'd**

Equity Jurisdiction as to, 22, 217

Examples, 22, 217-222

In general, 22, 217

Insolvency, 22, 220

Where satisfaction of the debt will not be obtained at law, 22, 218

Withdrawing from state, 22, 219

Similar, 12, 316

Special Phrases Construed, 12, 314

Any other jurisdiction, 12, 314

Common-law jurisdiction, 12, 314

Competent jurisdiction, 12, 314

Concurrent jurisdiction, 12, 314

Final jurisdiction, 12, 314

Further civil and criminal jurisdiction, 12, 315

Jurisdiction clause, 12, 317

Jurisdiction of the cause, 12, 315

Out of the jurisdiction, 12, 315

Similar jurisdiction, 12, 316

Summary jurisdiction, 12, 316

Within the jurisdiction, 12, 316

Stare Decisis

Questions relating to, 23, 36

Statutes, 23, 406

Construction, 23, 406

Presumption against ousting courts of jurisdiction, see STATUTES.**Effect of Repeal**, 23, 506

By implication, 23, 506

In general, 23, 506

Jurisdiction lost, 23, 506

Pending proceedings, 23, 507

Whether provisions regarding are mandatory or directory, 23, 468

Summary, 12, 316

Superior and Inferior Courts, 12, 265

Courts not of record, 12, 266

Courts of record, 12, 266

Distinction between courts of general and limited jurisdiction, 12, 265

History of distinction, 12, 265

In Arkansas, 12, 266

Inferior Courts, 12, 268

Alabama's court of commissioner of revenue, 12, 268

Court martial, 12, 269

Justices' courts, 12, 270

Orphan's courts, 12, 269

Probate courts, 12, 269

Special courts, 12, 268

Special courts created by state statutes, 12, 268

Surrogate courts, 12, 269

Judgment liable to review, 12, 266

Superior Courts, 12, 266

Admiralty courts, 12, 268

County courts, 12, 268

Prize courts, 12, 268

United States circuit courts, 12, 267

United States district courts, 12, 247

United States territorial courts, 12, 267

Territorial jurisdiction, 12, 266

Supplementary Proceedings, 24, 603

Continuance when once acquired, 24, 610

Court where judgment was rendered, 24, 603

Distinction between court and judge in New York, 24, 605

Examples, 24, 603-605

In general, 24, 603

In Kansas, 24, 603

In Kentucky, 24, 603

In New York, 24, 603

In North Carolina, 24, 603

In Wisconsin, 24, 603

Judges who have power in New York to entertain proceedings, 24, 604

Taken Away, 12, 303

Agreement not to appeal, 12, 305

By consent of parties, 12, 305

By consolidation of action, 11, 1015²

By Statute, 12, 303

Act of congress, 12, 304

Express words, 12, 303

Necessary implication, 12, 303

Generally, 12, 303

Subsequent Events, 12, 305

Amount finally recovered, 12, 305

Change of condition of parties, 12, 305

Change of residence of party, 12, 305

Citizenship of personal representative, 12, 305

Death of defendant, 12, 305

Effect of escape on right to appeal, 12, 306

Failure to comply with statutes, 12, 306

Interest accruing subsequent to beginning suit, 12, 305

Territorial courts, 25, 967

Territorial Jurisdiction, 12, 252

See CRIMINAL PROCEDURE; EJECTMENT; EQUITY; NON-RESIDENTS; PARTITION; SERVICE OF PROCESS.

Transitory action, 8, 206

Trover, 26, 807

Various courts, 12, 251

Venue, see VENUE.*Crime conceived in one county and executed in another*; see *infra*, CRIME BEGUN IN ONE COUNTY AND FINISHED IN ANOTHER.

Waiver, 20, 535

What courts will inquire into, 12, 245-250

Where land lies out of state, 8, 206

Where property is situated in two states, 8, 205

Within the jurisdiction, 12, 316

Without the jurisdiction, 29, 526

Wounds inflicted without state causing death within state, 9, 619

JUROR, 12, 317

See JURY AND JURY TRIAL.

Competency of, 7, 103

Privilege from arrest, 10, 235

JURY AND JURY TRIAL, 15, 481

See CHANGE OF VENUE; GRAND JURIES; INSTRUCTIONS; NEW TRIAL; QUESTIONS OF LAW AND FACT; VERDICT.

Charge to jury, see INSTRUCTIONS.

Error and appeal, see APPEAL; ERROR, WRIT OF; NEW TRIAL.

Evidence, see EVIDENCE.

Exceptions, see BILL OF EXCEPTIONS.

For sheriff's jury for the assessment of damages in case of default, see DEFAULT.

Inspection in court, see VIEW.

Inspection of person, see VIEW.

Judgment, see JUDGMENT.

Jury in eminent domain cases, see EMINENT DOMAIN.

Fury of women, see PREGNANCY.

Questions of law and fact, see QUESTIONS OF LAW AND FACT.

Right to open and close court, see RIGHT TO OPEN AND CLOSE.

Verdict, see VERDICT.

View, see VIEW.

Affirmation, 12, 363

Age

Exemption from jury duty, 12, 326

Qualification, 12, 326

Aliens

Disqualified as jurors, 4, 831; 12, 324

Amendment

When juror must be resworn, 12, 363

Arrest

Juror's privilege from, 1, 725

Arrest of Judgments

Jury illegally constituted, 12, 147e

Jury irregularly summoned or impaneled, 12, 147g

Bias, 2, 190; 4, 822; 9, 661; 12, 352

Books and Papers in Jury Room, 12, 376

All papers received in evidence, 12, 376

Books of law, 9, 688; 12, 377; 19, 615

Books of science, 12, 377

Depositions, 12, 377

Diagrams to explain evidence, 12, 376

Effect of improper books and papers, 12, 377

Judge's instructions, 12, 376

Judges' minutes, 12, 377

Maps, 12, 377

Papers not in evidence, 12, 377

Papers not in evidence showing party's claim, 12, 376

Pleadings in case, 12, 376

Statutes, 12, 377

Challenges, 4, 828; 9, 660; 12, 343

See *infra*, VOIR DIRE.

Actual bias, 2, 190; 9, 661; 12, 352

After the juror has been sworn, 4, 829

Alien, 4, 831; 12, 524

Challenge "propter affectum," 4, 831

Challenge "propter defectum," 4, 831

Challenge "propter delictum," 4, 831

I-D—58

Challenge improperly overruled, followed by a peremptory challenge, not cause for reversal if party goes to trial without exhausting his peremptory challenges, 4, 829

Classes of, 4, 828

Discretion of court, 12, 359

Divisions of, for cause, 4, 831

Exemption from Jury Duty

Power of legislature to exempt, 12, 327

Exhaustion of peremptory challenges, 4, 829; 12, 366

Ex post facto laws, 7, 529

Expression of opinion, 9, 661

Former statements, 9, 661

Implied bias, 9, 660; 12, 350

Improperly allowed or disallowed, 4, 829

Injury to the challenger, the test, 12, 366

Larceny, 12, 831

Objection by juror that he is disqualified though he is not challenged, 4, 830

Order, 12, 356

Challenge to polls as waiver to challenge of array, 12, 357

Criminal prosecutions, 12, 356

Peremptory challenges, 12, 345, 357

State's challenge after acceptance by defendant, 12, 357

Peremptory, see *infra*, PEREMPTORY.

Principal, 4, 830

"Propter defectum," 4, 831

Special jury, 12, 320, 327

Time and mode of taking them, 4, 829

Time at Which Made, 12, 356

After juror has been sworn, 12, 356

After talesmen have been summoned, 12, 356

Before juror is sworn, 12, 356

Challenges for cause, 12, 356

Challenges to the array, 12, 344, 356

Challenges to the polls, 12, 345, 356

Full panel must be present, 12, 356

Peremptory challenge, 12, 345

Statute modification, 12, 356

Time at Which Summoned

In Louisiana, 12, 356

To the polls, 4, 831

Trial, 12, 356, 357

Court the trier, 12, 349, 357

Discretion of court, 12, 358

Unknown cause, 12, 366

Waiver, 12, 366

Waiver of the right to, 4, 828

When objection can be made, 12, 366

Where juror can give an impartial verdict notwithstanding all he has read and heard, 9, 661

Challenges for Cause, 9, 660; 12, 349

Actual bias, 9, 661; 12, 349, 352

Challenges on general grounds, 12, 349

Challenges on particular ground, 12, 350

Challenges to the favor, 12, 349

Vol. I.

JURY AND JURY TRIAL—Cont'd**Challenges for Cause—Cont'd**

Consanguinity and Affinity, 9, 960; 12, 350

Affinity, 12, 351

Discretion of court, 12, 351

How reckoned, 12, 350

Ignorance of relationship, 9, 661

Not discovered until after verdict, 12, 350

What degree of relationship, 12, 350

Implied bias, 9, 660; 12, 349, 350

Interest, 4, 833; 12, 351

Association to suppress crimes, 12, 351

Business connections, 12, 352

General rule, 12, 351

Grand juror, 12, 352

Inhabitants of town, 12, 351

Liability for attorney's fees, 12, 351

Member of religious societies, 12, 352

Necessity of direct pecuniary interest, 12, 351

Prior service in a similar case, 12, 352

Public corporations, 12, 351

Voluntary associations, 12, 351

Meaning of term "bias," 12, 352

Opinion, 4, 828; 9, 661; 12, 354

Based on rumor, 12, 354

Expression of opinion, 12, 355

Formed by conversation with witness, 12, 355

Formed by reading report of testimony, 12, 355

General rule, 12, 354

Juror declaring that he can give impartial verdict, 12, 354

Must be founded upon verdict, 12, 355

Newspaper statement, 12, 354

Selections of cases under statute, 12, 354, 355

Preference, 12, 352

Prejudice, 12, 353

Against anarchism, 9, 662

Against capital punishment, 4, 828; 9, 661; 12, 353

Against circumstantial evidence, 9, 662; 12, 353

Against defense set up, 12, 353

Against one of the parties, 12, 353

Against particular suit, 12, 353

Against party's occupation, 12, 353

Against the crime, 12, 353

Against the law, 12, 353

In favor of one of parties, 12, 353

Principal challenges, 12, 349

Prior services, 12, 349

Removal of distinction between principal challenges and challenges to the favor, 12, 349

Statutes, 12, 351

Association to suppress crimes, 12, 351

Business connections, 12, 352

General rule, 12, 351

Grand jurors, 12, 352

Inhabitants of town, 12, 351

Liability for attorney's fees, 12, 351

Member of religious society, 12, 352

Necessity of direct pecuniary interest, 12, 351

Prior service in a similar case, 12, 352

Public corporations, 12, 351

Voluntary associations, 12, 351

Suits pending and at issue, 12, 350

Challenges to the Array, 4, 830; 12, 343, 357

After talesmen have been summoned, 12, 344

Challenge to polls as waiver of, 12, 357

Change in law, 12, 343

Class from which jurors are to be selected, 12, 344

Ground at common law; 12, 343

Immaterial irregularities, 12, 343

Partiality in sheriff, 12, 343

Statutory enactments, 12, 344

Statutory ground, 12, 344

Statutory ground exclusive, 12, 344

Whether title of selecting officer ground for, 12, 343

Writing, 4, 831

Challenges to the Polls, 12, 344

See CHALLENGES FOR CAUSE; PER-
EMPTORY CHALLENGES.

As waiver of challenge to array, 12, 357

Chance, 12, 378

Coercion, 12, 378

Communications, 9, 666, 667; 12, 373

Bailiff in charge, 12, 374

Between juror and counsel, 16, 528

Between jurors and third parties, 12, 373

Character of third party, 12, 373

Court clerk, 12, 374

Immaterial, 12, 373

Judges, 9, 668, 669; 12, 373

Successful party, 12, 374

Third parties generally, 12, 374

Witnesses, 12, 373

Compensation, 12, 380

Compromise verdicts, 28, 268

Computation of time, 26, 7

Conduct, *see infra*, MISCONDUCT.

Contempt by jurymen, 3, 782

Coroner's jury, 4, 177

Counterclaim, 22, 434

Custody, 12, 371

See infra, SEPARATION.

Adjournment of court, 12, 371

After jury retires, 12, 371

Intoxicating liquors, 12, 372

Isolation, 12, 371

Necessaries, 12, 371

Officers must be sworn, 12, 371

Place, 12, 371

Refreshments, 12, 371

- Defendant's List**, 4, 815
 Homicide, 9, 660
Definition, 12, 319
Discharge Before Verdict, 12, 361, 364
 As to jeopardy, see JEOPARDY.
 At instance of defendant, 12, 364
 Discretion of court in England, 12, 364
 Discretion of court in United States, 12, 361, 364
 Inability to agree, 12, 364
Individual Jurors
 Discharge of whole jury where discharge of one juror is necessary, 12, 365
 Power of court, 12, 364, 365
 Insanity, 12, 364
 Power of court, 12, 364, 365
 Sickness, 12, 364
 Upon grounds of strict necessity, 12, 364
Discharge of Jury
 Defendant's Consent, 11, 959
 Consent to withdrawal of jury, 11, 960
 Defendant voluntarily absenting himself, 11, 959
 Effect of defendant's concurrence, 11, 959
 Homicide, 9, 663
 Justice of the peace, 12, 465
 Unauthorized, 3, 733
 Discretion of Court
 Challenge, 12, 359
 Challenge to the favor, 12, 360
 Discharge after juror has accepted and been sworn, 12, 361
 Discharge of juror after having been sworn, 12, 358
 Discharge of juror before verdict, 12, 364
 Excluding for other than statutory reasons, 12, 360
 Excluding jurors, 12, 360
 Excluding legal juror, 12, 360
 Excusing Juror, 12, 358, 361
 Before juror sworn, 12, 361
 In Texas, 12, 361
 Juror excused for insufficient cause, 12, 360, 361
 Juror summoned on special venire, 12, 361
 Personal reasons, 12, 361
 Generally, 12, 359
 Ordering view, 12, 369
 Review of judge's decision, 12, 360
 Rights of challenge, 12, 360
 Selection, 12, 359
 Trial, 12, 359
Disqualification of Jurors
 Infamy, 10, 606
 Relationship
 Degree of, 12, 54
 Mode of counting degree, 12, 54
 Stockholders of corporation, 12, 46
 Divorce cases, 5, 764
Drawing of the Panel, 12, 331; 9, 658
 By Whom Drawing Is to Be Made, 12, 331
 Construction of statutory provisions in regard to, 12, 332
 County clerk, 12, 332
 County judge, 12, 331
 In California, 12, 332
 In Louisiana, 12, 332
 In Maine, 12, 332
 In New England, 12, 332
 In New Jersey, 12, 332
 In New York, 12, 331
 In Pennsylvania, 12, 332
 Penalties for failure, 12, 332
 Sheriff, 12, 331
 Certifying to names drawn, 12, 333
 In general, 12, 331
 Irregularities, 12, 334
 Manner of Drawing, 12, 333
 By lot, 12, 333
 Certified list of names drawn, 12, 333
 Conforming to law, 12, 333
 Effect of irregularities, 12, 334
 Effect of irregularity in criminal cases, 12, 334
 In open court, 12, 333
 Intermixing names, 12, 333
 Public notice, 12, 333
 United States jurors, 12, 334
 Notice, 12, 334
 Number, 12, 332
 In Illinois, 12, 332
 In Louisiana, 12, 332
 In Michigan, 12, 332
 In New York, 12, 332
 In Pennsylvania, 12, 332
 Precedes issuing of venire, 12, 335
 Right to service of panel, 12, 334
 Time of drawing, 12, 331
Embracery, 6, 507, 508
 Attempt, 6, 508
 Definition, 6, 507
 Offenses at common law, 6, 507
 Solicitations by juror, 6, 507
 Who may be guilty of the offense, 6, 508
Empanel, 6, 635; 9, 950
 Swearing no part of, 6, 635
Exemption from Jury Duty, 12, 326
 Age, 12, 326
 Attorney licensed but not practicing, 12, 327
 Examples, 12, 326, 327
 Ground for challenge, 12, 327
 Occupation, 12, 326
 Party not actually engaged in occupation, 12, 327
 Public officers, 12, 326
Failure to Agree
 Justice of the peace, 12, 465
 Forcible entry and detainer, 8, 163
 Formation of the jury, 4, 827
 Habeas corpus, 9, 200
 Homicide Cases, 9, 658
 Presumption of regularity, 9, 658

JURY AND JURY TRIAL—Cont'd**Homicide Cases—Cont'd**

Same in homicide as in other trials, 9, 658

Special care in homicide cases, 9, 658

Special venire in capital cases, 9, 658

Summoning talesman, 9, 659

When talesman should be called, 9, 659

Illegal Methods of Arriving at Verdict,

12, 378; 28, 267

Chance, 12, 378; 16, 563; 28, 271

Coercion, 12, 378; 16, 522; 28, 268

Duress, 28, 269

Experiments to determine how jury stands, 28, 271

No agreement to abide by results of chance, 28, 272

Quotient verdict, 12, 378

Restraint of jury, 12, 378

Impanel, 6, 635; 9, 950

Inability to agree, 12, 364

In Criminal Cases, 4, 822

Bias, 2, 190; 4, 822; 9, 661; 12, 325

Competency a question for the judge, 4, 822

Exemption no disqualification, 4, 828

Expression of opinion, 4, 822

Formation of the jury, 4, 827

Impartial jury, 4, 822

Juror opposed to capital punishment, 4, 828; 9, 661; 12, 353

Jury must be of twelve men, 4, 827

Number of peremptory challenges allowed, 4, 833

Opinions of juror, 4, 828; 9, 661; 12, 354

Waiver of the right to be tried by a jury of twelve, 4, 827; 12, 319; 28, 267

Where a juror's name varied from the list furnished by the defendant, 4, 827

In general, 18, 472

Interest, see infra, CHALLENGES FOR CAUSE.

Intoxicating Liquors, 12, 372

Effect of, 12, 379

How intoxication of juror may be shown, 12, 379

Intoxicated juror, 12, 372

Moderate use, 12, 372

Whether moderate use will vitiate verdict, 12, 372

Juror, 12, 317

Juror Impeaching His Own Verdict, 28, 273

Affidavit for New Trial, 12, 379; 16, 653

Affidavit of outside party, 16, 653

Explaining verdict, 16, 654

In general, 16, 653

Misconduct of jury, 16, 654

Showing reasons for verdict, 16, 653

Jury

In prosecution of actual conspiracy, 4, 638

Meaning of term in provisions creating right of trial by jury, 3, 714

Jury de medietate linguæ, 12, 321

Justice of the Peace, 12, 459

American practice, 12, 459

Bystanders, 12, 463

Challenge for cause, 12, 463

Discharge of jury, 12, 465

Drawing jury, 12, 507

Failure to agree, 12, 465

Filling vacancies, 12, 463

Form of oath, 12, 461

How obtained, 12, 459

Impanelling Jury, 12, 46 2

Venire, 12, 462

In Alabama, 12, 461

In Arkansas, 12, 460

In California, 12, 461

In Colorado, 12, 461

In Connecticut, 12, 460

In Delaware, 12, 460

In Florida, 12, 462

In Georgia, 12, 462

In Illinois, 12, 460

In Indiana, 12, 461

In Iowa, 12, 460

In Kansas, 12, 460

In Kentucky, 12, 461

In Louisiana, 12, 460

In Maine, 12, 460

In Maryland, 12, 460

In Massachusetts, 12, 460

In Michigan, 12, 462

In Minnesota, 12, 460

In Mississippi, 12, 460

In Missouri, 12, 460

In Nebraska, 12, 461

In Nevada, 12, 461

In New Hampshire, 12, 460

In New Jersey, 12, 461

In New York, 12, 461

In North Carolina, 12, 461

In Ohio, 12, 461

In Oregon, 12, 461

In Pennsylvania, 12, 460

In Rhode Island, 12, 460

In South Carolina, 12, 461

In Tennessee, 12, 460

In Texas, 12, 462

In Vermont, 12, 461

In Virginia, 12, 460

In West Virginia, 12, 460

In Wisconsin, 12, 461

Jury demanded by either party, 12, 460

Misdemeanors

Absence of defendant, 12, 410

Disagreement of jury, 12, 409

Discharge of jury, 12, 410

Right to poll jury, 12, 410

Verdict of not guilty, 12, 410

Mode of summoning jury, 12, 460

Oath of jury, 12, 464

Obtained by either party, 12, 462

Peremptory challenge, 12, 463

Power of justice, 12, 464

Qualification, 12, 463

Questions for jury, 12, 464

Relationship, 12, 463

Right to, 12, 459

- Voir dire, 12, 463
 Who may obtain a jury, 12, 462
Kind of Jury, see GRAND JURY.
Coroner's jury, see CORONERS.
Special juries, see *infra*, SPECIAL JURIES.
 Jury de medietate linguæ, 12, 321
 Striking juries, 12, 320
 Liability of jurors, 12, 38
 Lot, 12, 378; 16, 563; 28, 273
Misconduct, 16, 530
 See infra, BOOKS AND PAPERS IN JURY ROOM; COMMUNICATIONS; ILLEGAL METHODS OF ARRIVING AT VERDICT; INTOXICATING LIQUORS; NEWSPAPERS; RECEIVING EVIDENCE OUT OF COURT; REFRESHMENTS; SEPARATION; SLEEPING DURING TRIAL.
By or Relating to Jury After Retiring, 9, 667
 Consulting records of other trials, 9, 668
 Examination of things not in evidence, 9, 668
 View of places, 9, 668
By or Relating to Jury During Trial, 9, 666
 Counsel influencing jury, 9, 667
 Discretion of court, 9, 667
 Duty of officer in charge, 9, 666
 Jury should be in charge of officer for capital case, 9, 666
 Officer allowing jury to exercise unusual privilege, 9, 666
 Officer interested as a witness, 9, 666
 Waiver of irregularities, 9, 667
Effect of, 12, 379
 Record Not Prejudicial, 12, 379
 Criminal cases, 12, 379
 Party participating in misconduct, 12, 380
How Shown, 12, 378; 28, 273
 Admissions of jurors, 12, 379; 16, 653
 Affidavit, 12, 379; 28, 277, 279
 Affidavit of third parties, 12, 378, 379
 Chance verdict, 12, 378; 28, 280
 Chance witness, 28, 277
 Embracery, 12, 379
 Examples, 28, 273-276
 Intoxication of juror, 12, 379
 Juror's affidavit, 12, 378; 28, 277, 279
 Juror's testimony, 28, 273
 Juror's testimony admitted, 28, 276, 277
 Misconduct of bailiff, 12, 379
 Misconduct of officer, 28, 276
 Misentry of verdict, 28, 277
 No verdict, 28, 278
 Quotient verdict, 12, 378
 Testimony of sheriff, 28, 276
 Verdict agreed to by portion of jury, 28, 278
 Influences, 28, 267
 Intelligent reflection, 28, 271
Of Court, 16, 522; 28, 278
 Coercion of jury, 12, 378; 16, 522; 28, 268
 Examples, 16, 522-524
 Improper remarks in hearing of jury, 16, 524
 Judge urging an agreement, 28, 269
 Preliminary remarks as to duty of jurors, 16, 523
 Remarks to hasten jurors, 28, 269
 Remarks to jury, 16, 522
 Unwarrantable interference, 28, 270
 What amounts to coercion, 16, 522
 Of jury, 16, 654, 666
 Passion or prejudice, 28, 267
 Waiver, 12, 379
Mixed jury, 15, 697
Mode of deliberation, 28, 267
Municipal corporations, 15, 978
Newspapers, 12, 373
 Effect of reading, 12, 379
Number of Jurors, 4, 813; 12, 319; 28, 265
 Civil causes, 28, 266
 Constitution over, 12, 319
 Criminal prosecutions, 4, 827; 12, 319; 28, 267
 In general, 28, 265
 Less than twelve, 4, 813; 12, 319; 28, 265
 Unanimity, 28, 265
 Waiver of numerical irregularities, 28, 267
 Whether twelve necessary number, 28, 265
Oath, see *infra*, SWEARING.
Objections, 12, 365
 By a juror who is disqualified though not challenged, 4, 830
 To verdict, 12, 365
 When may be taken, 12, 365
Organization, 12, 327
 Challenges, see *infra*, CHALLENGES.
 Discharge of jury before verdict, see *infra*, DISCHARGE BEFORE VERDICT.
 Discretion of court, see DISCRETION OF COURT.
 Drawing of panel, see *infra*, DRAWING OF THE PANEL.
 Selection of the list, see *infra*, SELECTION.
 Swearing, see *infra*, SWEARING.
 Talesman, see *infra*, TALESMEN.
 Venue and other process, see *infra*, VENUE.
 At common law, 12, 327
 Discretion of court, 12, 328
 Statute regulating method, 12, 328
 Whether statute excludes common-law method, 12, 328
 Whether statutory provision directory, 12, 328
 Packing jury, 17, 309
Panel, 17, 310
 See infra, DRAWING OF THE PANEL.

JURY AND JURY TRIAL—Cont'd

Pardon, 17, 326
 Partiality of sheriff, 12, 343
 Patent law, 18, 112
Peremptory Challenges, 4, 833; 9, 663;
 12, 344
 After acceptance and swearing, 12, 345
 Alternate challenges, 12, 345
 Before acceptance and swearing, 12,
 345
 Civil cases, 12, 344
 Common law, 12, 344
 Defendant entitled to a full panel of
 qualified jurors, 4, 834
 English rule, 4, 833
 In Iowa, 4, 834
 In Missouri, 4, 834
 In Ohio, 4, 834
 Justices' jury, 12, 463
 Misdemeanors, 12, 344
 Nature of, 4, 834; 12, 344
Number, 12, 346
 At common law, 12, 346
 Defendant charged with separate
 misdemeanors, 12, 348
 Statute regulating challenges of joint
 defendants, 12, 347
 Under United States statutes, 12,
 346
 Various statute provisions, 12, 346
 Whether joint defendants shall join
 in their challenges, 12, 346
 Whether state allows increased num-
 ber of challenges when joint de-
 fendants sever, 12, 348
 Order in which challenges shall be
 made, 12, 345
 Right of rejection, 12, 344
Standing Aside Jurors, 12, 348
 English statutes, 12, 348
 Practice in United States, 12, 348
 Where statute has provided for per-
 emptory challenges, 12, 348
 Struck jury, 12, 348
 Talesmen, 12, 346
 The right is not to select but to reject,
 4, 834
 United States courts, 12, 345
 When disallowed, 4, 834
 Whether restricted to capital felonies,
 12, 344
Petit Jury, 12, 319
 Distinguished from grand jury, 12,
 319
 Traverse, 12, 319
Polling the Jury, 28, 349
 Absence of counsel, 28, 353; 354
 Cautions, 28, 352
 Civil cases, 28, 350
 Criminal cases, 28, 349
 Discretion of trial judge, 28, 350
 Dissent of juror, 28, 352
 Effect of disaffirmance, 28, 353
 Form of the question, 28, 351
 Homicide, 9, 751
 In criminal cases, 28, 349
 In general, 28, 349

Sealed verdict, 28, 415
 Second verdict, 28, 353
 Sending jury back, 28, 353
 Waiver, 28, 591
 Waiver of right, 28, 353
 When request should be made, 28, 351
 Whether matter of right, 28, 349
 Private communication between judge
 and jury, 16, 520
Qualifications, 4, 823; 12, 321, 322; 19, 659
See infra, CHALLENGES FOR CAUSE.
 Abolition of common law, 12, 322
 Age, 4, 831; 12, 326
 Alienage, 4, 831; 12, 324
 Characters, 12, 326
 Citizenship, 12, 232; 15, 1203
 Commissioners, 12, 325
 Common law, 12, 321
 Constitutional provisions, 12, 322
 County commissioners, 12, 325
 Deputy sheriff, 12, 326
 Education, 12, 325
 Exemption no disqualification, 4, 828
 Free and lawful men, 12, 321
Freehold, 4, 823; 12, 321, 324
 In Alabama, 12, 324
 In California, 12, 324
 In Indiana, 12, 324
 In Mississippi, 12, 324, 325
 In New Mexico, 12, 324
 In New York, 12, 325
 In North Carolina, 12, 324
 In South Carolina, 12, 324
 In Texas, 12, 325
 In United States, 4, 825
 In Virginia, 12, 324
 Good and lawful men, 9, 659
 Grand jurors, 9, 659
 Juror on former trial, 16, 677
 Juror opposed to capital punishment,
 4, 828; 9, 661; 12, 353
 Naturalized citizens, 4, 826
 Officers of United States, 12, 325
 Opinion of juror as to the defense of in-
 sanity, 4, 823
 Opinions of juror, 4, 828
 Person peremptorily challenged upon
 former trial, 9, 660
 Political status, 12, 323
 Power of legislature, 12, 322
Prejudice, *see infra*, CHALLENGE FOR
 CAUSE.
 Previous service as juror, 12, 325
Property, 4, 824; 12, 324
 In Alabama, 12, 324
 In California, 12, 324
 In Indiana, 12, 324
 In Mississippi, 12, 324, 325
 In New Mexico, 12, 324
 In New York, 12, 325
 In North Carolina, 12, 324
 In South Carolina, 12, 324
 In Texas, 12, 325
 In Virginia, 12, 324
 Public officers, 12, 325
 Qualified electors of the county, 9, 659
 Relationship, 12, 321

- Resident, 12, 323
- Same in homicide as in other cases, 9, 659
- Sheriff, 12, 326
- Statutes, 12, 322
- Talesman jurors, 12, 343
- United States courts, 12, 322
- United States jurors, 19, 592
- Quotient verdict, 12, 378
- Receiving Evidence out of Court, 12, 376**
 - Communications with witnesses, see infra, WITNESSES.*
 - Consulting books and papers, see infra, BOOKS AND PAPERS.*
 - Effect of, 12, 376
 - Experiments, 12, 376
 - View without permission of court, 12, 376
- Record**
 - Oath, 12, 363
- Refreshments, 16, 531**
 - Consent of court, 12, 372
 - Furnished at expense of successful party, 12, 372
 - To jury, 16, 529
 - When properly procured, 12, 372
- Relationship, see infra, CHALLENGES FOR CAUSE.*
- Restraint of jury, 12, 378
- Right of accused in criminal cases to list of jurors, 4, 815; 9, 660
- Right of Trial by Jury**
 - For right of trial by jury, see CONSTITUTIONAL LAW; SUMMARY PROCEEDINGS.*
- Right of trial by jury of vicinage, 3, 732
- Right to service of panel, 12, 334
- Selection**
 - Challenges to the array, 4, 830; 12, 343
 - Mandatory or directory provisions, 23, 462
 - Mode, 12, 330**
 - In Maryland, 12, 331
 - In Pennsylvania, 12, 331
 - Provisions, whether directory or mandatory, 12, 330
 - State courts, 12, 330
 - United States courts, 12, 330
- Selection of Lists, 12, 328**
 - Biennially, 12, 328
 - By Whom Made, 12, 328**
 - Constitutional provisions, 12, 329
 - County clerk, 12, 329
 - County courts, 12, 330
 - In Alabama, 12, 329
 - In Arizona, 12, 329
 - In Arkansas, 12, 329
 - In California, 12, 329
 - In Colorado, 12, 329
 - In Delaware, 12, 330
 - In Florida, 12, 329
 - In Georgia, 12, 329
 - In Illinois, 12, 329
 - In Iowa, 12, 329
 - In Kansas, 12, 329
 - In Kentucky, 12, 329
 - In Louisiana, 12, 329
 - In Maine, 12, 329
 - In Maryland, 12, 330
 - In Michigan, 12, 329
 - In Minnesota, 12, 329
 - In Mississippi, 12, 329
 - In Missouri, 12, 330
 - In Nebraska, 12, 329
 - In New Hampshire, 12, 329
 - In New Mexico, 12, 329
 - In New York, 12, 329
 - In North Carolina, 12, 329
 - In Ohio, 12, 329
 - In Oregon, 12, 330
 - In Pennsylvania, 12, 329
 - In Rhode Island, 12, 329
 - In South Carolina, 12, 329
 - In Tennessee, 12, 330
 - In Texas, 12, 329
 - In Vermont, 12, 329
 - In Virginia, 12, 330
 - In West Virginia, 12, 330
 - In Wisconsin, 12, 329
 - Jury commissioners, 12, 328
 - Statutory provisions strictly construed, 12, 331
 - Town authorities, 12, 329
- Time, 12, 328
- Triennially, 12, 328
- Yearly, 12, 328
- Separation, 12, 371-374**
 - After being sworn, 12, 374
 - After Finding of Sealed Verdict, 12, 375**
 - Consent of court, 12, 375
 - In civil cases, 12, 375
 - In criminal cases, 12, 375
 - Not prejudiced for separation, 12, 375
 - Proof of tampering, 12, 375
 - After Retiring, 9, 665; 12, 375**
 - Exception, 9, 665
 - Whether error, 9, 665
 - Before they are sworn, 12, 374
 - Capital felonies, 12, 375
 - Discretion of court, 12, 374
 - During Trial, 9, 664**
 - Burden of proof to show that defendant suffered prejudice, 9, 665
 - Capital cases, 9, 664
 - Separation against defendant's objection, 9, 665
 - Separation without authority of court, 9, 665
 - Waiver of the error, 9, 665
 - When in charge of an officer, 9, 665
 - Where defendant suffers no prejudice, 9, 665
 - Whether it is error in demanding a new trial, 9, 664
 - General rule as to felonies, 12, 375
 - In civil cases, 12, 374
 - Misdemeanor cases, 12, 374
 - Non-capital felonies, 12, 375
- Service on Juries**
 - Fourteenth and fifteenth amendments, 3, 727
- Sleeping during trial, 12, 373

JURY AND JURY TRIAL—Cont'd

- Special Jury**, 12, 320
 - Challenges, 12, 320
 - Definition, 12, 320
 - Peremptory challenges, 12, 348
 - Qualifications, 12, 320
 - Statutes regulating mode of selection, 12, 320
 - Statutory provisions, 12, 320
 - Striking juries, 12, 320
 - What allowed as a matter of course, 12, 320
- Speedy trial**, 3, 732
- Standing Aside Jurors**, 12, 348
 - English statutes, 12, 348
 - Practice in United States, 12, 348
 - Where statute has provided for peremptory challenge, 12, 348
- Statutes directing court to assess punishment for crime, 4, 724
- Swearing**, 12, 362
 - Forcible entry and detainer, 8, 163
 - Form**, 12, 362
 - According to law and evidence, 12, 362
 - Common law, 12, 362
 - Statutory oath must be followed, 12, 362
 - Homicide, 9, 663
 - Method, 12, 362
 - Method in absence of statute, 12, 362
 - Method of common law, 12, 362
- Record**, 12, 363; 20, 480
 - Affirmation, 12, 363
 - Oath appearing of record, 12, 363
 - Whether oath should be entered, 12, 363
- Reswearing**, 12, 363
 - Amendment, 12, 363
 - Motion to quash indictment, 12, 363
 - Severance of persons jointly indicted, 12, 363
 - When necessary, 12, 363
- Swearing in a body, 12, 362
- Swearing separately at common law, 12, 362
- Time**, 12, 362
 - After each cause, 12, 362
 - General oath at opening of court, 12, 362
- Tales**, 25, 2
- Talesmen**, 12, 340; 25, 3
 - Additional jurors, 12, 342
 - Challenges to the array, 12, 344
 - Common-law method, 12, 340
 - Common law prevails unless prohibited by statute, 12, 340
 - Deputy or other officer acting for sheriff, 12, 343
 - Discretion of court, 12, 343
 - Emergency, 12, 341
 - Meaning of "bystanders," 12, 342
 - Necessity arising from operation of statute, 12, 342
 - Number, 12, 343
 - Qualifications, 12, 343

- Statute prohibiting common-law method, 12, 340
- Statute regulating summoning, 12, 342
- When part of jury are engaged in another trial, 12, 342
- When talesmen may be summoned, 12, 341
- Whether jury can be formed entirely of bystanders, 12, 342
- Whether talesmen form a new panel, 12, 342
- Whether talesmen may be summoned for more than one trial, 12, 342
- Tampering with jury, 16, 529
- Time**
 - Before plea has been filed, 12, 362
- Trial by jury of twelve, 4, 813; 12, 319; 28, 265
- Trial by one's peers, 18, 268
- United States Courts**, 27, 623
 - Admiralty, 27, 624
 - Choosing jurors, 27, 624
 - Compulsory nonsuit, 27, 624
 - Constitutional provision, 27, 623
 - Drawing, 12, 334; 27, 624
 - Following state laws as to qualifications, etc., 27, 624
 - Grand juries, 27, 625
 - In civil cases, 27, 623
 - In general, 27, 623
 - Issuing and serving the venire, 27, 625
 - Patents, 27, 624
 - Qualifications of jurors, 27, 624
 - Race or color, 27, 624
 - Statutory provisions, 27, 624, 625
 - Treason, 27, 625
 - Waiver of jury, 27, 624
- Venire and Other Process**, 12, 335
 - Changed from original character, 12, 335
 - Defects in venire, 12, 337
 - Forms of the process, 12, 337
 - Generally, 12, 337
 - Ground for quashing, 12, 338
 - Indorsement of names of persons drawn, 12, 337
 - Neglect of sheriff to indorse entry, 12, 337
 - Neglect of sheriff to sign, 12, 337
 - Quashing, 12, 338
 - Seal of the court, 12, 337
- Special Venire**, 12, 338
 - Capital cases, 12, 338
 - Statute providing for as matter of right, 12, 339
 - Strict compliance with statutory provisions, 12, 339
 - Struck jury, 12, 339
 - When regular venire has been exhausted, 12, 338
 - When regular venire has been quashed, 12, 338
 - When regular venire is not drawn, 12, 338
 - When special venire may be issued, 12, 338

- Vicinage, 12, 336
 Who are to be summoned, 12, 336
 Venire facias de novo, 28, 199
Voir Dire, 4, 827
 See VOIR DIRE.
Waiver
 Exemption from jury duty, 28, 590
 Of Right to Trial by Jury, 28, 589
 In civil cases, 28, 589
 When charged, 3, 121
Withdrawal of Juror
 Consent of defendant, 11, 960
Witnesses, see WITNESSES.
As Jurors
 Misconduct, see infra, MISCONDUCT.
 Jurors as, 12, 31; 29, 605
 Affidavit, 29, 605
 Early English doctrine, 29, 605
 In general, 29, 605
JUS, 12, 381
JUS ACCRESCENDI, *see SURVIVORSHIP*
BETWEEN JOINT TENANTS.
JUST, 12, 381
 Just and proper cause, see MALICIOUS PROSECUTION.
 Just and fair, 12, 384
 Just and reasonable, 12, 385
 Just claim, 12, 381
 Just compensation, 3, 378; 12, 382
 Just debts, 12, 383
 Just or convenient, 12, 382
JUSTICE, 12, 3, 387
 As to fugitives from justice, see EXTRA-DITION.
 Ex officio justices, 12, 296
 Hands of justice, 12, 389
 Offenses against public justice, 12, 390
JUSTICE OF THE PEACE, 12, 391
 See generally, COURTS; JUDGE; JURISDICTION; MUNICIPAL COURTS; PLEADING.
 Sec MITTIMUS; PRELIMINARY EXAMINATION; WARRANTS.
 Poor debtors, see POOR DEBTORS.
Precautionary and Provisional Jurisdiction
 Searches and seizures, see SEARCHES AND SEIZURES.
 Preliminary examination, see PRELIMINARY EXAMINATION.
 Abstract, 12, 473
 Accord and satisfaction, 12, 454
 Account render lies before, 1, 134
 Acting as coroner, 4, 174
 Action on official bond, 12, 430
Adjournment
 Absence of justice, 12, 444
 Affidavit, 12, 443
 Deposition of facts to which absent witness would testify, 12, 443
 Entry upon docket, 12, 444
 In general, 12, 442-445
 Materiality of evidence, 12, 443
 Waiver of defects, 12, 444
 Want of material testimony, 12, 443
 When a party may have, 12, 443
 Without consent of party, 12, 443
 Administering oaths, 12, 507
Amendment
 Commencement, 12, 433
 Complaint, 12, 415
 In appellate courts, 12, 414
 Of bond, 12, 488
 Transcript, 12, 488
 Warrant of arrest, 12, 414
Amount in Controversy
 Action ex contractu, 12, 427
 Action ex delicto, 12, 427
 Amount due when suit brought, 12, 427
 Appeal, 12, 483
 "Balance due in settlement," 12, 427
 Bill of particulars, 12, 448
 Cost, 12, 429
 Credits, 12, 428
 Distinction between conventional and legal interest, 12, 429
 Fixed by plaintiff's plea, 12, 426
 General rule, 12, 428
 Interest, 12, 429
 Joinder of causes of action, 12, 448
 Offset, 12, 428
 Remittitur, 12, 428
 Replevin, 12, 427, 492
 Set-off, 12, 428
 Splitting demand, 12, 428
 Sum found to be due, 12, 427
Appeal, 12, 479
 See infra, MISDEMEANORS.
 Affidavit, 12, 480, 481
 Amount in controversy, 12, 483
 Bond, 12, 480
 Essentials, 12, 480
 Form, 12, 480
 Statute, 12, 480
 Computing time for, 12, 484
 Default, 12, 479
 Discharge of attachment by defendant's appeal, 12, 483
 Effect, 12, 479, 488
 Forcible entry and detainer, 12, 482
 Garnishment, 12, 483
 General rule, 12, 479
 How obtained, 12, 479
 Irregularities, 12, 487
 Compliance with statute, 12, 487
 Ministerial act, 12, 487
 Judgment by confession, 12, 480, 484, 487
 Judgment by default, 12, 483
 Limitation on right of appeal, 12, 483
 Non-resident, 12, 480
 Nonsuit, 12, 479
 Notice of appeal, 12, 482
 Personal privileges, 12, 484
 Personal right, 12, 479
 Recognizance or bond, 12, 480
 Removal of the case, 12, 479
 Resident, 12, 480
 Review of attachment proceedings, 12, 482
 Statutory right, 12, 479
 Time, 12, 479, 484
 Transcript, 12, 484
 Certified by justice, 12, 486

JUSTICE OF THE PEACE—Cont'd**Appeal—Cont'd****Transcript—Cont'd**

Definition, 12, 484

Judgment, vacation by, 12, 485, 486

Jurisdiction appearing of record 12, 485

When to be filed, 12, 485

Trial de novo, 12, 479, 486, 488

Waiver of defects in justice's court, 12, 486, 487

Appearance

As commencement of action, 12, 431

As waiver of defects in commencement, 12, 435

Jurisdiction by, 12, 439*See* **APPEARANCE.**

Appearance of unauthorized attorney, 12, 440

Appearing for purpose of testing, 12, 440

Asking adjournment, 12, 441

Asking continuance, 12, 441

Entry into a recognizance, 12, 441

Filing a demurrer, 12, 440

Filing an answer, 12, 441

Filing an appeal bond, 12, 441

General appearance, 12, 440

What is general appearance, 12, 440

What is special appearance, 12, 440

Special, 12, 430, 440

Waiver of defects in service, 12, 436

Apprehending fugitives from justice, 12, 425**Arbitration, 12, 430****Arguments of counsel, 12, 465****Arrest, 1, 734; 12, 437***See infra*, **FALSE IMPRISONMENT.**

Effect of setting aside order, 12, 437

Repeal of statute authority, 12, 438

When committed, 12, 437

As coroner, 12, 506**Attachment**

Amount, 12, 439

Appeal, 12, 482

As commencement of action, 12, 432

Claim not due, 12, 439

Definition, 12, 439

Proceedings strictly construed, 12, 439

Provisions in general, 12, 439

Record, 12, 439

Attorney's fees, 12, 449**Bastardy, 12, 423****Bill of exceptions, 12, 467****Bill of Particulars, 12, 445-449**

Defendant's set-off, 12, 452

Bond, 2, 466; 12, 397

Amendment, 12, 488

Appeal Bond, 12, 476, 480

Essentials, 12, 480

Form, 12, 480

Statute, 12, 480

Breach, 12, 397

Error in judgment, 12, 397, 398

Gross neglect, 12, 397

Judicial acts, 12, 398

Ministerial acts, 12, 398

Ministerial duty annexed to judicial office, 12, 398

What is a ministerial act, 12, 398

Conditions, 12, 397

Liability of surety, 12, 397

Neglect of duty, 12, 399

Penalties, 12, 397

Replevin bond, 12, 493

Requirement, 12, 397

Statutory provisions, 12, 397

Stay of execution, 12, 476

When not required, 12, 397

Burden of proof, 12, 457

Certiorari, 3, 66; 12, 489

Transcript, 12, 485

Change of Venue, 12, 441

Affidavit, 12, 441

Confession of judgment for costs, 12, 442

Correction of irregularities, 12, 442

Costs, 12, 442

In general, 12, 441

Insufficiency of affidavit, 12, 442

Justice's duty, 12, 441

Statutory provisions, 12, 441

Classes of justices in England, 12, 393

Complaint, see infra, **PLEADING.**

Amendment, 12, 415

Consolidation of action, 12, 455

Constable, 22, 566

As ministerial officer, 22, 568

Contempt, 12, 500

Commitment for contempt, 12, 500

Enforcement of punishment, 12, 500

Power of court to punish for, 3, 801

Power of justices, 12, 500

Requiring surety for good behavior, 3, 801

What is contempt, 12, 500

Continuance

Absence of justice, 12, 444

Affidavits, 12, 443

Deposition of facts to which absent witness would testify, 12, 443

Entry upon docket, 12, 444

In general, 12, 442-445

Materiality of evidence, 12, 443

Waiver of defects, 12, 444

Want of material testimony, 12, 443

When a party may have, 12, 443

Without consent of party, 12, 443

Costs, 12, 429, 442, 501, 514**Criminal Jurisdiction, see infra**, **ARREST; MISDEMEANORS; see PRELIMINARY EXAMINATION.**

Classification, 12, 405

Extent of jurisdiction, 12, 405

In general, 12, 405

Particular statutes, 12, 405

Criminal liability, 12, 509

De Facto Justices, 12, 396, 511*See generally*, **DE FACTO OFFICERS.**

Action by people to try the title to the office, 12, 396

Collateral attack upon election or appointment, 12, 396

Distinguished from *de jure*, 12, 396

- Parol evidence, 12, 396
 Person neglecting to give official bond, 12, 396
 Person neglecting to take official oath, 12, 396
 Right of de jure officer against intruders, 12, 396
 Validity of acts, 12, 396
 What are de facto justices, 12, 396
 When there is no office to fill, 12, 396
 De jure justices, 12, 396
 De jure officer's right against intruders, 12, 396
 Disinterested, 5, 690
 Disqualification, 12, 44
Docket, 12, 502
 See infra, PLEADING; TRANSCRIPT.
 As evidence, 12, 503
 Best evidence of proceedings, 12, 503
 Collateral attack, 12, 503
 Conclusiveness, 12, 503
 Effect of failure to make entries, 12, 502
 Entries to be made, 12, 502
 Irregularities, 12, 502
 Jurisdictional facts, 12, 408
 Necessity for, 12, 502
 Parol evidence, 12, 503
 Presumption in favor of, 12, 409
 Proof of, 12, 503
 Quasi records, 12, 503
 Requisites, 12, 502
 Show jurisdiction, 12, 504
 Sister state, 12, 503
 Specialty, 12, 503
 Statute of entries, 12, 504
 Technical defects, 12, 502
 What effect as evidence, 12, 503
 What must appear upon docket, 12, 502
 Drawing jury, 12, 507
 Duty of justice of higher court, 12, 455
 Embezzlement by, 6, 493
 "Entered" distinguished from "rendered," 12, 468
 "Entering" a ministerial act, 12, 474
 "Entering" judgments, 12, 459, 466
 Equitable jurisdiction, 12, 499
 "Errors of fact," 7, 658
 Evidence, 12, 457, 464
Execution, 12, 121; 12, 477
 Delay, 12, 477
 Duty of judge, 12, 477
 Entering return, 12, 479
 How directed, 12, 477
 Justice's duty, 12, 478
 Proceedings, 12, 478
 Property liable to execution, 12, 478
 Recall, 12, 478
 Receipt of money, 12, 479
 Requisites, 12, 477
 Return, 12, 478
 Void judgments, 12, 478
 Exemptions from militia duty, 15, 479
 Ex officio jurisdiction, 12, 506
Ex Officio Justice
 Criminal causes, 12, 397
 Mayors, 12, 396
 Misdemeanors, 12, 397
 Notary public, 12, 397
 Other city officers, 12, 396
 Termination of city officer's term, 12, 397
 Extortion, 7, 587; 12, 513
Failure to Appear, 12, 454
 Defendant proceeding when counterclaim has been filed, 12, 455
 Place and hour of trial, 12, 454
 Proceedings in absence of adverse parties, 12, 454
 Reasonable time, 12, 454
 When justice may proceed, 12, 454
False Imprisonment, 7, 668
 Arrest in civil action, 7, 669
 Arrest upon defective affidavit, 7, 669
 Examples of what have and have not been held, 7, 670
 When liable, 7, 669
Final Judgment
 Order to pay money into court, 12, 476
 Findings of justice, 12, 456
Forcible Entry and Detainer, 8, 143; 12, 495
 Appeal, 12, 482, 497
 Complaint, 12, 496
 Damages for detention, 12, 495
 Demurrer to counterclaim for damages, 12, 497
 Deposition, 12, 497
 Description, 12, 496
 Forcible entry and unlawful detention, 12, 495
 Indemnity bond, 12, 495
 Jurisdiction, 12, 495
 Limitation of their jurisdiction, 8, 144
 Notice to quit, 12, 495
 Party aggrieved, 12, 497
 Peaceable entry and unlawful detention, 12, 495
 Plea, 12, 496
 Removal to higher court, 8, 144
 Time within which action may be maintained, 12, 495
 Title to real property, 8, 144
 Where action must be brought, 12, 495
 Writ of restitution, 12, 497
 "Forthwith," 12, 468
Garnishment, 8, 1144; 12, 439, 475
 Answer of garnishee, 12, 476
 Appeal, 12, 483
 Compliance with statute, 12, 475
 Failure of garnishee to answer, 12, 476
 Nature, 12, 475
 Order to pay money into court, 12, 476
 Publication of summons, 12, 438
 Handwriting, 9, 274
 Holding county court, 12, 506
 Immediately, 12, 468
 Incompatible offices, 19, 562w, 562x, 562y, 562z
 Insane persons, 11, 113
 Instructions to jury, 12, 464

JUSTICE OF THE PEACE—Cont'd

- Interpleader, 12, 499
- Jeopardy, 11, 947
- Joinder of causes of action, 12, 448
- J. P., 12, 1
- Judge, 12, 3
- Judgments**
 - Judgment void for want of jurisdiction*, see *infra*, JURISDICTION.
 - Jurisdiction*, see *infra*, JURISDICTION.
 - Abstracts of judgments for transfer, 12, 473
 - Against one of joint defendants where others not served, 12, 436
 - Alteration of, 12, 472
 - By Confession**, 12, 149¹, 470
 - Appeal, 12, 484, 487
 - By Default**, 12, 470
 - Appeal, 12, 483
 - Defendant's failing to appear, 12, 471
 - Justice's duty to hear evidence, 12, 471
 - Nonsuit, 12, 471
 - Notes, 12, 471
 - Presumption that justice heard evidence, 12, 471
 - Setting aside, 12, 471
 - By justice on his findings, 12, 458
 - Conclusiveness of, 12, 469
 - Definition, 12, 468
 - Entered forthwith, 12, 469
 - Entered immediately, 12, 466
 - "Entering" a ministerial act, 12, 474
 - Exceeding jurisdiction, 12, 472
 - Filing transcript in court of record, 7, 121
 - Final, 12, 475
 - "Forthwith," 12, 468
 - Immediately, 12, 468
 - Irregularities in, 12, 472
 - Irregularities of proceedings, 12, 469
 - Jury trial, 12, 468
 - Justice's duty, 12, 468
 - Lien, 12, 470, 473
 - Liens on land, 12, 474
 - Modification of, 12, 472
 - Of dismissal, 12, 469
 - Of verdict, 12, 466
 - "Rendering" a judicial act, 12, 474
 - Setting aside judgment by default, 12, 474
 - Time within which judgment must be rendered, 12, 469
 - Transcript, 12, 473
 - Transcript from as evidence, 12, 472
 - Vacation by, 12, 486
 - When to be "rendered" and "entered," 12, 468
- Judicial Notice**
 - Justices in other counties, 12, 182
 - Origin and jurisdiction, 12, 182
- Jurisdiction**
 - Appearance giving, 12, 430
 - Appearing of record, 12, 469
 - Arbitration, 12, 430
 - Civil**, 12, 425
 - Amount in controversy*, see *infra*, AMOUNT IN CONTROVERSY.
 - Implication, 12, 425
 - In general, 12, 425
 - Subject-matter, 12, 426
 - Equitable, 12, 499
 - Generally**, 12, 400, 440
 - Classes of jurisdiction, 12, 400
 - Definition of jurisdiction, 12, 400
 - What confers jurisdiction, 12, 400
 - How Lost**, 12, 402
 - Application of either party, 12, 402
 - Change of venue, 12, 402
 - Failure to render judgment within statutory time, 12, 402
 - Title to land, 12, 402
 - Transferring case to another justice, 12, 402
 - How objection to jurisdiction taken, 12, 430
 - How questioned, 12, 429
 - Judgment void for want of, 12, 474
 - Must appear of record, 12, 429
 - Must appear on docket, 12, 504
 - Official bond, 12, 430
 - Of person, 12, 431
 - Of property, 12, 421
 - Person, 12, 469
 - Plea to, 12, 451
 - Proceedings Without**, 12, 400
 - Agreement of parties, 12, 401
 - Jurisdiction conferred upon court after suit begun, 12, 401
 - Liability of justice, 12, 400
 - Presumption, 12, 401
 - Stare decisis, 12, 401
 - Validity of acts, 12, 400
 - When jurisdiction is apparent, 12, 401
 - When question of jurisdiction may be raised, 12, 401
 - Record**
 - Jurisdiction appearing of, 12, 469
 - Special appearance, 12, 430
 - Subject-matter, 12, 469
 - Title to Land**
 - See *infra*, REMOVAL OF CAUSES.
 - Examples, 12, 402-404; 20, 1029
 - How questions arise, 12, 404
 - In Indiana, 12, 403
 - In Kansas, 12, 403
 - Jurisdiction for breach, 12, 402
 - Landlord and tenant, 12, 403
 - Lands in dispute, 12, 402, 403
 - Manure, 12, 403
 - Pleadings of defendant, 12, 404
 - Pleadings of plaintiff, 12, 404
 - Questions where title to land is involved, 12, 404
 - When objection to jurisdiction must be taken, 12, 430
 - Where to Be Exercised**, 12, 404
 - Co-extensive with county, 12, 404
 - Generally, 12, 404
 - Limited to township or district, 12, 405
 - Office of attorney at law, 12, 405
 - Within the territory for which he is elected, 12, 405

Jury, 12, 459

American practice, 12, 459
 Bystander, 12, 463
 Challenge for cause, 12, 463
 Demanded by either party, 12, 460
 Discharge of jury, 12, 465
 Failure to agree, 12, 465
 Filling vacancies, 12, 463
 Form of oath, 12, 461
 How obtained, 12, 459
 In Alabama, 12, 461
 In Arkansas, 12, 460
 In California, 12, 461
 In Colorado, 12, 461
 In Connecticut, 12, 460
 In Delaware, 12, 460
 In Florida, 12, 462
 In Georgia, 12, 462
 In Illinois, 12, 460
 In Indiana, 12, 461
 In Iowa, 12, 460
 In Kansas, 12, 460
 In Kentucky, 12, 461
 In Louisiana, 12, 460
 In Maine, 12, 460
 In Maryland, 12, 460
 In Massachusetts, 12, 460
 In Michigan, 12, 462
 In Minnesota, 12, 460
 In Mississippi, 12, 460
 In Missouri, 12, 460
 In Nebraska, 12, 461
 In Nevada, 12, 461
 In New Hampshire, 12, 460
 In New Jersey, 12, 461
 In New York, 12, 461
 In North Carolina, 12, 461
 In Ohio, 12, 461
 In Oregon, 12, 461
 In Pennsylvania, 12, 460
 In Rhode Island, 12, 460
 In South Carolina, 12, 461
 In Tennessee, 12, 460
 In Texas, 12, 462
 In Vermont, 12, 461
 In Virginia, 12, 460
 In West Virginia, 12, 460
 In Wisconsin, 12, 461
 Instructions, 12, 464
 Mode of summoning, 12, 460
 Oath of jurors, 12, 464
 Obtained by either party, 12, 462
 Peremptory challenge, 12, 463
 Power of justice, 12, 464
 Qualification, 12, 463
 Questions for, 12, 464
 Relationship, 12, 463
 Right to, 3, 723; 12, 459
 Voir dire, 12, 463
 Who may demand a jury, 12, 462

Justice's duty, 12, 455

Liability, 12, 33, 38, 148f

See *infra*, BOND; JURISDICTION; PERSONAL LIABILITY.

Action under unconstitutional statute, 12, 35

Affidavit, 12, 36

Attachment, 12, 36

Commitment for contempt, 12, 37

Complaint must be insufficient, 12, 36

Contempt of court, 12, 33

Doubt as to sufficiency of affidavit, 12, 36

Imposing heavier fine, 12, 35

Inferior judges' jurisdiction affirmatively established, 12, 34

In Vermont, 12, 34

Judge acting without any jurisdiction, 12, 33

Maintaining order, 12, 37

Mistake of fact, 12, 37

Necessity of complaint, 12, 35

Order of probate judge, 12, 37

Presumption as to jurisdiction, 12, 33,

Process of seizure, 12, 36

Reasons for distinction between superior and inferior courts, 12, 34

Refusing to accept appeal, 12, 37

Reinstating case, 12, 37

Requirement of security from guardian, 12, 37

Striking attorney's name from roll, 12, 37

Taking bail, 12, 37

Taking recognizance, 12, 37

When case is no longer before officer, 12, 36

Libel and slander, 13, 359

Lien, 12, 474

Judgment, 12, 470

Malfeasance, see *infra*, REMOVAL.

Mandamus, 14, 127

See generally, MANDAMUS.

Appeal, 14, 134

Correction of errors, 14, 136

Discretion, 14, 134

Dismissing writ of replevin, 14, 135

Docket entries, 14, 135

Examples, 14, 134, 135

Filing transcript, 14, 135

Issuing execution, 14, 135

To compel entry of judgment, 14, 134

When the writ lies, 14, 133

Manner of Selecting

In Alabama, 12, 394

In Arkansas, 12, 394

In California, 12, 394

In Colorado, 12, 394

In Connecticut, 12, 394

In Dakota, 12, 394

In Delaware, 12, 395

In Florida, 12, 395

In Georgia, 12, 394

In Illinois, 12, 394

In Indiana, 12, 394

In Iowa, 12, 394

In Kansas, 12, 394

In Kentucky, 12, 394

In Louisiana, 12, 394

In Maine, 12, 395

In Maryland, 12, 395

In Massachusetts, 12, 395

In Michigan, 12, 394

In Minnesota, 12, 394

JUSTICE OF THE PEACE—Cont'd**Manner of Selecting—Cont'd**

In Mississippi, 12, 394
 In Missouri, 12, 394
 In Nebraska, 12, 394
 In Nevada, 12, 394
 In New Hampshire, 12, 395
 In New Jersey, 12, 394
 In New Mexico, 12, 394
 In New York, 12, 394
 In North Carolina, 12, 394
 In Ohio, 12, 394
 In Oregon, 12, 394
 In Pennsylvania, 12, 394
 In Rhode Island, 12, 394
 In South Carolina, 12, 394
 In Tennessee, 12, 395
 In Texas, 12, 395
 In United States, 12, 394
 In Vermont, 12, 395
 In Virginia, 12, 395
 In West Virginia, 12, 395
 In Wisconsin, 12, 395

Marriage

Authority to celebrate out of the county, 3, 49

Mechanic's lien, 12, 499; 15, 184

Minutes, 20, 492

Misdemeanors, 12, 406

Absence of defendant, 12, 410

Amendment of complaint, 12, 408

Appeal, 12, 413

Amendment of complaint, 12, 414

At what time taken, 12, 413

Before judgment is rendered, 12, 414

Compliance with statute, 12, 413

Courts to which appeal may be taken, 12, 413

Generally, 12, 413

Manner of taking, 12, 413

Scope of appellate court's jurisdiction, 12, 414

Statutory provisions, 12, 413

Suspension of judgment, 12, 413

Transfer of papers, 12, 414

Trial de novo, 12, 414

Burden of proof, 12, 409

Capacity to entertain complaint, 12, 406

Certiorari, 12, 412

Change of venue, 12, 408

Complaint

Amendment, 12, 408

In appellate court, 12, 414

Election, 12, 406, 407

Joinder of misdemeanors, 12, 406

Process without, 12, 407

Setting forth offense in words of statute, 12, 406

Sufficiency of, 12, 406

Swearing to, 12, 407

Violation of liquor law, 12, 406

Wording of statutes, 12, 406

Continuance, 12, 408

Depositions, 12, 409

Disagreement of jury, 12, 409

Discharge of jury, 12, 410

Entering plea of guilty, 12, 408

Essentials of process, 12, 407

Execution, 12, 412

Against goods and chattels of defendant, 12, 412

Commitment to county jail, 12, 412

Expiration of time without imprisonment, 12, 412

Habeas corpus, 12, 412

Judgment, 12, 411

Aggregate fine or imprisonment, 12, 412

Commitment before sentence is rendered, 12, 412

Commitment to county jail, 12, 411

Costs, 12, 412

Fine and imprisonment, 12, 411

General provisions, 12, 411

Joinder of misdemeanors, 12, 412

"Or" not read as "and," 12, 411

Order of proceedings, 12, 408, 409

Presumption as to truthfulness of docket, 12, 408

Record, 12, 408

Requisite to jurisdiction, 12, 406

Right to jury trial, 12, 408

Right to poll jury, 12, 410

Right to trial by jury, 12, 408, 409

Title to land being involved, 12, 410

Trial and its incidents, 12, 408

Verdict of not guilty, 12, 410

When trial must cease, 12, 410

Where punishment is indefinite, 12, 411

Misjoinder, 12, 448

Motion to quash, 12, 440

Necessity of its appearing upon face of their proceedings that they acted within their jurisdiction, 4, 453

New Trials, 12, 467, 490; 16, 612, 617

Costs, 12, 468

Effect of, 12, 491

General rule, 12, 490

Grounds for, 12, 467

How obtained, 12, 491

Mistake, surprise, etc., 12, 468

Mode of obtaining, 12, 467

Negligence, 12, 467, 468

Newly discovered evidence, 12, 467

Notice of application, 16, 639

Statutory notice, 12, 491

Statutory provisions, 12, 491

When allowed, 12, 490

Notary public, 16, 757

Oath of office, 12, 399

Official bond of, 2, 466g; 12, 397

Order of trial, see *infra*, TRIAL.

Origin of, 12, 393

Personal Liability of Justice, 12, 508

See generally, JUDGES.

See *infra*, LIABILITY.

Action without jurisdiction, 12, 508

Bond of justice, 12, 508

Civil jurisdiction, 12, 508

Criminal liability, 12, 509

Distinction between judicial and ministerial acts, 12, 508

- Errors in judgment, 12, 509
 Examples, 12, 508, 509
 For judicial act, 12, 508
 Granting or refusing appeal, 12, 509
 Wrongful attachment, 12, 509
- Pleading**
Defendant's, 12, 451
 Accord and satisfaction, 12, 454
 Bill of particulars of counterclaim, 12, 452
 Bill of particulars of set-off, 12, 452
 Demanding bill of particulars, 12, 452
 Demurrer, 12, 451
 Effect of tender, 12, 453
 General denial, 12, 451
 Miscellaneous, 12, 454
 Necessary allegations, 12, 453
 Necessity of filing, 12, 451
 Offer of judgment for specific sum, 12, 453
 Payment, 12, 452
 Plea in abatement, 12, 451
 Plea of jurisdiction, 12, 451
 Res adjudicata, 12, 453
 Statute of fraud, 12, 452
 Statute of limitation, 12, 452
 Tender, 12, 453
- Plaintiff's**, 12, 445
 Assumpsit, 12, 447
 Bill of particulars, 12, 445
 Certainty, 12, 447
 Different names for the pleading, 12, 445
 Entry on justice's docket, 12, 446
 Essential elements, 12, 447
 Examples, 12, 446, 448
 Examples of statements, 12, 445
 In California, 12, 447
 In Kansas, 12, 445
 In Ohio, 12, 445
 Irregularities, 12, 446
 Joinder, 12, 448
 Miscellaneous, 12, 445
 Misjoinder, 12, 448
- Names of Parties**, 12, 449
 Attorney's fee, 12, 449
 Corporations, 12, 450
 Defendant having two names, 12, 449
 Defendant's name unknown, 12, 449
 Initials, 12, 449
 Middle name, 12, 449
 Names in title, 12, 449
 Partnership, 12, 450
 Representative capacity, 12, 449
- Necessity of written pleading, 12, 445
 Object of bill of particulars, 12, 446
 Replevin, 12, 447
 Substance of issue, 12, 446
 Suit against railroad's killing stock, 12, 448, 450
 Technical objections, 12, 446
 Technical precision, 12, 446
 Trover, 12, 447
- Poor and Poor Laws**, 18, 772, 775
 Conclusiveness of order, 18, 776
 Examples, 18, 775, 776
 In general, 18, 775
 Order to overseers, 18, 775, 776
 Removal of pauper, 18, 803
 Statutory duty, 18, 775
- Power of legislature to alter territorial jurisdiction, 12, 19
 Preponderance of evidence, 12, 457
 Procedendo, 19, 218
- Proceedings to Require Surety to Keep Peace**, 12, 419
 Commitment to prison, 12, 420
 Discharge, 12, 420
 Habeas corpus, 12, 421
 Hearing, 12, 420
 Recognizance, 12, 420
 Review, 12, 421
 Statutory provisions, 12, 419
 Trial, 12, 420
- Prohibition, 19, 277
 Promissory note, 12, 456
 Proof, 12, 457, 464
 Proof of execution of written instrument, 12, 455
- Provisional and Precautionary Jurisdiction**, see *infra*, PROCEEDINGS TO REQUIRE SURETY TO KEEP PEACE.
 See PRELIMINARY EXAMINATION.
- Publication of summons, 12, 438
- Qualifications**, 12, 395
Relationship, see *infra*, RELATIONSHIP.
 Age, 19, 402
 Citizen of state, 12, 395
 Citizen of the United States, 12, 395
 Good moral character, 12, 395
 Residence, 12, 395
- Questions of Law and Fact**, 12, 464
 Questions for the jury, 12, 464
- Recognizance*, see *infra*, BOND.
Record, see *infra*, DOCKET; TRANSCRIPT.
- Recordari, 12, 489
- Relationship**, 12, 395
 Affinity, 12, 395
 Examples, 12, 395, 396
 Ignorant of the interest, 12, 395
 In Connecticut, 12, 395
 Nearness of, 12, 395
 To either party, 12, 395
 To party in interest, 12, 395
- Removal**
 Accepting another office, 12, 513
 Conviction and judgment for felony, 12, 513
 Drunkenness, 12, 512
 From office, 12, 510, 511
Malfeasance in Office, 12, 513
 Definition of malfeasance, 12, 513
 Extortion, 12, 513
 What constitutes, 12, 513
- Removal of Causes**
 Title to Real Property, 12, 402; 20, 1029
 See *infra*, JURISDICTION.

JUSTICE OF THE PEACE—Cont'd**Removal—Cont'd****Removal of Causes—Cont'd****Title to Real Property—Cont'd**

- Bond, 20, 1030
- Dismissal, 20, 1030
- In general, 20, 1029
- In Virginia, 20, 1031
- Petition for partition, 20, 1031
- Plea setting up a license, 20, 1031
- Plea that defendant has private way, 20, 1031
- Question of title directly and distinctly raised, 20, 1030
- Scope of the statute, 20, 1029
- State statute, 20, 1029, 1030
- Trespass, 20, 1031

"Rendered" distinguished from "entered," 12, 468

"Rendering" a judicial act, 12, 474

"Rendering" judgment, 12, 459, 466

Replevin, 12, 492

- Affidavit, 12, 493
- Bill of particulars, 12, 493
- Breaches of the bond, 12, 494
- Conduct of trial, 12, 494
- Contents of affidavit, 12, 493
- Demand, 12, 494
- Dismissal of action, 12, 494
- How commenced, 12, 493
- Judgment, 12, 494
- Justice approving bond for which writ is to be issued, when amount is beyond his jurisdiction, 20, 1079
- Replevin bond, 12, 493
- Summons, 12, 494
- Value of property beyond justice's jurisdiction, 12, 492
- Value of property shown at trial, 12, 492
- Whether maintained in justice's court, 12, 492

Res Adjudicata, 12, 453

Showing by parol, 12, 455

Review, 12, 489

See *infra*, APPEAL.

Right of Trial by Jury, 12, 459

Statute authorizing justice of the peace to decide question without jury, 3, 723

Right to open and close, 12, 458

Service by publication, 12, 438

Service of Process, 12, 436

- Waiver of defects, 12, 436
- Setting aside judgment, 12, 468
- Sister state judgments, 3, 711; 12, 148m
- Solemnizing marriage, 12, 507

Statute of Limitation

Pleading, 12, 452

Statutes

Justice's jurisdiction, 23, 354

Stay of Execution, 12, 476

Bond or recognizance, 12, 476

How to stay, 12, 476

Joint liability of debtor and surety, 12, 477

Statutory provisions, 12, 476

Subpoena, 12, 501

Duces tecum, 12, 501

Statute, 12, 501

Suits before justice of the peace, 12, 456

Suit upon note, 12, 456

Summons, 12, 431

Alias Writs, 12, 436

Where there are several defendants, 12, 436

Amendment, 12, 433

As complaint, 12, 446

Constable noting time of receipt, 12, 432

Date, 12, 432

Definition, 12, 431

Description of defendant, 12, 433

Directed to constable, 12, 432

Examples of specification of time, 12, 434

Fictitious names, 12, 433

Indorsement of amount for which plaintiff will take judgment, 12, 433, 434

Initials, 12, 433

Irregularities, 12, 433

Must be made out by justice, 12, 431

Name, examples, 12, 432

Name of defendant, 12, 432

Name of person unknown, 12, 433

Place of appearance, 12, 431

Place of trial, 12, 434

Place where must be entered, 12, 434

Pluries writs, 12, 436

Signature, 12, 432

Time of appearance, 12, 431

Time returnable, 12, 435

Time when it may be served, 12, 435, 436

To whom directed, 12, 432

When action commences, 12, 432

When alias writs may be issued, 12, 436

When returnable, 12, 435

Suretyship, 24, 892

Taking acknowledgments, 12, 507

Taking case under advisement, 12, 458

Tender, 12, 453

Title of Property

Forcible entry and detainer, 12, 495

Title to Land, 20, 1029

Examples, 12, 402-404; 20, 1029

How questions arise, 12, 404

In Indiana, 12, 403

In Kansas, 12, 403

Involved in criminal action, 12, 410, 411

Jurisdiction for breach, 12, 402

Landlord and tenant, 12, 403

Lands in dispute, 12, 402, 403

Manure, 12, 403

Pleadings of defendant, 12, 404

Pleadings of plaintiff, 12, 404

Questions where title to land is involved, 12, 404

Transcript, 12, 473, 484, 504

Amendment, 12, 488

Certificate, 12, 505

How authenticated, 12, 505

- Statutes, 12, 505
 Transcript as evidence, 12, 506
 Transcript to be used in another state, 12, 505
 Certified by justice, 12, 486
 Definition, 12, 484, 504
 Judgment, vacation by, 12, 485, 486
 Jurisdiction appearing of record, 12, 485
 Strict technicality, 12, 505
 What it must contain, 12, 504
 When to be filed, 12, 485
 Whether an exemplification, 12, 504
 Transfer to district court, 12, 473
Trial, 12, 454
 And its incidents, 12, 454-456
 Before, 12, 464
 Order of trial, 12, 456, 464
Trial of the Right of Property, 12, 498
 Appeal, 12, 499
 Form of statute, 12, 498
 Judgment, 12, 499
 Jury, 12, 498
 Statutory provisions, 12, 498
Vacancy, 12, 509
 How Filled, 12, 511
 Appointment, 12, 511
 Special election, 12, 512
 Statutory provisions, 12, 510-512
 How Occasioned, 12, 509
 Age qualification, 12, 511
 Death of incumbent, 12, 510
 Legislative enactment, 12, 510
 Removal, 12, 510
 Removal from territory, 12, 510
 Resignation, 12, 510
 Statutory provisions, 12, 509
Verdict, 12, 465
 Asking jury for their, 12, 466
 Entry upon docket, 12, 466
 Oral or written, 12, 466
 Signature by foreman, 12, 466
 Waiver of irregularities by appeal, 12, 486, 487
 Whether judgment is entitled to "full faith and credit in a sister state," 3, 711; 12, 148*m*
 Whether superior or inferior court, 12, 147, 270
Witnesses, 12, 501
 Fees, 12, 501
 Refusing to testify, 12, 501
JUSTIFIABLE, 12, 514
 Justifiable cause, 3, 45; 12, 514
JUSTIFIABLE HOMICIDE, see **HOMICIDE**
 Criminal attempting to escape, 1, 746
JUSTLY, 12, 514
 Justly due, 3, 188; 6, 39; 12, 381, 514
 Justly measured, 12, 515
KEEP, 12, 515; 21, 975
 Have and keep, 9, 305
 Keep disorderly house, 12, 516
 Keep down, 12, 515
 Keep down the interest, 6, 1
 Keep open, 12, 516
 Keep tipping house, 12, 516
 Manufacture and keep, 14, 264
 To keep open under Sunday laws, 24, 537
KEEPER, 12, 517
KEROSENE, 12, 518
 Distinguished from burning fluid, 2, 698
KEY, 12, 518
KIDNAPPING, 12, 519
 See **ABDUCTION**.
 See generally, **FALSE IMPRISONMENT**.
 Consent, 12, 519
 Criminal conspiracy, 4, 598
 Definition, 12, 519
 Force, 12, 519
 Indictment, 12, 520
 Intent, 12, 520
 Inveigle, 11, 780
 Language of statute, 12, 520
 Larceny
 Variance, 12, 863
 Libel and slander, 13, 339
 Procuring by intoxication, 12, 519
KILL, 12, 520; 22, 795
KILLING, 9, 533
KIN, 12, 520
 See **NEXT OF KIN**.
 Bastards, 24, 414
KIND, 12, 620
 Like kind, 13, 662
KINDRED, 12, 521
 Descent and distribution, see **SUCCESSION**.
KLEPTOMANIA, 15, 257
 Larceny, 12, 830
KNIGHTS OF LABOR, see **SOCIETIES AND CLUBS**.
KNOCK
 Down, 6, 1
KNOTS, 15, 389
KNOW, 12, 522
 Equivalent to "personally," 1, 171
KNOWINGLY, 8, 503
 Distinguished from "unlawfully," 12, 522
 Fraudulently, 12, 523
 "Knowingly and willfully," 12, 522
 Knowingly deposited, 12, 525
 Knowingly sell, 12, 526
KNOWLEDGE, 12, 526
 Carnal knowledge, 2, 735; 11, 379
 Distinguished from belief, 2, 164
 Distinguished from notice, 16, 790
 Knowledge and belief, 12, 526
 Of Marriage
 Probate, 19, 189
KNOWN, 12, 527
 "Known creditors," 12, 530
 "Known equivalent," 12, 530
 "Known intemperate habits," 12, 530
 Known to exist, 12, 527; 15, 544
 Known violation of law, 12, 529
 "Personally known," 12, 530
LABELS, 12, 531
 See **COPYRIGHT**; **TRADE-MARK**.
LABOR, 12, 532
 As to the convict labor system, see **PRISONS**.

LABOR—*Cont'd*

Common labor, 3, 347

Labor and improvements, 15, 552

Regulations

Labor of women and children, 18, 753

Police power, 18, 753

Whether property, 19, 286

LABOR COMBINATIONS, see BOYCOTT; CRIMINAL CONSPIRACY; STRIKES.**LABORERS, 12, 532; 23, 872**

Architect, 12, 532

Chinese laborers, 9, 948

Examples of persons who have been held laborers, 23, 872, 873

Statutes

Constitutional provisions requiring that subject shall be expressed in the title, 23, 242

Constitutional provisions that statute shall contain no more than one subject, 23, 273

Within statutes imposing liability for debts on stockholder, 23, 872

LACHES, 12, 533*See* LIMITATION OF ACTION.

Abandonment, 12, 543

Absence from State, 12, 557

Ignorance of right of action, 12, 558

Infancy, 12, 552

Necessary absence, 12, 557

Voluntary absence, 12, 557

Accounting, 12, 572

Close of transaction, 12, 573

Computing lapse of time, 12, 573

Examples, 12, 572-574

Fraud, 12, 574

General rule, 12, 572

Limited period in which account will be decreed, 12, 574

Loss of evidence, 12, 573, 574

Mere delay, 12, 573

Respondent not in condition to render account, 12, 573

When account has been settled, 12, 574

When laches bar to plaintiff's bill, 12, 572

Accounts, see *infra*, EXECUTORS AND ADMINISTRATORS; TRUSTS AND TRUSTEES.

Principal and agent, 12, 579

Acquiescence

Definition, 12, 538

Distinguished from laches, 12, 536

Imports knowledge, 12, 539

Laches as evidence of, 12, 536

Shareholders of corporation, 12, 539

Act of defendant, 12, 560**Admiralty, 12, 574**

Change in condition, 12, 575

General principles, 12, 574

Lapse of time alone, 12, 574, 575

Maritime Liens, 12, 576*See infra*, MARITIME LIENS.

Different classes of liens, 12, 577

Ocean-going vessel, 12, 576

Purchaser charged with notice, 12,

577

Subsequent purchase of liens, 12, 576

Vessel sold before filing, 12, 577

What amounts to laches, 12, 576

Where not question of priority, 12, 578

Statute of limitations, 12, 576

Whether a bar, 12, 574

Amendment

When party guilty of laches, 12, 554

Ancestors, 12, 566

Application dependent upon circumstances, 12, 562

Arbitration, 12, 581

Delay in performance, 12, 581

Executory agreement, 12, 581

Loss of evidence through delay, 12, 582

Past transactions, 12, 581

Stranger to reference, 12, 581

Bankruptcy, 12, 556

Barring, 5, 920

Bill in Equity

Demurrer, 6, 787

Bills to quiet title, 12, 606

Bodies of creditors, 12, 570

Bottomry contract, laches in enforcing, 2, 492

Boundaries

Municipalities, 12, 565

Breach of condition subsequent in deed, 12, 597

Certiorari as bar to, 3, 64

Checks, 5, 528⁸⁸

Presenting or giving notice of dishonor, 3, 215

Compromise, 12, 561

Conditions, 12, 555

Consideration of public policy, 12, 555

Constructive trusts, 10, 84

Continual assertion of claim, 12, 552

Continuing influences, 12, 561

Continuing obligation, 12, 567

Continuing wrong, 12, 567

Copyright

Breach of, 12, 582

Delay which will bar, 12, 582

Knowledge of infringement, 12, 583

Presumption of abandonment, 12, 582

Unreasonable delay, 12, 582

Corporate matters, see infra, SUBSCRIPTION TO STOCK.**Corporations, 12, 586**

Negotiable instruments, 4, 228

Cost, 12, 608

Coverture, 12, 553

Antenuptial contract, 12, 554

At common law, 12, 553

Bill by husband and wife, 12, 553

Cumulative disability, 12, 554

Dissolution of marriage by death, 12, 553

Husband and wife, 12, 553

Laches by husband, 12, 554

Presumption of payment of debt, 12,

554

Cumulative Disabilities, 12, 554
 Both disabilities existed when right of action accrued, 12, 554
 Infancy and coverture, 12, 554
Deceit, 5, 342
Definition, 12, 533
Degree, 12, 546
Delay, 12, 540
 By agreement of parties, 12, 560
 Degree of laches, 12, 546
Effect of Mere, 12, 540
 Abandonment, 12, 543
 As evidence, 12, 542
 Delay for want of knowledge, 12, 544
 Delay preventing substantial justice being done, 12, 541, 542
 Enforcement of continuing obligation, 12, 545
 No alteration in position of parties, 12, 544
 Presumption arising from, 12, 542
 Presumption rebutted, 12, 543
 Uncertainty, 12, 542
 Where delay has worked wrong to adverse party, 12, 544
 Where there is statutory limitation, 12, 545
 Whether ever a bar to proceedings, 12, 540
 Loss of evidence from, 12, 550
Mere Delay, 12, 540
 Accounting, 12, 573
 Mines, 12, 546, 547
 Poverty, 12, 556
 Sales for trade purposes, 12, 546, 547
 When value is fluctuating, 12, 546
 Where statute of limitation is applicable, 12, 549, 550
Demurrer, 13, 770, 771
Derivation of term, 12, 534
Directors, 12, 586
Discharging drawer of check, 3, 215; 5, 528²⁸³
Discretion of court, 12, 550
Distinguished from acquiescence, 12, 536
Divorce suits, 5, 826
Dower, Claim for, 12, 597
 In Missouri, 12, 598
 Lapse of twenty years, 12, 597
 Less than twenty years, 12, 597
Effect of continual claim, 12, 552
Elections, 6, 357
Equitable Title to Land, 12, 606
 Claimant out of possession, 12, 607
 Increased value of property, 12, 608
 Loss of evidence, 12, 608
 Loss of muniments of title, 12, 607
 Right of innocent third parties, 12, 608
Essentials, see *infra*, **DELAY**; **KNOWLEDGE**; **LOSS OF EVIDENCE**; **PREJUDICE TO ADVERSE PARTY**.
Estoppel
 Municipal securities, 15, 12, 95
Evidence, 12, 609

Excuses, see *infra*, **ABSENCE FROM STATE**; **ACT OF DEFENDANT**; **BANKRUPTCY**; **CONTINUING INFLUENCES**; **COVERTURE**; **CUMULATIVE DISABILITIES**; **DELAY BY AGREEMENT OF PARTIES**; **FULFILLMENT OF CONDITIONS**; **INFANCY**; **INSANITY**; **NEGLECT OF ATTORNEY**; **NEGOTIATIONS FOR COMPROMISE**; **PENDENCY OF SUIT**; **POVERTY**; **RECOGNITION OF RIGHT**; **SICKNESS**; **WAIVER OF OBJECTION**.

Executed and executory interests, 12, 566

Executors and Administrators, see *infra*, **SUITS BY LEGATEES AND DISTRIBUTUTES**.

Accounts, 12, 589

Delay of thirty years, 12, 590

Delay of twenty years, 12, 589

Executor holding property in trust, 12, 589

Fraud, 12, 591

Loss of evidence, 12, 589

No one authorized to sue, 12, 590

Presumption of satisfaction, 12, 589

Settled by executor, 12, 590

Suit by administrator de bonis non, 12, 590

Breach of Duty by Executors, 12, 593

Acquiescence by parties in interest, 12, 593

Wrongful purchase of property of the estate by executor, 12, 593

Family Quarrels, 12, 569

Delay not as strictly regarded, 12, 569

Importance of relationship, 12, 569

Loss of evidence, 12, 569

Foreclosure of Mortgages

Appointment of receiver, 8, 238

Foreclosure Sale of Railroad, 19, 768

Bill to set aside by single stockholder, 19, 769

Defeating recovery, 19, 768

Ignorance or fraud alleged, 19, 768

What lapse of time bars remedy, 19, 769

Fraud, 12, 600

See *infra*, **IN EQUITY**.

See **RESCISSION OF CONTRACT**.

Concealment by defendants, 12, 600

Court, 12, 574

Discovery of fraudulent act, 12, 602

General principles, 12, 600

Knowledge of defendant, 12, 602

Of defendant, 12, 561

Plaintiff ignorant of fraud, 12, 600

Presumption in favor of innocence, 12, 601

Rights of third parties, 12, 603

Unreasonable delay, 12, 602

Fraudulent Conveyances, Setting Aside, 12, 598

Debtor remaining in possession, 12, 599

General rule, 12, 598

Institute proceedings within reasonable time, 12, 598

LACHES—Cont'd**Fraudulent Conveyances, Setting Aside—
Cont'd**

No person claimed adversely to debtor,
12, 599

Statute of limitation, 12, 599

Fulfillment of conditions, 12, 555

General rule, 13, 674

Government, 5, 528²², 528⁵²; 13, 711

Grantors, 12, 566

Guaranty, 19, 82

How far presumed, 5, 528⁸⁴

Ignorance

Absence from state, 12, 558

Immunity of the United States, 2, 4660

In Equity

Analogy to the period in law, 6, 711;
13, 677

As Affected by Statute, 13, 675

See infra, LIMITATION OF ACTIONS.

Acquiescence, 13, 679

Analogy of statutes, 6, 711; 13, 677

Burden of proving acquiescence, 13,
679

Circumstances in exclusive delay
13, 680

Cloud on title, 13, 680

Concurrent jurisdiction, 13, 679

Concurrent jurisdiction in equity,
13, 675

Delay falling short of statutory
period, 13, 679

Delay for less than the term pre-
scribed, 13, 675

Equity following law, 6, 711; 13, 675

Exclusive jurisdiction in equity, 13,
677

Expressly applicable to courts of
equity, 13, 675

Federal courts, 13, 676

Fraud in Equity, 13, 680

See infra, FRAUD.

Affirmative acts of guilty party,
13, 682

Concealment of cause of action,
13, 680

Concurrent jurisdiction, 13, 681

Constructive discovery, 13, 682

Diligence, 13, 682

Equitable nature of doctrine, 13,
680

Ignorance alone, 13, 683

Ignorance without fault, 13, 683

Mistake, 13, 683

Necessity of fraud, 13, 683

Plaintiff's discovery in cause of ac-
tion, 13, 681

Where statute in terms applies to
equitable actions, 13, 681

Lost deed, 13, 680

Petition for mandamus, 13, 680

Refusing relief before statute is run,
13, 679

Relief after claim is barred by stat-
ute, 13, 680

Specific performance, 13, 678

Statutes not always followed, 13, 677

Statutes suspended by war, 13, 678

Where there is no legal right, 13,
679

Infancy, 5, 496f; 12, 552

Absence from state, 12, 558

Ancestor and heir, 12, 554

Cumulative disability, 12, 554

Defendant an infant, 12, 554

Doubt cast upon claim by delay, 12,
553

Effect of delay, 12, 552

Fulfillment of conditions, 12, 555

General rule, 12, 552

Minors residing in different state, 12,
552

Suit after majority, 12, 553, 554

Injunctions, 10, 802

Acquiescence, 10, 803

Dissolution, 10, 1019

General rule, 10, 802

Judgment obtained against party
through his laches, 10, 902

Reasonable diligence, 10, 802

Relief refused for want of diligence,
10, 802

Trade-mark, 10, 937

Violation, 10, 1013

Insanity, 12, 554

Insolvency, 12, 556

Interest, 11, 395; 12, 608

Justness of claim, 12, 550

Knowledge, 12, 547

Circumstances leading to inquiry, 12,
548

Failure to obtain, 12, 548

Necessity, 12, 547

Obscurity of transaction, 12, 548

Limitations of Action, 6, 711; 13, 675, 677

Acquiescence, 13, 679

Analogy of statutes, 13, 677

Analogy to the period in law, 13, 677

Burden of proving acquiescence, 13,
679

Circumstances in exclusive delay, 13,
680

Cloud on title, 13, 680

Concurrent jurisdiction, 13, 679

Concurrent jurisdiction in equity, 13,
675

Courts refuse to follow statutes, 6, 711

Delay falling short of statutory period,
13, 679

Delay for less than term prescribed,
13, 675

Demurrer to bill, 6, 787

Equity acts by analogy to statute, 6,
711; 13, 677

Equity following law, 13, 675

Equity follows statute, 6, 711; 13, 677

Exclusive jurisdiction in equity, 13,
677

Expressly applicable to courts of equity,
13, 675

Federal courts, 13, 676

Fraud in Equity, 13, 680

Affirmative acts of guilty party, 13,
682

- Concealment of cause of action, 13, 680
- Concurrent jurisdiction, 13, 681
- Constructive discovery, 13, 682
- Diligence, 13, 682
- Equitable nature of doctrine, 13, 680
- Ignorance alone, 13, 683
- Ignorance without fault, 13, 683
- Mistake, 13, 683
- Necessity of fraud, 13, 683
- Plaintiff's discovery of cause of action, 13, 681
- Where statute in terms applies to equitable actions, 13, 681
- Lost deed, 13, 680
- Petition for mandamus, 13, 680
- Refusing relief before statute is run, 13, 679
- Relief after claim is barred by statute, 13, 680
- Specific performance, 13, 678
- Statutes not always followed, 13, 677
- Statutes suspended by war, 13, 678
- Where there is no legal right, 13, 679
- Where there is no statute, 6, 711
- Whether Plaintiff Can Defer Running,** 13, 726
 - At common law, 13, 727
 - General rule, 13, 726
 - In equity, 13, 727
 - Must perfect cause within a reasonable time, 13, 726, 727
 - What time is reasonable, 13, 727
- Limited Estates,** 12, 568
 - Laches of tenant for life, 12, 568
 - Remainderman, 12, 568
 - Where remainderman has sold his estate, 12, 568
- Loss of Evidence,** 12, 550
 - Accounting, 12, 574
 - Court not satisfied that original claim was unjust, 12, 550
 - Discretion of court, 12, 550
 - Family quarrel, 12, 569
- Lost wills, 13, 1138
- Mandamus,** 14, 107, 124
 - Payment of claims, 14, 186
- Maritime Liens,** 16, 358
 - See infra*, ADMIRALTY.
 - General rule, 14, 447
 - Material man's lien, 14, 448
 - Subsequent incumbrances, 14, 447
 - Subsequent purchasers, 14, 447
 - Where no injury has resulted, 14, 448
 - Where ownership has not been changed, 14, 448
- Marriage settlements, 14, 549
- Mechanics' liens, 15, 121
- Mere delay, 12, 544
- Mines and mining claims, 15, 606
- Mistake, 15, 634
- Mortgage**
 - Redemption, 20, 626
- Municipal Corporations**
 - Illegal annexation, 15, 1020
- Municipal officers,** 12, 565
- Municipal Securities**
 - Estoppel, 15, 1295
- Navigation, 16, 358
- Negligence,** 12, 534
 - Of attorney, 12, 559
- Negotiations for compromise, 12, 561
- New trial, 16, 621
- Nuisances,** 16, 960
 - Delay without acquiescence, 16, 961
 - General principle, 16, 960
 - Silence, 16, 961
- Oppression, 12, 561
- Partition, 17, 667
- Partnership**
 - Accounting, 17, 1284
 - Whether laches in pursuing surviving partner exonerates estate of deceased partner, 17, 1178
- Patent Law,** 18, 81
 - Defenses to action for infringement, 18, 91
 - Demurrer, 18, 97
 - Rehearing, 18, 116
 - Specific performance, 18, 139
- Pendency of suit, 12, 558
- Pleading,** 12, 609; 13, 770
 - Demurrer, 12, 609
 - Setting out reason for delay, 12, 609
 - Whether evidence must be pleaded, 12, 609
- Poverty,** 12, 556
 - Creating delay, 12, 557
 - Effect of, 12, 557
 - Presumption of payment, 12, 557
 - Whether an excuse, 12, 556
- Prejudice to Adverse Party,** 12, 544, 549
 - Engagements entered into, 12, 549
 - Expenses incurred, 12, 549
 - Improvements, 12, 549
 - Where statute of limitation is applicable, 12, 549, 550
- Presumption, 12, 535
- Principal and Agent,** 12, 578
 - Account, 12, 579
 - Acquiescence by principal, 12, 578, 579
 - Breach of confidence by agent, 12, 578
 - Delay on part of agent, 12, 580
 - Evidence not sufficient to establish fraud, 12, 579
- Public Officer,** 5, 528⁵²
 - Liability of public, 19, 507
- Public policy, 12, 534
- Question of fact, 12, 562
- Quieting title, 12, 606
- Rationale of doctrine, 12, 534
- Receivers, 20, 260
- Rescission of Contract,** 12, 603
 - Change in condition of property, 12, 604
 - Change in value of property, 12, 603
 - Death of party to transaction, 12, 604
 - Delay after acquiring knowledge, 12, 604
 - Delay after knowledge of fraud, 12, 603
 - Delay causing injustice to opposite party, 12, 603

LACHES—Cont'd**Rescission of Contract—Cont'd**

- Knowledge of fraud, 12, 604
- Loss of testimony, 12, 604
- Reasonable diligence, 12, 605
- Recognition of validity of transaction, 12, 604
- When suit not barred, 12, 604
- Recognition of right, 12, 559
- Redemption of mortgage, 20, 626
- Removing cloud, 12, 606
- Resulting trust, 10, 34

Sheriff's Sales

- Execution defendant, 22, 679, 684

Sickness, 12, 558

- In family, 12, 558
- Whether an excuse, 12, 558

Sovereignty, 12, 562

- Government appearing in business transaction, 12, 563
- Laches of officers, 12, 562
- Officers of state, 12, 565
- Suit by government for benefit of private individual, 12, 564
- Suit by individual against government, 12, 564
- Surety of officer, 12, 562

Specific Performance, 22, 1043

- Acceptance of part payment, 22, 1052
- Acquiescence in delay, 22, 1052
- Complainant's delay, 22, 1043
- Defendant failing to show that he was ready to perform conditions required, 22, 1050
- Defenses, 22, 1050
- Delay in commencing suit, 22, 1054
- Delay which has proved fatal to the remedy, 22, 1044
- Diligence necessary, 22, 1043
- Diligence out of court, 22, 1053
- Effect of right of specific performance, 22, 1043
- Examples of delay, 22, 1044, 1045
- Examples of laches, 22, 1046, 1047
- Excuses for delay, 22, 1046, 1047
- Excuses for delay held insufficient, 22, 1046
- Fulfillment within a reasonable time, 22, 1052
- Mere delay, 22, 1053
- Time as an Essence of the Contract, 22, 1054
- Change of circumstances where time has been made a part of the contract, 22, 1061
- Conveyance of real estate, 22, 1059
- Gross negligence, 22, 1055
- Instances where time has been deemed essential, 22, 1056-1058
- Reasonable time within which to fulfill contract, 22, 1052
- Time made essential by subsequent conduct of parties, 22, 1058
- Time not essential, 22, 1059
- Waiver of promptness, 22, 1059
- Whether parties have made time an essential element, 22, 1055

Whether time is an essence of the contract in equity, 22, 1054

Trifling delay, 22, 1053

Waiver of default, 22, 1050-1052

Where contract has imposed no condition precedent upon the plaintiff, 22, 1053

Where defendant has been the cause of complainant's laches, 22, 1050

Where no imperative day is fixed, 22, 1052

Where one party has been guilty of negligence, 22, 1054

Where one party has been guilty of negligence and the other has tried to rescind, 22, 1054

Where the interests of third parties have intervened, 22, 1049

Where time is an essential element, 22, 1043

Where time is not the essence of the contract, 22, 1052

Whether lapse of time will prevent complainant's recovery, 22, 1044

Stale demands, 12, 535

Statute of Limitations

See infra, LIMITATIONS OF ACTION.

Stock, 12, 584

See infra, SUBSCRIPTION TO STOCK; ULTRA VIRES.

Cancellation of shares, 12, 586

Forfeiture, 12, 584

List of contributors, 12, 585

Register of transfer, 12, 586

Transfer, 12, 586

Where directors may decline to register, 12, 586

Stockholders, 12, 587

Subscription to Stock, 12, 583

Action against directors, 12, 583

Cancellation of subscription, 12, 583

Forfeiture, 12, 584

In England, 12, 583

In United States, 12, 584

Misrepresentation, 12, 583

Right to claim stock, 12, 584

Suits by creditors against executors, 12, 594

Suits by Legatees and Distributees, 12, 591

Agreement among legatees, 12, 592

Delay of twenty years, 12, 591

Great delay, 12, 592

Payment of interest of specific sum, 12, 591

Presumption of appointment, 12, 591

Settlement, 12, 592

Specific legacy, 12, 591

When a bar, 12, 592

Suits to Charge Heirs and Legatees, 12, 594

Suit brought by an heir, 12, 595

Where there is prejudice from delay, 12, 594

Suits to Set Aside Judgment, 12, 605

General rule, 12, 605

Judgment obtained by fraud, 12, 605

Judgment void upon its face, 12, 605
 Knowledge, 12, 605
 Supplementary proceedings, 24, 605
 Taxation, 25, 455
Trade-Marks, see **TRADE-MARKS**.
 Damages and profits, 26, 513, 519
 Preliminary injunction, 26, 504
Trusts and Trustees, 13, 683; 27, 269
Accounts, 27, 106
 Beneficiary guilty of laches, 27, 107
 Effect of demand, 27, 107
 Express trusts, 27, 107
 How far account will be carried back, 27, 107
 Jurisdiction of equity to compel accounting, 27, 106
 Legal limitation, 27, 107
 Rents and mesne profits, 27, 107
 When account required, 27, 106
 Application confined to pure trusts, 13, 684
As Between Trustee and Beneficiary, 27, 100
 Acquiescence in transaction, 27, 106
 Examples, 27, 100-106
 Express or direct trusts, 27, 100, 101
 Implied trusts, 27, 101
 Laches less than statutory time, 27, 104
 Pleading, 27, 106
 Possession by trustee as possession of cestui que trust, 27, 101
 Possession of cestui que trust not adverse to that of trustee, 27, 104
 Presumption as to abandonment of rights, 27, 105
 Presumption as to release of disability, 27, 105
 Presumption from lapse of time, 27, 105
 Presumption of conveyance, 27, 105
 Presumption of payment, 27, 105
 Repudiation must be clear and unequivocal, 27, 104
 Statute of limitations has no application unless trust has been repudiated by trustee, 27, 101
 What constitutes disavowal of a trust, 27, 104
 Whether cestui que trust can set up statute, 27, 104
As Between Trustee or Beneficiary and Stranger, 27, 99
 Changing tribunal, 27, 99
 Fraudulent concealment, 27, 100
 Ignorance or mistake, 27, 100
 In general, 27, 99
 Laches less than the full statutory period, 27, 99
 Part payment by trustee, 27, 100
 Party in possession, 27, 99
 Whether where trustee is barred beneficiary is barred, 27, 99
 Between trustee and cestui que trust, 13, 683
 Cestui que trust sleeping on his rights, 27, 269

Concurrent remedy at law, 13, 685
 Disavowal of trust, 13, 688
 Examples, 27, 269-271
Executors and administrators, see *infra*, **EXECUTORS AND ADMINISTRATORS**.
 General principles of estoppel, 27, 270
 Implied or constructive trusts, 13, 684
 Instances of implied trusts, 13, 685
 Instances of pure trusts, 13, 684
 Lapse of time, 13, 684
 Misconduct of trustee, 27, 269
Partnership, see *infra*, **PARTNERSHIP**.
 Possession presumed to be that of cestui que trust, 13, 684
 Presumption of payment, 13, 683, 684
 Ratification, 27, 269
 Trustee purchaser at his own sale, 27, 270
 What amounts to a disavowal, 13, 688
Ultra Vires, 12, 586
 See **ULTRA VIRES**.
 Acquiescence of shareholder, 12, 586
 Prompt action by stockholders, 12, 588
 Rights acquired, 12, 587
 Stockholders' knowledge of transaction, 12, 587
 Ultra vires of corporation, 12, 588
 Ultra vires of directors, 12, 588
 Undue influence, 12, 561; 27, 494, 495
 Vendor's lien, 28, 180
 Vigilantibus non dormientibus, subveniunt leges, 12, 534
 Waiver of objection, 12, 561
 Where relation of parties is unaltered, 12, 544
LAGER BEER, see **BEER**.
LAKES AND PONDS, 12, 610
 See **ACCRETION**.
 See generally, **SURFACE WATERS**.
 See **ICE AND ICE COMPANIES**; **WATERS AND WATER COURSES**.
Boundaries, 12, 642
Artificial Ponds, 12, 653
 General doctrine, 12, 653
 Shifting boundary, 12, 654
 Generally, 12, 642
 In Illinois, 12, 648
 In Indiana, 12, 648
 Federal ruling, 12, 648
 State ruling, 12, 648
 In Maine, 12, 644
 In Massachusetts, 12, 642
 Application to artificial pond, 12, 642
 Grant bounded by great pond or lake, 12, 643
 Reconciliation of prior ruling, 12, 644
 Rule as to waters in general, 12, 642
 In Michigan, 12, 648
 In New Hampshire, 12, 645
 In New York, 12, 645
 In Ohio, 12, 647
 In Vermont, 12, 645
 In Wisconsin, 12, 650
 Intervening water, 12, 653
 Prevailing doctrine, 12, 642

LAKES AND PONDS—Cont'd**Boundaries—Cont'd**

Receding of Waters, 12, 651

In general, 12, 651

New York view, 12, 652

Water's edge, 12, 642

Current in lake, 24, 900

Definition of lake, 12, 611

Definition of pond, 12, 611

Diversion of waters, 12, 628

Fishing, 12, 626

See FISH AND FISHERIES.

See *infra*, GREAT PONDS.

In general, 12, 626

In Michigan, 12, 627

In New Jersey, 12, 628

In Ohio, 12, 627

Private rights, 12, 628

Profit à prendre, 12, 626

Public rights, 12, 627

What are "private ponds" in Pennsylvania, 12, 627

When user by individual considered

permissive, 12, 628

Whether right to fish can be acquired

by custom, 12, 626

Great Ponds—Massachusetts, 12, 634

Area of over twenty acres, 12, 634

Colony Ordinance, 12, 638

Operation of ordinance, 12, 638

State ownership of great ponds, 12,

639

Compensation for taking lands for fish-

ing, 12, 636

Eminent Domain, 12, 639

Decision favoring condemnation

without compensation, 12, 639

Watuppa pond case, 12, 641

Inclusion of migratory fish, 12, 636

Increase by dam, 12, 635

In general, 12, 634

Lease of Great Pond, 12, 636

Constitutionality of statute, 12, 637

Enclosures and appliances, 12, 637

Sufficiency of occupation of pond,

12, 637

When pond is place where fishes are

"artificially cultivated," 12, 636

Meaning of term, 12, 634

Power of legislature, 12, 636

Public Rights

Enumeration of uses, 12, 635

Fishing and fowling, 12, 635, 636

In great ponds, 12, 635

Right of fishing in great ponds, 12,

636

Use included as they arise, 12, 635

Purpose to make various privileges

free, 12, 635

Right of Fishing in Great Ponds, 12, 635,

636

Right of all persons who own land

adjoining, 12, 635

Rulings reviewed, 12, 640

Scope of charters, 12, 638

State ownership of great ponds, 12,

639

Title to Great Ponds, 12, 637

By grants from king, 12, 637

Rights and powers conferred, 12, 638

State ownership of great ponds, 12,

639

When not regarded as above ebb and

flow of tide, 12, 634

When pond is place where fishes are

"artificially cultivated," 12, 636

Lake Distinguished from Stream, 12, 611

Current as criterion, 12, 611

When lake is running stream, 12, 612

Lowering pond by deepening drain, 12,

630

Navigable lakes, see *infra*, TITLE TO

LAKES AND PONDS.

Navigable Lakes and Waters, 12, 612

New York doctrine as to title of ripa-

rian owner, 12, 613

Public highways, 12, 612

Title of riparian owner, 12, 613

Obstructing view, 12, 628

Outlet Streams Flowing from Lakes, 12,

613, 626

Drainage of lake interfering with flow

of water, 12, 614

Ownership of bed of lake or pond, 12,

614

When not mere surface waters, 12,

613

Owner of pond and stream, 12, 626

Owners of pond and outlet streams, 12,

626

Rights of owner, 12, 626

Right to access, 12, 622

Right to construct wharves, 12, 622

Riparian Rights, 12, 618

Right to cut and take ice, see ICE AND

ICE COMPANIES.

As depending on title to bank, 12, 619

Early English authorities, 12, 618

Interference with access, 12, 622

Lake Muskegon, 12, 619

Right of access, 12, 622

Right to construct wharves, 12, 620

Under Massachusetts law, 12, 619

Scope of term, 12, 611

Size as distinguishing lake from pond,

12, 611

Surface Waters

Pond, Stagnant Bodies, etc., 24, 904

Drainage, 24, 905

Draining upon land of adjoining

proprietor, 24, 905

Examples, 24, 904-906

In general, 24, 904

Loss of character as surface water,

24, 904

Where there is no outlet, 24, 904

Title to Lakes and Ponds, 12, 615

Great Inland Lakes in United States,

12, 615

Federal doctrine, 12, 617

Grant by state, 12, 617

In Michigan, 12, 617

In New Jersey, 12, 617

In New York, 12, 616

- In Vermont, 12, 616
- Navigable rivers, 12, 615
- Public property, 12, 615
- Scope of grants, 12, 618
- In England, 12, 615
- Navigable lakes and waters, 12, 612
- Owner of outlet of lake, 12, 614
- Right of government, 12, 615
- Use for Aqueduct Purposes**, 12, 630
- Equitable Remedies Against Aqueduct Corporations**, 12, 632
 - For interference with great pond, 12, 632
 - For tapping and drawing off underground sources of water supply, 12, 633
- Matter one of statutory construction, 12, 630
- Sinking wells to intercept underground current, 12, 631
- Statutory authority, 12, 630
- Taking waters insufficiently described, 12, 631
- Use in general, 12, 630
- When petition for damages too late, 12, 631
- Wrong concerning, 12, 628
- LAND**, 12, 655; 19, 1032
- See* **PUBLIC LANDS; REAL PROPERTY; SPANISH LAND GRANTS; WILLS.**
- Adowson, 12, 655
- Bridge, 12, 655
- Incorporeal hereditaments, 12, 655
- Increase of, 10, 360
- Interest in, 12, 657
- May denote an estate, 12, 656
- My land, 16, 110
- Poor, 12, 657
- Property in land, 19, 285
- Satisfaction of judgment, 12, 150e
- Synonymous with ground, 9, 62
- Tide lands, 26, 1
- Vacant lands, 28, 34
- What are wild, 5, 891
- Wild**
 - Dower in, 5, 891
- LAND COMPANY**, 11, 1038, 1040; 1049
- LANDING**, 12, 657
 - Navigable waters, 16, 261
 - Public landing, 12, 657
- LANDLORD AND TENANT**, 12, 658
- See* **CROPS; DISTRESS; EJECTMENT; EVICTION; FIXTURES; FORCIBLE ENTRY AND DETAINER; IMPLIED COVENANTS; LEASE; LODGING HOUSE; LODGINGS AND APARTMENTS; REAL COVENANTS; RENT; TRESPASS.**
- Assignment*, *see* **LEASE.**
- Ejection*, *see* generally, **EJECTION.**
- Farming on shares*, *see* **CROPS.**
- Letting on shares*, *see* **CROPS.**
- Reversion*, *see* **REVERSION.**
- Tenancy in fee*, *see* **ESTATE.**
- Abandonment**
 - False representations, 12, 749
 - Fraud, 12, 749
- Tenant's right to liability of landlord for repairs, 12, 726
- Termination of tenancy, 12, 757z
- Accretions**, 12, 698
- Action by Landlord**
 - Damages to tenant, 12, 682
 - Relative to freehold, 12, 682
 - Trespass, 12, 682
- Action by Tenant**, 12, 696
 - Against landlord, 12, 696
 - Forcible entry and detainer, 12, 696
- For Damages**
 - Repairs, 12, 727
 - Injury to his possession, 12, 696
 - Landlord's breach of covenant, 12, 696
 - Trespass, 12, 696
 - Trespass quare clausum fregit, 12, 720
- Adverse Possession**, *see* **ADVERSE POSSESSION.**
 - Surrender of possession, 12, 703
- At Common Law**
 - Tenancy at will, 12, 673
- Attornment**, 12, 699, 758v
 - See infra*, **ESTOPPEL.**
 - Common-law rule, 12, 699
 - Contract to attorn to third party, 12, 704
 - Definition, 12, 699
 - Iowa statute, 12, 699
 - Landlord's consent to, 12, 699
 - Mortgagee, 12, 701
 - New York statute, 12, 699
 - Order of court, 12, 701
 - Rights of third persons, 12, 699
 - Successful party to action, 12, 700
 - Where landlord's title is obtained, 12, 700
- Attorn to adverse claim, 12, 757z
- Betterment and Repairs**, 10, 254; 13, 603
 - Contract to repair, 10, 254
 - Lessee's duty to make repairs, 10, 254
 - Liability of lessor, 10, 256
 - Repairs by tenant who is also mortgagee, 10, 255
 - Statute provisions, 10, 256
 - Trespass, 10, 256
- Boundaries**, 12, 708
- Contributory negligence**, 12, 691
- Control of Premises**
 - Joint right to exclusive occupation, 12, 696
 - Joint right to undisturbed possession, 12, 698
 - Landlord's control, 12, 682
 - Measure of damages, 12, 697
 - Tenant's control, 12, 695
 - Use of premises, 12, 698
- Conveyance of Reversion**, 12, 683
 - Accruing rent, 12, 683
 - Devisee's or heir's right to rent, 12, 684
 - For breach of, 12, 684
 - Grantee's right to reentry, 12, 683
 - Grantee's right to sue for rent, 12, 683
 - Grantor's rights in a lease, 12, 683
 - Rent incident to reversion, 12, 683
 - Rents in arrears, 12, 684

LANDLORD AND TENANT—Cont'd**Conveyance of Reversion—Cont'd**

Sale of reversion under execution, 12, 684

Covenants to repair, 8, 444

Crops, 12, 708, 710

See **CROPPERS**.

Cultivation of land on shares, 12, 666

Relation must appear from lease, 12, 666

Whether relation exists, 12, 666

Debt, Action of

For rent, 5, 167

Dedication to public during tenancy, 5, 399

Definition, 12, 660

Landlord, 12, 658

Of disclaimer, 5, 672

Demand

Holding over, 12, 758*t*

Mortgagee, 26, 758

Destruction of Premises

Eviction, 12, 758*f*

Tenant's covenant to repair, 12, 721

Termination of tenancy, 12, 757*z*

Destruction of Premises by Fire

Rent, 12, 721, 741

Apartments, 12, 742

Covenant to erect, 12, 1019

Covenant to rebuild, 12, 1020

In absence of provision in lease, 12, 741

Landlord covenanting to rebuild, 12, 742

Rent, 3, 902; 12, 1020, 1021

Statute, 12, 742

War, 12, 742

Where a building merely is rented, 12, 742

Whether tenant is relieved from payment of rent, 12, 741

Disclaimer, 6, 245*b*, 446, 451

See infra, **ESTOPPEL TO DENY LANDLORD'S TITLE**.

Forcible entry and detainer, 8, 129, 161

Waiver of notice, 8, 142

Easements, 12, 708

Ejection, 6, 207, 237; 12, 758*t*

Against tenant at will, 6, 245*e*

By tenant at sufferance, 6, 243

By tenant at will, 6, 243

By tenant for years, 6, 243

In Arkansas, 6, 207

In California, 6, 207

In Delaware, 6, 207

In Georgia, 6, 207

In Illinois, 6, 207

In Indiana, 6, 207

In Kansas, 6, 208

In Kentucky, 6, 208

In Louisiana, 6, 208

In Maryland, 6, 208

In Massachusetts, 6, 208

In Michigan, 6, 208

In Minnesota, 6, 208

In Mississippi, 6, 208

In New Hampshire, 6, 208

In New Jersey, 6, 208

In New York, 6, 208

In North Carolina, 6, 208

In Oregon, 6, 208

In Pennsylvania, 6, 208

In Rhode Island, 6, 208

In South Carolina, 6, 208

In Tennessee, 6, 208

In Virginia, 6, 208

In Wisconsin, 6, 208

Instances, 6, 237

Landlord made defendant in, 6, 245*f*

Necessity of demand, 12, 758*t*

Necessity of notice to quit, 12, 758*t*

Possessory action, 12, 758*u*

Reëtry, 6, 237

Subtenant, 12, 758*t*

Tenant holding over, 12, 758*t*

Tenant repudiating tenancy, 12, 738*t*

When the relationship exists, 6, 237

Elevated Railroads, 23, 1058

Continuous injury, 23, 1058

General rule, 23, 1058

Injunction by owner of fee, 23, 1060

Injury to the inheritance, 23, 1058

Lease executed after construction of road, 23, 1058

Lease executed before construction of road, 23, 1059

Measure of damages in action by lessor, 23, 1059

Trespass of a temporary character, 23, 1058

Emblements, 12, 708

See **EMBLEMMENTS**.

Certain termination, 12, 709

Crops, 12, 708

Custom, 12, 710

Conflict with stipulation of lease, 12, 711

Contravention of contract, 12, 711

Crop which defendant knows he cannot reap, 12, 710

General usage of the country, 12, 711

Presumption that contract is made in reference to, 12, 711

Death before seed is actually sown, 12, 710

Definition, 12, 708

Examples, 12, 712

Lease of tenant for life, 12, 710

Lease terminated by notice, 12, 709

Lessee of tenant for life, 12, 709

Manure, *see infra*, **MANURE**.

Natural products of soil, 12, 709

Sale under mortgage, 12, 711

Sublease, 12, 710

Tenancy terminated by some act other than tenant's, 12, 709

Term of tenancy uncertain, 12, 709

To what the right extends, 12, 709

Way-going crops, 12, 710

Wheat straw, 12, 713

Eminent Domain

See infra, **ELEVATED RAILROADS**.

Eviction, 12, 758*f*

- Measure of Damages**
 For lessee, 6, 581
 Parties, 6, 609
 Termination of tenancy by appropriation, 12, 757^z
 Who entitled to damages, 6, 589
Enforcement of right, 12, 758^o
Entry, see *infra*, REENTRY.
 Right of entry to repair, 12, 725
 To demand rent, 12, 685
 To distrain for rent, 12, 685
 To make repairs, 12, 685
Estate for years defined, 6, 884
Estoppel, 7, 25, 100
 Acknowledgment of tenancy through mistake or fraud, 7, 27
 Action by tenant, 12, 738
 Sealed lease, 7, 25
To Deny Landlord's Title, 6, 245^p; 7, 25; 12, 701
Adverse possession, see ADVERSE POSSESSION.
Termination of tenancy by, see *infra*, FORFEITURE.
Admission of statements against landlord, 12, 704
 After death of landlord, 12, 705
 After expiration of lease, 7, 26
 Agent's authority, 12, 704
 Application of rule, 12, 702
 As against a stranger, 12, 703
 Beneficial owner, 12, 704
 Conditions essential to existence of, 7, 25
 Conflicting claims, 12, 707
 Contract to attorn to another, 12, 704
 Duress, 12, 705
 Effect where tenant disclaims, 12, 758^l
 Eviction, 12, 707
 Examples, 12, 702
 Forfeiture, 12, 758^a
 General rule, 7, 25, 27; 12, 701
 Landlord's assignee, 12, 703
 Landlord's fraud in obtaining execution of lease, 12, 704
 Landlord's mortgagee, 12, 703
 Landlord's title expired, 12, 706
 Landlord's title extinguished, 12, 706
 Landlord's vendee, 12, 703
 Lease of part of premises, 12, 707
 License, 7, 25
 Misrepresentation of landlord, 12, 705
 Mistake and fraud, 12, 705
 Necessity of possession, 7, 25
 Parol lease, 7, 25
 Parties not sui juris, 7, 27
 Privies, 7, 27
 Purchase of adverse title, 12, 904
 Purchase of landlord's title by tenant, 7, 26
 Reason of the rule, 12, 702
 Relation created by law, 12, 706, 727
 Showing expiration of landlord's title, 7, 26
 Subtenant, 12, 703
 Surrender of possession, 7, 25; 12, 703
 Tax sales, 12, 704
 Tenancy in common, 12, 703
 Tenancy under a deed showing landlord has no title, 7, 26
 Tenant disputing landlord's title, 12, 701
 Tenant ignorant of his rights, 12, 705
 Tenant in possession when he acknowledged tenancy, 7, 26
 Tenant showing eviction, 7, 26
 Title given before possession taken, 12, 705
 Void lease, 12, 703
 Waiver by lessor, 12, 707
 What is meant by disputing landlord's title, 12, 703
 Where term has expired, 7, 26; 12, 707
 Who may rule, 12, 703
 To whom estoppel extends, 7, 27
Eviction, 12, 758^b
 Acts of landlord, 12, 757^y
 Appropriation of premises by eminent domain, 12, 758^f
 Creating nuisance, 12, 758^e
 Destruction by fire, 12, 758^c
 Effect of, upon rent, 12, 758^c
 Entry under paramount title, 12, 758^c
 Examples of, 12, 758^d-758^f
 Failure to repair, 12, 758^d
 New York rule, 12, 758^c
 Taking possession of part of premises, 12, 758^d
 Termination of tenancy, 12, 758^b
 What constitutes, 12, 758^b
 What is not, 12, 758^c
Fences, 12, 708
 Stock, 12, 719
Fixtures, see FIXTURES.
Forcible Entry and Detainer, 12, 758^u
See generally, FORCIBLE ENTRY AND DETAINER.
 In general, 12, 758^u
 Inquiry into title, 12, 758^u
 Question at issue, 12, 758^u
 Summary nature, 12, 758^u
Forfeiture, 8, 446; 12, 758^a
See infra, TERMINATION; WASTE.
 Definition, 15, 758^k
 Denying landlord's title, 12, 758^a
 Enforcement in equity for forfeiture, 12, 758^o, 758^p
Enforcement of Right
 Breach result of accident, 12, 758^o
 Compliance with lease, 12, 758^o
 Demand, 12, 758^o
 In equity, 12, 758^o
 Serving notice, 12, 758^o
Non-Payment of Rent, 12, 758^a, 758^k
 Forfeiture resulting from, 12, 758^k
 Lease waiving demand, 12, 758^l
 Necessity of action by landlord, 12, 758^l
 Necessity of demand, 12, 758^l

LANDLORD AND TENANT—Cont'd**Forfeiture—Cont'd****Non-Payment of Rent—Cont'd**

Necessity of provision in lease, 12, 758^k

Payment, 12, 758^l

Payment after forfeiture, 12, 758^l

Statutory provisions, 12, 758^l

Tender, 12, 758^l

Reentry, 12, 758^m

Repudiation of lease, 12, 758^l

Subtenant, 12, 758^m

Unlawful sale of intoxicating liquors, 11, 724

Waiver of Right, 12, 758^m

See infra, **WAIVER**.

Acceptance of year's rent in advance, 12, 758^m

Example, 12, 758^m, 758ⁿ

Suit to recover rent, 12, 758ⁿ

Waste, *see infra*, **WASTE**.

Fraud

Liability of Landlord, *see infra*, **LIABILITY OF LANDLORD**.

Holding Over, 12, 758^p; 758^w

See infra, **TENANCY FROM YEAR TO YEAR**.

Action for use, 12, 757^c

Acts Rebutting Intention to, 12, 758^t

Demand for possession, 12, 758^t

Holding over for few days, 12, 758^t

Notice to quit, 12, 758^t

Additional rent, 12, 758^s

Adverse possession, 12, 708

As evidence of a new demise, 12, 758^q

Consequences in general, 12, 758^p

Defenses, 8, 161

Denying landlord's title, 8, 161

Fraud in obtaining lease, 8, 161

Set-off and counterclaim, 8, 162

Tenant evicted, 8, 161

Where defendant did not enter as tenant of plaintiff, 8, 162

Effect of Landlord's Notice of New Conditions, 12, 758^s

Additional rent, 12, 758^s

Lease provides for conditions of renewal, 12, 758^s

Implication of Renewal of Former Lease, 12, 758^q

Consent of landlord, 12, 758^q

Examples, 12, 758^q-758^s

General rule, 12, 758^q

Tenant from year to year, 12, 758^r

When rent payable, 12, 758^r

With consent of landlord, 12, 758^r

Implied removal, 12, 677

Relief in equity for forfeiture, 12, 758^p

Summary proceedings, 12, 758^u

Tenancy at sufferance, 12, 758^p

Tenancy at will, 12, 670-672, 758^p

Tenant as trespasser, 12, 758^p

How estate is terminated, 6, 886

Illegal use of premises, *see infra*, **TERMINATION OF TENANCY**.

Improvements, 10, 254; 12, 692, 723

See infra, **LIABILITY OF LANDLORD**.

Tenant for Life or Years, 13, 603

General rule, 13, 603

Lessor liable by contract, 13, 603

Unfinished house, 13, 603

Injunction, 10, 809, 816

Conveyances to use premises for particular purpose, 10, 817

Material alterations, 10, 817

Subtenant, 10, 817

Innocent conveyances, 11, 3

Instruction, examples of, 11, 267-274

Insurable Interests, 11, 314

Lessor's interest, 11, 314

Structures erected by lessee, 11, 314

When lessee's interest is at an end, 11, 314

Interpleader, 11, 498

Intoxicating Liquors, 11, 723

Consent of landlord, 11, 723, 724

Dow liquor law, 11, 723

Evidence, 11, 725

Forfeiture of lease, 11, 724

In Indiana, 11, 723

In Ohio, 11, 723

Knowledge of landlord, 11, 723, 724

Landlord as aider and abettor, 11, 724

Lease for lawful purpose, 11, 724

Reservation of control, 11, 725

Statutes, 11, 723

What constitutes the offense, 11, 724

Joint Tenants and Tenants in Common, 12, 665

Absence of contract, 12, 665

Agreement between tenants, 12, 666

Cultivation of land on shares, 12, 666

Examples, 12, 666

Payment of definite part of crop, 12, 666

Relationship appearing from lease, 12, 666

Judgment, 12, 95, 102

Against lessee, 12, 95

Against lessor, 12, 95

Lessee in possession when action commenced, 12, 95

Subsequent lessee, 12, 95

Where issue involves the title to land, 12, 96

Kind of tenancy, *see infra*, **TENANCY AT SUFFERANCE; TENANCY AT WILL; TENANCY FOR LIFE; TENANCY FROM YEAR TO YEAR**.

Landlord's authority over estate leased, 12, 682

Landlord's Rights, 12, 685

Conveyance of reversion, *see infra*, **CONVEYANCE OF REVERSION**.

Over estate, *see infra*, **CONTROL OF PREMISES**.

Reentry, *see infra*, **REENTRY**.

In general, 12, 685

Protection of reversion, 12, 685

To make alteration in premises, 12, 682

Landlord's warrant, 28, 735

Lease, 12, 704

Liability of Landlord, 12, 686

Express covenant, *see COVENANT*.

Implied covenant, see IMPLIED COVENANT.

Damages resulting to one tenant from acts of another, 13, 1010

Defective sidewalk, 12, 724

Fraud, 12, 691

Concealing defective condition of premises, 12, 691

Concealing unsafe condition, 12, 691

Contagious disease, 12, 692

Estoppel to deny landlord's title, 12, 704

Examples of landlord's fraud, 12, 691

Landlord's knowledge, 12, 692

Generally, 12, 686

Ice, 13, 1014

Improvements, 10, 254; 12, 692, 723; 13, 603

See *infra*, IMPROVEMENTS.

Conditional rights, 12, 693

Examples, 12, 693, 694

Express agreement, 12, 692

General rule, 12, 692

Implied agreement, 12, 692

Louisiana law, 12, 695

In general, 13, 1012

Negligence, 12, 687

Defective repairs, 12, 724

Of landlord, 13, 1012

Of tenant, 13, 1011

Repairs, 12, 727, 728

Negligence to Tenant, 12, 687

Adjoining residences, 12, 688

Defective construction of building, 12, 687

Examples, 12, 687-689

Failure to keep in proper state of repair, 12, 687

Repairs, 12, 688

Negligence to Third Party, 12, 689; 16, 473

Coal hole, 12, 689; 16, 475

Contributory negligence, 12, 691

Excavation, 12, 689

Injuries from defective construction, 12, 689

Joint liability of tenant and landlord, 12, 689

Measure of liability, 12, 691

Negligence of tenant, 12, 690

When landlord exonerated, 12, 691

Where premises are under landlord's control, 12, 689

Nuisance, 12, 695; 16, 980

Continuance of, 12, 695

Created by landlord, 12, 695

Measure of damages, 12, 695

Tenants contributing to, 12, 695

Tenant's liability, 12, 719

Permanent improvements, 12, 723

Repairs, 12, 727, 748

Taxes, 12, 692; 25, 122

See *infra*, TAXATION.

Duty of landlord, 12, 692

In absence of covenant, 12, 692

Local assessments, 12, 692

To Third Persons, 12, 689

After landlord has alienated property, 16, 475

Coal hole negligently left open, 12, 689; 16, 475

Erection of dangerous or injurious structure, 16, 473

Natural decay of premises, 16, 475

Negligent use, 12, 689; 16, 475

Negligent use of premises, 12, 689; 16, 473

Party in possession of premises, 16, 474

Where landlord has exclusive control of building, 13, 1013

Whether implied warranty as to fitness, 13, 1012

Liability of Tenant

Negligence

Cellarway, 12, 723

Defective repairs, 12, 724

Want of repairs, 12, 723

Nuisance, 12, 695

Liens

Discharge, 13, 622

Local assessments, 12, 692

Manure, 12, 712

Agricultural tenant, 12, 712

Building not devoted to agricultural purposes, 12, 712

Express agreement, 12, 712

Livery stable, 12, 712

Tenant at will, 12, 713

Wheat straw, 12, 713

Whether part of real estate, 12, 713

Master and Servant, 12, 664

Examples, 12, 664

Possession of tenant or servant, question of fact, 12, 664

Relation of landlord and tenant does not ordinarily exist, 12, 664

Merger, 15, 316

Of Estate, see generally, MERGER.

See *infra*, TERMINATION OF TENANCY.

Attachment, 15, 317

Estates held in different rights, 15, 317

Liens, 15, 317

Life estate greater estate, 15, 316

New lease, 15, 317

Union of estates, 15, 316

When there is no merger, 15, 317

Mistake, 12, 705

Mortgages

Redemption, 20, 619

Mortgage and Mortgagee, 12, 665, 668

After conditions broken, 12, 665, 668

Mortgagee remains in possession by consent of mortgagor, 12, 665

Mortgagor in possession, 12, 665

Negligence, see *infra*, TENANT'S NEGLIGENCE; LIABILITY OF LANDLORD.

Notice

Possession as Notice

Possession of intruder, 16, 804

Possession of Tenant as Notice, 16, 804

Defect in title, 16, 804

LANDLORD AND TENANT—Cont'd**Notice—Cont'd****Possession of Tenant as Notice—Cont'd**

Right of purchaser to rely on statement of tenant, 16, 805

Tenant asserting that he is owner, 16, 804

Tenants interested in premises, 16, 804

Notice to Landlord

Repairs, 12, 726

Notice to Quit, 6, 238; 12, 757*t*, 757*u*

See infra, WAIVER.

After foreclosure of mortgage, 6, 240

Agreed time fixed for tenant at will to quit, 12, 757*u*

Co-tenants, 6, 240

Disclaimer, 6, 239

Examples of when notice is or is not necessary, 6, 238–241

Holding over, 12, 758*t*

Lapse of notice, 12, 757*u*

Lapse of time required, 12, 757*u*, 757*w*

Mortgagor, 6, 240

Nature of service, 12, 757*u*

Necessity of relationship of landlord and tenant, 6, 288

Notice served after expiration of time, 12, 757*v*

Notice served before expiration of time, 12, 757*v*

Occupancy under license, 12, 757*u*

Possession under contract to purchase, 12, 757*v*

Purchaser from mortgagor, 6, 240

Summary proceedings, 12, 758*v*

Tenancy at sufferance, 6, 239; 12, 669

Tenancy at will, 12, 673, 757*u*

Tenancy for fixed time, 12, 757*v*

Tenancy from month to month, 12, 757*t*

Tenancy from year to year, 6, 239; 12, 679, 757*u*

Tenant at will, 6, 240

Void owner's lease, 12, 757*t*

Waiver, 28, 553

Examples, 28, 553–555

Holding over, 28, 554

In general, 28, 553

Receipt of rent, 28, 553

Rent, 28, 554

What amounts to waiver, 28, 553, 554

Where relation of landlord and tenant does not exist, 12, 757*v*

Who entitled to, 6, 238

Nuisance, see *infra*, LIABILITY OF LANDLORD; LIABILITY OF TENANT.**Party-walls, 18, 16****Possession Under Void Lease, 12, 667**

Examples, 12, 667, 668

General rule, 12, 667

Lease executed on Sunday, 12, 667

Prohibited by statute of fraud, 12, 667

Real Covenants, 19, 1014

See REAL COVENANTS.

Assignee of part interest in lease, 19, 1008

Covenants running with the land, 19, 1008

Receiver

As between landlord and tenant, 20, 323

Recoupment, 22, 354, 362**Reentry, see *infra*, ENTRY.****By Landlord, 12, 684**

After end of term, 12, 684

After tenant abandons premises, 12, 684

Breach of covenant, 12, 684

Compliance with formalities required by law, 12, 684

Failure to pay rent, 12, 684

Non-payment of taxes, 12, 684

Forfeiture, 12, 758*m*

Repairs, 12, 685

To demand rent, 12, 685

To distrain, 12, 685

Relation Arising by Implication, 12, 661

See infra, JOINT TENANTS; MASTER AND SERVANT; MORTGAGOR AND MORTGAGEE; POSSESSION UNDER VOID LEASE; VENDOR AND PURCHASER.

Generally, 12, 661

Intention of tenant, 12, 662

Occupancy alone, 12, 661

Occupancy without consent of owner, 12, 661

Presumption of relation, 12, 661

Whether particular words are necessary, 12, 662

Relation generally, 12, 660

Remedies, see infra, EJECTMENT; FORCIBLE ENTRY AND DETAINER.

Rent, 12, 698

See RENT.

See infra, FORFEITURE; REPAIRS.

Destruction of premises by fire, see infra, DESTRUCTION OF PREMISES BY FIRE.

Repairs, 12, 720

Covenant to repair, see LEASE.

As effected by covenant to, 12, 721

Damages, 12, 728

Examples, 12, 729

Interruption to tenant's business, 12, 729

What damages tenant is entitled to, 12, 728

Defective as to eviction, 7, 37

Destruction by fire, 12, 721

Failure to Make

Eviction, 12, 758*g*

Generally, 12, 720

Implied obligation of tenant, 12, 720

In absence of covenant, 12, 1013–1018

In lieu of rent, 12, 731

Notice to landlord, 12, 726

Notice of repairs to landlord, 12, 724

Parol promises after lease executed, 12, 725

Rent, 12, 748

Abandonment of premises, 12, 748

Counterclaims, 12, 748

- Deducting cost of repairs, 12, 748
- Remote damages, 12, 748
- Set-off, 12, 748; 22, 400
- Right of entry to, 12, 725
- Statutory Liability of Landlord**, 12, 726
 - Express provisions of lease, 12, 726
 - In California, 12, 726
 - In Connecticut, 12, 726
 - In Georgia, 12, 726
 - In Louisiana, 12, 726
 - In New Jersey, 12, 726
 - In New York, 12, 726
 - Ordinary repairs, 12, 726
 - Tenant's liability, 12, 726
- Tenancy for life, 12, 680
- Tenant's duty as to permanent repairs, 12, 721
- Tenant's Implied Duty**, 12, 721
 - Custom, 12, 723
 - Examples, 12, 722
 - General rule, 12, 720, 721
 - In absence of agreement with landlord, 12, 722
 - In absence of statute, 12, 721
 - Joint liability for negligence, 12, 724
 - Landlord's covenant not implied, 12, 723
 - Liability to town for negligence, 12, 713, 718, 723
 - Parts of premises not expressly demised, 12, 723
 - Permanent improvements, 12, 723
 - Presumption, 12, 723
- Tenant's liability for negligence, 12, 688, 689
- Tenant's Remedies**, 12, 726
 - Abandonment of premises, 12, 726
 - Deduction from rent, 12, 727
 - Part of premises under landlord's control, 12, 728
 - Recoup, 12, 727
 - Set-off, 12, 727
 - Suit for damages, 12, 727
 - Waiver of right to abandon, 12, 726
 - Waiver by tenant, 12, 726, 728
- Res Judicata**
 - In general, 21, 160
 - Privity between lessor and lessee, 21, 145
 - When judgment binding, 21, 160
- Right of lessee before entry, 6, 885
- Right of lessee where lease is silent, 6, 885
- Right of reëntry, 12, 685
- Set-Off**, 12, 748
 - Counterclaim in actions for rent, 22, 400
 - Recoupment, 22, 354, 362
- Statutory Notice**
 - Tenancy at will, 12, 673
- Streets and Sidewalks**
 - Dedication, 24, 9
- Whether Necessary Parties**
 - Proceedings to establish, 24, 20
- Sublease**, 12, 715
 - Distinction between assignment and under lease, 12, 716
- Duties and obligations of subtenant, 12, 715
- No stipulations to contrary, 12, 715
- Receiving rent, 12, 716
- Tenant at will, 12, 715
- Waiver of restriction, 12, 717
- Whether tenant is discharged from payment of rent, 12, 715
- Subtenant**, see **SUBLEASE**.
- Action for use and occupation, 12, 757*b*
- Contradicting written contract by parol, 12, 744
- Emblements, 12, 710
- Forfeiture, 12, 758*m*
- Rent, 12, 732
- Summary Statutory Proceedings**, 12, 758*u*
 - Attornment, 12, 699, 758*v*
 - Demand, 12, 758*v*
 - Illegal holding over, 12, 758*u*
 - In whose name brought, 12, 758*v*
 - Nature of proceedings, 12, 758*u*
 - Non-payment of rent, 12, 758*u*
 - Notice to quit, 12, 758*v*
 - Procedure, 12, 758*v*
 - Refusal, 12, 758*v*
 - Relationship of landlord and tenant, 12, 758*v*
 - Violation of covenant, 12, 758*u*
- Surrender**, 6, 886; 12, 758*g*
 - Abandonment acquiesced in by landlord, 12, 758*i*
 - Abandonment by tenant, 12, 758*i*
 - Acceptance by landlord, 12, 758*i*
 - By agreement, 12, 758*h*
 - By operation of law, 12, 758*i*
 - By parol, 12, 758*h*
 - Definition, 12, 758*g*
 - Delivery of keys to landlord, 12, 758*i*
 - Examples, 12, 758*j*
 - Facts showing intention, 12, 758*j*
 - Keys, 12, 751*i*
 - Landlord re-renting premises, 12, 758*j*
 - Notice by tenant, 12, 758*i*
 - Presumption from non-user, 12, 758*i*
 - Purchase of the fee, 12, 758*j*
 - Termination of tenancy, 12, 758*a*
 - Verbal agreement, 12, 758*h*
- Taking leasehold estate on execution, 6, 885
- Taxation**, see *infra*, **LIABILITY OF LANDLORD**.
 - Redemption, 25, 414
 - To whom property is taxed, 12, 692; 25, 122, 123
- Tax Titles**
 - Whether Tenant Can Acquire Tax Title**, 25, 709
 - Where tenant agrees to pay taxes, 25, 709
 - Where there is no covenant to pay tax, 25, 709
- Tear**
 - Wear and tear, 12, 1010
- Tenancy at Sufferance**, 6, 890; 12, 668
- Joint estates*, see **JOINT TENANCY AND TENANCY IN COMMON**.

LANDLORD AND TENANT—Cont'd**Tenancy at Sufferance—Cont'd**

- Agreements of parties, 6, 890
- Definition, 6, 890; 12, 668
- Examples of tenancy at sufferance, 12, 668, 669
- Holding over, 12, 758*p*
- How created, 6, 890
- In New York, 6, 891
- Landlord's right to terminate relation, 12, 668
- Lessee holding after expiration of tenancy at will, 12, 668
- Liability for rent, 12, 669
- Mortgagor after conditions broken, 12, 668
- Mortgagor after sale, 12, 668
- Right to emblements, 12, 669
- Right to notice to quit, 12, 669
- When it arises, 6, 890

Tenancy at Will, 6, 887; 12, 670

- Action against landlord, 12, 674
- Action by, 12, 674
- After expiration of tenancy, 12, 668
- Agreement to purchase, 12, 670
- Assignment, 12, 715
- Before possession is taken, 12, 673
- Care of owner during life, 12, 671
- Common-law notice, 12, 674
- Consent of owner, 12, 672
- Death, 12, 758*b*
- Definition, 6, 887; 12, 670
- Emblements, 6, 887
- Examples of tenancy at will, 12, 670-672
- Executory contract to purchase, 12, 673
- Exercising acts, 12, 674
- Holding over, 12, 670, 758*p*
- How created, 6, 887
- Ingress and egress to remove property, 12, 673
- Interest of tenant, 6, 887
- In what states it exists, 6, 888
- Lease at tenant's pleasure, 12, 671
- Lease until land is sold, 12, 671
- Liability for rent, 12, 675
- Mechanic's liens, 15, 21
- Mortgagor, 12, 665
- Necessity of notice, 6, 888
- No rent prescribed, 12, 671
- Notice to quit, 12, 757*u*
- Oral tenancy, 12, 671-673
- Possession after sale under execution, 12, 672
- Possession under agreement to lease, 12, 670
- Possession under parol contract, 12, 671
- Possession under void deed, 12, 671
- Possession under void lease, 12, 671
- Purchaser, 12, 662
- Squatter, 12, 671
- Statute making all oral tenancies, tenancies at will, 12, 673
- Statutory notice, 12, 673
- Sublease, 12, 715

Termination, 6, 888; 12, 673, 757*u*

- Abandonment of premises, 12, 674, 757*z*

Acts of landlord, 12, 757*y***Acts of Tenant**

- Abandonment, 12, 674, 757*z*
- Attorn to adverse claim, 12, 757*z*
- Denying landlord's title, 12, 757*z*
- Purchase at tax sale, 12, 757*y*
- Sale of stock, 12, 757*y*
- Conveyance of the fee, 12, 674
- Death, 12, 674
- Foreclosure of mortgage, 12, 757*u*
- Lease of either party, 12, 674
- New lease given to same party, 12, 757*u*
- Notice, 12, 673
- Possession by tenant in common, 12, 757*u*
- Sale of land, 12, 757*u*
- Waste, 12, 764
- Will of either party, 12, 673

To What Tenant Is Entitled, 12, 673

- Emblements, 12, 673
- Where tenant terminates tenancy, 12, 673

Trespass by tenant, 12, 674

- Under parol leases, 6, 887
- Vendor and conveyances, 12, 671
- Violation of contract, 12, 674
- Where created, 12, 673
- Whether assignable, 12, 672

Tenancy for Life, 12, 679, 680**See CURTESY; DOWER; REMAINDERS; REVERSION.**

- Action for injured possession, 12, 680
- Admissions of tenant, 12, 681
- Cutting timber for new buildings, 12, 680

Deed, 12, 680

- Definition, 12, 679
- Emblements, 12, 709, 710
- Firewood, 12, 680
- Homestead, 12, 680
- How constituted, 12, 680
- How created, 12, 680
- Intention of lessor governs, 12, 680
- Interest on incumbrances, 12, 680
- Landlord removing cloud upon title, 12, 681

Lease, 12, 680

- Mortgage, 12, 680
- Open mines, 12, 680
- Operating mines, 12, 680
- Operation of law, 12, 679
- Rent, 12, 680
- Repairs, 12, 680
- Reversion, 12, 680
- Tenant holding adversely to landlord, 12, 681

Tenant's Rights and Liabilities, 12, 680

- Action for injured possession, 12, 680
- Cutting timber for new buildings, 12, 680
- Firewood, 12, 680
- Homestead, 12, 680

- Interest on incumbrances, 12, 680
- Lease, 12, 680
- Mortgage, 12, 680
- Open mines, 12, 680
- Operating mines, 12, 680
- Repairs, 12, 680
- Timber, 12, 680
- Transfer, 12, 680
- Use of premises, 12, 680
- Waste, 12, 680
- Termination, 12, 681
- Timber, 12, 680
- Transfer, 12, 680
- Use of premises, 12, 680
- Waste, 12, 680
- Will, 12, 680
- Tenancy for Short Period**
 - Governed by same principles as tenancy from year to year, 12, 679
 - Holding over, 12, 679
 - Statute, 12, 677
 - Tenant holding over, 12, 677
- Tenancy from Year to Year, 6, 888; 12, 675**
 - Adverse possession, 12, 708
 - Assignment, 6, 890
 - Construction, 6, 889
 - Definition, 12, 675
 - Estates at will now considered to be, 6, 888
 - Holding over, 12, 758^b
- Implied from Holding Over, 12, 675**
 - Assent of landlord, 12, 677
 - Conflicting evidence to establish assent, 12, 677
 - Covenants, 12, 677
 - Examples, 12, 676
 - General rule, 12, 675
 - Mere holding over alone, 12, 677
 - Rebuttal of presumption, 12, 676
 - Recognition by landlord, 12, 677
 - Statute, 12, 677
 - Where tenancy is for less than a year, 12, 677
- Implied from statute of fraud, 12, 678
- In consideration of services rendered, 12, 675
- Intention of tenant, 12, 678
- Landlord's right to treat tenant as trespasser, 12, 678
- Notice of termination, 6, 888
- Notice to quit, 12, 757^u
- Payment of rent, 6, 888
- Rent payable annually, 12, 675
- Rent payable monthly, 12, 675
- Rent payable quarterly, 12, 675
- Repairs, 12, 675
- Shorter period, 12, 679
- Statute of fraud, 12, 678
- Termination, 6, 890; 12, 679**
 - How notice must be given, 12, 679
 - Notice to quit, 12, 679
- Waiver of notice, 6, 890
- When Not Implied, 12, 677**
 - Discretion of landlord, 12, 678
 - Negotiations between parties, 12, 678
- Year, 6, 888
- Tenancy of Relation**
 - Tenancy at will*, see *infra*, TENANCY AT WILL.
- Tenant**
 - As to stipulations by*, see LEASE.
- Tenant in possession, 25, 895
- Tenant's liability to third persons, 12, 689-691
- Tenant's Negligence, 12, 714**
 - Acts of agents and servants, 12, 719
 - Defective condition of premises, 12, 718
 - Failure to make repairs, 12, 714
 - Ice, 12, 718
 - Injuries to third persons, 12, 718
 - Liability to co-tenant, 12, 718
 - Liability to third persons, 12, 718
 - Severally liable, 12, 718
 - Tenant's liability, 12, 718
- Termination of Tenancy, 12, 757^s**
 - See *infra*, EVICTION; FORFEITURE; SURRENDER.
- Acts of Landlord, 12, 757ⁿ**
 - See *infra*, EVICTION.
- Foreclosure of mortgage, 12, 757ⁿ
- New lease given to same party, 12, 757ⁿ
- Possession by tenant in common, 12, 757ⁿ
- Sale of land, 12, 757ⁿ
- Acts of Tenant, 12, 757^y**
 - Abandonment, 12, 757^z
 - Attorn to adverse claim, 12, 757^z
 - Denying landlord's title, 12, 757^z
 - Purchase at tax sale, 12, 757^y
 - Sale of stock, 12, 757^y
- Appropriation of premises by eminent domain, 12, 757^z
- Death, 12, 758^b
- Destruction of premises, 12, 757^z
- Happening of particular event, 12, 757^s
- Illegal Use of Premises, 12, 758, 758^l**
 - Waste, see WASTE.
- Failure of provision of lease, 12, 758
- Immoral use, 12, 758
- Unlawful use, 12, 758
- Lapse of time, 12, 757^s
- Lease for definite term of years, 12, 757^t
- Merger of Estate, 12, 758**
 - General rule, 12, 758
 - Reversion acquired by life tenant, 12, 758
 - Reversion conveyed to tenant, 12, 758
 - Where life tenant conveys to the reversioner, 12, 758^a
- Presumption of possession by landlord, 12, 757^t
- Summary proceedings, 12, 758^v
- Tenancy at sufferance, 12, 669
- Tenancy for life, 6, 890; 12, 681
- Tenancy from year to year, 6, 890; 12, 679
- Term of years, 25, 951
- Threats, 12, 705

LANDLORD AND TENANT—Cont'd**Trespass**

Possession of tenant the possession of landlord, 29, 586

Trespass quare clausum fregit, 12, 720

Trover

Fixtures, 26, 775

Usages and Custom, see *infra*, EMBLEMENTS; MANURE.

Mutual privileges founded on usage, 12, 713

Reasonableness, 27, 772

Examples, 27, 772-774

In general, 27, 772

Repairs, 12, 723

Usages Annexing Incidents to Contracts, 27, 835

Away-growing crop, 27, 835, 837

Decisions in Pennsylvania, 27, 836

In general, 27, 835

Rules in United States, 27, 836

Usages contrary to common law, 27, 786

Usages to explain contracts, 27, 823

Usages to vary contracts, 27, 852

Usury, 27, 1017

Attempt to disguise usury, 27, 1017

Examples, 27, 1017, 2018

Usurious agreements, 27, 1018

Valid transactions, 27, 1018

Vendor and Purchaser, 12, 662

Lessee holding over after expiration of lease, 12, 663

Purchaser after default, 12, 662

Purchaser agreeing to pay rent after rescission of contract, 12, 663

Relation between vendor and purchaser, 12, 663

Where deed has been delivered, 12, 663

Waiver, see *infra*, FORFEITURE.

Notice to Quit, 28, 553

Examples, 28, 553-555

Holding over, 28, 554

In general, 28, 553

Receipt of rent, 28, 453

Rent, 28, 554

What amounts to waiver, 28, 553, 554

Waste, 10, 822; 12, 714; 28, 819

See WASTE.

Accidental injury, 12, 715

Action Against Tenant, 28, 914

Examples, 28, 914, 915

His own waste, 28, 914

In general, 28, 914

Waste committed by strangers, 28, 914

At common law, 28, 891

Committed by others, 28, 892

Definition, 12, 714

Erection of building, 10, 822

Examples, 12, 714, 715

Forfeiture, 12, 758a, 758m

In general, 28, 891

Injunction, 28, 931

Bad husbandry, 28, 931

Buildings, 28, 932

Examples, 28, 931-933

Improper use of leased premises, 28, 931

Injunction granted to lessee, 28, 933

Timber, 28, 931

Liability for, 28, 891

Material change in character of building, 10, 823

Permissive waste, 12, 714; 28, 892

Presumption in favor of tenant, 28, 892

Pulling down and removing building, 10, 823

Removal of building, 10, 823

Repairs, 28, 887

Reversioner, 12, 714

Termination of tenancy, 12, 758

Timber, 12, 715

Under statutes, 28, 891

Voluntary, 12, 714

Wood, 12, 715

Way-going crops, see *infra*, EMBLEMENTS.

What may be demised, 12, 660

Wheat straw, 12, 713

When term may begin, 6, 884

Witnesses, 29, 580

Tear to year, see *infra*, TENANCY FROM YEAR TO YEAR.

LAND WARRANTS, see **SHIFTED LAND WARRANTS**; **STATE LANDS**.

LANES, 12, 759

LANGUAGE

English, 6, 645

Ordinary language, 17, 273

LAPSE, 12, 759

In ecclesiastical law, 12, 759

In criminal proceedings, 12, 759

LAPSED DEVISES, see **DEVISES**.

LAPSED LEGACIES, see **LEGACIES**.

LARCENY, 12, 760

See EMBEZZLEMENT; RECEIVING STOLEN GOODS; RESTITUTION OF STOLEN GOODS.

Record, see **EVIDENCE**.

Accessories, see *infra*, **PRINCIPAL AND ACCESSORY**.

Petit larceny, 12, 794

Admissions, 12, 858

Competency of witnesses, 12, 860

Confessions, 12, 859

Conspirators, 12, 859

Corpus delicti, 12, 858

Corroborated proof, 12, 859

Declarations made before larceny, 12, 859

Promise to pay, 12, 860

Silence, 12, 859

Third persons, 12, 860

When competent, 12, 858

Adulterer, 3, 286; 4, 702; 9, 796

Alibi, 12, 850

Amendment

Indictment, 12, 828

Examples, 12, 828

Name of owner, 12, 828

- Prejudice of defendant, 12, 828
 Variance, 12, 828
 Verdict, 12, 891
Animals, 1, 573; 12, 782
 Animals *feræ naturæ*, 12, 783
 Bees, 12, 782
 Cattle, 12, 782
 Dogs, 12, 782
 Domestic animals, 12, 782
 General rule, 12, 782
 Oysters, 12, 783
 Pigeons, 12, 782
 Wild animals, 12, 783
Arrest of Judgment, 12, 893
 Description, 12, 893
 Distinct crimes, 12, 893
 Joinder, 12, 893
 Newly discovered evidence, 12, 893
 Value, 12, 894
 Variance, 12, 893, 894
 When motion lies, 12, 893
Asportation, see *infra*, CARRYING AWAY; INDICTMENT.
Attempt
 Indictment, 12, 816
 To commit larceny, 4, 660
 To steal where there is nothing to be stolen, 4, 667
 Bail, 12, 831
 Bailee, 12, 780
 Bailment, 12, 773, 775, 790
Bank Notes, 12, 784
 Evidence, 12, 836
 Genuineness, 12, 785
 Indictment, 12, 808, 819
 Treasury notes, 12, 784
 Variance, 12, 866
Barred, see *infra*, LIMITATION TO PROSECUTION.
 Between husband and wife, 9, 796
Bills and Notes
 Indictment, 12, 819
Brand, 12, 833, 861
 In general, 12, 861
 Recorded, 12, 861
 Unrecorded, 12, 861
 Variance, 12, 866
Burden of Proof, 12, 880
 Instructions as to possession of stolen property, 12, 880
 Possession of stolen goods, 12, 847, 848
 Possession of stolen property, 12, 851
Burglary
 Conviction of larceny upon failure to convict of burglary, 2, 696
 By child, 1, 328
 By husband and wife jointly, 4, 702
 By wife of husband's goods, 4, 702
 By wife of husband's goods in concurrence with her adulterer, 3, 286; 4, 702; 9, 796
Carrying Away, 12, 763
 See *infra*, INDICTMENT.
 Evidence, 12, 834
 Possession enduring only for an instant, 12, 764
 Presence of person, 12, 764
 Necessity, 12, 763
 No purpose to carry property away, 12, 765
 Out of presence of owner, 12, 764
 What amounts to, 12, 763
 Cashier of bank, 6, 484
 Cattle, 12, 782
 Certificate of stock, 13, 785
 Challenges, 12, 831
Change of Venue, 12, 831
 Application of district attorney, 12, 831
 Discretion of court, 12, 831
 Character, 12, 853
Choses in Action, 12, 784
 At common law, 12, 784
 Invalid bonds or notes, 12, 784
 "Personal goods," 12, 784
 Statute, 12, 784
Co-Defendants
 Evidence, 12, 844
 Collection of checks, 12, 770
 Color of title, 12, 789
Confessions, 12, 859, 860
 Illegally obtained, 12, 860
 Promise to pay, 12, 860
 Threats, 12, 860
Consent, see *infra*, WITHOUT CONSENT OF OWNER.
Conspiracy, see *infra*, EVIDENCE.
 Conspiracy to commit, 4, 597
Conspirators
 Admissions, 12, 859
 Continuance, 12, 831
 Count, see *infra*, INDICTMENT.
 Courts martial, 12, 799
Crime Committed in One County or State and Completed in Another, 12, 796, 820; 13, 797
 Committed in one county, goods taken to another, 10, 531, 532
 Venue, 12, 843
Declarations, 12, 858
 Character of possession, 12, 851
 Competency of witnesses, 12, 860
 Confessions, 12, 859
 Conspirators, 12, 854, 859
 Corpus delicti, 12, 858
 Corroborated proof, 12, 859
 Defendant's declaration concerning property, 12, 840
 Made before larceny, 62, 859
 Promise to pay, 12, 80
 Res gestæ, 12, 857
 Silence, 12, 859
 Third persons, 12, 860
 When competent, 12, 858
Defense, see *infra*, PLEA.
Definition, 12, 761
 Of dwelling-house, 6, 101
 Demurrer, 12, 830
Description, see *infra*, VARIANCE.
Description of Property Taken, see *infra*, INDICTMENT.
 Arrest of judgment, 12, 893
Bank Bills, 12, 808
 Number, 12, 808

LARCENY—Cont'd**Description of Property Taken—Cont'd****Bank Bills—Cont'd**

Synonymous with bank notes, 12, 808

Value, 12, 808

Bill of exchange, 12, 814

"Cattle," 12, 812

Certainty, 12, 811

Coin, 12, 810

Color of animal, 12, 812

Cow, 12, 813

Crops, 12, 813

Current money of the United States, 12, 810

Deed, 12, 814

Description unknown to grand jury, 12, 807

Examples, 12, 806-818

Excuse for omission, 12, 807

Grain, 12, 813

Greenbacks, 12, 809

Hogs, 12, 813

Horse, 12, 812

Kind of coin, 12, 810

Minute description, 12, 811

National currency, 12, 809

Particulars unknown, 12, 812

Plea of guilty as waiver, 12, 830

Promissory note, 12, 814

Property subject to larceny, 12, 808

Securities, 12, 814

Sex of animals, 12, 812

Sheep, 12, 812, 813

Species of coin, 12, 811

Statutory words, 12, 808

Sufficiency of description, 12, 806

Uncertainty, 12, 806

United States currency, 12, 809

Vagueness, 12, 806

Value, 12, 808, 810

Value of money, 12, 811

Distinguished

From Embezzlement, 6, 455; 12, 767

Embezzling proceeds of property, 6, 458

Goods received from master, 6, 456

Lack of element taking in embezzlement, 6, 456

Marked money, 6, 456

Possession and embezzlement, 6, 457

Possession distinguished from mere custody, 6, 457

Power of legislature to include larceny, 6, 455

Property in hands of bailee or servant, 6, 455

Property merely in custody, 6, 457

Servant of a co-partnership, 6, 458

Statutory offense, 6, 455

From false personation, 7, 696

From false pretense, 7, 700; 12, 770

From malicious mischief, 12, 789

From robbery, 12, 791; 21, 415

Dogs, 12, 782

As subject of larceny, 1, 573

Special tax upon, 1, 573

Duplicity, 12, 825

One of several articles, 12, 825

Theft from several owners, 12, 826

Theft of several articles, 12, 825

When bad for, 12, 825

Dwelling, see *infra*, FROM A DWELLING HOUSE OR OTHER BUILDING.

Embezzlement, 6, 455, 458; 12, 769

Evidence, 12, 832

See *infra*, VARIANCE.

Acts of Conspirators, 12, 854

Admissibility, 12, 854

Corroboration, 12, 854

Declarations, 12, 854

General rule, 12, 854

Theft in furtherance of general design, 12, 854

Admissibility, 12, 843

Acts of co-defendants, 12, 844

Circumstances throwing light on the transaction, 12, 844

Examples, 12, 844

After occurrences, 12, 844

In general, 13, 843

Living beyond one's means, 12, 844

Possession of stolen goods, 12, 847

Admissions, see *infra*, ADMISSIONS; DECLARATIONS.

Bills, 12, 836

Brand, 12, 861

In general, 12, 861

Recorded, 12, 861

Unrecorded, 12, 861

Carrying away, 12, 834

Character of, 12, 843

Circumstantial, 12, 843

Instructions, 12, 879

Burden of proof, 12, 879

Conviction from that fact alone, 12, 879

Explanation, 12, 880

Form of language, 12, 879

Possession of Stolen Property, 12, 879

See *infra*, POSSESSION OF STOLEN PROPERTY.

Preponderance of evidence, 12, 881

Reasonable doubt, 12, 881

Recent possession, 12, 880

Where prosecution relies upon law, 12, 879

Consent, 12, 838

Absence of, 12, 838

Circumstantial evidence, 12, 838

How non-consent shall be proved, 12, 838

In New York, 12, 838

Personal property, 12, 838

Declarations, see *infra*, DECLARATIONS.

Direct, 12, 843

Identity of Defendant, 12, 837

Defendant known by certain name, 12, 837

Foot-tracks, 12, 837

- Identity of Stolen Property**, 12, 835
 Best evidence, 12, 836
 Description of stolen bills, 12, 836
 Evidence of genuineness, 12, 836
 Evidence of value, 12, 836
 Identification by witness, 12, 835
 Necessity of proof, 12, 835
 Parol evidence, 12, 835
 Property improperly described, 12, 837
 Similar article, 12, 835
In general, 12, 832
Intent, 12, 838
 Bona fide taking, 12, 839
 Claim of right, 12, 839
 Declarations, 12, 839
 Defendants dealing with property, 12, 840
 Infant, 12, 838
 License, 12, 839
 Other larcenies, 12, 855
 Possession, 12, 839
 Proof of felonious, 12, 838
 Question for jury, 12, 840
 Return, 12, 840
 What admissible, 12, 839
Money, 12, 836
Of Other Larcenies, 12, 855
 Admissibility, 12, 855
 Guilty intent, 12, 855
 Possession of stolen property, 12, 856
 Res gestæ, 12, 855
Opinion, 12, 841, 842
Ownership of Property, 12, 832
 Brand, 12, 833
 Constructive possession, 12, 832
 General evidence of property, 22, 832
 Paper evidence of title, 12, 833
 Paper title, 12, 832
 Prima facie proof of ownership, 12, 832
 Proof corresponding to allegation, 12, 832
 Record title, 12, 833
 Special property, 12, 832
Possession of Stolen Property, 12, 845, 856
 Admissibility in evidence, 12, 847
 Assertion of claim, 12, 845
 Burden of proof, 12, 849
 Circumstances to show guilt, 12, 847, 848
 Co-conspirators, 12, 848
 Conclusiveness, 12, 846
 Exclusive, 12, 848
Explanation of Defendant's Possession, 12, 849
 Admissibility, 12, 849
 Alibi, 12, 850
 Burden of proof, 12, 851
 Circumstances not admissible, 12, 851
 Conclusiveness of presumption, 12, 853
 Declaration of accused, 12, 851
 Effect of failure to explain, 12, 851
 Explanation upon arrest, 12, 850
 Failure to make explanation, 12, 852
 False explanation, 12, 853
 Impeachment of witness, 12, 852
 Improbable explanation, 12, 852
 Necessity of intent, 12, 851
 Partial rebuttal of presumption, 12, 853
 Previous good character, 12, 853
 Purchase, 12, 850
 Reasonable doubt, 12, 852
 What circumstances admissible, 12, 850
 What warrants verdict of guilty, 12, 853
 When explanation may be made, 12, 850
 Where defendant has parted with goods, 12, 850
 Failure to make satisfactory explanation, 12, 852
 General rule, 12, 845
 Illegal custom, 12, 851
 Part of the stolen goods, 12, 847
 Personal, 12, 848
 Possession alone, 12, 847
 Presumption, 12, 845
 Presumption of fact, 12, 849
 Presumption of guilt, 12, 834
 Property other than that described, 12, 848
 Question for jury, 12, 847, 848
 Remoteness, 12, 846
 Strength, 12, 847
 Time between theft and possession, 12, 846
 What is sufficiently recent, 12, 846
 Whether sufficient for conviction, 12, 847
 Reasonable doubt, 12, 843
Record, 12, 861
 Bill of sale, 12, 861
 Cattle brand, 12, 861
 Preliminary examination, 12, 861
 Warrant, 12, 861
Similar Crimes, 12, 853
 Burglary, 12, 854
 Evidence of embezzlement, 12, 854
 Obtaining goods under false pretenses, 12, 853
 Receiving stolen property, 12, 854
 Whether such evidence will sustain conviction, 12, 854
 Sufficiency, 12, 886, 887
The Taking, 12, 833
 False pretense, 12, 834
 In Texas, 12, 834
 Necessity of proof, 12, 833
 Possession of property, 12, 834
 Tracks, 12, 837
Value, 12, 836, 841
 Aggregate value of several articles, 12, 842
 Criterion of, 12, 842

LARCENY—Cont'd**Evidence—Cont'd****Value—Cont'd**

Description of goods, 12, 841

Grade of offense, 12, 842

Inspection of goods, 12, 841

Market, 12, 842

Necessity of proof, 12, 841

Of gold and silver coin, 12, 841

Opinion of owner, 12, 842

Opinion of witnesses, 12, 841

Proof of, 12, 841

Some, 12, 841

What evidence admissible, 12, 841

Venue, 12, 843, 886

Necessity of proof, 12, 843

Reasonable doubt, 12, 843

Stolen in one county and brought into another, 12, 843

Sufficiency of proof, 12, 843

What is required, 12, 832

Exceptions, 12, 894

Authentication, 12, 894

Duty of higher court, 12, 895

Necessity, 12, 894

Time to prepare, 12, 894

When exceptions may be taken, 12, 894

False Personation, 7, 697; 12, 773

As forming a part of larceny, 7, 696

False pretense, 12, 770

False token, 12, 773

Felonious intent, see *infra*, INTENT.

First offense, 12, 823

Foot-tracks, 12, 837

Former Conviction, see *infra*, INDICTMENT.

Punishment, 12, 897

From a Dwelling-House, 12, 791See *infra*, INDICTMENT.

As grand larceny, 12, 791

Domestic servant, 12, 792

Employee, 12, 792

Examples, 12, 792

Interior of house, 12, 792

Nighttime, 12, 793

Occupant of the house, 12, 791

Or other building, 12, 791

Shop, 12, 793

Store, 12, 793

Stranger, 12, 792

Verdict, 12, 884

When from building and when from person, 12, 792

From the Person, 12, 791See *infra*, INDICTMENT.

Consent of owner, 12, 791

Distinguished from robbery, 12, 791

Grand larceny, 12, 793

Knowledge of owner, 12, 791

Verdict, 12, 884

What constitutes, 12, 791

Gas, 12, 785

Goods stolen in one county and taken into another, 3, 538

Goods stolen in one state and taken into another, 3, 538

Grand Larceny, 12, 793

Definition of offense, 12, 793

Distinguished from petit larceny, 12, 793

From dwelling house, 12, 793

From the person, 12, 793

Market value, 12, 793

Several small larcenies, 12, 793

Growing crops, 4, 891

Honest misapprehension of ownership of property, 4, 687

Husband and Wife, 3, 286; 4, 702; 9, 796; 13, 774

Indictment, 12, 803

Ice, 12, 785

Identity*Stolen property*, see *infra*, EVIDENCE.

Instructions, 12, 873

Identity of owner, see *infra*, VARIANCE.*Identity of property*, see *infra*, EVIDENCE; VARIANCE.**Indictment, 12, 800***See *infra*, VENUE.*Duplicity*, see *infra*, DUPLICITY.**Allegations of Ownership, 12, 800**

Articles belonging to different persons, 12, 805

Averment of ownership, 12, 804

Breach of trust, 12, 806

Corporate property, 12, 804

Estate of decedent, 12, 805

General and special property, 12, 800

Heir, 12, 805

Husband and wife, 12, 803

Incorrect statement of name, 12, 802

Joint property, 12, 803

Larceny by bailee, 12, 803

Larceny from general and special owner, 12, 801

Minor, 12, 805

Mortgagee in possession, 12, 804

Necessity of averment, 12, 800

Occupancy of house, 12, 806

Omission of name, 12, 802

Ostensible owner, 12, 805

Owner unknown, 12, 802

Possession, 12, 801

Property of special owner, 12, 801

Real owner, 12, 805

Several counts, 12, 806

Special property, 12, 803

Statutory words, 12, 802

Stray, 12, 803

Amendment, 12, 828

Examples, 12, 828

Name of owner, 12, 828

Prejudice of defendant, 12, 828

Variance, 12, 828

Charging Different Crimes in Different**Counts, 12, 820, 826**

Burglary, 12, 827

Conspiracy to defraud, 12, 827

Discretion of court, 12, 827

Election, 12, 827

Joinder, 12, 826

- Nolle prosequi, 12, 828
 Receiving stolen property and theft, 12, 826
 Several larcenies, 12, 827
 Description of property, 10, 596
 For, in conviction of burglary, 15, 368
 For larceny, conviction for attempt, 15, 368
Former Conviction, 12, 822
 Facts conferring jurisdiction, 12, 822
 First offense, 12, 823
 Sufficiency of allegation, 12, 822
Form of, 12, 823
 Bailee, 12, 823
 Certainty, 12, 824
 Grammatical inaccuracy, 12, 824
 Grand or petit larceny, 12, 823
 Misspelling, 12, 824
 Surplusage, 12, 824
 Unknown person, 12, 823
 Verbal inaccuracy, 12, 824
 From a building, 12, 821
 From a dwelling house, 12, 822
 From the person, 12, 821
Intent, 12, 817
 Alleging felonious, 12, 817
 Embezzlement, 12, 818
 " Feloniously," 12, 817
 Fraudulently, 12, 817
 Larceny from dwelling house, 12, 818
 Necessity of allegation, 12, 817
 Irregularities, 12, 824
Joint
 Severance, 12, 832
 Misspelling, 12, 824
Possession of Owner, 12, 816
 At common law, 12, 816
 In New Jersey, 12, 816
 In Virginia, 12, 816
 Statutes, 12, 816
 Receiver of stolen goods, 10, 599f
 Second offense, 10, 570
 Statute of limitations, 12, 795, 823
 Surplusage, 12, 824
Taking and Carrying Away, 12, 815
 Attempt, 12, 816
 Conversion by bailee, 12, 816
 In Texas, 12, 815
 Larceny from the person, 12, 815
 Necessity of allegation, 12, 815
 Where "take and carry away" are unnecessary, 12, 815
Under Special Statutes, 12, 829
 " Contrary to the form of statute," 12, 830
 Larceny at common law, 12, 829
 Necessary allegations, 12, 829
 Sufficiency of allegation, 12, 829
 Words of statute, 12, 829
Value, 12, 818
 Affecting penalty, 12, 818
 Bank notes, 12, 819
 Duplicity, 12, 826
 Effect of not stating, 12, 819
 General rule, 12, 819
 Grand larceny, 12, 818
 Money, 12, 819
 Necessity of the allegation, 12, 818
 Promissory notes, 12, 819
 Theft of several different things, 12, 819
 Variance, 12, 828
Without Consent of Owner, 12, 816
 Joint ownership, 12, 816
 Necessity of allegation, 12, 816
 Infamous crime, 10, 605, 646
 Infancy, 12, 830
Instructions, 12, 870
 See infra, SIMILAR OFFENSES.
 Assumption of facts in issue, 12, 871
 As to fraudulent intent, 12, 874
 As to identity, 12, 873
 As to ownership, 12, 873
 As to want of consent, 12, 874
 Biased or prejudicial charge, 12, 873
Circumstantial Evidence, 12, 872, 879
 Burden of proof, 12, 879
 Conviction from that fact alone, 12, 879
 Explanation, 12, 880
 Form of language, 12, 879
Possession of Stolen Property, 12, 879
 See infra, POSSESSION OF STOLEN PROPERTY.
 Preponderance of evidence, 12, 881
 Reasonable doubt, 12, 881
 Recent possession, 12, 880
 Where prosecution relies upon law, 12, 879
 Construed as a whole, 12, 870
 Examples of, 12, 267-274
 Felonious, 12, 871
 How construed, 12, 870
Intent, 12, 874
 False and unfounded claim, 12, 876
 Offense not criminal, 12, 876
 Purchase, 12, 876
 Taking under claim of right, 12, 875
 What constitutes fraudulent intent, 12, 874
 Invasion of province of jury, 12, 871
 Reasonable doubt, 12, 872
 Special, 12, 870
Value, 12, 877
 Grades of larceny, 12, 877, 878
 Measure, 12, 877
 Where sentence depends upon, 12, 877
 Weight and effect of evidence, 12, 870
 When entitled to instructions, 12, 873
 When error to refuse, 12, 870
Intent, 12, 776
 See infra, EVIDENCE; INDICTMENT; INSTRUCTIONS; LOST PROPERTY.
 At time of taking, 12, 779
 Bailee, 12, 779
 Carrying away, 12, 765
 Change of mind, 12, 776
 Color of title, 12, 789
 Conversion for use of another, 12, 778
 Disposition of property, 12, 778
 Evidence of, 12, 777
 Mistake, 12, 788

LARCENY—Cont'd**Intent—Cont'd**

- Necessity of felonious, 12, 776
- Not existing at time of taking possession, 12, 772
- Not existing at time possession was acquired, 12, 779
- Questions of law and fact, 12, 874
- Setting aside verdict, 12, 889
- Taking, 12, 763
- To appropriate property, 12, 777
- To deprive owner of use of property, 12, 778
- To induce owner to offer reward, 12, 778
- To return, 12, 788
- Wrongful taking without, 12, 777

Jeopardy, 11, 942

- Burglary and larceny, 11, 943, 945
- Different larcenies, 11, 945
- Grand and petit larceny, 11, 942
- Robbery and larceny, 11, 942
- Where same act constitutes several offenses, 11, 938

Joinder, 12, 826

- Arrest of judgment, 12, 893
- Burglary, 12, 827
- Discretion of court, 12, 827
- Election, 12, 827
- Nolle prosequi, 12, 828
- Of embezzlement and larceny, 6, 498
- Receiving stolen property and theft, 12, 826
- Several larcenies, 12, 827
- With false pretenses, 7, 763
- With receiving stolen property, 20, 451

Jurisdiction, 12, 796

- County where larceny is committed, 12, 796

Courts martial, 12, 799**Crime Commenced in One County or State and Completed in Another, 10, 531, 532; 12, 820**

- Crime committed partly in one county and partly in another, 12, 796

State into which thief has brought goods, 12, 796

- Stealing in one state and bringing goods into another, 12, 797

Venue, 12, 843**Examples, 12, 797**

- Goods stolen in foreign countries, 12, 798

Local courts, 12, 799

- Property carried to another place, 12, 796

Taking, 12, 798**United States courts, 12, 799****Value, 12, 884****Jury and jury trial, 12, 831****Justification**

- Where property is confided to a bailee, 4, 811

Kleptomania, 12, 830; 15, 257**Letters, 13, 784****Libel and slander, 13, 307, 340, 344, 388****Lienholder, 12, 780****Limitation to Prosecution, 12, 794**

- At common law, 12, 794
- Concealment, 12, 795
- Continuous crimes, 12, 795
- Extra-territorial effect, 12, 795
- Flight, 12, 795
- Indictment, 12, 795
- Liberal construction of statutes, 12, 794

Offense committed before passage of statute, 12, 795**Pleading, 12, 795****Statutes, 12, 794****Suspension of statute, 12, 795****When statute begins to run, 12, 795****Living beyond one's means, 12, 844****Lost Property, 7, 977; 12, 786****English cases, 7, 980**

- Finder must have means of discovering owner at hand, 7, 980

Ignorance of law, 7, 981**Inference of intent, 12, 787****In Missouri, 7, 979****In New York, 7, 978****In Tennessee, 7, 978****Intent, 12, 786****Intent at the time of taking, 12, 786****Knowledge of owner, 12, 787****Larceny of finder, 7, 977****Marked property, 12, 787****Means of knowing owner, 12, 787****No felonious intent, 12, 788****Old rule and new, 7, 980****Place of finding, 12, 788****Stray cattle, 12, 787****Time of finding, 12, 788****When fraudulent intent must be formed, 7, 980****When not larceny, 12, 788****Whether subject of larceny, 12, 786****Whether there can be larceny of lost property, 7, 977****Malicious mischief, 12, 789****Married women, 14, 649****Matters preliminary to trial, 12, 831****Merger, 15, 367****Mixed larceny, 15, 697****Money****Evidence, 12, 836****Evidence of value, 12, 841****Indictment, 12, 808-810, 819****Paid by mistake, 12, 768, 769****Variance, 12, 867****Money, Coin, 12, 784****Bank notes, 12, 784****Coin, 12, 784****Forged bank notes, 12, 785****Money, 12, 784****Mortgagee, 12, 780****Owner****Identity of owner, see *infra*, IDENTITY.****Ownership of property, see *infra*, EVIDENCE.**

Ownership*See infra*, INDICTMENT.

Instructions, 12, 873

Oysters, 12, 783

Partnership

By one partner from another, 17, 943

Personal Property of Another, 12, 765

Mistake as to ownership, 12, 765

Mortgagees, 12, 765

Part owner of property, 12, 765

Taking from trustees, 12, 765

What interest, 12, 765

Petit, 10, 608, 794

Accessory, 12, 794

At common law, 12, 794

Definition of offense, 12, 794

Distinguished from grand larceny, 12,

793

Felony, 12, 794

Misdemeanor, 12, 794

Plea, 12, 830

Demurrer, 12, 830

Description, 12, 830

Examples, 12, 830, 831

Guilty, 12, 830

Infancy, 12, 830

Kleptomania, 12, 830

Waiver of objections, 12, 830

Pleading

Statute of limitations, 12, 795

Possession, *see infra*, INDICTMENT.**Possession Obtained**, 12, 770

Agent, 12, 773

By lawful means, 12, 770

Distinguished from false pretenses, 12,

770

False personation, 12, 773

False tokens, 12, 773

Fraudulent trick, 12, 770

Goods, 12, 770

Money, 12, 771

Pretense of hiring, 12, 773

Surrender of title as well as of possession, 12, 770

Taking not felonious in the first instance, 12, 771

When intent must have existed, 12,

772

Possession of Owner or His Agent, 12, 766

Another's possession, 12, 766

Appropriation by agent or servant,

12, 767

Collection of check, 12, 770

Constructive possession, 12, 766

Conversion of money, 12, 768

Delivery to another for special purpose, 12, 768

Detention of property, 12, 769

Distinguished from embezzlement, 12,

767

Embezzlement as larceny, 12, 769

Examples, 12, 766, 767

Money paid by mistake, 12, 768

Possession of agent, 12, 767

Possession of servant, 12, 767

Possession that of owner or his agent,

12, 766

Property in trust of agent or servant,

12, 769

Special ownership, 12, 766

Possession of Stolen Property, 2, 693, 694*See infra*, EVIDENCE.**Instructions**, 12, 879

Conviction from that fact alone, 12,

879

Explanation, 12, 880

Preponderance of evidence, 12, 881

Reasonable doubt, 12, 881

Recent possession, 12, 880

Postal Law, 18, 862

Evidence, 18, 863

In general, 18, 862

Intention, 18, 863

Provisions of revised statutes, 18, 862

What constitutes the crime, 18, 863

Principal and Accessory, 12, 780

Actual presence, 12, 781

After the fact, 12, 781

Agent, 12, 781

Aiders and abettors, 12, 780

Before the fact, 12, 781

Petit larceny, 12, 781

Promissory Notes

Indictment, 12, 819

Prosecution*When barred*, *see infra*, LIMITATION
TO PROSECUTION.**Punishment**, 12, 895

Amendment of statute, 12, 897

At common law, 12, 895

Designation of court, 12, 895

Differant, 12, 897

Examples, 12, 895-898

Former conviction, 12, 897

Jury, 12, 896

Return of property, 12, 897

Second offense, 12, 897

Special statutes, 12, 893

Statute failing to designate punishment, 12, 895

Statutory, 12, 896

Value of property, 12, 896

Questions of Law and Fact

Intent, 12, 840

Possession of stolen goods, 12, 847

Really, *see infra*, THINGS SAVORING
OF REALTY.**Reasonable Doubt**, 12, 843, 881, 886Instructions as to the possession of
stolen property, 12, 880

Possession of stolen property, 12, 852

Venue, 12, 843

Receipt, 12, 783**Receiving stolen property**, 20, 442**Res Gestæ**, 12, 857; 21, 115

Declarations as to right to property,

12, 116

Declarations explanatory of possession,

12, 115

Examples, 12, 116

In general, 12, 115

Other larcenies, 12, 855

Statements of defendant, 12, 857

What admissible, 12, 857

LARCENY—Cont'd

- Restitution, 12, 898
 - At common law, 12, 898
 - In United States, 12, 898
 - Summary, 12, 898
- Return, 12, 840
- Reversal, see *infra*, VERDICT.
- Reversion of judgment, 12, 885, 886
- Reward, 12, 778
- Search warrant, 21, 958, 959
- Second Offense
 - Punishment, 12, 897
- Severance, 12, 831
- Similar crimes, see *infra*, EVIDENCE.
- Similar Offenses, 12, 878
 - Instructions, 12, 878
 - Other property, 12, 878
 - Property taken at the same time, 12, 878
 - Receiving stolen property, 12, 878
- Simple larceny, 22, 784
- Soliciting a servant to steal his master's goods, 4, 670
- Statute of Limitations
 - Indictment, 12, 823
- Stealing, 20, 442
- Stealing shroud or apparel of dead body, 5, 118
- Subjects of, 12, 784
 - See *infra*, ANIMALS; CHOSSES IN ACTION; MONEY; THINGS SAVORING OF REALTY; WRITTEN INSTRUMENTS.
- Ice, 12, 785
- Illuminating gas, 12, 785
- Examples, 12, 785, 786
- Gaming checks, 12, 785
- Gas, 8, 1287
- In general, 12, 785
- Property donated to public use, 12, 786
- Property illegally acquired, 12, 786
- Railroad tickets, 12, 785
- Slightest degree of usefulness, 12, 786
- Test of value, 12, 786
- Value, 12, 786
- Surplusage, 12, 824
- Take, 25, 1
- Taking, 12, 762
 - See *infra*, EVIDENCE; INDICTMENT.
 - Distinguished from robbery, 12, 763
 - Essential element of crime, 12, 762
 - Intent after, 12, 762
 - Intention of, 12, 762
 - Jurisdiction, 12, 798
 - Manual possession by thief, 12, 762
 - Not felonious in the first instance, 12, 771
 - Secrecy, 12, 763
- What Does Not Amount to Larceny, 12, 788
 - Bailee, 12, 790
 - Color of title, 12, 789
 - Conversion by constable, 12, 790
 - Failure to make division, 12, 790
 - Intent to return, 12, 788
 - Knowledge of owner, 12, 789
 - Malicious injury, 12, 789

- Mistake, 12, 788
- Protection of property, 12, 789
- Self-defense, 12, 789
- Taking property openly, 12, 789
- To prevent violation of law, 12, 789
- Without felonious intent, 12, 788
- Theft, 25, 1054
- Things Savoring of Realty, 12, 781
 - Examples, 12, 781, 782
 - Key in door, 12, 781
 - Personal chattels constructively annexed, 12, 781
 - Things attached to the freehold, 12, 781
- Tickets, 12, 785
- Time
 - Variance, 12, 869
- Trees, 26, 558
- United States courts, 12, 799
- Value, 28, 47
 - See *infra*, EVIDENCE; INDICTMENT; INSTRUCTIONS; VERDICT.
- Averment, 12, 893
- Punishment, 12, 896
- Setting aside verdict, 12, 889
- Special statutes, 12, 892
- Variance, 12, 869
- Variance, 12, 828, 862, 868
 - Arrest of judgment, 2, 894
 - Description, see *infra*, IDENTITY OF PROPERTY.
- False pretenses, 12, 862
- Fatality, 12, 862
- Identification of Owner, 12, 863
 - Discrepancies in name, 12, 864
 - General ownership, 12, 864
 - Misspelling, 12, 864
 - Name of owner, 12, 863
 - Possession by latest owner, 12, 863
 - Special ownership, 12, 864
 - Tenant in common, 12, 864
 - Unknown owner, 12, 864
 - Whether fatal, 12, 863
- Identification of place of crime, 12, 868
- Identity of Property, 12, 865
 - Animals, 12, 865
 - Bank notes, 12, 866
 - Certain number of articles, 12, 868
 - Checks, 12, 867
 - Descriptive averment, 12, 865
 - Designation of animal by name, 12, 866
 - General rule, 12, 865
 - Greenbacks, 12, 867
 - Marks and brands, 12, 866
 - Money, 12, 867
 - Object of description, 12, 865
 - Treasury notes, 12, 866
- Kidnapping, 12, 863
- Material, 12, 862
- Ownership of property, 12, 832
- Receiving stolen property, 12, 862
- Robbery, 12, 863
- Time, 12, 869
- Value, 12, 869
- Venue, 12, 869
- Verdict, 12, 888

Venue, 12, 820, 886

See *infra*, EVIDENCE.

County where prosecution is laid, 12, 820

Failure to produce evidence, 12, 886

Petit larceny, 12, 820

Place where demand was made, 12, 821

Stolen in one county and brought into another, 12, 820

Trust, 12, 821

Variance, 12, 869

Verdict, 12, 881, 886

Reversion, see *infra*, SETTING ASIDE.

Assessment of Value, 12, 884

Aggregate value, 12, 885

Exact sum charged in indictment, 12, 885

General verdict, 12, 884

Jurisdiction, 12, 884

Special finding, 12, 884

Conclusiveness, 12, 882

Counts, 12, 883

Defects in, 12, 885

Formal defects, 12, 885

Immaterial defects, 12, 885

Misspelled words, 12, 885

Failure of evidence, 12, 886

General, 12, 881, 884

Grand and petit larceny, 12, 883

Guilty as to part of the articles, 12, 882

Indictment for robbery, 12, 884

Joint defendant, 12, 882

Larceny from a dwelling-house, 12, 884

Larceny from person, 12, 884

Necessity of special finding, 12, 881

Of petit larceny, 12, 883

Partial, 12, 882

Receiving stolen property, 12, 884

Responsiveness, 12, 882

Setting Aside, 12, 886, 888

Amendment, 12, 891

Asportation, 12, 888

Claim of ownership, 12, 890

Conflicting evidence, 12, 891

Conviction of embezzlement, 12, 890

Credibility of witnesses, 12, 891

Different crime, 12, 892

Failure of evidence, 12, 888

Fraudulent intent, 12, 889

Higher grade of crime, 12, 892

Irregularity, 12, 891

Newly discovered evidence, 12, 890

Number of jurors, 12, 891

Reasonable presumption of guilt, 12, 891

Receiving stolen property, 12, 889

Uncertain verdict, 12, 891

Value, 12, 889

Variance, 12, 888

Violation of duty by prosecuting officer, 12, 891

Several distinct offenses, 12, 881

Sufficiency, 12, 881

Under Special Statutes, 12, 892

Compliance with statute, 12, 892

Punishment, 12, 893

Value, 12, 892

While intoxicated, 4, 807

Who May Commit Offense, 12, 780

Bailee, 12, 780

Capacity for crime, 12, 780

General owner of goods, 12, 780

Lienholder, 12, 780

Mortgagee, 12, 780

Without Consent of Owner, 12, 774

See *infra*, INDICTMENT.

Bailee in charge of goods, 12, 775

Consent obtained by false pretenses, 12, 776

Custodian of property, 12, 774

Instructions, 12, 873

Knowledge of ownership of property, 12, 775

Opportunities given to thief in order to entrap him, 12, 774

To that particular taking, 12, 774

Wife's consent, 12, 774

Witnesses, 12, 862

Informers, 12, 862

Owner of stolen property, 12, 862

Written Instruments, 12, 753

Letters, 12, 784

Of value, 12, 783

Public records, 12, 783

Receipt, 12, 783

LARGE, 12, 898-900

"Going off large," 12, 902

LARGER, 12, 902

LASCIVIOUS, 12, 902

See LEWD.

Lewd and lascivious cohabitation and conduct, see LEWD AND LASCIVIOUS.

LAST, 12, 902

Last date, 12, 905

Last examination, 12, 906

Last legal settlement, 12, 907

"Last place of abode," 12, 902

Last sickness, 12, 907

Since last entering service, 12, 905

LATE, 12, 908

LATENT, 12, 910

Latent deed, 12, 910

LATENT AMBIGUITY, see AMBIGUITY.

LATENT DEFECTS, 12, 910

Employee's Liability, 12, 923

Employee's right to expect freedom from, 12, 923

Master liable, 12, 924

Want of reasonable care, 12, 924

In Goods Sold, 12, 926

Evidence concerning fraud, 12, 932

Exceptions to general doctrine, 12, 927

Executory contracts, 12, 929

Fraudulent concealment of latent defect, 12, 931

In general, 12, 926

Manufacturer's warranty against, 12, 927

Patent defects, 12, 929

Remedy on divergence from description, 12, 930

LATENT DEFECTS—Cont'd**In Goods Sold—Cont'd**

- Scienter, 12, 926
- Warranty by dealer, 12, 927
- Warranty of fitness as related to that against latent defects, 12, 928

In Vehicles, 12, 910

- Liability of coach proprietors, 12, 910
- Liability of livery stable keeper, 12, 910

Liability of Passenger Carrier, 12, 910

- Burden of proof, 12, 917
- Conclusions concerning passenger carrier's liability, 12, 912
- Crack in iron axle, 12, 915
- English view, 12, 913, 914
- Examples, 12, 912-923
- Imputed negligence, 12, 913
- In Illinois, 12, 923
- In Massachusetts, 12, 918
- In Michigan, 12, 912, 920
- In New York, 12, 911, 915
- In Pennsylvania, 12, 918
- In Tennessee, 12, 912, 921
- Letting out grand stand, 12, 914
- Negligence of manufacturer, 12, 912
- Purchase from skillful manufacturer, 12, 911
- Review of decision, 12, 912
- "Vehicle-worthy road," 12, 916

Master and Servant, 14, 844, 891

- Defective rope, 14, 891
- Defects obvious, 14, 844
- Fall of pulley, 14, 891
- Internal defect in timber, 14, 891
- Liability for, 14, 844
- Liability of master, 14, 891
- Negligence of master, 14, 844
- Questions of law and fact, 14, 844

Municipal Corporation's Liability for, 12, 925

- Duty of municipality, 12, 925
- Negligence, 12, 925

Rescission, 21, 32**Ships, 22, 741****LATERAL, 12, 933****LATERAL AND SUBJACENT SUPPORT, 12, 933, 935****See PARTY WALLS; PRESCRIPTION.**

- Change of grade in street, 12, 935
- Continuous use of, 19, 18
- Damages, 12, 939
- Definition, 12, 933
- How Right May Be Acquired, 12, 935
 - Ex jure nature, 12, 935
 - Expressed grant, 12, 935
 - Grant, 12, 935
 - Implied grant, 12, 935
 - Prescription, 12, 935; 19, 18
- Injunction, 10, 849; 12, 939
 - Ancient buildings, 10, 850
 - Nature of the right, 10, 849
 - Prescriptive right to lateral support, 10, 850
 - Right of property, 10, 849
 - Right of support, 10, 850
 - Rights of adjoining proprietor, 10, 850

Subadjacent support, 10, 850

Weight of buildings, 10, 850

Mines and Mining Claims, 12, 934; 15, 589

- Buildings, 15, 591
- Examples, 15, 590
- Increasing pressure, 15, 591
- In general, 15, 589
- Miner working with utmost care and skill, 15, 590
- Surface in its natural state, 15, 591
- Waiver of right to support, 15, 590
- Where the right is excepted, 15, 590
- Whether right to support absolute, 15, 590
- Whether rule is same as in case of ordinary lands, 15, 591

Prescription, 12, 939; 19, 28

Continuous use of, 19, 18

Right

Extent of right, 26, 594

Right and Liabilities of Adjoining Owners, 12, 937

- Care and skill to be used, 12, 937
- Liability, 12, 937
- Negligence, 12, 938
- Notice, 12, 937

Trespass, 26, 593

Extent of right, 26, 594

In general, 26, 593

Right of owner to lateral support, 26, 593

Underground waters, 27, 429**LATERAL OR BRANCH RAILROAD, 12, 940; 19, 805**

- Agreements not to build side track, 19, 806
- Branch road, 19, 805
- Carriers, 12, 947
- Charter, 12, 940
- Condemnation of land, 12, 940, 943, 947; 19, 805
- Definition, 12, 940
- Discretion of directors, 12, 942
- Eminent domain, 12, 940, 945, 947; 19, 805
- Generally, 12, 940
- Mortgage, 19, 706
- Negligence in operations, 12, 948
- Organizing another corporation of its own stockholders, 19, 806
- Power to construct, 12, 940; 19, 805, 813
- Private establishments, see *infra*, SPURS.
- Purchase of branch railroad, 12, 941
- Side tracks, see *infra*, SPURS; SWITCHES AND SIDINGS.

Spurs, 12, 942

- Charter of company, 12, 943
- Condemned by another company, 12, 944
- Eminent domain, 12, 943
- In absence of legislative authority, 12, 943
- Mandamus, 12, 945
- Order of legislature, 12, 942
- Ordinary side tracks, 12, 944
- Right of railroad to run, 12, 942

- Switches and Sidings, 12, 945
 Eminent domain, 12, 947
 Public use, 12, 946
 Railroad in street, 12, 946
 Right to construct, 12, 945
 Taxation, 12, 948; 25, 172
- LATITAT**, 12, 948
- LATTER**, 12, 949
- LAUNCHED**, 12, 949
- LAUNDRIES**
 Police power, 18, 756
- LAUNDRY BUSINESS**
 Municipal corporations, 15, 1190
- LAW**, 11, 373; 12, 950; 26, 556
See LEX; STATUTES.
Revenue law, *see* REVENUE LAW.
 According to, 12, 956
 Cases at, 3, 25, 26
Change of Law
 By cession of territory, 26, 550
 Common, 12, 955
 Common and statute, 12, 950
 Contrary to, 4, 1
 Decisions of courts of, 12, 953
 Declare the, 5, 369
 Due course of, 6, 40
 Ignorance of law as defense to crime, 4, 688-690
 Maritime law, 14, 409
 Martial and military, 12, 955
 Matter of law, 14, 977
 Municipal law, 15, 1204
 Municipal ordinance, 12, 951
 Natural law, 16, 220
 Of collisions, 10, 602
- Of the Land**
Law of the land, *see* DUE PROCESS OF LAW.
 Equivalent to "due process of law," 3, 714
 Operation of law, 17, 214
 Practicing law, 19, 2
 Public and private, 12, 950
 Pursuant to law, 12, 957
 Resolution of one branch of legislature, 12, 951
 State constitution, 12, 950
 Treaties, 26, 556
 Unconstitutional act of legislature, 12, 951
 Usage and custom, 12, 955
 Verdict against, 12, 956
- LAW BOOKS**
Counsel Reading from Law Books, 19, 621
See BOOKS AS EVIDENCE.
 Counsel adopting views expressed in book as his own, 19, 622
 Court's right to restrict counsel, 19, 624
 Discretion of the trial court, 19, 624
 Examples, 19, 622
 In general, 19, 622
 In Virginia, 19, 624
 Measure of damages, 19, 623
 Passages bearing upon questions of fact, 19, 622
- Unnecessary consumption of time suffered, 19, 625
 Where charge of judge precedes argument, 19, 623
 Where the passage as read has no application to the facts of the case, 19, 625
- LAW AND FACT**, *see* QUESTIONS OF LAW AND FACT.
- LAWFUL**
Lawful money, *see* MONEY.
 Good and lawful men, 8, 1360
 Lawful claims, 3, 274
 "Other lawful merchandise," 3, 147
- LAWFULLY**
 Equivalent to peaceably, 8, 124
- LAW MERCHANT**, 16, 761
- LAW OF THE ROAD**, 12, 957
 Avoidance of collisions, 12, 960
 Bicycles, 12, 958
 Canals, 12, 964
Carriages
 What are, 2, 737
 Collision of one team with another at highway crossing, 4, 951
 Definition, 12, 957
 Driving sleigh without bells, 12, 961
 Evidence of neglect, 12, 960
 Examples, 12, 963
 Excuse for collisions, 12, 960
 Foot passengers, 12, 864
 In general, 12, 951-963
 Junction of streets, 12, 959
 Obstructions, 12, 963
 Passing, 12, 961
 Pleading, 12, 964
 Private way, 12, 959
 Rate of speed, 12, 963
- Rights and Duties of Persons Traveling on Highways and Streets**, 12, 957
 Avoidance of collisions, 12, 960
 Bicycles, 12, 958
 Driving sleigh without bells, 12, 961
 Evidence of neglect, 12, 960
 Examples, 12, 963
 Excuse for collisions, 12, 960
 In general, 12, 951-963
 Junctions of streets, 12, 959
 Obstructions, 12, 963
 Passing, 12, 961
 Private way, 12, 959
 Runaway horses, 12, 960
 Steam locomotive, 12, 962
 Street crossing, 12, 959
 To travel on any part, 12, 957
 Traveling on horseback, 12, 958
 Turning to the right, 12, 957
 Unusual machinery, 12, 962
 Where two alternatives are presented, 12, 961
- Runaway horses, 12, 960
 Steam locomotive, 12, 962
 Stopping by wayside, 12, 963
 Street crossings, 12, 959
Street Railways, 23, 990-992, 1028
 At street crossings, 23, 1028

LAW OF THE ROAD—Cont'd**Street Railways—Cont'd**

Failure of approaching vehicle to turn to the right, 23, 1030

In general, 23, 1028

Right of way over tracks, 23, 1029

To travel on any part, 12, 957

Traveling on horseback, 12, 958

Turning to the right, 12, 957

Unusual machinery, 12, 962

Where two alternatives are presented, 12, 961

LAWYER, 12, 964

See ATTORNEY AND CLIENT.

LAY, 12, 965

Lay corporations, 12, 965

Laying out a highway, 12, 965

LAY CORPORATIONS, see generally,

CHARITIES; CORPORATIONS.

LAY DAYS, 12, 965

Lay days, see DAYS.

Commencement, 12, 965

Burden of proof, 12, 973

Charterer, 12, 966

Customary dispatch, 12, 972

Delay caused by crowded condition of docks, 12, 971

Delay caused by default of ship, 12, 971

Delay caused by frost, 12, 971

Delay caused by tempest, 12, 971

Detention by ice, 12, 970

Detention longer than specified period, 12, 968

Detention of vessel, 12, 966

Discharge in two places, 12, 973

Dispatch, 12, 972

Duty of party, 12, 967

Holding of charterer, 12, 967

In general, 12, 965

Liability of charterer, 12, 967

Question for jury, 12, 973

Quick dispatch, 12, 972

Reasonable dispatch, 12, 967

Regular turn, 12, 973

Ship not ready, 12, 972

Stipulation to unload at particular dock, 12, 971

Time of arrival, 12, 966, 968

Time ship entered dock, 12, 967

Whether specified in charter, 12, 968

Computation, 12, 973

"Days," 12, 973

Demurrage, 12, 974

English courts, 12, 974

Running days, 12, 974

Weather working days, 12, 973

With customary dispatch, 22, 983

"Working days," 12, 973

Definition, 12, 965

Question of law and fact, 12, 972

LEAD, 12, 974

Lead manure, 12, 974

LEAGUE

Marine league, 14, 318

LEAKAGE, 14, 332**LEAP YEAR**

Twenty-eighth and twenty-ninth of February as one day, 5, 91

LEASE, 10, 602; 12, 974

See FRAUDS, STATUTE OF; GROUND RENTS; LANDLORD AND TENANT; LODGINGS AND APARTMENTS; REAL COVENANTS; RELEASE.

As to covenants in leases under seal, see generally, REAL COVENANTS.

Husband and wife, see HUSBAND AND WIFE.

Remainders and executory interests, see REMAINDERS AND EXECUTORY INTERESTS.

Statute of frauds, see FRAUDS, STATUTE OF.

Theaters, see THEATERS.

Acceptance, 12, 986, 988

Necessity, 12, 988

Possession of premises, 12, 988

Presumption, 12, 988

Acknowledgement, 12, 989

Action of Covenant, 4, 488

Averment for non-payment of rent, 4, 536

For breach of covenant not to carry on a particular trade, 4, 489

For breach of covenant to allow lessor certain privileges, 4, 489

For breach of covenant to cultivate premises in a particular manner, 4, 489

For breach of covenant to do repairs, 4, 489

For breach of covenant to pay rent, 4, 489

For breach of covenant to reside on premises, 4, 489

On lease executed by lessor only, 4, 501

Whether an action of covenant may be maintained where the house becomes uninhabitable, 4, 499

Adverse possession, 12, 990

Agency, 12, 995

Acquiescence, 12, 997

Acting for both parties, 12, 997

Agent exceeding his authority, 12, 996

Agent's authority, 12, 995

Authority to collect rent, 12, 997

Execution, 12, 995

Lease in name of agent, 12, 995

Lease under seal, 12, 996

Manner of signature, 12, 995, 996

Ratification by Principal, 12, 996

Acquiescence, 12, 997

Acts by principal in ignorance of facts, 12, 996

Relating back to original transaction, 12, 996

When agent has no authority, 12, 996

Recording, 12, 997

Renewal, 12, 1010

Whether agent's authority should be under seal, 12, 996

- Whether binding upon principal, 12, 995
- Agreement for**, 12, 980
- Alterations, 12, 980
- Amendment, 12, 980
- Appraisements, 1, 635
- As chattel real, 3, 164
- Assignment**, 12, 685, 1029
- Attornment*, see LANDLORD AND TENANT.
- See LANDLORD AND TENANT.
- Acceptance of rent, 12, 1032
- Assignee, action against, 4, 519
- Assignee's liability, 16, 894
- Assignee's liability for rent, 12, 738, 1033
- Assignee's Right to Renew**
- Whether assignment carries right to renew*, see *infra*, COVENANT TO RENEW.
- Assignee's Right to Sue**, 12, 1034
- Administrator as assignee, 12, 1034
- General assignee's liability for use and possession of premises, 12, 1034
- Liability of general assignee, 12, 1034
- Mortgagee of a term, 12, 1034
- Privity between lessor and lessee, 12, 1034
- By Tenant**, 12, 717
- Acceptance of rent, 12, 717
- At common law, 12, 717
- Conveyance of entire unexpired term, 12, 717
- Improvements, 12, 717
- Verbal consent of landlord, 12, 717
- Waiver of restriction by landlord, 12, 717
- When there is no restraining clause, 12, 717
- Contrary to Terms of Lease**, 12, 1031
- Acceptance of rent, 12, 1032
- Acquiescence of landlord, 12, 1031
- Assigns, 12, 1032
- Contracts, 12, 1032
- Executors of lessee, 12, 1042
- General rule, 12, 1031
- Covenant against**, 12, 685; 13, 801, 802
- Covenant strictly construed**, 12, 685
- Effect on Rent**, 12, 744
- Assent of landlord, 12, 744
- Privity between landlord and assignee, 12, 744
- Transfer of entire interest of tenant's term, 12, 744
- From what time, liable, 12, 1033
- How breach of covenant can be taken advantage of, 12, 685
- Implied covenants, 9, 965; 12, 1035
- Joint assignees, 12, 1036
- Landlord's, 12, 685, 1036
- Lease at will, 12, 1029
- Parol, 12, 1030
- Parties to action, 17, 532
- Presumption from possession, 12, 1036
- Privy of estate, 12, 717
- Rent, 12, 736, 738
- Rent due before assignment made, 12, 1033
- Rent to become due, 12, 1033
- Reservation in assignment as to accruing rent, 12, 1033
- Right to assign, 12, 685
- Seals, 12, 685, 1030
- Subletting, 12, 1032
- Tenancy from year to year, 12, 685
- Tenant at will, 12, 1030
- Tenant's, 12, 685
- Validity, 12, 744
- Waiver of covenant against, 12, 685
- What interest passes, 12, 1030
- What may be assigned, 22, 1029
- When assignment must be in writing, 12, 1030
- Whether lessee released by, 12, 1032
- Written, 12, 1030
- By tenant for life, 12, 680
- Condition**, 12, 1000; 19, 1050
- See *infra*, COVENANT.
- Bequest, 7, 297
- By which executor is bound, 7, 297
- Definition, 12, 1000
- Working a forfeiture, 8, 444
- Conditional sales disguised as, 3, 426
- Conditional Sales Distinguished from**, 3, 426
- Examples, 3, 426, 427
- In general, 3, 426
- Sales disguised as leases, 3, 426
- Condition Precedent**, 12, 1000
- Definition, 12, 1000
- Improvements, 12, 1001
- Performance impossible, 12, 1000
- Possession as condition precedent for liability for rent, 12, 1001
- Possession taken before performance, 12, 1001
- Condition Subsequent**, 12, 1001
- Clause of reëtry, 12, 1001
- Definition, 12, 1001
- Impossible, 12, 1001
- Reëtry, 12, 1001
- Unlawful, 12, 1001
- Consideration**, 12, 982
- Constructive trusts from renewal of leases by fiduciary**, 10, 80
- Conveyance**
- Forfeiture, 12, 758a
- Corporations**, 12, 997
- See *infra*, MUNICIPAL CORPORATIONS.
- By railroad companies*, see *infra*, RAILROADS.
- Execution, 12, 997
- Lessee disputing corporation's authority, 12, 997
- Mistake in name of, 12, 998
- Right of corporation to lease, 12, 997
- Rights of lien holders, 12, 997
- Rights of stockholders, 12, 997

LEASE—Cont'd**Covenant**, 6, 886; 12, 1001*See infra*, ACTION OF COVENANT;
CONDITION; IMPLIED COVENANT;
INJUNCTIONS.*See* REAL COVENANTS.

Acts of God, 12, 1003

Against assignment, *see infra*, AS-
SIGNMENT.

Against incumbrances, 12, 1003

Dependent, 12, 1002

Equitable interference, 12, 1028

Equitable relief for breach by mistake,
15, 627"Except damages by the elements,"
12, 1019

Excused by process of law, 12, 1003

Express, 12, 1003

Forfeiture, 12, 758*l*

General and special, 12, 1002

Illegal, 12, 1002

Independent, 12, 1002

Intention of parties, 12, 1002

Lessor by implication bound to make
certain repairs, 12, 1019Performance prevented by other party,
12, 1003

Perpetual renewal, 12, 1007

Quiet Enjoyment, 4, 485, 499; 12, 696,
1013Right of action against landlord, 12,
696

Seal, 12, 1001

Tenancy from year to year, 12, 677

To Erect Building, 12, 1017

Assignee, 12, 1017

Examples, 12, 1017

To pay rent, 13, 801

To Rebuild, 12, 1020

Strict compliance, 12, 1025

Uncertainty, 12, 1002

Void lease, 12, 1003

Warranty, 12, 1015

Wear and tear, 12, 1019

What is a, 12, 1001

Words unnecessary, 12, 1001

Covenant Against Incumbrances

Expressed, 12, 1003

How broken, 12, 1003

Implied, 12, 1003

Whether it runs with land, 12, 1003

Covenant as to Use of Premises, 12, 1025

Acquiescence of landlord, 12, 1026

Covenant construed, 12, 1028

Covenant to right of premises, 12,
1027Dependent and independent covenants,
12, 1027

Effect of breach, 12, 1026

Enforcement by equity, 12, 1025

Examples, 12, 1026, 1027

Forfeiture, 12, 1026

In restraint of trade, 12, 1027

Mining rights, 12, 1026

Trade covenants, 12, 1026

When covenant broken, 12, 1026

When covenant not broken, 12, 1028

Covenant for Quiet Enjoyment, 4, 499; 12,
696, 1011-1013Acts which render premises useless,
4, 485

Constructive eviction, 4, 484

Erections constructed by lessor, 4,
484

Grantor as trespasser, 4, 485

Partial eviction, 4, 485

Where property is taken under right
of eminent domain or by govern-
ment, 4, 484**Covenant in Restraint of Trade**, 12,
1027Covenants without limitation as to
place, 12, 1027

Limited distance, 12, 1027

When covenant broken, 12, 1028

Whether enforceable, 12, 1027

Covenant to Insure, 12, 1024

Covenant to rebuild, 12, 1024

Relief against, in equity, 12, 1025

Special building, 12, 1025

What operates as a breach, 12, 1024

Whether covenant runs with land, 12
1024**Covenant to Make Repairs****By Lessee**, 12, 1018

Good repairs, 12, 1018

In absence of covenant, 12, 1018

Where landlord makes repairs, 12,
1018Effect on tenant's common-law lia-
bility, 12, 721**Landlord's Covenant**, 12, 1003Conditions precedent to payment of
rent, 12, 1001, 1006Duty of landlord in absence of cove-
nant, 12, 1003

In Connecticut, 12, 1004

In Louisiana, 12, 1004

In New Jersey, 12, 1004

In New York, 12, 1004

Making repairs and charging expense
to landlord, 12, 1005

Notice to landlord, 12, 1006

Right to enter to make repairs, 12,
1006Tenant refusing to make repairs after
covenanting to do so, 12, 1005What time repairs must be made, 12,
1004Whether defense to action for rent,
12, 1005

Runs with land, 12, 730

Covenant to Pay Rent, 12, 1020

Destruction of premises, 12, 1020

Implied covenant, 12, 1020

"Yielding and paying," 12, 1020

Covenant to Pay Taxes, 12, 1022

Curbing and paving, 12, 1023

In absence of covenant, 12, 1023

Legal assessments, 12, 1023

Street assessments, 12, 1023

Taxes generally, 12, 1023

Whether it runs with the land, 12,
1022

Covenant to Purchase Buildings and Improvements, 12, 1016

Immaterial repairs, 12, 1016

Lease specifying kind of improvements, 12, 1016

Covenant to Renew, 12, 1006

General renewal, 12, 1007

Implied covenant, 12, 1011

Lessee Excused from Renewing, 12, 1011

Lessee violating covenant, 12, 1011

Tenant committing waste, 12, 1011

Lessee's renewal, 12, 1007

Perpetual Renewals, 12, 1009

Assignability, 12, 1009

Whether enforceable, 12, 1009

Renewal of condition by lessee, 12, 1006

Rights of assignee, 12, 1008

Specific performance, 12, 1007

When lessee loses his right of renewal, 12, 1006

When notice is not required, 12, 1008

When notice required, 12, 1008

Who Are Entitled to Benefits of Covenant to Renew, 12, 1009

Agents, 12, 1010

Executor obtaining renewal, 12, 1010

Husband and wife, 12, 1010

One of two or more lessees, 12, 1009

Persons occupying fiduciary relation, 12, 1010

Secretly obtaining renewal, 12, 1010

Strangers, 12, 1010

Whether assignment carries right to renew, 12, 1035

Whether lessee must make new covenant for renewal, 12, 1008

Date, 12, 981

Mistake in, 12, 981

Time of commencement, 12, 981

When no date is fixed, 12, 985

Where no date is specified, 12, 981

Definition, 12, 986**Delivery, 12, 987**

Necessity, 12, 987

What constitutes, 12, 988

"Demise," 5, 538

Description imperfect, 12, 984

Description of Premises, 12, 983

All parts taken together, 12, 983

Boundaries, 12, 983

Necessity, 12, 983

Particulars, 12, 983

Distinguished from license, 13, 541

Duress, 6, 83

Effect Upon Rent of Parol Change in Lease

Under Seal, 12, 750

Consideration, 12, 750

General rule, 12, 750

Eminent Domain, 12, 746**Measure of Damages**

For lessee, 6, 581

Enjoyment

Lessee yielding to paramount title, 12, 1015

What is a breach, 12, 1015

Entry into possession, 12, 986

Executions, 7, 127

Executors and Administrators, 12, 998

Administrators, 12, 998

Executors, 12, 998

Power to collect rent, 12, 998

When empowered by will, 12, 998

Foreign corporations, 8, 365

Forfeiture, 8, 447*See infra*, COVENANT.*See* LANDLORD AND TENANT.

Illegal use, 8, 451

Reentry, 8, 447

Waiver, 8, 447

Waste, 8, 451

Formal parts of a, 12, 981

Form of, 12, 977

Frauds, statute of, *see* FRAUDS, STATUTE OF.**Guardian and Ward, 12, 998**

Covenant, 12, 999

Death of ward, 12, 999

Guardian's duty, 12, 998

Leases to guardian, 12, 999

Natural guardian, 12, 999

Responsibility of guardian for rent, 12, 998

Termination of guardian's authority, 12, 999

Termination of lease, 12, 999

To whom rent payable, 12, 999

Implied Covenant, 5, 538; 9, 964; 12, 1015*See infra*, COVENANT.

Assignments of lease, 9, 965; 12, 1035

From term "demise," 5, 538

Husbandlike manner, 12, 1014

Lease by parol, 9, 964

No implied covenant to put lessee in possession, 12, 1015

Power to demise, 9, 964

Premises fit for occupancy, 9, 964

Quiet enjoyment, 9, 964

Rent, 9, 965

Right to make lease, 5, 539

Scope, 9, 964

That house is habitable, 5, 540

To use in tenant-like manner, 9, 965

Waste, 12, 1014

Improvements

In absence of expressed covenant, 12, 1016

Infants, 12, 990

Avoidance of lease for infancy, 12, 991

By agent, 12, 990

By attorney, 12, 990

Disaffirmance on becoming of age, 12, 992

Leases as contracts for necessities, 12, 991

Leases to, 12, 991

What is a confirmation of an infant's lease, 12, 993

When infancy does not avoid a lease, 12, 992

When infant may disaffirm, 12, 992

Whether voidable or void, 10, 632; 12, 990

LEASE—Cont'd**Injunctions****Restrictive Covenants in Lease, 10, 941**

Certain business, 10, 942

Instances, 10, 941

Particular covenants, 10, 941

Particular opportunities, 10, 941

Violation prevented by injunction,
10, 941**Innocent conveyances, 11, 3****Insanity, 12, 993**

By committees or guardians, 12, 994

Deaf, dumb, and blind, 12, 993

Mere weakness of mind, 12, 993

Previous, 12, 993

Subsequent, 12, 993

Void or voidable, 12, 993

Where party has a guardian or com-
mittee, 12, 993**Insurance, see *infra*, COVENANT TO IN-
SURE.****Joint Tenants and Tenants in Common,
11, 1094; 12, 1000***See* LANDLORD AND TENANT.Authority of tenant in common, 12,
1000

Ejectment, 11, 1095

Execution of lease without consent of
co-tenant, 11, 1094

Joint distress, 11, 1095

Joint lease, 11, 1095

Receiving rent, 11, 1095

Renewal enuring for benefit of all, 12,
1009Whether action for rent should be
joint, 12, 1000**Judgment lien, 12, 108****Landlord and tenant, 12, 704**

"Lessor," 13, 230

"Let," 13, 230

License, 12, 977**Married Women, 12, 994; 14, 625**Acceptance of rent by wife after hus-
band's death, 12, 994

Assent of husband to lease, 12, 994

At common law, 12, 994

Confirmation by wife of husband's
lease, 12, 994Effect of death upon husband's lease,
12, 994

Lease by husband, 12, 994

Under statute, 12, 994

Whether it is necessary husband should
join in lease, 12, 994**Mines and mining claims, 15, 593**

More or less, 12, 984

**Municipal Corporations, 12, 998; 15,
1058**

Compliance with charter, 12, 998

Power to Lease, 15, 1071

Annulment of lease, 15, 1072

Dependent upon legislation, 15, 1072

General rule of landlord and tenant,
15, 1072

In general, 15, 1071

Public buildings, 15, 1073

Responsibility for rent, 12, 998

Names of Parties, 12, 981

Christian name, 12, 981

Parol evidence, 12, 982

Person to whom lease was made, 12, 982

Parks and public squares, 17, 415

Parol, 6, 885; 12, 987, 989

See FRAUDS, STATUTE OF.

Parol Evidence, 12, 982; 17, 424

Impeaching for fraud, 17, 437, 438

Parties to Actions

Assignment, 17, 532

Partnership, 12, 999*See* LANDLORD AND TENANT.

In general, 12, 999, 1000

Obtaining Renewal, 17, 1059

After dissolution, 17, 1060

A trust for benefit of the firm, 12,
1000; 17, 1059Inures to the benefit of firm, 12,
1000; 17, 1059

Surviving partner, 17, 1060

Where lease contains no provision
as to renewal, 17, 1059Renewal procured secretly by one
member, 12, 1000; 17, 1059Whether covenant is joint or several,
12, 999Whether leasehold partnership prop-
erty, 12, 999**Possession, 12, 989****Possession Under Void Lease****Whether Relation of Landlord and Ten-
ant Exists, 12, 667**

Examples, 12, 667, 668

General rule, 12, 667

Lease executed on Sunday, 12, 667

Prohibited by statute of fraud, 12,
667Powers of executors and administrators
to make, 7, 271**Power to Lease, 18, 908**

Confirmation of lease, 18, 911

Conforming to conditions, 18, 911

Examples, 18, 908-910

Following conditions, 18, 911

In England, 18, 908

In general, 18, 908

In Possession or Reversion, 18, 912

Examples, 18, 912, 913

Meaning of the term, 18, 912

Under power to lease generally, 18,
913Lease for longer time than that author-
ized, 18, 910Lease for longer time than time pre-
scribed, 18, 910

Lease in possession, 18, 912

Lease or reversion, 18, 912

Lease to commence at future day, 18,
912Lease which may terminate in life of
tenant for life, 18, 908

Length of lease, 18, 910

Life tenant, 18, 908

Mines, 15, 596; 18, 910; 19, 911

Relating to creation of power, 18, 894,
913

- Rent, 18, 913**
 Ancient rent, 18, 913
 Examples, 18, 913, 914
 For the best rent, 18, 913
 In general, 18, 913, 914
 Mode of reservation, 18, 913
 Quantum, 18, 913
 Usual rent, 18, 913
 Rules of construction of power to lease, 18, 910
 Validity, 18, 910
 Void conditions, 18, 912
 Proper words of conveyance, 5, 538
 Provisions to refer renewal to arbitrators, 1, 668
 Questions of law and fact, 19, 651
Quiet Enjoyment, 4, 484, 485, 499; 12, 666, 1011
 Demise, 12, 1013
 Effect of breach, 12, 1011
 Express covenants, 12, 1012
 From what words a covenant will be demised, 12, 1013
 "Grant and demise," 12, 1013
 Implications, 12, 1011
 "Lease," 12, 1013
 "Let," 12, 1013
 Liability for rent after breach, 12, 1011
 What constitutes a breach, 12, 1011-1013
 What lessee may do to protect himself from breach, 12, 1012
Railroads, 19, 895
Authority to Lease, 19, 895
Receivers, see RECEIVERS OF RAILROADS.
 Absence of express authority, 19, 896
 Assent in writing, 19, 897
 Consent of stockholders, 19, 897
 Express authority, 19, 896
 Inability, 19, 896
 In general, 19, 895
 Power to take lease, 19, 896
 Property without the state, 19, 897
 Public functions, 19, 896
 Where state has conferred authority, 19, 897
Effect of Lease, 19, 897
 Eminent domain, 19, 899
 Joint liability, 19, 899
 Lessee's liability, 19, 897
 Lessor's debt, 19, 898
 Liability depending upon language of lease, 19, 898
 Rents, 19, 898
 Statutory requirements, 19, 897
 Two roads united under a lease, 19, 898
Relative Liability of Lessor and Lessee, 19, 899
Failure to maintain fences, see FENCES.
 Examples, 19, 899-903
 Joint liability, 19, 902
 Lease without authority, 19, 902
 Legislative consent, 19, 900
 Lessee's breach of contractual duty, 19, 903
 Liability of lessee, 19, 901, 902
 Necessity of statutory authority, 19, 900
 Negligence in the operation of the road, 19, 902
 Negligence or tortious injury, 19, 899
 Relation of principal and agent, 19, 900
 Statutory provision that lessor shall be exempt from liability, 19, 901
 Unauthorized lease, 19, 899
Real Property
 Assignable, 12, 747
 Liability for rent, 12, 747
 Receipt, 12, 978
 Recital, 12, 892
Recording Acts, 12, 989; 20, 530
 Acknowledgment, 12, 989
 As between lessor and lessee, 12, 989
 Assignments, 12, 1036
 Chattel mortgages, 20, 539
 Lease included by express terms, 20, 531
 Mortgages of leasehold, 20, 530
 Parol, 12, 989
 Where lease is not specifically mentioned, 20, 530
 Whether lease is within the statute, 12, 898; 20, 530
 Whether necessary, 12, 989; 20, 530
 Redemption of mortgage by lessee, 20, 618
 Relation, 20, 736
Renewals, see *infra*, COVENANT TO RE-NEW.
 Specific performance, 22, 972
Repairs, see *infra*, COVENANT TO REPAIR.
Seals, 12, 987
 Agent, 12, 987
 Form, 12, 987
 Necessity, 12, 987
Signature, 12, 986
 By third party, 12, 986
 Lead pencil, 12, 986
 Letter, 12, 986
 Necessity, 12, 986
 Necessity of execution, 12, 986
 Stamp, 12, 986
Specific Performance, 22, 972
 Agreements to execute lease, 22, 972
 Agreements to renew lease, 22, 972
 Agreements to sell at expiration of term, 22, 973
 In general, 22, 972
 Other contracts in connection with lease, 22, 973
 Street railways, 23, 1032
Sublease, 12, 1036
 See LANDLORD AND TENANT.
 Assignments, 12, 1038
 Contrary to terms of lease, 12, 1032
 Definition, 12, 1036
 Examples, 12, 1037

LEASE—Cont'd**Sublease—Cont'd**

In general, 12, 1036, 1038
Limitation upon power to sublet, 12, 1036

Termination, 12, 1038

Whether it amounts to an assignment, 12, 1036

Sunday law, 12, 981

Suretyship

Discharge by change in lease, 24, 843

Taxation, see *infra*, COVENANT TO PAY TAXES.

Term, 12, 984

Certainty, 12, 984

Contingency, 12, 985

Duration, 12, 985

"From," 12, 985

When no date is fixed, 12, 985

Termination

See LANDLORD AND TENANT.

Necessity of reentry by landlord, 13, 785

Time of taking effect, 12, 987

Trade covenants, 12, 1027

Trusts and Trustees

Power of trustee to lease, 27, 140

Renewal, 12, 1010

Ultra Vires, 27, 362

Injunction, 27, 397

Unlawful sale of liquor working forfeiture of, 3, 261

Use of the word "lease," 12, 978

Waiver of conditions, 13, 802

Warranty

Covenant or, 12, 1015

Waste

See LANDLORD AND TENANT.

Implied covenants against, 12, 1014

What may be leased, 12, 977

What not a lease, 12, 976

Whether lease is a conveyance, 4, 137

Words necessary, 6, 885

LEAST, 13, 230

At least, 13, 1

LEAVE, 13, 2

In various connections, 13, 5

Leave of the author, 13, 6

Leave the state, 13, 5

Leaving meeting house, 13, 6

Leaving out, 13, 6

Without leaving issue, 13, 2

LEAVING

Without leaving issue, see ISSUE.

Die without leaving issue behind him, 11, 905

Equivalent to having, 13, 2

Leaving no issue, 11, 904

Without leaving issue, 11, 904

LECTURES

Literary property, 13, 922

LEFT, 13, 6**LEGACIES AND DEVISES, 3, 7; 129, 349**

See ADVANCEMENTS; DEBTS OF DECEDENTS; ELECTION; EQUITABLE CONVERSION; EXECUTORS AND AD-

MINISTRATORS; FOREIGN EXECUTORS AND ADMINISTRATORS; ISSUE; PERPETUITIES; SUCCESSION; WILLS.

As to corporation as devisee, see CORPORATIONS.

As to who may be a legatee or devisee, see WILLS.

Collateral inheritance tax, see SUCCESSION TAX.

Executor's remedy against legatee where assets have failed, see EXECUTORS AND ADMINISTRATORS.

Executor's devises, see REMAINDERS AND EXECUTORY INTERESTS.

Gifts mortis causa, see GIFTS.

"Issue"

As to the force of the term in legacies and devises, see "ISSUE."

Legacy duty, see SUCCESSION TAX.

Promise to leave legacy, or to devise, see WILLS.

Refunding bond, see EXECUTORS AND ADMINISTRATORS.

Release, see *infra*, SATISFACTION AND RELEASE.

Trusts for charitable uses, see CHARITIES.

Vested or contingent, see WILLS.

Abatement, 11, 12; 3, 130

Annuities, 1, 594; 13, 68, 132, 134, 143, 145

Demonstrative Legacies Depending Upon

General Estate, 13, 132

Abatement, 13, 136

Legacy to erect, 13, 136

Monuments, 13, 136

General Legacies, 13, 134

Abatement inter se, 13, 141

Abate ratably, 13, 134

Annuity, 13, 134

Bequest in Lieu of Dower, 13, 137, 145

Bequest exceeding value of right relinquished, 13, 137

Bequest to wife of interest in general estate, 13, 138

Creditors, 13, 138

Express direction of testator, 13, 138

In Massachusetts, 13, 138

Lien on realty, 13, 138

Necessity of the words "in lieu of dower," 13, 137

Pretermitted children, 13, 138

Statutes providing that bequest to wife shall be construed in lieu of dower, 13, 137

What bequests are in lieu of dower, 13, 137

Where testator never had any land, 13, 140

Whether bequest in lieu of dower has priority over specific legacies and devises, 13, 138

Bequest to charities, 13, 136

Bequest to child, 13, 135

Bequest to executor for his trouble, 13, 140

- Bequest to old servants, 13, 136
 Bequest to wife, 13, 135
 Consideration arising after testator's death, 13, 139
 Creditors whose debts have been previously liquidated, 13, 140
 Debt barred by statute of limitations, 13, 140
 Demonstrative legacies, 13, 134
 General rule, 13, 134
 Intention to give priority, 13, 140
Intent of Testator to Give Priority,
 13, 141
 " Afterwards," 13, 141
 Annuities, 13, 143
 But one general legacy, 13, 143
 Immediately, 13, 141
 " In the first place," 13, 141
 In the next place, 13, 141
 Legacies for life, 13, 143
 Legacy duty, 13, 143
 Must clearly appear, 13, 140
 Preferences, 13, 140, 142
 Right to give, 13, 140
 Testator's belief that there is more than enough to pay prior legacies, 13, 142
 Legacies for support and maintenance, 13, 136
 Legacies given under sense of moral obligation, 13, 139
 Legacies payable at a future period, 13, 134
 Legacy in satisfaction of debt, 13, 137
 Monuments, 13, 136
 Mourning rings, 13, 136
 Relationship, 13, 136
 Relationship in California, 13, 136
 Relationship in New York, 13, 136
 Stock, 13, 134
 In lieu of dower, gift, or devise, 13, 137, 145
Lapsed Interests, 13, 147
 Bequest to charities, 13, 148
 Lapsed and specific legacy, 13, 148
 Lapsed share, 13, 147
 Lapsed share of personalty, 13, 147
 Lapsed share of residue, 13, 147
 Specific devise must take effect where lapsed interest descends to heir, 13, 147
 Where lapsed interest falls into residuary devise, 13, 147
 Where there is no charge of debts, 13, 148
 Where there is no residuary bequest, 13, 148
 Order of, 1, 12; 13, 130
 Residuary devises, 13, 146, 147
Residuary Legacies, 13, 131
 Annuities, 13, 132
 Annuity charge on income, 13, 132
Charging Debts Upon a Particular Fund, 13, 133
 All personalty expressly exempted from payment of usual charges, 13, 133
 Deficiency, 13, 133
 Mortgaged property, 13, 133
 Provision that residuary and general legacies shall abate ratably, 13, 133
 Residue undisposed of, 13, 133
 Exhaustion of entire property, 13, 131
 General rule, 13, 131
 Legacies in lieu of a share of residue, 13, 133
 Life tenant and reversioner, 13, 132
 Losses subsequent to testator's death, 13, 132, 133
 Revoked share, 13, 133
 Testator's directions as to abatement, 13, 132
Specific and Demonstrative Legacies and Devises, 13, 143
 Annuities charged on land devised, 13, 145
 Contribution in favor of general legacies, 13, 146
 Devise in lieu of dower, 13, 145
 Devise to heir, 13, 145
 Effect of general charge on legacy, 13, 146
 Exhaustion of estate not specifically bequeathed, 13, 143
 Fund given in fractional parts, 13, 143
 General legacies, 13, 143
 Intention of testator, 13, 144
 Legacies charged on land devised, 13, 145
 Pro rata abatement, 13, 143
 Residuary devises, 13, 146
 Specific devisees and legatees, 13, 144
 Statutes rendering real estate liable, 13, 144
 When demonstrative legacies abate, 13, 144
 When demonstrative legacy regarded as general legacy, 13, 145, 146
 When specific legacies and devises abate, 13, 143
 Where all testator's personal property is specifically bequeathed, 13, 143
Statutory Provisions, 13, 149
 Contribution, 13, 149, 150
 In Arkansas, 13, 149
 In California, 13, 149
 In Colorado, 13, 150
 In Connecticut, 13, 149
 In Florida, 13, 149
 In Georgia, 13, 149
 In Indiana, 13, 149
 In Kansas, 13, 149
 In Kentucky, 13, 149
 In Maine, 13, 149
 In Massachusetts, 13, 149
 In Michigan, 13, 150
 In Minnesota, 13, 150
 In Nebraska, 13, 149
 In Nevada, 13, 149

LEGACIES AND DEVISES—Cont'd**Abatement—Cont'd****Statutory Provisions—Cont'd**

In New Hampshire, 13, 149

In Ohio, 13, 149

In Oregon, 13, 149

In Vermont, 13, 149

Legacies to widows and kindred, 13, 150

Provision that legatees contribute, 13, 149

Testator's intention, 13, 149

Accretions, 13, 184, 186

Acknowledgment

Release of married women, 1, 170

Action of Covenant

Against heirs and devisees, 4, 519

By heirs and devisees, 4, 511

Actions for Legacies, 13, 188*See infra*, Suits.

Assumpsit, 1, 888; 13, 189

Ejectment, 13, 188

General legacy, 13, 188

Remedy in equity, 13, 188, 189

Replevin, 13, 188

Specific legacies, 13, 188

Trespass, 13, 188

Ademption

Definition, 13, 70

Devises of Real Estate, 13, 100

Advancements, 13, 102

Conveyance of lands specifically devised, 13, 100

Conveyance of testator's whole estate, 13, 100

Leases for life, 13, 101

Material alteration in estate, 13, 100

Statutes providing that will shall speak from testator's death, 13, 101, 102

Whether reconveyance revives, 13, 101

Distinguished from satisfaction, 13, 70

Effect of appointment of executor, 7, 312

Extrinsic Evidence, 13, 104

Advancement, 13, 104, 106

Book entries, 13, 108

Declarations, 13, 108

Disproving parental relationship, 13, 105

Gift, 13, 106

Legacies to strangers, 13, 107

Portions generally, 13, 106

Presumption raised in first instance, 13, 104

Raising presumption in first instance, 13, 105

Rebuttal by parol, 13, 104, 106, 107

Receipts, 13, 108

Release, 13, 109

Release of debt by legacy, 13, 104

Testator's intention, 13, 104

Satisfaction distinguished from ademption, 13, 70

Satisfaction distinguished from performance, 13, 72

Ademption and Satisfaction**Statutory Provisions, 13, 103**

In Alabama, 13, 103

In Arkansas, 13, 103

In California, 13, 103

In Georgia, 13, 103

In Indiana, 13, 103

In Kansas, 13, 103

In Kentucky, 13, 103

In Louisiana, 13, 103

In Missouri, 13, 103

In Nevada, 13, 103

In New York, 13, 103

In North Carolina, 13, 103

In Ohio, 13, 103

In Oregon, 13, 103

In Virginia, 13, 103

In West Virginia, 13, 103

Ademption of Debt by Legacies

Executor's assent, 13, 152

Ademption of General Legacies to Strangers, 13, 99, 102

Acceptance by legatee in lieu of legacy, 13, 100

General rule, 13, 99

In California, 13, 103

In Kentucky, 13, 103

In Virginia, 13, 103

In West Virginia, 13, 103

Where shown to be on account of legacy, 13, 99

Ademption of Legacies by Portions, 13, 92*See* ADVANCEMENT.

Advancements prior to legacy, 13, 94

Amounts advanced very small, 13, 96

Bequest of residue, 13, 98

Devise of real estate, 13, 98, 102

Difference in amounts, 13, 95

Difference in limitations, 13, 95

Difference in times of payment between two provisions, 13, 96

Effect of ademption of life interest upon ulterior limitation, 13, 94

Extrinsic Evidence, 13, 104

Declarations, 13, 108

Determining what was meant by subsequent act, 13, 105

Effect of release, 13, 109

Gift, 13, 106

Legacies to strangers, 13, 107

Portions, 13, 106

Proving or disproving parental relationship, 13, 105

Raising presumption, 13, 107

Raising presumption in first instance, 13, 105

Rebuttal, 13, 107

Receipts, 13, 108

Repelling presumption, 13, 106

Repelling presumption itself, 13, 105

Grandfather, 13, 93

In loco parentis, 13, 94

Legacy certain and advancement contingent, 13, 97

Legacy and subsequent advancement not of same kind, 13, 97

- Legacy or advancement given in compensation, 13, 97, 98
 Mothers, 13, 93
 Payment to husband, 13, 92
 Pecuniary legacy and subsequent gift of house and lot, 13, 97
 Presumption that advancement is in lieu of legacy, 13, 92
 Pro tanto ademption of legacy, 13, 92
 Putative father, 13, 93
 Rebuttal, 13, 95, 96
 Republication of will by codicil, 13, 99
 Settlement preceding will, 13, 95
 Share of residue, 13, 98
 Specific legacies, 13, 98
 Testator's intention, 13, 97
 Uncles, 13, 93
 Where advancement is equal to or greater than amount of legacy, 13, 92
 Will preceding settlement, 13, 95
Ademption of Specific Legacies, 13, 70, 72
 Bequest of proceeds of a thing, 13, 75
 Change by operation of law, 13, 77
 Change in form of specific chattel, 13, 73
 Change of trustees, 13, 79
 Change without knowledge of testator, 13, 77, 78
 Debt called in by testator, 13, 75
 Debt paid by debtor of his own motion, 13, 75
 Debt specifically bequeathed, 13, 74
 Destruction of specific thing, 13, 72
 Effect of republication of will, 13, 80
 Implied revocation of leasehold property, 13, 80
 Intention, 13, 73
 Intention to change state of a fund, 13, 79
 Intent to adeem, 13, 73
 Leasehold property, 13, 79
 Loan on stock, 13, 79
 Mortgages, 13, 76
 Mortgaging subject-matter of bequest, 13, 74
 Partial receipt of debts specifically bequeathed, 13, 75
 Payment of debt in lifetime of testator, 13, 75
 Pledging subject-matter of bequest, 13, 74
 Policies of insurance, 13, 75
 Presumption that legacy is by portions, 13, 92
 Provisions against ademption, 13, 76
 Question of identity, 13, 73
 Removal of goods bequeathed as being at a certain place, 13, 74
 Removal of goods on account of fire, 13, 74
 Removal of goods without testator's knowledge, 13, 74
 Removal where place is referred to merely to identify the goods, 13, 74
 Renewal of notes, 13, 75
 Revival, 13, 80
 Sale, 13, 77
 Share of profits in partnership, 13, 79
 Stock, 13, 76
 Stock transferred to testator's own name, 13, 78
 Substitution of another for original debtor, 13, 76
 Term of years, 13, 79
 Unexecuted intention to change, 13, 79
Advancements
See ADVANCEMENTS.
 Whether a legacy or distributive share is an advancement, 13, 91
After-Acquired Lands, 13, 9
See WILLS.
 At common law, 13, 9
 Construction of statutes, 13, 10
 Statutory provisions, 13, 9
After-Acquired Property
 Lapsed and void legacies and devises, 13, 42
 Residuary legatee, 13, 46
 Words sufficient to pass after-acquired realty, 13, 52
Annuities, 1, 594; 13, 17, 62
See generally, ANNUITIES.
Appropriation of funds to secure annuities and legacies payable in futuro, *see infra*, PAYMENT AND DELIVERY.
Abatement, 13, 68
 Annuitant and residuary legatees, 13, 69
 Annuities charged on land devised, 13, 145
 Investment, 13, 69
 Mode of valuation, 13, 68
 Payment of amount of valuation, 13, 68
 Pro rata with general legacies, 13, 68
 Valuation, 13, 68
 Annuity charge on land, 13, 65, 119
 Annuity for maintenance and education, 13, 68
 Arising out of land, 13, 27
 Appropriation of funds to secure annuities payable in futuro, 13, 164
 As a species of legacy, 13, 63
 Devise of all testator's property on trust, 13, 66
Directions to Purchase, 13, 66
 Gift over or upon alienation, 13, 67
 Restraint upon anticipation, 13, 67
 Whether purchase-money vests in annuitant, 13, 66
 Distinction between annuities given for a period and for an object, 13, 67
 Education and maintenance, 13, 65
 Gift of rents and profits to parent during minority of child, 13, 67
 Gift over upon bankruptcy, 13, 67
 Legacies comprehending, 13, 63
 Legatee including annuitant, 13, 63
 Nature of term, 13, 62
 Part of income of particular fund, 13, 66

LEGACIES AND DEVISES—Cont'd**Annuities—Cont'd**

- Passes to personal representative, 13, 63
- Rent charge, 13, 65
- Rules determining whether annuity is perpetual, 13, 65, 66
- Time of payment, 13, 159
- To A forever, 13, 65
- To trustees for their trouble, 13, 67
- Where annuity constitutes rent charge, 13, 63, 64
- Whether an Annuity Is Charged Upon Land or on Rents and Profits Only,** 13, 112
 - An unlimited, indefinite charge upon rents and profits, 13, 112
 - Examples, 13, 112, 113
 - Prima facie presumption, 13, 113
 - Whether legacy is an interest in lands, 13, 112
- Whether an annuity might be entailed, 13, 64
- Whether charged with personal property, 13, 64
- Whether for life or perpetual, 13, 64
- Assumpsit, 1, 888; 13, 189
- Bastards, 2, 142
- Bequest of dividend, 5, 733
- Bequest of Personal Property**
 - By what law governed, 3, 574
- Bequests of General Personal Estate, 13,** 23
 - All testator's personal estate, 13, 23, 24
 - Enumeration of specific things, 13, 24
 - Exception of specific part, 13, 25
 - In same clause with devise of real estate, 13, 24
 - Part subject to debts, 13, 26
 - Personal property in certain place, 13, 25
 - Residue of estate at B, 13, 25
 - Rest of residue of a specified fund, 13, 26
 - Specific legacy, 13, 25
- Bill in Equity**
 - By one legatee in behalf of all, 6, 736
- Bill in Nature of a Bill of Revivor**
 - For legatee or devisee, 2, 272
- Bond of residuary legatee who is also executor, 7, 209
- By What Law Governed, 3, 577, 642**
 - Extent in the interest of a legatee, 3, 642
- Charges upon devisees, 3, 119
- Classification, 13, 10
- Contribution, 1, 12; 4, 11; 13, 149, 150**
 - See *infra*, ABATEMENT.
- Conversion of perishable property where there is a bequest for life with remainder over, see infra, REMAINDERMAN AND LIFE TENANT.*
- Corporations, 4, 217
- Cumulative and Substitutional Bequests, 13, 54**

- Admissibility of Parol Evidence, 13, 58**
 - Circumstances of testator, 13, 59
 - Meaning of words, 13, 59
 - Rebuttal of presumption, 13, 58
 - Rebutting presumption in favor of cumulation, 13, 58
 - Rebutting presumption in favor of substitution, 13, 59
 - Two codicils of different date, 13, 59
- "And further," 13, 55
- Circumstances strengthening presumption in favor of accumulation, 13, 56
- Definition, 13, 54
- Different testamentary instruments, 13, 55
- Exceptions, 13, 56
- Illustrations of rule where amounts are equal, 13, 56
- Illustrations of rule where amounts are unequal, 13, 56
- "In addition," 13, 55, 57
- Incidents, 13, 59**
 - Intention, 13, 59
 - Hereinafter, 13, 60
 - Subject to same conditions as previous gift, 13, 59
 - When the rule does not apply, 13, 60
- Intention governs, 13, 56
- Legacies of quantity, 13, 54
- Legacies of quantity of equal amount, 13, 55
- Legacies of quality of unequal amounts, 13, 54
- "Moreover," 13, 55
- Nature, 13, 54
- Rebuttal, 13, 58
- Rules to ascertain testator's intent, 13, 54
- Same motive and same sum, 13, 57
- Second bequest explanatory of the first, 13, 56
- Second gift coupled with gift of specific thing, 13, 57
- Second instrument incorporated with first, 13, 56
- Second instrument mere copy of first, 13, 58
- Second testamentary instrument as mere substitution of first, 13, 57
- Specific thing bequeathed twice, 13, 54
- When cumulative, 13, 54
- When substitutional, 13, 54
- Where one of bequests is to a class, 13, 55
- Will and codicil, 13, 56
- Currency**
 - Money, 13, 183
 - Currency of place where legatees reside, 13, 183
 - Of country of testator's domicile, 13, 183
- Debts and Legacies Charged on Land, 13, 16, 109**
 - As to whether debts are charged upon the land, see DEBTS OF DECEDENTS.
- Blending real and personal estate together, 13, 125

Charge of Debts, 13, 109
 Charge distinguished from trust, 13, 109
 Effect of such charge, 13, 109
 Exoneration of personalty, 13, 109, 110
 Necessity at common law, 13, 109
Pari passu with personalty, 13, 110
 Statutes rendering real estate liable, 13, 109
Charge of Legacies, 13, 110
 Effect of mere charge, 13, 110
 Exoneration of person, 13, 110
 Person's primary obligations, 13, 110
 Primary liability of personalty, 13, 110
Exoneration of Personalty, 13, 109, 110, 120
 Blending of real and personal estate, 13, 121, 125
 Charge is imposed upon devisee in terms of a condition, 13, 121
 Charge on lands generally, 13, 121
 Charge on specific portions of land, 13, 121
 Charge upon particular personalty, 13, 120
 Cost of probate, 13, 122
 Creditors and legatees distinguished, 13, 120
 Directing realty to be sold, 13, 124, 125
 Directing realty to be sold for debts, 13, 123
 Examples of exoneration, 13, 124
 Examples of express words, 13, 121
Expressio unius est exclusio alterius, 13, 122
 Expressly subjecting personalty to certain charges, 13, 122
 Express words, 13, 120
 Funeral charges, 13, 122
 General rule, 13, 120
 How testator's intention shown, 13, 120
 Intention of testator, 13, 120
 Legacies charged solely on real estate, 13, 124
 Legacies directed to be paid out of particular real estate, 13, 124
 Necessary implication, 13, 121
Pari passu liability, 13, 126
 Parol evidence, 13, 121
 Real estate directed to be given in payment of legacies, 13, 125
 Real estate subjected to certain expenses, 13, 122
 Refusal of devisee to accept, 13, 124
 Relative amount of debts and personalty, 13, 122
 Relative amount of real and personal estate, 13, 122
 Specific bequest of all personalty, 13, 122
 Testamentary expenses, 13, 122

Whether charging land exonerates personalty, 13, 120
 Whether general charge extends to lands specifically devised, 13, 126
 Will not executed so as to pass realty, 13, 124
Expressions Which Charge, 13, 110
 "After payment of debts and legacies," 13, 116
 "After securing payment," 13, 117
 All the balance of testator's estate, 13, 118
 Annuities, 13, 119
 Blending of real and personal property in residuary clause, 13, 117
 Devise by appraised valuation, 13, 114
 Devise preceded by general directions that debts or legacies should be paid, 13, 115
 Direction to devisee to pay legacies, 13, 117
 Distinction between debts and legacies, 13, 114
 Examples, 13, 111-119
 Executors simply directed to pay debts, 13, 116
 Extraneous circumstances, 13, 111
 Express words, 13, 111, 114
 Implied charges, 13, 111
 Indefinite charge upon rents and profits, 13, 112
 Intention must clearly appear, 13, 111
 "In the first place," 13, 115
 Legacies for support, 13, 113
 Legacies given generally and residue given in one mass, 13, 117
 Legacy charged as an interest in land, 13, 112
 Necessary implications, 13, 110
 No real estate devised to executors, 13, 116
 "Out of my estate," 13, 117
 Provisions, 13, 115
 Residuary devise, 13, 117
 Specific devise contained in residuary clause, 13, 118
 "Subject to devise or bequest," 13, 117
 Testator knowing that his personal estate would be insufficient, 13, 111
 Upon condition that devisee pay legacies, 13, 116
 What language amounts to express charge, 13, 111
 When implied, 13, 111
 Whether annuity is charged upon land, 13, 112
 Whether annuity is charged upon rents and profits, 13, 112
 Interest in the land, 13, 112
 Legacies charged solely on real estate, 13, 124
 Legacy as interest in land, 13, 112

LEGACIES AND DEVISES—Cont'd**Debts and Legacies Charged on Land—***Cont'd***Personal Liability of Devisee, 13, 119, 126**

Acceptance, 13, 127

Acceptance of devise, 13, 119

Charge exceeding value of land, 13, 127

Devise on condition that devisee pay, 13, 126

Devise without directions to the devisee to pay, 13, 126

Directed to pay legacy, 13, 117

Directions to devisee to pay legacy, 13, 119

Direction to devisee to pay, 13, 126

Double security, 13, 130

Election, 13, 127

Judicial sales, 13, 128

Notice, 13, 127, 129

Order of liability, 13, 130

Personal action at law, 13, 129

Private arrangements, 13, 129

Remedy where land only is charged, 13, 127

Remedy where personalty only is charged, 13, 127

Scheduled and unscheduled debts, 13, 128

When remedy confined to person only, 13, 129

Where lien is lost by resorting to personalty, 13, 130

Real property, 13, 112

Whether General Charge Extends to Lands Specifically Devised, 13, 126

Blending real and personal estate, 13, 126

Debts and legacies charged together, 13, 126

General charge in legacies, 13, 126

Definite failure of issue, 5, 517

Definition, 5, 660; 13, 8

Ademption, 13, 70

Bequest, 13, 10

Demonstrative legacy, 13, 12

General legacy, 13, 10, 11

Lapsed and void legacies and devises, 13, 27

Legacy, 13, 9

Legatee, 13, 10

Of devises, 13, 9

Performance, 13, 70

Revocation, 13, 70

Satisfaction, 13, 70

Specific legacy, 13, 10

*Delivery of legacies, see infra, PAYMENT AND DELIVERY.***Demand**Legacies charge upon land, 5, 528²⁹**Upon Executor**When necessary, 5, 528²⁰Where executor is legatee, 5, 528³⁰**Demonstrative Legacy, 5, 541; 13, 12***Abatement, see infra, ABATEMENT.*

Charge upon particular security, 13, 18

Definition, 13, 12

Demonstrative annuities, 13, 14

Distinguished from general, 13, 14

Distinguished from specific, 13, 14

Gift of money out of stock, 13, 17

Nature, 13, 13

Stocks, 13, 20

When legacy fails with failure of fund, 13, 13

Devisee's Liability

Direction to pay legacy, 13, 117

Devise governed by *lex loci rei sitæ*, 3, 564**Devise in Lieu of Dower**

Abatement, 13, 145

Devise Obtained by Fraud

Constructive trusts, 10, 65

Devise upon trust, 19, 1046

Dividend, 13, 21

Ejectment, 13, 188

Ejectment by devisee, 6, 242

Equitable Conversion

Proceeds of Land Directed to Be Converted for Objects of Sale

Lapsed and void legacies and devises, 13, 44

Equitable remedy, 13, 188, 189

Executor's Assent, 13, 151, 152

Absolute interest after assent, 13, 152

Action after assent, 13, 152

Action against executor, 13, 152

Action for recovery of legacy before assent, 13, 152

Assent before probate, 13, 153

Assent relates to testator's death, 13, 153

Assent to bequest to life tenant, 13, 155

Conditional assent, 13, 153

Condition precedent, 13, 153

Condition subsequent, 13, 154

Covenants contained in leases, 13, 153

Creditors following property in equity, 13, 156

Debts of estate after assent, 13, 152

Effect of assent, 13, 155

Ejectment, 13, 152

Executor also trustee, 13, 153

Executor following property in equity, 13, 156

Executor's assent inferred, 13, 155

Feme covert executor, 13, 153

Inchoate right of legacy before assent, 13, 151

Legacy to executor, 13, 155

Mere acquiescence, 13, 154

Necessity, 13, 151

Refusal of assent without cause, 13, 156

Relief in equity, 13, 157

Remainders, 13, 155

Replevin, 13, 152

Residuary legacy, 13, 152

Revocation of assent, 13, 155

Right before assent transmissible to representatives, 13, 152

Specific legacy, 13, 152

Trespass, 13, 152

Trover, 13, 152

- When title vests absolutely, 13, 156
 Where there are several executors, 13, 153
 Whether any form of words necessary, 13, 154
 Words held equivalent to assent, 13, 154
 Words of congratulation, 13, 154
- Foreign Attachment**, 8, 314
 Distributive share, 8, 314
 Estate under administration, 8, 315
 General rule, 8, 314
 Statutes rendering legacies attachable, 8, 314
- General Legacy**, 13, 10
Abatement, see *infra*, **ABATEMENT**.
 Action, 13, 188
 Annuities, 13, 17
 Examples, 13, 12
 Interest, 11, 387
 Legacies bequeathed to be invested in particular securities, 13, 16
 Legacies bequeathed to procure a specific object, 13, 16
 Money, 13, 15
 Stocks, 13, 20, 22
 Time of payment, 13, 157
- Gift**
 Of a definite sum part of a specific fund, 13, 17
 Of money out of stock, 13, 17
 Of part of specific fund, 13, 17
 Of specific thing to be sold and divided, 13, 17
 Of sum invested in particular securities, 13, 19
- Gifts to a Class**, 13, 60
See **REMAINDERS**; **WILLS**.
 Children, 13, 62
 Construction, 13, 62
 Distinction between gifts to classes of different individuals, 13, 60
 Examples, 13, 61
 Gift to several persons by name, 13, 16
 Grandchildren, 13, 62
- In Aid of Legatees**
 Personal assets exhausted by mortgage, 14, 727
- In Lieu of Dower**
Abatement, 13, 137
 Bequest exceeding value of right relinquished, 13, 137
 Bequest to husband, 13, 138
 Bequest to wife of interest in general estate, 13, 138
 Creditors, 13, 138
 Express direction of testator, 13, 138
 In Massachusetts, 13, 138
 Lien on realty, 13, 138
 Necessity of the words "in lieu of dower," 13, 137
 Pretermitted children, 13, 138
 Statutes providing that bequest to wife shall be construed in lieu of dower, 13, 137
 What bequests are in lieu of dower, 13, 137
- Where testator never had any land 13, 140
 Whether bequest in lieu of dower has priority over specific legacies and devises, 13, 138
- Interest**, 11, 387; 13, 166
Executor trading with assets, see **EXECUTORS AND ADMINISTRATORS**.
Portions of annuities, see **ANNUITIES**.
 Accumulated, 13, 183
 Adult children, 13, 173
 Age of twenty-one attained in lifetime of testator, 13, 180
 Annuities, 13, 172
 Annuity payable out of income alone, 13, 177
 Assignment of, 13, 183
 Bequest of, 13, 21
 Bequest to child by parent, 13, 181
 Breaking into principal, 13, 176
 Child with means of support, 13, 173
Compound Interest, 13, 167
See **EXECUTORS AND ADMINISTRATORS**.
 Contingent bequest, 13, 180
 Demonstrative annuities, 13, 179
 Devise to contingency, 13, 170
 Direction that interest shall accumulate, 13, 182
- Direction that Legacy Shall Be Paid**, 13, 170
 "As soon as executor shall think proper," 13, 170
 "As soon as possible," 13, 170
 Executors "shall have five years within which to settle my estate," 13, 170
 "That bequest shall be paid" at convenience of executors, 13, 170
 "That bequest shall be paid" within one year, 13, 170
 Direction that residue be invested in a particular way, 13, 179
 Direction to pay legacy within three years, 13, 181
 Divesting contingency, 13, 180
 Duration, 13, 176
 Effect of contest, 13, 167
 Effect of exonerated personality, 13, 169
 Examples, 13, 171
 Expressions which give interest from death, 13, 173
 First year after testator's death, 13, 166
 From time of investment, 13, 179
 From when interest is due, 13, 166-168
 General contingent residuary bequest, 13, 180
 General legacies, 11, 387; 13, 166
 Grandchildren, 13, 173, 182
 Illegitimate children, 13, 182
 Infant en ventre sa mere, 13, 173
 In loco parentis, 13, 182
 In satisfaction of a debt, 13, 171
 Intention of testator, 13, 183
 Legacies and annuities for maintenance and support of minor, 13, 174

LEGACIES AND DEVISES—Cont'd**Interest—Cont'd**

Legacies charged solely upon land,
13, 169

Legacies charged upon another bequest, 13, 169

Legacies paid into court, 13, 170

Legacies payable in future with direction that interest shall be paid,
13, 182

Legacies payable out of proceeds of realty, 13, 170

Legacies to be raised out of land, 13, 169

Legacies to child, 13, 182

Legacies to persons not in loco parentis, 13, 183

Liability to debts of legatee, 13, 176

Life Tenant and Remainderman, 13, 190

Authorizing securities, 13, 192

Direction that enjoyment is to begin at a particular time, 13, 197

Direction to accumulate, 13, 198

Direction to convert and invest, 13, 196

Direction to keep together, 13, 198

Discretion as to time of conversion,
13, 197

During delay allowed for payment of legacies, 13, 198

From time of death of testator, 13, 199

Funds severed from bulk, 13, 191

Income from funds in proper state of investment, 13, 196

Income from funds properly invested, 13, 196

Income of estate properly invested within year, 13, 192

Income which fund would have produced if invested, 13, 196

In England, 13, 200

Interest on reinvestment, 13, 195

Investments, 13, 193

Investment made within a year from death, 13, 196

Lewin's classification, 13, 198

Life tenant's interest for first year,
13, 190, 191

Life tenant's right at death of testator, 13, 190

Mode of computation, 13, 194

Money due on improper securities,
13, 193

No directions to accumulate, 13, 192

No directions to convert, 13, 192

Payment of debts and legacies out of income or capital, 13, 200

Payments on principal, 13, 191

Rate, 13, 194, 195

Reinvestment of money on improper securities, 13, 194

Making up arrearages of lean years from surplus income, 13, 177

Minor child, 13, 172

Necessity of demand, 13, 183

Nephews, 13, 182

Niece, 13, 182

One year after grant of letters, 13, 167

Payment of legacy impracticable, 13, 169

Payment postponed until twenty-one,
13, 180

Personal liability of devisee, 13, 169

Provision by testator, 13, 170

Rate, 13, 167, 168

Rate, in England, 13, 168

Residuary bequest, 13, 180

Residue to one for life, remainder to another, 13, 179

Specific legacies, 11, 387; 13, 185

Testator's directions, 13, 170

Time of payment fixed by will, 13, 180

To be paid as needed, 13, 175

To wife in lieu of dower, 13, 171

Where assets are productive, 13, 169

Where assets are unproductive, 13, 169

Whether Annuity Is Charged on Income or Corpus, 13, 178

Annuity plainly charged on corpus,
13, 178

Arrears out of corpus, 13, 178

Rules determining whether corpus is charged, 13, 178

Whether bequest of interest is specific,
13, 19

Interpleader, 11, 498

Laches, see *infra*, **SUITS BY LEGATEES AND DISTRIBUTEES.**

Land devised for payment of debts goes to personal representative, 7, 261

Lands, 13, 26

Lapse at ecclesiastical law, 12, 759

Lapsed and Void Legacies and Devises, 13, 27

See **CHARITIES; PERPETUITIES; WILLS.**

Trust for accumulation, see **PERPETUITIES.**

Abatement, 13, 147

Bequest to charities, 13, 148

Lapsed and specific legacy, 13, 148

Lapsed share, 13, 147

Lapsed share of personalty, 13, 147

Lapsed share of residue, 13, 147

Specific devise must take effect where lapsed interest descends to heir,
13, 147

Where lapsed interest falls into residuary devise, 13, 147

Where there is no charge of debts,
13, 148

Where there is no residuary bequest, 13, 148

Beneficiaries taking as a class, 13, 33

Bequest to one in trust for another, 13, 34

Cases to which doctrine of lapse is applicable, 13, 29

Debt due from legatee, 13, 30

Definition, 13, 28

- Devolution**, 13, 39
At Common Law, 13, 39
 Fall into the residue, 13, 39
 Heir, 13, 40
 Next of kin, 13, 40
 Pass under residuary clause, 13, 40
By Statute, 13, 40
 Abolition of distinction between
 real and personal property, 13,
 41
 Devises passing under residuary
 clause, 13, 41
 Heir or distributee, 13, 42
 In Alabama, 13, 40
 In Colorado, 13, 42
 In England, 13, 40
 In Indiana, 13, 40
 In Kentucky, 13, 41
 In North Carolina, 13, 40
 In Ohio, 13, 42
 In Pennsylvania, 13, 40
 In Virginia, 13, 40
 In West Virginia, 13, 40
 Lapsed devises, 13, 40
 Share of the residue, 13, 42
 States in which distinction be-
 tween real and personal prop-
 erty are abolished, 13, 42
 Statute providing for after-ac-
 quired real property, 13, 42
 Void devise, 13, 41
Charges on mixed funds, 13, 45
Charges on Realty, 13, 42
 Absolute charge, 13, 43
 Benefit of devisee, 13, 42
 Charge void ab initio, 13, 43
 Equitable conversion, 13, 43
 Exception from devise, 13, 43
 Failure to pay, 13, 42
 Proceeds of realty directed to be
 sold, 13, 44
 Realty and personalty blended,
 13, 44
 Statutes, 13, 44
 Subsequent lapse, 13, 43
 Vested legacy, 13, 43
 Proceeds of lands directed to be
 sold, 13, 44
Examples, 13, 30, 31
Gift of personal property, 13, 29
Gift of real property, 13, 29
Gift on happening of a certain event,
 13, 30
Gifts to several, 13, 33
Gifts to several as joint tenants, 13, 33
Gifts to several as tenants in common,
 13, 33
Heir, 13, 51
**Incapacity arising after death of tes-
 tator**, 13, 29, 30
**Incapacity arising before death of tes-
 tator**, 13, 30
Land charged with legacy, 13, 33
Lapsed share of residue, 13, 49
Legacy by appointment, 13, 32
Legacy given in satisfaction of debt,
 13, 30
Power, 13, 39
Power created by will, 13, 33
Remainder, 13, 32
Remoteness, 13, 32
Representatives of legatee, 13, 30
Residuary legatee, 13, 46
Residue of residue, 13, 49
Statutes Preventing Lapse, 13, 37
 Child or other descendant of tes-
 tator, 13, 37
 Child or other relatives, 13, 38
 Construction, 13, 39
 In Alabama, 13, 37
 In Arkansas, 13, 37
 In California, 13, 38
 In Colorado, 13, 37
 In England, 13, 37
 In Georgia, 13, 38
 In Illinois, 13, 37
 In Indiana, 13, 37
 In Iowa, 13, 39
 In Kansas, 13, 38
 In Kentucky, 13, 38
 In Maine, 13, 38
 In Maryland, 13, 39
 In Massachusetts, 13, 38
 In Michigan, 13, 38
 In Minnesota, 13, 38
 In Mississippi, 13, 37
 In Missouri, 13, 38
 In Nebraska, 13, 38
 In Nevada, 13, 38
 In New Hampshire, 13, 38
 In New Jersey, 13, 37
 In New York, 13, 37
 In North Carolina, 13, 37
 In Ohio, 13, 38
 In Oregon, 13, 38
 In Pennsylvania, 13, 37
 In Rhode Island, 13, 38
 In South Carolina, 13, 39
 In Tennessee, 13, 38
 In Texas, 13, 37
 In Vermont, 13, 38
 In Virginia, 13, 38
 In West Virginia, 13, 38
 In Wisconsin, 13, 38
 Intention of testator, 13, 39
 Issue, 13, 37
 Lineal descendant, 13, 38
 Representation, 13, 39
Substitution of issue, 13, 32
Vested interests, 13, 30
**What indicates an intent to exclude
 from residue**, 13, 47
What Will Prevent Lapse, 13, 34
 Bequest to A and his heirs, 13,
 36
 Bequest to several as tenants in com-
 mon, 13, 36
 Death of donee in lifetime of testator,
 13, 37
 Designating persons to succeed,
 13, 34
 Examples, 13, 35
 Express declaration, 13, 36
 Legacy to A or his heirs, 13, 35

LEGACIES AND DEVICES—*Cont'd***Lapsed and Void Legacies and Devises—***Cont'd*

Legacy to his personal representatives, 13, 35

Where beneficiary dies after testator, 13, 39

Lease for years, 13, 26

Leasehold, 13, 184

Legacy as Evidence of Forgiveness of Debt, 7, 259; 13, 80

Modern rule as to legacy, 7, 259

Showing intention of forgiveness, 7, 259; 13, 80

Legacy bequeathed to be invested in particular securities, 13, 16

Legacy bequeathed to procure a specific object, 13, 16

Legacy Obtained by Fraud

Constructive trust, 10, 64

Legacy to Creditor

Distinction between legacy in satisfaction of a debt due a child and legacy in satisfaction of a portion, 13, 88

Legatee, 13, 222

Lien, 13, 603

Lien of Debts, 13, 603

See DEBTS OF DECEDENTS.

Lien of Legacies, 13, 606

See infra, WHETHER LEGACIES ARE A CHARGE UPON THE LAND.

When it arises, 13, 603

When lien by devise arises, 13, 603

Limitations of Actions, 7, 406

Laches, *see infra*, SUITS BY LEGATEES AND DISTRIBUTEES.

Waiver, 13, 708

Marshaling Assets

In Aid of Legatees, 14, 727

Against the heir, 14, 738

Charities

Effect of direction to pay legacies to charities out of pure personality, 24, 735

Examples, 14, 734-736

States in which statutes of mortmain are not in force, 14, 737

Two kind of funds, 14, 735

Devise subject to a mortgage, 14, 728

Examples, 14, 738

Land in foreign jurisdiction, 14, 730

Lands not chargeable with payment of debts, 14, 738

Lands sold before exhaustion of personality, 14, 738

Personal assets exhausted by vendor holding a lien, 14, 727

Simple Contract Creditor, 14, 731

Aliens, 14, 734

Charity, 14, 734

Death of legatee before time of payment, 14, 733

Effect of doctrine upon order of application, 14, 733

General legacies, 14, 733

Land descended, 14, 731

Land devised, 14, 732

Legacies charged upon the land, 14, 732

Pecuniary legacies, 14, 735

Residuary legatee, 14, 734

Specialty creditor, 14, 729

Widow taking devise in lieu of dower, 14, 738

Meaning of devise, 11, 374

Misnomer of corporation, 4, 205

Money, 13, 15, 17

Municipal Corporations, 15, 1060

Disabling or restraining statutes, 15, 1061

Examples, 15, 1061, 1062

In trusts for particular object, 15, 1061

Name, 15, 968

What valid, 15, 1060

Parol Evidence

Exoneration of personality, 13, 121

Partnership

Direction that legatee shall continue business, 17, 1136

Payment and Delivery, 7, 315; 13, 157

Currency, *see infra*, CURRENCY.

Interest, *see infra*, INTEREST.

Appropriation of Funds to Secure Annuities and Legacies Payable in Futuro, 13, 163

All persons bound by appropriation, 13, 164, 165

Annuities, 13, 165

Annuity charged upon whole personal estate, 13, 165

Application to court of equity to have sum set apart, 13, 163

Appropriation without order of court, 13, 164

Contingent legacy, 13, 163

Executor paying over a residue charged with an annuity, 13, 163

Legacies charged on land, 13, 164

Legacy chargeable on personal estate, 13, 163

Residue charged with an annuity, 13, 163

Rise or fall of stock, 13, 164

Compelling beneficiaries to refund, 7, 321

Creditor compelling legatee to refund, 7, 322

Duty of executor, 7, 315

General Legacies Payable in Stock, 13, 162

Time of decree of administration, 13, 162

To what amount of stock entitled, 13, 162

Where executor is also trustee, 13, 162

Impounding or retaining assets, 7, 319

Impounding or retaining assets as security for contingent liabilities, 7, 319

Legatee compelling another to refund, 7, 322

Mode of, 7, 315

- Refunding bond from legatee, 7, 320
 Reimbursement where executor has made advances, 7, 321
Residue, 13, 187
Interest, see *infra*, INTEREST.
 Duty of executor, 13, 187
 To be ascertained at end of year, 13, 187
Security, 7, 319
Specific Legacies, 13, 184
 Accretion, 13, 184
 Accretion before death, 13, 186
 "All my debts," 13, 186
 "All my stock," 13, 186
 Call on stock legacies, 13, 185
 Direction to deliver a sealed package unopened to particular legatee, 13, 186
 Dividends, 13, 185
 Exoneration from charges, 13, 184
 Income, 13, 185
 Interest, 13, 185
 Leasehold, 13, 184
 Selection, 13, 185
 To natural guardian, 9, 85
 Under order of court of equity, 7, 320
When Due, 13, 157
 Annuity, 13, 159
 Bequest of residue for life, 13, 159
 Divesting contingency, 13, 160
 General legacy, 13, 157
 Investing executor with discretion, 13, 158
 Legacy given for life with remainder over, 13, 557
Legacy to Be Paid at Twenty-One, 13, 161
 Where interest is given during minority, 13, 162
 Where interest is not given during minority, 13, 152
 Where legatee dies under twenty-one, 13, 161
 Where legatee has a vested interest and time of payment is postponed to subsequent period, 13, 162
Legacy Upon Contingency, 13, 160
 Contingency occurring in testator's lifetime, 13, 160
 Where contingency occurs more than a year after testator's death, 13, 160
 Legacy upon death of a person under age of twenty-one, 13, 161
 Securities where there is divested contingency, 13, 160
 When no refunding bond is tendered, 7, 320
 Where contingent liability exists, 7, 319
 Where there is no notice of debt, 7, 319
 Pecuniary legacies, 13, 15; 18, 256
 Redemption by devisees and legatees 20, 618
 Relief in equity, 13, 152
Remainderman and Life Tenant, 13, 211
Accretions, see REMAINDERS AND EXECUTORY INTERESTS.
Dividends, see REMAINDERS AND EXECUTORY INTERESTS.
For waste, see REMAINDERS AND EXECUTORY INTERESTS.
Repairs, see REMAINDERS AND EXECUTORY INTERESTS.
Taxation, see REMAINDERS AND EXECUTORY INTERESTS.
Perishable Property, 13, 201
 Absence of a direction to convert, 13, 210
 Assumption by testator that property is unconverted, 13, 210
 Bequest of barn stock, 13, 203
 Bequests of all that is "left," 13, 209
 Connecticut statute, 13, 206
 Construction of bequest, 13, 209
 Conversion into money, 13, 202
 Direction to convert certain specific parts of personal estate, 13, 211
 Direction to "divide," 13, 211
 Discretionary power to sell, 13, 211
 English practice, 13, 201
 Executor's duty, 13, 202, 203
 Express direction to sell at particular period, 13, 210
 Expression indicating an intention that life tenant enjoy in specie, 13, 209
 Furniture, plate, pictures, etc., 13, 207
 General rule, 13, 201
 Gift of all personal estate, 13, 202
 Gift of interest in testator's property, 13, 202
 In the United States, 13, 202
 Inventory, 13, 207
 Investment in permanent legal securities, 13, 202
 Lord Dartmouth *v.* Howe, 13, 201
 Money, 13, 208
 Payment of interest to life tenant, 13, 202
 Payment over to life tenant on receiving security, 13, 203, 204
 Pennsylvania statute, 13, 205
 Personal chattels specifically bequeathed, 13, 207
 Power to vary securities, 13, 211
 Preservation of principal for remainderman, 13, 202
 Residuary clause containing an enumeration of particulars, 13, 211
 Residuary gifts, 13, 209
 Specific bequests, 13, 204
 Stock in trade, 13, 208
 Things consumable in use, 13, 208
 Use of word "dividends," 13, 211
 Use of word "rent," 13, 210
 Wearing apparel, 13, 208
 When property will not be converted and invested, 12, 206-212
 When security may be required, 13, 207

LEGACIES AND DEVISES—Cont'd**Remainderman and Life Tenant—Cont'd****Perishable Property—Cont'd**

Where no absolute interest was intended to be conferred, 13, 209

Where testator intended life tenant to enjoy things bequeathed in specie, 13, 209

Remainderman and Life Tenant, Relative Rights of**Interest and Income, 13, 190**

Authorizing securities, 13, 192

Direction as to time of conversion, 13, 197

Direction that enjoyment is to begin at a particular time, 13, 197

Direction to accumulate, 13, 198

Direction to convert and invest, 13, 196

Direction to keep together, 13, 198

During delay allowed for payment of legacies, 13, 198

From time of death of testator, 13, 199

Funds severed from bulk, 13, 191

Income from funds in proper state of investment, 13, 196

Income from funds properly invested, 13, 196

Income of estate properly invested within year, 13, 192

Income which fund would have produced if invested, 13, 196

In England, 13, 200

Interest on reinvestment, 13, 195

Investment made within a year from death, 13, 196

Investments, 13, 193

Lewin's classification, 13, 198

Life tenant's interests for first year, 13, 190, 191

Life tenant's right at death of testator, 13, 190

Mode of computation, 13, 194

Money due on improper securities, 13, 193

No directions to accumulate, 13, 192

No directions to convert, 13, 192

Payment of debts and legacies out of income or capital, 13, 200

Payments on principal, 13, 191

Reinvestment of money on improper securities, 13, 194

Rate, 13, 194, 195

Remainders to a Class, 20, 854

Confining gifts to persons answering description at death of testator, 20, 856

Gifts to remote relatives, 20, 855

Gift to children, 20, 855

Gift to grandchildren, 20, 855

In general, 20, 854

Opening up to let in those afterwards born, 20, 855

Those of a class born after the determination of a particular estate, 20, 855

Vested in persons in esse, 20, 854

Where none of the class are in esse, 20, 855

Rents and Profits, 13, 52, 151

Devisee's right to, 13, 151

Devise subject to prior limitations, 13, 151

Future devise of lands, 13, 151

Gift to a class, 13, 151

Intermediate rents until birth of devisee, 13, 151

Realty and personalty blended, 13, 151

Residuary devise, 13, 151

Rent charge, 13, 27

Repealed legacies, see *infra*, **CUMULATIVE AND SUBSTITUTIONAL BEQUESTS**.

Replevin, 13, 188

Residuary Bequests, 13, 45, 185

Abatement, see *infra*, **ABATEMENT**.

Accrued income, 13, 46

And Devises

Lapsed and void legacies and devises, 13, 39

Construction of word "residue," 13, 50

Contingent interest, 13, 46

Everything not disposed of, 13, 45

Income which has accumulated between testator's death and period of vesting, 13, 47

Joint residuary bequests, 13, 49

Lapsed and void legacies, 13, 45

Lapsed appointments, 13, 47

Lapsed share of residue, 13, 49, 50

Lapsed shares, 13, 50

Nature of residuary legatee's interest, 7, 316

Particular residue, 13, 50

Proceeds of realty, 13, 50

Property acquired after date of will, 13, 46

Rebuttal of presumption in favor of residuary legatee, 13, 48

Renounced bequests, 13, 46

Residue of particular fund, 13, 50

Residue of residue, 13, 49

Revoked shares, 13, 49

Share of residue, 13, 48

What indicates an intention to exclude lapsed legacies, 13, 47

What is carried by, 13, 45

What words create a good residuary bequest, 13, 46

Whether Bequest of General Personal Estate Is, 13, 23, 24

All testator's personal estate, 13, 23, 24

Enumeration of specific things, 13, 24

Exception of specific part, 13, 25

In same clause with devise of real estate, 13, 24

Part subject to debts, 13, 26

Personal property in certain place, 13, 25

Residue of estate at B, 13, 25

Rest of residue of a specified fund, 13, 26

Specific legacy, 13, 24

Residuary Clause

Mutual insurance, 16, 50

Residuary Devise, 13, 26, 51

After-acquired realty, 13, 52

Contingent and residuary interests, 13, 51

English statute, 13, 51

Future, 13, 53

Income from residuary real estate prior to vesting, 13, 52

Income of realty blended with residuary personality, 13, 52

In Virginia, 13, 51

Lapsed and void devises, 13, 51

Particular residue, 13, 52

Rents and profits, 13, 52

Share of residue, 13, 52

Where there is no residuary clause, 13, 52

Whether specific, 13, 51

Revocation of executor's assent, 13, 156

Sales of real estate to pay legacies, 7, 272

Satisfaction, see *infra*, ADEMPTION.**Satisfaction and Release, 13, 80**

Legacy to debtor, 13, 80

Satisfaction and Release of Debts by Legacies, 13, 108

Abatement, 13, 137

Extrinsic evidence, 13, 108

Legacy to Creditor, 13, 82

Annuity, 13, 84

At law, 13, 83

Breach of trust, 13, 83

Debt an express charge on legacy, 13, 83

Debt contracted after making will, 13, 84

Deficiency of assets, 13, 86

Difference in time of payment of debts from legacy, 13, 84

Different sets of trustees, 13, 87

Domestic servants, 13, 87

Express agreement to accept legacy, 13, 83

Express direction in will for payment of debts, 13, 85

General rule, 13, 82

Legacy by husband to wife, 13, 86

Legacy by parent to child, 13, 86

Legacy contingents, 13, 84

Legacy equal to existing debt, 13, 82

Legacy for use of married women, 13, 84

Legacy greater than existing debt, 13, 82

Legacy of different nature from debt, 13, 84

Legacy of less amount than debt, 13, 84

Legacy to creditor's wife, 13, 87

Negotiable security, 13, 86

Particular motive assigned for gifts, 13, 84

Specific chattel, 13, 84

Unliquidated demand, 13, 86

When a satisfaction for debt, 13, 82

Legacy to Debtor, 7, 259; 13, 80

Extrinsic evidence of intention, 13, 81

General rule, 7, 259; 13, 80

Intention of testator, 7, 259; 13, 80

Set off abatement, 13, 81

What words sufficient, 13, 81

Satisfaction of a debt by, 5, 202; 13, 89

Satisfaction of legacies, 13, 70

Satisfaction of Portions by Legacies, 13, 87

Advancement, 13, 89

Bequest less than portion, 13, 87

Contingency, 13, 90

Difference in times of payment, 13, 88

Direction to pay debts, 13, 91

Distinction between legacy and satisfaction of a debt due a child and legacy in satisfaction of a portion, 13, 88

Land for money, 13, 90

Legacy given for a different purpose, 13, 90

Money for land, 13, 90

Not ejusdem generis, 13, 90

Pro tanto satisfaction, 13, 88

Provisions of a different nature, 13, 89

Rebuttal of presumptions against double portions, 13, 88

Satisfaction of portions by advancements, 13, 91

Statement of rule, 13, 87

To whom rule applies, 13, 87

Whether a legacy or distributive share is an advancement, 13, 91

Securities

Devise to contingency, 13, 160

For money, 13, 16

Services with a view to the legacy, 14, 770

Specific devise, 13, 51

Specific Legacy, 13, 10, 143*Payment*, see *infra*, PAYMENT AND DELIVERY.

Accretions, 13, 184

Action, 13, 188

"All my debts," 13, 186

"All my stock," 13, 186

Annuity arising out of the land, 13, 27

Bequest of lease for years, 13, 26

Charging bequest on land, 13, 28

Construction, 13, 15

Debts, 13, 16

Devises of real estate, 13, 26

Directing investment in homestead, 13, 26

Distinguished from general legacy, 13, 10-12

Dividends, 13, 185

Examples, 13, 10, 12, 18

Exoneration from all charges, 13, 184

Gift of a definite sum part of a specific fund, 13, 17

Gift of part of specific fund, 13, 17

Gift of specific thing to be sold and divided, 13, 17

Gift of sum invested in particular securities, 13, 19

LEGACIES AND DEVISES—Cont'd**Specific Legacy—Cont'd**

- Incidents of, 13, 12
- Income, 13, 185
- Interest, 13, 19, 185, 387
- Leasehold, 13, 184
- Money, 13, 15
- Rent charge, 13, 27
- Residuary devise, 13, 26
- Sealed package, 13, 186
- Securities for money, 13, 16
- Stocks, 13, 19, 22
- Thing of which testator contemplates acquisition, 13, 11
- Tithes, 13, 27

Whether Bequest of General Personal

- Estate is, 13, 23, 24
- All testator's personal estate, 13, 23, 24
- Enumeration of specific things, 13, 24
- Exception of specific part, 13, 25
- In same clause with devise of real estate, 13, 24
- Part subject to debts, 13, 26
- Personal property in certain place, 13, 25
- Residue of estate at B, 13, 25
- Rest of residue of a specified fund, 13, 26
- Specific legacy, 13, 24

Statute of Limitations, 13, 190

In general, 13, 190

Legacies charged on land, 13, 190

Stocks, 13, 19

- Bequest charged upon stock, 13, 21
- Bequest of all the stock, 13, 20
- Bequests of dividends and interest, 13, 21
- Directions to invest, 13, 23
- Directions to sell, 13, 22
- Directions to transfer stock, 13, 23
- Disposition of fractional parts, 13, 23
- Effect of statutes providing will should speak from death, 13, 20
- Examples of specific legacies, 13, 21
- Of a particular description, 13, 20
- Parol evidence, 13, 23
- Possession of stock of kind bequeathed, 13, 22
- When bequest is specific, 13, 19
- When demonstrative, 13, 20
- When general, 13, 20
- When not specific, 13, 22

Suits by Legatees and Distributees

Laches, 12, 591

- Agreement among legatees, 12, 592
- Delay of twenty years, 12, 591
- Great delay, 12, 592
- Payment of interest of specific sum, 12, 591
- Presumption of appointment, 12, 591
- Settlement, 12, 592
- Specific legacy, 12, 591
- When a bar, 12, 592

Substitutional bequests, see *infra*,
CUMULATIVE AND SUBSTITUTIONAL
BEQUESTS.

Superstitious uses, 3, 130

Title, 13, 150, 156

See *infra*, PAYMENT AND DELIVERY.
Executor's assent to the legacy, see *infra*,
EXECUTOR'S ASSENT.

Devisee derives his title immediately
from testator, 13, 150

Future devises of land, 13, 151

Inchoate right of legatee, 13, 151

Legatee's title, 13, 150

Nature of their respective titles, 13, 150

Rents and profits, 13, 150

Trespass by executor, 13, 151

When legatee's title complete, 13, 151

When title vests absolutely, 13, 156

Transformation of state into national
banks, 16, 149

Trespass, 13, 188

Whether Debts Are a Charge Upon Land,
13, 603, 604, 605

At common law, 13, 604

Created by will, 13, 604

Effect of a statutory lien, 13, 605

Primary liability of personal property,
13, 604

Specific fund for payment of debts, 13, 606

Testator's direction, 13, 604

Whether Legacies Are a Charge Upon the
Land, 13, 606

Equitable liens, see EQUITABLE MORT-
GAGES; LIENS.

Blending personalty with realty, 13, 607

Charge of all the real estate, 13, 607

Directions that real estate shall be sold,
13, 606

Parl passu liability, 13, 607

Primary liability of the personalty,
13, 606Real estate in New York and Con-
necticut, 13, 607

Sufficiency of words, 13, 606

LEGAL, 13, 221

Last legal settlement, 12, 907

Legal cause, 3, 45

Legal fraud, 8, 635

Legal heirs, 11, 374; 13, 221

Legal representative, see EXECUTORS
AND ADMINISTRATORS.

Legal representative, 13, 221; 16, 48;
21, 18; 27, 65; 29, 436

Legal residence, 21, 125

Legal rights, 3, 824

Measure of damages, 5, 54

LEGAL ASSESSMENTS

In Indiana, 10, 266

Gravel, rail, and plank road, 10, 265

LEGALIZE, 13, 222**LEGALLY**

Due, 6, 39

LEGAL TENDER, 15, 702

See MONEY.

LEGATEE, see LEGACIES AND DEVISES.**LEGISLATION**, see STATUTES.

As to lobbying contracts, see ILLEGAL
CONTRACTS.

LEGISLATIVE EXERCISE OF TAXING POWERS, see **TAXATION**.**LEGISLATIVE POWER**, 13, 222**LEGISLATOR**

Incompatible offices, 19, 562z

LEGISLATURE, see **CONSTITUTIONAL LAW**; **CONTEMPT**; **PUBLIC OFFICERS**.
As to privilege from arrest, see **ARREST**.*As to privilege of free speech*, see **LIBEL AND SLANDER**.*As to the power of the legislature*, see **CONSTITUTIONAL LAW**.*Compelling appearance of witnesses*, see **WITNESS**.*Enactment of statutes*, see **STATUTES**.*Journals of legislature*, see **STATUTES**.*Jurisdiction over judiciary*, see **CONSTITUTIONAL LAW**.

Branch of the legislature, 2, 514

Compelling attendance of absent member, 19, 486

Expulsion, 19, 486

Imprisonment for misconduct, 19, 486

Members of the legislature, 15, 261

Sessions

Judicial notice, 12, 187

LEGITIMACY, 13, 224*See generally*, **BASTARDY**; **MARRIAGE**.**Access**, 1, 50; 13, 225

Absence of husband, 13, 225

Conclusive presumption of, 13, 224

Divorce, 13, 226

Evidence of husband or wife, 13, 226; 29, 627

Impotence of husband, 13, 225

Non-Access, 2, 139; 7, 97

Wife as witness, 13, 226; 29, 627

Parties living apart by mutual consent, 13, 226

Wife proven unfaithful, 13, 224

Wife unchaste before marriage, 13, 225

Cohabitation and repute, 13, 224; 14, 530

Construction of statutes, 23, 417

Definition, 13, 224

Domicile

Illegitimate child, 5, 861

Illegitimate infant, 5, 866

Legitimized child, 5, 861

Executors and administrators, 7, 176

How proven, 13, 224

Issue of Marriage of a Divorced Person

Legitimization, 13, 226

Where divorce is afterwards avoided, 5, 846, 847

Non-access, see *infra*, **ACCESS**.**Nullity of Marriage**, 14, 537

Statutes, 14, 538

Presumption, 2, 129; 7, 97; 13, 224; 19, 48

How rebutted, 2, 139

Where woman is pregnant at the time of her marriage, 2, 137

Slaves and slavery, 22, 794

Statutes

Effect of acts, 24, 422

Extra-territorial effect of statutes, 24, 427

Issue of marriage deemed null at law, 24, 422

Private act, 24, 422

Retroactive statutes, 24, 421

Subsequent marriage of parent, 24, 422

Whether bastards may be legitimized by, 24, 421

LEGITIMATE, 13, 226**LEGITIMATION**, 13, 226**LEND**, 13, 227**LENGTH**, 13, 228**LESS**, 13, 229

More or less, 12, 984

Not less, 16, 751

LESSOR, 13, 230**LET**, 13, 230**LETTER BOOK**, 13, 237*See* **BOOKS AS EVIDENCE**.*As evidence*, 2, 467p**LETTER OF ADVICE**, 13, 237**LETTER OF CREDIT**, 13, 237

Action against drawer in favor of any person who gives value to the drawee, 3, 849

As acceptance of bill of exchange, 3, 849

Circular notes, 13, 239

Conflict of Laws, 3, 597

Governed by law of country of drawee, 3, 597

Consideration, 13, 240

Definition, 13, 237

Distinguished from bills of exchange, 13, 239

Forgery, 8, 484

General, 13, 238

Guaranty, 13, 240

Instruction, 13, 250

Kinds, 13, 238

Liability of Writer, 13, 239*As principal and only debtor*, 13, 239

Examples, 13, 240

Generally, 13, 240

Liability as guarantor, 13, 240

Liability of co-surety, 13, 240

Special letters of credit, 13, 240

Valuable consideration, 13, 240

Volunteer, 13, 240

Where the letter is purchased, 13, 239

Negotiability, 13, 243

Examples, 13, 243-249

General letter of credit, 13, 243

In nature of a guaranty, 13, 243

Special letter of credit, 13, 243

Notice to writer, 13, 250

Operating as a general offer, 3, 849

Parol evidence, 13, 241

Special, 13, 238

Suit by party advancing, 13, 241

Surety, 13, 240

When notice of compliance with request, 13, 250

LETTERS, 13, 231, 251*See* **ADDRESS OF LETTERS**; **LETTERS OF CREDIT**.

LETTERS—Cont'd

See generally, LITERARY PROPERTY;
MAIL; POSTAL LAWS.

See WITNESSES.

As to obtaining money by false pretenses,
see FALSE PRETENSES.

Begging letters, see FALSE PRETENSES.

Letter book, see BOOKS AS EVIDENCE.

Letter of attorney, see POWER OF AT-
TORNEY.

Letters of administration, see PROBATE
AND LETTERS OF ADMINISTRATION.

Abstraction from the Mails

Embezzlement, 6, 494

Address of Letters, 1, 188; 13, 264

Mailing Notice of Dishonor, 1, 188

Address to either residence or place
of business, 1, 189

What sufficient address, 1, 188

Capital letters, 2, 728

Contracts by, 3, 851; 13, 233

See infra, SALES.

By what law governed, 3, 857

Contract Completed by Posting Letter, 13,
255

Casualties occurring in post-office,
13, 256

Effect of posting, 13, 256

General rule, 13, 255

Retraction, 13, 256

Retraction by party accepting offer,
13, 257

Retraction by party making offer,
13, 256

Sale, 13, 255

Stipulation that acceptance shall be
actually communicated to party,
13, 257

When answer must be made, 13, 256

When contract completed, 13, 256

Correspondence, 13, 236, 254

Examples, 13, 254, 255

General rule, 13, 254

How meaning determined, 13, 255

Insurance contract, 11, 283

Partly written and partly by parol, 13,
255

Retraction, 13, 256

Sales, 13, 255

Usage, 13, 255

What letters constitute a contract, 13,
254

When contract is complete, 3, 856

Decoy Letters, 13, 257

See DECOY LETTERS.

Dedication, 13, 252

To private individuals, 13, 252

To the public, 13, 252

Definition, 13, 231, 251

Whether a writing, 13, 231

Whether it includes envelope, 13, 231

Demand by, 5, 528⁷

Evidence, 13, 258

Letter Press Copies, 21, 986

As to letter books, see BOOKS AS
EVIDENCE.

Action on contract, 13, 265

Address, 13, 263

Admissible to show purpose, 13, 260

Ancient, 1, 565

Between husband and wife, 13, 265

Conspirators, 13, 264

Dates of post-marks, 13, 263

Examples of letters admissible, 13, 258

For and against whom admissible, 13,
259

Impeaching witness, 13, 264

In criminal cases, 4, 853; 13, 231; 21,
121

Letters inadmissible, 13, 259

Letters respecting subject of contro-
versy, 13, 258

Letters written by agents, 13, 262

Letters written to agents, 13, 262

Possession of letters, 13, 264

Presumption of reception, 13, 260

Proof of contents, 13, 259

Seduction, 21, 1029

To persons alleged to be insane, 13, 264

Unanswered letters, 13, 263

Whether admissible in writer's favor,
13, 259

Executors and Administrators

Restraining publication of decedent's
letters, 7, 394

Forgery, 8, 487, 488

General property in, 4, 150

In criminal law, 4, 853; 13, 231; 21, 121

Injunction against publication, 13, 231

Larceny, 12, 784

Larceny from mails, see POSTAL LAWS.

Letter Press Copies

See BOOKS AS EVIDENCE.

Secondary evidence, 21, 986

Libel and Slander, 13, 454

Jurisdiction, 13, 454

Publication of letters, 13, 372

Losses through negligence, 13, 258

Lost

Liability, 14, 247

"Mail," 13, 1201

Mandate, 14, 247

Marriage, 14, 511

Memorandum

By deceased persons, 15, 270

Of credence, 13, 237

Official

Records, 20, 505

Of Introduction

Forgery, 8, 488

Opening Letters

As Offense, 18, 854

Examples, 18, 854, 855

In general, 18, 854

Opening Letters Addressed to Another

Libel and slander, 13, 351

Presumption, 19, 80

Arising from date, 5, 78

Letter posted presumed to arrive at
the usual time, 19, 80

Letter sent by special messenger, 19, 81

Presumption of Receipt, 13, 260

Notice by mail, 16, 825

Probate, 19, 176

- Property in**, 13, 231, 251
See LITERARY PROPERTY.
 Dedication to an individual, 13, 252
 Dedication to the public, 13, 252
 General rule, 13, 251
 Injunction against opening, 13, 253
 Injunction against publishing, 13, 253
 Right of owner, 13, 253
 Right of publication, 13, 253
 Right of receiver, 13, 254
 Written by agent, 13, 253
- Publications**
 Injunction against, 13, 253
 Injunctions, 10, 930
 Right, 13, 251, 254
 Reception, 13, 260
- Res Gestæ**, 21, 121
 Contracts, 21, 121
 Criminal case, 21, 121
 Examples, 21, 121
 Letters written by agents, 21, 121
 What letters admissible, 21, 121
- Right of publication**, 13, 253
- Sales**, 21, 452
See infra, CONTRACTS BY.
Acceptance by Letter, 21, 452
 Examples, 21, 452-454
 Revocation, 21, 453
 When contract is complete, 21, 452
- Secondary Evidence**, 21, 986
 Notice to produce, 21, 989
 When evidence of contents admissible, 21, 989
- Trusts and trustees**, 27, 32, 33
Vendor and purchaser, 28, 92
 Where possession of an unanswered letter is an admission of its contents, 9, 339
Wills, 29, 141, 143
 Without prejudice, 13, 257; 29, 527
 Wrongful detention, 13, 258
- LETTERS OF MARQUE AND REPRISAL**, 13, 265
See INTERNATIONAL LAW.
 Citizens of another state taking letters from one of two belligerents, 13, 266
 Constitution of the United States, 13, 266
 Definition, 13, 265
 Disuse, 13, 266
 Municipal law, 13, 265
 Preliminary to war, 13, 265
 Treaties, 13, 265
 Whether pirates, 13, 266
- LETTERS PATENT**, *see* PATENT; PUBLIC LANDS.
- LETTERS ROGATORY**, 5, 581; 13, 266
See generally, DEPOSITIONS; INTERROGATORIES.
 Definition, 13, 266
 Form, 13, 267
- LETTERS TESTAMENTARY**, *see* PROBATE AND LETTERS OF ADMINISTRATION.
- LETTING**, 13, 268
- LETTING ON SHARES**, *see* CROPS; CROPPERS.
- LEVANT**, 13, 269
 Levant and couchancy, 13, 269
- LEVEE**, 13, 269
See SURFACE WATERS.
 Real covenants, 19, 1002
- LEVEL**, 13, 269; 15, 506
- LEVY**, 13, 269
See EXECUTION; TAXATION.
 Equitable levy, 13, 271
 Levy a tax, 13, 270
 Levy court, 13, 272
 Levv on, 13, 270
- LEWD**, 13, 273
See OBSCENITY.
 Lewd house, 13, 273
- LEWD AND LASCIVIOUS COHABITATION AND CONDUCT**, 1, 211; 13, 274; 17, 5
See EXPOSURE OF PERSON; FORNICATION; INCEST.
 As a continuing offense, 13, 282
- At Common Law**, 13, 276
 Open and notorious, 13, 276
 What constitutes the offense, 13, 276
 Whether a misdemeanor, 13, 276
 Whether indictable, 13, 276
- Cohabitation**, 13, 274, 282
 Definition, 13, 274, 282
 Living together as husband and wife, 13, 282
 What constitutes the offense, 13, 282
- Definition**, 13, 274
 Carriage and behavior, 13, 275
 Lascivious, 13, 273, 274
 Lascivious carriage, 13, 275, 283
- Lewdness**, 13, 274, 277, 284
 Open lewdness, 13, 277
 Publicity, 13, 277
 Under the statute, 13, 277
- Essentials of Crime**
 Parties must cohabit openly and notoriously, 8, 557
 Public and offensive lewdness, 8, 557
- Evidence**, 13, 282
 Circumstantial, 13, 283
 Hearsay, 13, 283
- Fornication of**
 Definition of, 1, 211
- Indictment**, 13, 277
 Charging specific acts, 13, 277
 Joint or separate, 13, 280
 Open and notorious, 8, 561
 Specific act, 13, 280
 Words equivalent to statutory words, 13, 277
 Words of statute, 13, 277
- Joint or Separate**
 Conviction, 13, 281
 Indictment, 13, 280
 Trial, 13, 280
- Lascivious Carriage**, 13, 283
 What constitutes the offense, 13, 283, 284
- Lewdly**, 13, 284
- Lewdness**, 13, 284
- Living together as husband and wife**, 13, 279, 282

LEWD AND LASCIVIOUS COHABITATION AND CONDUCT—Cont'd

- Notoriety, 13, 276, 279
- Notorious, 13, 276
- One person present, 13, 284
- Open, 13, 276
- Open lewdness, 13, 277
- Openly living together, 1, 211, 212
- Presence of one person, 13, 284
- Private, 13, 277, 278
- Private illicit intercourse, 13, 278
- Prostitution, 19, 291
- Publicity, 13, 277, 278
- Statutory offense, 13, 277
- Together, 13, 279
- What Constitutes the Offense**
 - Under Statutes, 13, 277, 278
 - Cohabitation, 13, 282
 - Examples, 13, 278, 280
 - Living together, 13, 279
 - Living together as husband and wife, 13, 279
 - Notoriety, 13, 278
 - Private illicit intercourse, 13, 278
 - Publicity, 13, 278
 - Secret intercourse, 13, 279
 - Specific act, 13, 279
 - Together, 13, 279
 - With each other, 13, 279
- Whether one may be prosecuted without other, 13, 281
- With each other, 13, 279

LEWDLY, 13, 284**LEWDNESS**, 13, 284**LEX**, 13, 285

See LAW.

Lex domicilii, *see* CONFLICT OF LAWS; DOMICIL.

De minimus non curat lex, 13, 285

Lex Fori, 13, 286

See CONFLICT OF LAWS.

Lex Loci, 13, 286

See CONFLICT OF LAWS.

Lex loci contractus, 13, 286

Lex loci rei sitæ, 13, 287

Lex naturæ, 13, 285

LIABILITIES, 13, 287**LIABILITY**

- Contingent, 3, 804
- Distinguished from debt, 5, 144, 159
- Of Principal to Third Parties**
 - For acts done after termination of agency, 1, 448
- Tax, 13, 288

LIABLE, 13, 290

Whether applicable to crimes, 13, 290

LIBEL AND SLANDER, 13, 292

See INNUENDO.

Newspaper libel, *see* NEWSPAPERS.

Abortion, 13, 334, 387

Accord and satisfaction, 13, 477

Actionable, 13, 391

Acts of a third person, 13, 446

Adultery, 13, 300, 304

Advertising debts, 13, 301

Affairs of state, 13, 411

Affidavits, 13, 407

Agency, 13, 301, 451

See infra, MASTER AND SERVANT; MERCANTILE AGENCIES.

Contribution from employer, 13, 452

Ignorance of servant, 13, 452

Instructions of master, 13, 452

Knowledge of master, 13, 453

Liability of servant, 13, 452

Master's liability, 13, 452

Privileged communications, 13, 416

Ratification, 13, 452

Knowledge of master, 13, 453

Liability of master, 13, 452

Suit by servant, 13, 451

When master may maintain an action, 13, 451

Aggravation of Damages, 13, 490

Evidence, 13, 438

Express malice, 13, 491

Family of plaintiff, 13, 490

Justification, 13, 494

Other libelous publications, 13, 491

Pecuniary circumstances of defendant, 13, 438, 490

Pleading, 13, 437

Plea of justification, 13, 428

Position in society, 13, 438

Publication, 13, 438

Rank of parties, 13, 438

What considered, 13, 438

Amendment, 13, 472, 483

Foreign language, 13, 471

Publication, 13, 472

Answer, 13, 474, 475

See infra, JUSTIFICATION.

Mitigation, *see infra*, MITIGATION OF DAMAGES.

Notice, *see infra*, JUSTIFICATION.

Admissions, 13, 474

Criminating himself, 13, 474

In general, 13, 474

Application for membership in society, 13, 301

Architect, 13, 356

Arson, 13, 335, 387

Attorneys, 13, 312, 356

Auctioneer, 13, 357

Bail required in, 2, 36

Bastardy, 13, 301, 305, 336

Bawdy house, 13, 336

Belief, 13, 390

Bigamy, 13, 301, 336

Bill of particulars, 2, 248; 13, 397

Bill to enjoin libel of patent right, 18, 124

Bitch, 2, 423

Blacklisting employees, 13, 414

Blackmailing, 13, 301

Blacksmith, 13, 357

Blasphemy as a libel, 2, 425

Bona fide belief, 13, 396

Books, 13, 330

Bookseller

Buying from, 2, 469

Brewer, 13, 357

Bribery, 13, 301, 336

Brother and sister, 13, 448

Burden of Proof

Justification, 13, 395

Language *prima facie* actionable, 13, 492

Special damages, 13, 446

Burglary, 13, 336**Business Reputation****Libel, 13, 314**

Examples, 13, 315, 316

General rule, 13, 314

Inability to pay debts, 13, 314

Insolvency, 13, 306, 314

Trickery, 13, 314

Want of credit, 13, 306

Carpenter, 13, 358**Certainty, 13, 386**

Abortion, 13, 387

Actionable, 13, 391

Arson, 13, 387

As to the Person Defamed, 13, 391

Application to more persons than one, 13, 392

Class of individuals, 13, 392

General language, 13, 393

General rule, 13, 391

Innuendo, 13, 391

Particular application, 13, 392

Particular individual, 13, 391

Person referred to, 13, 393

Proof, 13, 393

Belief, 13, 390

Dishonest conduct, 13, 387

Effigy, 13, 394

Embezzlement, 13, 387

Examples, 13, 386-391

Felony, 13, 387

Forgery, 13, 387

Form of words, 13, 389

Imputation, 13, 386

Innuendo, 13, 386, 391

Intent, 13, 391

Intent to commit a crime, 13, 387

Justification, 13, 397

Larceny, 13, 398

Murder, 13, 388

Perjury, 13, 388

Picture, 13, 394

Question for the jury, 13, 389

Requisites, 13, 396

Sufficiency, 13, 390

Suspicion, 13, 391

Thief, 13, 388

Treason, 13, 389

Vicious conduct, 13, 387

Words that apply to things and not to persons, 13, 394

Character (in Evidence), 3, 112, 114

Ante litem motam, 3, 116

Kind of character that may be proved, 3, 114

Character**Of Plaintiff, 3, 112; 13, 396, 443, 488, 493**

In mitigation of damages, 3, 112, 443

Particular acts or transactions, 13, 494

Plaintiff's bad character, 13, 493

Charge of crime, 13, 301**Chastity, 3, 160, 162; 13, 302, 336, 365**

Schoolmistress, 13, 364

Cheat, 13, 334, 361

Cheating, 13, 302

Church censures, 13, 302

Church trial, 13, 410

Circumstances of provocation, 13, 445

Clergymen, 13, 357, 361

Clerk, 13, 357

Colloquium, 13, 460

Accuracy, 13, 462

Different counts, 13, 463

Examples, 13, 460-465

False swearing, 13, 463

In Canada, 13, 462

In England, 13, 462

In Iowa, 13, 462

In Missouri, 13, 462

In New Jersey, 13, 462

In New York, 13, 462

In Wisconsin, 13, 462

Innocent words, 13, 464

Materiality, 13, 464

Matters of inducement, 13, 463

Nature of, 13, 460

Omission of words, 13, 464

Relation to innuendo, 13, 466

Sufficiency, 13, 461, 462

Uncertainty, 13, 461

When defective, 13, 463

When not necessary, 13, 460, 461

When surplusage, 13, 462

Where there is no uncertainty as to person, 13, 461

Words actionable per se, 13, 460, 465

Words not actionable per se, 13, 460-463

Words spoken of one's business or profession, 13, 472

Complaint*Colloquium*, see *infra*, COLLOQUIUM.*United causes of action*, see *infra*, JOINDER.

Allegation of malice, 13, 473

Allegations of time and place, 13, 473

Defamatory sense of the words, 13, 456

Exact copy, 13, 457

Foreign language, 13, 471

Imputing crime, 13, 458

Irrelevancy, 13, 458

Newspaper article, 13, 458

Obscene language, 13, 457

Publication, 13, 472

Allegation that person understood words, 13, 473

Amendment, 13, 472

Necessity of averment, 13, 472

Newspapers, 13, 473

Purport and effect, 13, 457

Setting out slander or libel, 13, 468

Showing that words apply to plaintiff, 13, 456

Slander of title, 13, 457

Tenor, 13, 457

Words of slander, 13, 456

Words spoken concerning one's business or profession, 13, 473

LIBEL AND SLANDER—Cont'd

Conspiracy, 4, 616; 13, 337
Construction, 13, 378, 383
 After verdict, 13, 381
 Circumstances of case, 13, 384
 Circumstances under which words were uttered, 13, 378
 Considering words as a whole, 13, 384
 Doctrine of *mitiori sensu*, 13, 381
 Equivocal words, 13, 380
 Examples, 13, 378-386
 Function of judge and jury, 13, 381
 Generally, 13, 378, 379
 Hieroglyphics, 13, 383
Intent of Speaker, 13, 385
 Ambiguous language, 13, 385, 386
 Whether material, 13, 385
 Intricate illusions, 13, 383
 Jest, 13, 385
 Question for judge, 13, 381
 Question for jury, 13, 379
 Reading whole libel to jury, 13, 384
 Sense in which words would be naturally understood, 13, 379
 Upon motion of arrest of judgment, 13, 381
 Words capable of two constructions, 13, 379
 Words clear and unambiguous, 13, 382
 Words not in English, 13, 383
 Words taken in their ordinary meaning, 13, 378
Contractor, 13, 358
Convicted scoundrel, 13, 337
Coroners, 13, 409
Corporations, 13, 448
 Exemplary damages against, 4, 256; 13, 448
 Indictment, 4, 270, 683; 13, 449
 Liability of corporation for libel, 4, 256, 270, 683; 13, 448
 Malice, 4, 256
 Municipal, 13, 449
 Privileged communications, 13, 449
 Slander, 13, 448
 Slander by servants, 13, 449
 Slander of title, 13, 449
 Suit by, 13, 448
 Suit for libel, 13, 448
 Suit for slander, 13, 448
 Unincorporated trading company, 13, 448
Costs, 13, 503
 Costs of former trial, 13, 503
 Husband and wife, 13, 503
 In general, 13, 503
 Security for costs, 13, 503
 Special costs, 13, 503
 Trial by judge, 13, 503
 Trial by jury, 13, 503
Counsel, 13, 407, 409
Counterclaim, 13, 477
Counterfeiter, 13, 303
Counterfeiting, 13, 337
Criminal conspiracy to, 4, 616; 13, 337

Criminal Procedure, 13, 498
At Common Law, 13, 497
 Indictment, 13, 499
 In the United States, 13, 500
 Misdemeanor, 13, 498
 Publishing false news, 13, 500
 Solicitation to commit crime, 13, 500
 Statutory, 13, 500
 What constitutes, 13, 499
Evidence, 13, 503
Indictment, 13, 501
 Action for slander, 13, 502
 Allegations, 13, 501
 Innuendoes, 13, 501
 Sufficiency, 13, 501
Information, 13, 500
Justification, 13, 502
 Malice, 13, 502
 What sufficient, 13, 502
 Whether a defense, 13, 502
 Mitigation of punishment, 13, 503
Publication, 13, 500
 Distinction between civil and criminal cases, 13, 500
 Necessity, 13, 500
Criticism
 Of books, 13, 330
 Of pictures, 13, 330
 Cruelty to wife, 13, 303
Damages, 13, 432
See infra, MITIGATION OF DAMAGES.
 Acts of a third party, 13, 446
Aggravation, 13, 401
 Repetitions of the slander, 5, 47
 Showing malice, 5, 47
 Brother and sister, 13, 448
 Compensatory, 13, 432
 Contemptuous, 13, 433
 Determined by jury, 13, 432
 Excessive, 5, 61; 13, 432
 Exemplary, 4, 256; 13, 433, 434, 448
 Failure to show truth of defamation, 13, 401
General, 13, 434
 Definition, 13, 434
 Nature, 13, 434
 Presumption as to, 13, 434
 Where there are special damages, 13, 434
 Husband and wife, 13, 447
 In general, 13, 432
 Measure of, 5, 47
Mental anxiety, see *infra*, MENTAL SUFFERING.
Mitigation of damages, see *infra*, MITIGATION OF DAMAGES.
 Natural result of defendant's wrong, 13, 446
 Nominal, 13, 432, 433
 Punitive, 13, 433, 434, 448
 Remoteness of, 13, 446
Repetition of Defendant's Words, 5, 47
 Unsuccessful plea in justification, 5, 47
Special, 13, 434
 Absence of special damages, 13, 446

- Aggravation of damages, see infra*,
AGGRAVATION OF DAMAGES.
 Amount, 13, 437
 Burden of proof, 13, 446
 Definition, 13, 434
 Examples, 13, 434, 437
 General and special damages, 13, 435
 Husband and wife, 13, 447
 Loss of reputation, 13, 437
 Mental anxiety, 13, 437
 Nature, 13, 434
 Pleading, 13, 434, 436
 Proof, 13, 435
 Remoteness of damages, 13, 446
 Repetition, 13, 441-447
 Upon what dependent, 13, 434
 What constitutes, 13, 435
 When confined to special damages, 13, 436
Words Actionable Per Se, 13, 437
 Particularity required, 13, 437
 Profession or trade, 13, 437
 Repetition, 13, 437
Words libellous per se, 13, 434, 435
 Substantial, 13, 434
 What to be considered by jury, 13, 432
 Where there is no evidence as to damages, 13, 432
Words Actionable Per Se, 13, 434-437
 Particularity required, 13, 437
 Profession or trade, 13, 437
 Repetition, 13, 437
Defenses, see infra, **JUSTIFICATION.**
Definition
 Libel, 13, 294
 Examples, 13, 295, 296
 Slander, 13, 333
Demurrer, 13, 477
 Admitting truth of libelous matter, 13, 477
 Form of words laid in count, 13, 477
 General demurrer to two counts, 13, 477
 To answer, 13, 477
 When overruled, 13, 477
 Director of corporation, 13, 358
 Dishonest conduct, 13, 387
 Dishonesty, 13, 303
 Disorderly house, 13, 336, 351
 Distiller, 13, 358
 Divorce, 13, 303
 Documents necessary to the cause, 13, 407
 Drover, 13, 358
Drunkness, 13, 303, 306, 337, 361
 Mitigation of damages, 13, 440
 Duplicity, 13, 399
 Election frauds, 13, 303, 304, 337
 Embezzlement, 13, 303, 337, 387
 Embracery, 13, 336
Evidence, 13, 483
 See infra, **CHARACTER; MITIGATION OF DAMAGES.**
 Aggravation of damages, see infra,
 AGGRAVATION OF DAMAGES.
 As to malice, see infra, **MALICE.**
 Proof of the speaking of the slander, see infra, **VARIANCE.**
 After spoken words, 13, 490
 Aggravation of damages, 13, 438
 Antecedent conversations, 13, 493
 Criminal procedure, 13, 503
 Distress of mind, 13, 490
 For defendant, 13, 492
 In general, 13, 483
 Justification, 13, 401
 Mitigation of damages, 13, 439
Proof as to Plaintiff's Character, 3, 112;
 13, 396, 443, 488, 493
 Evidence of plaintiff's good character, 13, 489
 Particular acts, 13, 489
 Plaintiff's general character, 13, 488
 Plaintiff's special character, 13, 488
Proof of Libel, 13, 484
 Number of printed copies of same libel, 13, 484
 Original, 13, 484
 Production of libel, 13, 484
 Reading libel, 13, 484, 492
 Showing libel to jury, 13, 484
 Where original libel is lost, 13, 484
Proof of the Speaking of the Slander, 13, 485
 Reasonable doubt, 13, 485
 Sufficiency of proof, 13, 485
Proof that Words Refer to Plaintiff, 13, 486
 Asking witness what person is meant, 13, 488
 Calling persons acquainted with circumstances, 13, 486
 Examples, 13, 486, 487
 Reading libel to persons acquainted with circumstances, 13, 486
 Surrounding circumstances, 13, 486
 Where libel does not name plaintiff, 13, 486
Provocation, 13, 491
 Given at another time, 13, 492
 Heat of passion, 13, 491
 Want of deliberation in malice, 13, 491
 Publication, 13, 484
Special Damages, 13, 437, 446
 Rebuttal, 13, 446
 Subsequent words, 13, 490
 Sufficiency of proof, 13, 484
 Time, 13, 492
 Examples, 13, 300-309, 386-391
 Examples of actionable words, 13, 333
 Exposing to contempt, 13, 303
 Exposing to hatred, 13, 303
 Exposing to ridicule, 13, 303
Express malice, see infra, **MALICE.**
 Failure to show truth of defamation, 13, 401
 False pretenses, 13, 338
 False swearing, 13, 342, 463
 Felony, 13, 338, 387
Foreign Language
 Amendment, 13, 471
 Innuendo, 13, 471

LIBEL AND SLANDER—Cont'd**Foreign Language—Cont'd**

- Interpreter, 13, 471
- Setting out original, 13, 471
- Tongue unknown to hearers, 13, 471
- Translation, 13, 471
- Forgery, 13, 304, 338, 387
- Former, 13, 358
- Former proceedings, 13, 455
- Form of words, 13, 389
- Fornication, 13, 339, 404
- "Forswear," 8, 564
- Fraud, 13, 304
- Gambling house, 13, 339
- Gamekeeper, 13, 358
- Guardian and ward, 13, 416
- Homicide, 13, 339
- Husband and Wife**, 13, 450
 - Costs, 13, 503
 - Criminal liability, 13, 451
 - Damages, 13, 447
 - Defamation of wife, 13, 447
 - Examples, 13, 450, 451
 - Joinder, 13, 459
 - Liability of husband, 13, 450
 - Liability of wife, 13, 450, 451
 - Special damage to husband, 13, 447, 450
 - Who must sue, 13, 450
 - Wife suing the husband, 13, 450
 - Words actionable per se, 13, 450
 - Words not actionable per se, 13, 450
- Hypocrisy, 13, 304
- Immorality, 13, 364
- Implied malice*, see *infra*, MALICE.
- Imputation**, 13, 386
 - Of professional ignorance and unskillfulness, 13, 305
- Imputing want of credit, 13, 306
- Incest, 13, 306
- Indecent exposure, 13, 339, 351
- Indemnity contracts, 10, 406
- Indictment**, 13, 306, 501
 - Action for slander, 13, 502
 - Allegations, 13, 501
 - Exact copy of instrument, 10, 595
 - Innuendoes, 13, 501
 - Of corporation for libel, 4, 256, 270, 683; 13, 449
 - Sufficiency, 13, 501
- Infamous conduct, 13, 306, 307
- Infamous crime, 10, 608
- Information, 13, 300
- Infringement of patent, 13, 306
- Ingratitude, 13, 306
- Injunctions**, 10, 985; 13, 453
 - Libel of patent right, 18, 124
- Innkeeper, 13, 358
- Innuendo**, 13, 386, 399, 465, 470
 - Ambiguities, 13, 466
 - Averment, 13, 470
 - Connecting publication with plaintiff, 13, 467
 - Enlarging natural meaning of words, 13, 465
 - Evidence to explain meaning of words, 13, 472
 - Extending sense of words, 13, 466

- Foreign language, 13, 470
- Functions of judge, 13, 467, 469, 470
- Harmless and an injurious meaning, 13, 472
- Introducing new matter, 13, 465
- Justification, 13, 398, 399
- Nature, 13, 465
- Office, 13, 465, 470
- Ordinary English words, 13, 470
- Parol evidence, 13, 469
- Precedent averments, 13, 467
- Proof, 13, 467
- Provincial terms, 13, 470
- Relation to colloquium, 13, 466
- Setting out the libel and slander, 13, 468
- Slang phrases, 13, 470
- Supplying colloquium, 13, 466
- Technical terms, 13, 470
- Uncertainty, 13, 466
- Unusual import, 13, 466
- When necessary, 13, 468, 470
- Words libelous per se, 13, 469
- Words not implying criminal charge, 13, 468
- Words not used in their ordinary meaning, 13, 470, 471
- Words obviously defamatory, 13, 469
- Words prima facie defamatory, 13, 469
- Words used in a double sense, 13, 468
- Insane person's liability for slander, 11, 144
- Insanity, 13, 306
- Insolvency, 13, 306
- Instruction, 13, 407
- Instruction, examples of, 11, 267-275
- Intent, 13, 391
- Intent to commit a crime, 13, 387
- Ironical praise, 13, 307
- Irrelevant remarks of witness, 13, 408
- Joinder**, 13, 458
 - Assault and battery, 13, 458
 - Counts, 13, 459
 - Declaration containing more than one count, 13, 459
 - False imprisonment, 13, 458
 - Injury to real property, 13, 458
 - Malicious prosecution, 13, 458; 14, 16
 - Of parties, 13, 459, 460; 17, 601
 - Slander of title, 13, 458
 - Under codes, 11, 1008
- Joint liability, 13, 496
- Journalists, 13, 313
- Judge, 12, 40; 13, 312, 407
- Judicial proceedings, 13, 406
- Jurisdiction**, 13, 454
 - Inferior court, 13, 454
 - In general, 13, 454
 - Letter, 13, 454
 - Where words are published or uttered, 13, 454
- Justice of the peace, 13, 359
- Justification**, 13, 394, 494
 - See *infra*, CRIMINAL PROCEDURE.
 - Additional charge, 13, 397

Aggravation of Damages, 13, 401, 428

See *infra*, AGGRAVATION OF DAMAGES.

Averment of plea, 13, 398

Averment of truth, 13, 398

Bill of particulars, 13, 397

Bona fide belief, 13, 396

Burden of proof, 13, 395

Certainty, 13, 397

Character, 13, 444

Charge of conviction, 13, 495

Charge of crime, 13, 402

Circumstances in mitigation, 13, 400

Common report, 13, 402

Conformity with charge, 13, 398

Duplicity, 13, 399

Duty of jury, 13, 396

Effect of failure, 13, 401

Evidence, 13, 400, 495, 496

Failure to show truth of defamation, 13, 401

General abuse, 13, 397

General character of plaintiff, 13, 396

General issue, 13, 395

Ignorance, 13, 404

Innuendo, 13, 398, 399

Joint liability, 13, 496

Mistake, 13, 399

Mitigation of damages, 13, 399, 440

Necessity of pleading, 13, 395

Notice, 13, 475

Averment, 13, 475

In general, 13, 475, 476

Prolivity, 13, 475

Statutory, 13, 475

Part of libel, 13, 399

Pleading, 13, 474

Admissions, 13, 474

Fair comment, 13, 475

Necessity of, 13, 496

Not guilty, 13, 475

Setting forth facts, 13, 474

Where charge is specific, 13, 475

Preponderance of evidence, 13, 402

Presumption, 13, 396

Proof, 13, 395

Question for the jury, 13, 397

Rebuttal, 13, 396

Record of conviction, 13, 402

Record of criminal trial, 13, 496

Repetition, 13, 403

Rumor, 13, 497

Several charges, 13, 495

Specification of crime, 13, 402

Strictness of proof required, 13, 495

Sufficiency of evidence, 13, 402

Sufficiency of plea, 13, 397

What may be shown in, 13, 402

Whether truth is a defense, 13, 394

Kidnapping, 13, 339

Killing horse, 13, 340

Knave, 13, 333, 365

Larceny, 13, 307, 340, 344, 398

Letters, 13, 454

Jurisdiction, 13, 454

Sending, 13, 372

In civil cases, 13, 372, 373

In criminal cases, 13, 372

Not intended that third person should read, 13, 374

Publication by person receiving, 13, 372

Telegram, 13, 373

Third person having opportunity to read, 13, 373

Time of publication, 13, 373

When letter is published, 13, 373

Whether it amounts to a publication, 13, 372

Liar, 13, 342, 343

Libel, see *infra*, CRIMINAL PROCEDURE; PRIVILEGED COMMUNICATIONS.

Business reputation, see *infra*, BUSINESS REPUTATION.

Newspaper libel, see NEWSPAPERS.

Persons in office, see *infra*, PERSONS IN OFFICE.

Professional men, see *infra*, PROFESSIONAL MEN.

Proof of libel, see *infra*, EVIDENCE.

Affecting a class of persons, 3, 278

Criticism, 13, 328

Examples, 13, 328

Honest, 13, 328

Definition, 13, 294

Examples, 13, 295, 296

Distinguished from slander, 13, 296

Fair and bona fide comment, 13, 327

Of property, 13, 316

What Actionable, 13, 298

Injuring person in his profession, see *infra*, PROFESSIONAL MEN.

Adultery, 13, 300

Advertising debts, 13, 301

Caricature, 13, 300

Effigy, 13, 300

Holding plaintiff up to contempt, 13, 300

Holding plaintiff up to ridicule, 13, 300

Imputing crime, 13, 299

Imputing dishonesty, 13, 299

Imputing fraud, 13, 299

Imputing immorality, 13, 299

Infectious disorder, 13, 299

In general, 13, 298

Injuring person in his profession, 13, 299

Words imputing want of chastity, 3, 162; 13, 302, 336, 365

Limitation of Action, 13, 454

Repetition, 13, 377

Livery stable keeper, 13, 359

Mail, 18, 859

Malice, 13, 425

Allegation of, 13, 473

Definition, 13, 425

Evidence, 13, 428, 431, 489

Continuing malice, 13, 428

Examples, 13, 428-431

Extrinsic, 13, 430, 431

Examples, 13, 431

Former or subsequent defamation, 13, 431

LIBEL AND SLANDER—Cont'd

Malice—Cont'd

Evidence—Cont'd

Extrinsic—Cont'd

Letters, 13, 431

Statements of defendants, 13, 431

Former or subsequent defamation, 13, 431

Good reason for belief, 13, 429

Illustrating motive, 13, 428

In an action for slander, 13, 428

Innocent mistake, 13, 430

Intrinsic, 13, 430, 431

Knowledge of the truth, 13, 430

Letters, 13, 431

Necessity of evidence, 13, 430

Plea of justification, 13, 428

Prima facie malicious, 13, 489

Refusal of public retraction, 13, 431

Repetition, 13, 428

Statements of defendants, 13, 431

To disprove malice, 13, 494

What admissible, 13, 428

Express, 13, 425, 491

Aggravation of damages, 13, 425

Corporations, 4, 256

For what reason shown, 13, 425

Proof of express malice, 13, 425

Qualified privilege, 13, 426

Expressed or implied, 13, 425

Gross negligence, 13, 405, 425

Implied, 13, 426

Ambiguous article, 13, 427

Charge of crime, 13, 426, 427

Evidence necessary, 13, 427

From publication, 13, 426

How inferred, 13, 426

Motive, 13, 426

Presumption, 13, 426

Proof of spoken words, 13, 426

The speaking of actionable words, 13, 427

Inference by jury, 13, 425

Intention to injure plaintiff, 13, 425

Mitigation of damages, 13, 439

Other libelous publications, 13, 491

Privileged Communications, 13, 405

Express malice, 13, 325

Proof, 13, 425

Proof of express, 13, 425

Question for the jury, 13, 427

Manufacturer, 13, 359

Married women, 14, 647

Master and Servant, 13, 451

See *infra*, AGENCY.

Blacklisting employee, 13, 414

Character of servant, 13, 412

Contribution from employer, 13, 452

Ignorance of servant, 13, 452

Instructions of master, 13, 452

Knowledge of master, 13, 453

Liability of servant, 13, 452

Master's liability, 13, 452

Privileged communications, 13, 416

Ratification, 13, 452

Knowledge of master, 13, 453

Liability of master, 13, 452

Suit by servant, 13, 451

When master may maintain an action, 13, 451

Master of vessel, 13, 361

Mechanic, 13, 359

Mental Suffering, 13, 437, 445, 490

Consideration by jury, 13, 445

Prospective suffering, 13, 445

Words actionable per se, 13, 445

Words not actionable per se, 13, 445

Mercantile Agencies, 13, 414

Reports of, 15, 280

Canadian decisions, 15, 291

Cipher, 15, 288

Decisions in Georgia, 15, 290

Decisions in Maryland, 15, 289

Employees of agency, 15, 290

Entering information in books to which clerks have access, 15, 290

Incorrect statements of rule, 15, 293

Indictment for criminal libel, 15, 286

In general, 15, 280

Interest of subscribers, 15, 281

Libel and slander, 15, 286

New York rule, 15, 283

Relation of agency's employees to question of privilege, 15, 290

United States decisions, 15, 282

Whether distinguished from individuals, 15, 286

Military law, 15, 434

Misdemeanor, 13, 498, 500

Mistake, 13, 399

Mitigation of Damages, 13, 439, 440, 441, 497

Bar to the action, 13, 439

Disproving malice, 13, 476

Drunkenness, 13, 440

Evidence, 13, 430

Evidence of Plaintiff's Bad Character, 3,

112; 13, 443, 493

Admissibility, 13, 443

Circumstances of provocation, 13, 445

General issue, 13, 443

Good character of plaintiff, 13, 444

Particular facts, 13, 443

Presumption as to character, 13, 444

Under plea of justification, 13, 444

Where plaintiff opens the subject, 13, 444

Examples, 13, 441

Exceptions, 13, 442

Excitement on election, 13, 442

General rule, 13, 439

General rumors, 13, 440

Heat of passion, 13, 439

Honest belief, 13, 440

Injury caused by defendant, 13, 443

Justification, 13, 399, 440, 476

Knowledge of defendant, 13, 441, 493

Liability of others, 13, 442

Pleading, 13, 476

Pleading alone, 13, 476

Poverty of defendant, 13, 441

Previous publication by others, 13, 441

Provocation, 15, 491

- Recovery from others, 13, 442
 Repetition, 13, 442, 447
 Retraction, 13, 442
 Admissibility in evidence, 13, 442
 After suit is begun, 13, 442
 Publicity of, 13, 443
 Want of malice, 13, 439
 When general denial, 13, 476
 Municipal corporations, 13, 449
 Murder, 13, 341, 388
 Naval and military affairs, 13, 411
 Negligence, 13, 405
New Trial
 Inadequate damages, 16, 590
Nonsuit, 13, 497, 498
 Rules determining when nonsuit will be granted, 13, 497, 498
Notice, see *infra*, JUSTIFICATION.
Of Property
 Libel of, 13, 316
 Open and close, 17, 198
 Opening a letter addressed to another, 13, 351
 Opprobrious epithets, examples, 13, 307
 Parent and child, 13, 416, 448
Parties, 13, 459
 Class of individuals, 13, 460
 Joinder of actions, 13, 459
 Joinder of causes of action, 13, 459
 Joinder of defendants, 13, 460
 Joinder of plaintiffs, 13, 460
 Several included in the same libel, 13, 460
Partnership, 13, 453
 Agent or servant of firm, 13, 453
 Examples, 13, 453
 Injury to individual partner, 13, 453
 Joint suit, 13, 453
 Liability of firm, 13, 453
 Libel of partner, 13, 448
 Libel per se, 13, 453
 Private life of partner, 13, 453
Patent Right
 Bill to enjoin libel of patent right, 18, 124
 Perjury, 13, 308, 341, 388
Persons in Office, 13, 318, 319, 329, 332
 Libel, 13, 309
 Bishops and clergymen, 13, 310
 Clerk, 13, 311
 Coroner, 13, 311
 Examples, 13, 309-311
 General rule, 13, 309
 Judges, 13, 312
 Trustees of charity, 13, 311
 Physicians, 13, 314, 359, 360
 Pickpocket, 13, 346
 Pictures, 13, 330
 Pilfering, 13, 343
Pleading, 13, 407
 See infra, ACCORD AND SATISFACTION; AMENDMENT; ANSWER; COLLOQUIUM; COMPLAINT; COUNTERCLAIM; INNUENDO; STATUTE OF LIMITATIONS; VARIANCE.
 Demurrer, see *infra*, DEMURRER.
 Justification, 13, 395
 Special damages, 13, 352, 434, 436
 Under the codes, 18, 496
 Plundered, 13, 343
 Poisoning, 13, 341
 Postmaster, 13, 360
 Preliminary proceedings, 13, 406
Privileged Communications, 13, 323, 403, 406, 494
 Absolutely Privileged, 13, 406
 Affairs of state, 13, 411
 Affidavits, 13, 507
 Church trial, 13, 410
 Coroners, 13, 409
 Counsel, 13, 407, 409
 Documents necessary to a cause, 13, 407
 Instructions, 13, 407
 Irrelevant remarks of witness, 13, 408
 Judge, 13, 407
 Judicial proceedings, 13, 406
 Naval and military affairs, 13, 411
 Pleading, 13, 407
 Preliminary proceedings, 13, 406
 Witnesses, 13, 408
Affairs of State, 13, 324, 327, 411
 Criticism, 13, 329
 Matters of public interest, 13, 329
 What are matters of public interest, 13, 329
 Affidavits, 13, 407
Appeals to the Public, 13, 331
 Communications from papers, 13, 332
 Criticism of advertised method of cure, 13, 331
 Quasi public position, 13, 332
 Tradesman distributing handbills, 13, 331
 Candidates for office, 13, 319
 Character of servants, 14, 799
 Church trial, 13, 410
 Classes of, 13, 406
Communications in Self Defense, 13, 422
 Accidental presence of third person, 13, 425
 Answer to application from plaintiff, 13, 422
 Circulations, 13, 424
 Common interest in subject-matter of communication, 13, 423
 In general, 13, 422
 Large number of persons interested in subject-matter, 13, 424
 Necessity of communications, 13, 422
 Previous unprivileged publication, 13, 423
 Statements invited by plaintiff, 13, 422
 Strangers wholly uninterested in matter, 13, 424
Confidential Relationship, 13, 423
 Accidental presence of third person, 13, 425
 Circulation, 13, 424
 Common interest in subject-matter of communication, 13, 423
 Vol. I.

LIBEL AND SLANDER—Cont'd

Privileged Communications—Cont'd

Confidential Relationship—Cont'd

Large number of persons interested in subject-matter, 13, 424

Strangers wholly uninterested in matter, 13, 424

Coroners, 13, 409

Corporations, 13, 449

Counsel, 13, 407, 409

Criticism, 13, 328

Books, 13, 330

Examples, 13, 328

Honest, 13, 328

Pictures, 13, 330

Documents necessary to the cause, 13, 407

Express malice, 13, 325, 405

Gross negligence, 13, 405

In general, 13, 403

Instructions, 13, 407

Irrelevant remarks of witness, 13, 408

Judge, 13, 407

Judicial Proceedings, 13, 319, 328, 406

Comment, 13, 329

Comment pending action, 13, 320

Defamatory comments, 13, 321

Ex parte affidavit, 13, 322

Fair account, 13, 319

Fair and accurate reports, 13, 329

General rule, 13, 319

Illustrations, 13, 321

Impartial and accurate report, 13, 320

Obscene or blasphemous libel, 13, 322

Pleading of one party, 13, 321

Portion of, 13, 321, 322

Prohibition by court, 13, 322

Proof of malice, 13, 319, 322

Publication of portion as evidence of malice, 13, 322

Report distinguished from comment, 13, 329

What is a fair comment, 13, 321

When not privileged, 13, 322

Local authorities, 13, 330

Mandatory obligation to speak, 13, 404

Military law, 13, 434

Naval and military affairs, 13, 411

Obligation of duty to speak, 13, 404

Parliamentary Proceedings, 13, 323, 328

Comments, 13, 329

Fair and accurate reports, 13, 329

Report distinguished from comment, 13, 329

Pleading, 13, 407

Preliminary proceedings, 13, 406

Proceedings before the grand jury, 13, 323

Proof of malice, 13, 427

Public entertainments, 13, 331

Public institutions, 13, 330

Public interest, 13, 406

Public Officers, 13, 318, 329

Conduct and motives of public men, 13, 318

Party holding quasi public position, 13, 332

Unfair criticism, 13, 319

Public or private duty, 13, 405

Qualifiedly Privileged, 13, 406, 411

Qualified Privilege

Answers to confidential inquiries, 13, 412

Blacklisting employees, 13, 414

Character of servants, 13, 412

Charges Against Public Officials, 13, 418

Accusation of crime, 13, 419

Candidate, 13, 421

Candidate for office, 13, 420

Character of officer, 13, 419

Criminal charge, 13, 421

Criticism must be bona fide, 13, 421

Ecclesiastical matters, 13, 418

Language too violent for the occasion, 13, 420

Limit of criticism, 13, 421

Memorialist, 13, 418

No personal aggravations, 13, 418

Official act of public functionary, 13, 419

Petition, 13, 418

Private character of public officials, 13, 420

Public duty, 13, 418

Reckless statements, 13, 420

To whom application should be made, 13, 420

When charges against, are privileged, 13, 418

Communications in self-defense, 13, 411

Confidential Inquiries, 13, 412

Honest belief in truth of charge, 13, 412

Person seeking to discover a wrongdoer, 13, 412

Person thinking of dealing with another in any matter of business, 13, 412

Rumor wantonly or recklessly started, 13, 413

Statements made not in answer to inquiry, 13, 413, 416

Confidential Relationship, 13, 416

Attorney and client, 13, 416

Brother and sister, 13, 416

Father and son, 13, 416

General rule, 13, 416

Guardian and ward, 13, 416

Husband and wife, 13, 416

Intimate friends, 13, 416

Master and servant, 13, 416

Partners, 13, 416

Principal and agent, 13, 416

Where there is no, 13, 416

Detection of crime, 13, 412, 417

Duty to society, 13, 411

Information as to crime or misconduct of others, 13, 41, 417

In general, 13, 411

Report of mercantile agency, 13, 414

Vol. I.

- Questions of law and fact, 13, 430
 Reports of proceedings of societies generally, 13, 324
 Witnesses, 13, 408
Privilege of Attorney, 1, 948
 Wanton libel, 1, 949
Professional Men, see *infra*, WORDS TOUCHING ONE'S OFFICE OR VOCATION.
 Evidence, 13, 488
Libel, 13, 312
 Attorney, 13, 312
 General rule, 13, 312
 Imputing ignorance, 13, 312
 Imputing ignorance and unskillfulness, 13, 305
 Imputing unskillfulness, 13, 312
 Journalist, 13, 313
 Past misconduct, 13, 312
 Physicians, 13, 314
 Words not touching personal character, 13, 314
 Physician advertising method of cure, 13, 331
Slander
 Past conduct, 13, 312
Property, see *infra*, SLANDER OF TITLE.
 Prostitution, 13, 308, 343
Provocation, see *infra*, EVIDENCE.
Publication, 13, 370
 See *infra*, CRIMINAL PROCEDURE; PRIVILEGED COMMUNICATIONS.
 Aggravation of damages, 13, 438, 439
 Buying from bookseller as evidence of publication by him, 2, 469
 Communication in foreign language, 13, 371
Complaint, 13, 472
 Allegation that person understood words, 13, 473
 Amendment, 13, 472
 Necessity of averment, 13, 472
 Newspapers, 13, 473
 Corporations, 13, 449
 Definition, 13, 370
 Evidence, 13, 484
 Examples, 13, 370, 371
 Husband and wife, 13, 377
 Letters, 13, 372
 Mitigation of damages, 13, 441
 No personal aggravations, 13, 418
 Person must understand communication, 13, 371
 Place of, 13, 377
Repetition of Slander at Request of Defendant, 13, 374
 Defense, 13, 376
 Examples, 13, 374-377
 General rule, 13, 374
 Naming person from whom scandal was heard, 13, 377
 Responsibility for unauthorized repetition, 13, 375
 Right of action against person repeating, 13, 374, 375
 Seller of libel, 13, 375
 Special damage, 13, 375
 Statute of limitations, 13, 377
Sending Letters, 13, 372
 In civil cases, 13, 372, 373
 In criminal cases, 13, 372
 Not intended that third person should read, 13, 374
 Publication by person receiving, 13, 372
 Telegram, 13, 373
 Third person having opportunity to read, 13, 373
 Time of publication, 13, 373
 When letter is published, 13, 373
 Whether it amounts to a publication, 13, 372
 Time, 13, 492
Who Liable, 13, 371
Newspapers, see NEWSPAPERS.
 All concerned in publishing or in procuring publication, 13, 371
 Composed by another, 13, 371
 Composing without publication, 13, 371
 Contribution between tort feasons, 13, 372
 Delivery, 13, 371
 General rule, 13, 371
 Joint publication, 13, 372
 Printing as prima facie evidence of publication, 13, 371
 Public indecency, 13, 344
Public Officers, 13, 418
 See *infra*, PERSONS IN OFFICE.
 Accusation of crime, 13, 419
 Character of officer, 13, 419
 Candidate, 13, 421
 Candidate for office, 13, 420
 Criminal charge, 13, 421
 Criticism must be bona fide, 13, 421
 Ecclesiastical matters, 13, 418
 Evidence, 13, 488
 Language too violent for the occasion, 13, 420
 Limit of criticism, 13, 421
 Memorialist, 13, 418
 Official act of public functionary, 13, 419
 Petition, 13, 418
 Private character of public officials, 13, 420
Privileged communications, see *infra*, PRIVILEGED COMMUNICATIONS.
 Public duty, 13, 418
 Reckless statements, 13, 420
Slander, 13, 363
 Bribery, 13, 363
 Character, 13, 364
 Church warden, 13, 363
 Constable, 13, 363
 Examples, 13, 363, 365
 General rule, 13, 363
 Immorality, 13, 364
 Justice of the peace, 13, 363
 Plaintiff must hold office at time words were spoken, 13, 364
 Town clerk, 13, 363
 Want of capacity, 13, 363

LIBEL AND SLANDER—Cont'd**Public Officers—Cont'd**

To whom application should be made,
13, 420

When charges against are privileged,
13, 418

Question for the jury, 13, 389

Questions of Law and Fact, 13, 379, 390,
467, 488

Ambiguous, 13, 383

Clear and unambiguous words, 13, 382

Colloquium, 13, 467

Doubt as to construction, 13, 385

Equivocal words, 13, 380

In California, 13, 382

In Georgia, 13, 382

In Indiana, 13, 382

In Maine, 13, 382

In Maryland, 13, 382

In Massachusetts, 13, 382

In Missouri, 13, 382

In New York, 13, 382

In Pennsylvania, 13, 383

In Wisconsin, 13, 383

Instruction of judge, 13, 381

Judge instructing jury that words are
defamatory, 13, 382, 383

Judge withdrawing question of libel
from jury, 13, 381

Justification, 13, 397

Meaning of the term, 13, 379

Privilege, 13, 430

Question for jury, 13, 382

Sense in which alleged words are used,
13, 488

Stopping a case, 13, 467

Whether words are actionable per se,
13, 384

Words capable of harmless and an in-
jurious meaning, 13, 472

Words capable of two constructions,
13, 379

Words incapable of meaning ascribed,
13, 467

Words obviously defamatory, 13, 469

Words prima facie actionable, 13, 470

Ratification, see *infra*, **MASTER AND
SERVANT**.

Reasonable doubt, 19, 1088

Receiving stolen goods, 13, 346

Religious matters, 13, 418

Remoteness

Acts of a third person, 13, 446

Removing landmarks, 13, 351

Repetition, 13, 374, 496

Justification, 13, 401

Mitigation of damages, 13, 441

Special damages, 13, 447

Reports, 13, 308

Requisites, 13, 386

Res adjudicata, 13, 455

Retraction, 13, 431

See *infra*, **MITIGATION OF DAMAGES**.

Robbery, 13, 344

Rogue, 13, 346, 365

Rumor, 13, 497

Schoolmaster, 13, 360

Secondary evidence, 13, 484

Self-defense, see *infra*, **PRIVILEGED
COMMUNICATIONS**.

Servant girl, 13, 360

Shyster, 13, 334

Slander, 13, 333

Definition, 13, 296

Distinguished from libel, 13, 296

Professional men, see *infra*, **WORDS
TOUCHING ONE'S OFFICE OR VO-
CATION**.

Special Damages, 13, 351

When special damages must be
proved, 13, 351

What Actionable, 13, 333, 352, 364, 365

Abortion, 13, 334

Adultery, 13, 334

Arson, 13, 335

Bastardy, 13, 336

Bawdy house, 13, 336

Bigamy, 13, 336

Bribery, 13, 336

Burglary, 13, 336

Chastity, 13, 336, 365

Chastity of schoolmistress, 13, 364

Cheat, 13, 334

Conspiracy, 13, 337

Convicted scoundrel, 13, 337

Counterfeiting, 13, 337

Disorderly house, 13, 336, 351

Drunkenness, 13, 337

Election frauds, 13, 337

Embezzlement, 13, 337

Embracery, 13, 336

Examples of actionable words, 13,
333

False pretenses, 13, 338

False swearing, 13, 342

Felony, 13, 338

Forgery, 13, 338

Fornication, 13, 338

Gambling house, 13, 339

Homicide, 13, 339

Immorality, 13, 364

Indecent exposure, 13, 339, 351

In general, 13, 333

Kidnapping, 13, 339

Killing horse, 13, 340

Knave, 13, 333, 365

Larceny, 13, 340, 344

Liar, 13, 342, 343

Murder, 13, 341

Opening a letter addressed to an-
other, 13, 351

Perjury, 13, 341

Pickpocket, 13, 346

Pilfering, 13, 343

Plundered, 13, 343

Poisoning, 13, 341

Prostitution, 13, 343

Public indecency, 13, 344

Receiving stolen goods, 13, 346

Removing landmarks, 13, 351

Robbery, 13, 344

Rogue, 13, 346, 365

Shyster, 13, 334

Smuggling, 13, 344

- Sodomy, 13, 344
- Steal, 13, 344
- Swindler, 13, 334, 365
- Thief, 13, 344
- Unchastity, 13, 365
- Unnatural offenses, 13, 345
- Whore, 13, 333
- Whoredom, 13, 345
- Whore house, 13, 336, 345
- Words actionable only by reason of special damage, 13, 365
- Words Imputing a Crime, 13, 347**
 - Ambiguous words, 13, 348
 - Direct terms, 13, 348
 - Felonies, 13, 350
 - General rule as to nature of crime, 13, 350
 - In general, 13, 347
 - Insinuation, 13, 348
 - Misdemeanors, 13, 350
 - Moral turpitude, 13, 349
 - Offense punishable by fine and imprisonment, 13, 349
 - Technical accuracy, 13, 348
 - What crimes, 13, 350
 - Whether words impute crime a question of law, 13, 352
 - Words actionable per se, 13, 349
 - Words spoken by way of interrogation, 13, 348
 - Words not actionable, 13, 334
- Words Actionable Per Se, 13, 350**
 - See infra*, **WORDS IMPUTING CONTAGIOUS DISEASE; WORDS IMPUTING CRIME; WORDS TOUCHING ONE'S OFFICE OR VOCATION; WHAT ACTIONABLE.**
 - In general, 13, 350
- Words Imputing a Contagious Disease, 13, 346, 354**
 - Charge must apply to time of speaking, 13, 355
 - Examples, 13, 354
 - General rule, 13, 354
 - Plague, 13, 355
 - Smallpox, 13, 355
 - Veneral disease, 13, 354
- Words Imputing Crime, 13, 346, 352**
 - Acknowledging crime, 13, 386
 - Crime imputed must be possible, 13, 354
 - Old crime, 13, 353
 - Suspicion, 13, 353
 - Words imputing an intention, 13, 353
 - Words of suspicion, 13, 353
- Words imputing want of chastity, 13, 160; 13, 302, 336, 364, 365
- Words Touching One's Office or Vocation, 13, 346, 355, 361**
 - See infra*, **PROFESSIONAL MEN; PUBLIC OFFICERS.**
 - Architect, 13, 356
 - Attorney, 13, 356
 - Auctioneer, 13, 357
 - Blacksmith, 13, 357
 - Brewer, 13, 357
 - Carpenter, 13, 358
 - Clergyman, 13, 357, 361
 - Clerk, 13, 358
 - Contractor, 13, 358
 - Directly tending to prejudice plaintiff, 13, 361
 - Director of corporation, 13, 358
 - Dishonesty, 13, 363
 - Distiller, 13, 358
 - Distinction arising out of rank and position of plaintiff, 13, 361
 - Drover, 13, 358
 - Employment must be legitimate, 13, 356
 - Farmer, 13, 358
 - Fraud, 13, 362
 - Gamekeeper, 13, 358
 - Ignorance of duties of profession, 13, 361
 - Ignorance or misconduct in a particular case, 13, 363
 - Innkeeper, 13, 358
 - Justice of the peace, 13, 359
 - Livery stable keeper, 13, 359
 - Manufacturer, 13, 359
 - Master of vessel, 13, 361
 - Mechanic, 13, 359
 - Party must be pursuing his employment, 13, 356
 - Physicians, 13, 359, 360
 - Postmaster, 13, 360
 - Presumption of continuance of trade, 13, 356
 - Rank and position of plaintiff, 13, 361
 - Schoolmaster, 13, 360
 - Servant girl, 13, 360
 - Surveyor, 13, 360
 - Tailor, 13, 360
 - Time of utterance, 13, 356
 - Trader, 13, 360
 - Tradesman, 13, 361
 - Want of credit, 13, 362
 - When actionable per se, 13, 355
- Words which do not impute a crime, 13, 352
- Slander of Title, 13, 366, 449**
 - Advertising one's own goods, 13, 370
 - Agent, 13, 369
 - Assertion of claim, 13, 368
 - Attorneys, 13, 369
 - Bona fide assertion of claim, 13, 368
 - Defendant setting up title in himself, 13, 368
 - Definition, 13, 366
 - Essentials, 13, 366
 - Falsity of the words, 13, 366
 - Injury in reference to property, 13, 366
 - Interest in the property, 13, 367
 - Kinds of property, 13, 369
 - Letters patent, 13, 369
 - Malice, 13, 367, 368
 - Modes of publication, 13, 368
 - Personal property, 13, 369
 - Printing, 13, 368
 - Real property, 13, 369
 - Repetition, 13, 377

LIBEL AND SLANDER—Cont'd**Slander of Title—Cont'd**

Slander of goods manufactured or sold
by another, 13, 369

Special damages, 13, 366

Title to the property, 13, 367

Verbal, 13, 368

Want of probable cause, 13, 367, 368

Writing, 13, 368

Slang phrases, 13, 470, 472

Smuggling, 13, 308, 344

Sodomy, 13, 344; 22, 832

Solicitation to unchastity, 13, 307, 309

Special Damage, 13, 346

See infra, EVIDENCE.

Husband and wife, 13, 450

Words actionable only by reason of,
13, 365

Statute of Limitations, 13, 377, 454

Date of publication, 13, 454

Disability, 13, 454

From when the statute runs, 13, 454

Pleading, 13, 478

Words not actionable per se, 13, 454

Steal, 13, 344

Subsequent words, 13, 490

Sufficiency, 13, 390

Suits between husband and wife, 9, 796

Surveyor, 13, 360

Survival of actions for libel and slander,
7, 267

Suspicion, 13, 391

Swindler, 13, 334, 365

Tailor, 13, 360

Telegraphs and telephones, 25, 821

Theaters, 13, 331; 25, 1051

Thief, 13, 344, 389

Trader, 13, 360

Tradesman, 13, 361

Treason, 13, 389

Trespass on the case, 26, 702

Unchastity, 13, 365

Unfitness for society, 13, 309

Unnatural offenses, 13, 345

Variance, 13, 478, 484, 485

All words laid in declaration, 13, 479,
485

Effect, 13, 478, 479

Equivalent words, 13, 478

Exact words, 13, 479

Examples of material variance, 13,
478-482

Foreign language, 13, 480

General rule, 13, 478

Hypothetical statement, 13, 480

Immaterial variance, 13, 481, 482

In person, 13, 479

In tense, 13, 480

Proof of additional words, 13, 479

Substance of words charged, 13, 478

What sufficient proof, 13, 479

Words equivalent to those spoken, 13,
485

Words in an interrogative form, 13,
480

Venue, 28, 234, 237

Vicious conduct, 13, 387

What Actionable, 13, 297

See infra, SLANDER.

In general, 13, 297

Libel, 13, 300

Agent, 13, 301

Adultery, 13, 300

Advertising debts, 13, 301

Application for membership in so-
ciety, 13, 301

Bastardy, 13, 301, 305

Bigamy, 13, 301

Blackmailing, 13, 301

Bribery, 13, 301

Charge of crime, 13, 301

Chastity, 13, 302

Cheating, 13, 302

Church censures, 13, 302

Counterfeiter, 13, 303

Cruelty to wife, 13, 303

Dishonesty, 13, 303

Divorce, 13, 303

Drunkenness, 13, 303, 306

Election frauds, 13, 303, 304

Embezzlement, 13, 303

Examples, 13, 300-309

Exposing to contempt, 13, 303

Exposing to hatred, 13, 303

Exposing to ridicule, 13, 303

Forgery, 13, 304

Fornication, 13, 304

Fraud, 13, 304

Hypocrisy, 13, 304

Imputation of professional ignorance
and unskillfulness, 13, 305

Imputing want of credit, 13, 306

Incest, 13, 306

Indictment, 13, 306

Infamous conduct, 13, 306, 307

Infringement of patent, 13, 306

Ingratitude, 13, 306

Insanity, 13, 306

Insolvency, 13, 306

Ironical praise, 13, 307

Larceny, 13, 307

Opprobrious epithets, examples, 13,
307

Perjury, 13, 308

Prostitution, 13, 308

Reports, 13, 308

Solicitation of chastity, 13, 307,
309

Smuggling, 13, 308

Unfitness for society, 13, 309

Special Damage

Presumption, 13, 346

Witnesses, 13, 408

Whore, 13, 333

Whoredom, 13, 345

Whore house, 13, 336, 345

**Words Actionable Only by Reason of Special
Damage**, 13, 365

Words imputing want of chastity, 3,
161

*Words imputing contagious disease;
words imputing crime; words im-
puting want of chastity; words touch-
ing one's office, see infra*, SLANDER.

Vol. I.

- Words not actionable, 13, 334
Words not actionable per se, see *infra*,
 COLLOQUIUM; SLANDER.
- LIBERAL**, 13, 504
- LIBERTY**, 13, 504, 505
 Anglican liberty, 13, 506
 Civil liberty, 13, 505
 Liberty of speech, 13, 513
 Natural liberty, 13, 505
 Personal liberty, 13, 508
 Religious Liberty, see BLASPHEMY; RE-
 LIGIOUS LIBERTY.
Competency of witnesses, see WIT-
 NESSES.
Sunday laws, see SUNDAY.
- LIBERTY OF THE PRESS**, 13, 510
See generally, NEWSPAPERS.
- LIBRARY**, 13, 513
 Family, 7, 810
 Public library, 19, 304
- LICENSE**, 3, 316; 13, 514
See CEMETERIES; INTOXICATING LIQ-
 UORS; PERJURY.
As to internal revenue license, see REVE-
 NUE LAWS.
*As to licenses for occupations, business,
 and privileges*, see TAXATION.
As to license taxes, see TAXATION—sub-
 title, OCCUPATION, BUSINESS, AND
 PRIVILEGE TAXES.
Coasting trade, see SHIPS AND SHIP-
 PING.
Mines and mining claims, see MINES
 AND MINING CLAIMS.
To trade with belligerent, see INTER-
 NATIONAL LAW.
- Assignment**, 13, 545
 Logs and lumber, 13, 1031
 Burden of proof, 13, 518
 Definition, 13, 514
 Distinguished from easements, 6, 141
 Ejectment, 6, 234
 Eminent domain, 6, 596
 Estoppel of, 7, 100
 Evidence, 13, 518
 General principles, 13, 514
 Insurance agents, 13, 527
- Joint Tenants and Tenants in Common**, 11,
 1095
 Logs and lumber, 13, 1031
- Lease**, 12, 977
- Logs and Lumber**, 13, 1030
 Assignability, 13, 1031
 Co-tenants, 13, 1031
 Implication, 13, 1031
 Parol contracts, 13, 1030
 Reasonable time, 13, 1031
- Revocation**, 13, 1032
 After trees are cut, 13, 1032
 At what time it may be revoked, 13,
 1032
 Conveyance of property, 13, 1032
 Death of licensor, 13, 1032
 Title to timber, 13, 1031
 Within what time right must be exer-
 cised, 13, 1031
- Markets**, 13, 536
- Master and Servant**
 Illegal contracts, 14, 785
 Merchant, 13, 527
 Negligence, 16, 412
- In Case of Persons Invited**, 16, 413
 Distinction between implied invi-
 tation and license, 16, 414
 Examples, 16, 413
 Invitation implied, 16, 414
 Religious societies, 16, 414
 Intermeddler, 16, 413
 Liability to a, 16, 412
 Meaning of licensee, 16, 413
 Trespassers, 16, 413
- Pistols and knives, 13, 528
 Police power, 18, 748
 Prescription, 19, 15
- Real Estate Law**, 13, 539
See PROFIT A PRENDRE.
 Burden of proof, 13, 557
 Claim arising from adverse possession,
 13, 547
 Compliance with license, 13, 544
 Death of licensor, 13, 554
 Definition, 13, 539
 Destruction of building licensed to be
 erected, 13, 555
 Distinguished from easements 13,
 541
 Evidence, 13, 557
 Examples, 13, 540
 Extinguishment of easement by license,
 13, 548
How Created, 13, 542
 By parol, 13, 542
 Implied, 13, 542
 When deed necessary, 13, 543
 Implied, 13, 542
 Injunction, 13, 551
 License distinguished from a lease, 13,
 541
 License implied, 13, 543
 License in connection with estoppel
 creating easement, 13, 548
 License to maintain mill, 13, 540
 Notice of revocation, 13, 557
 Pleading, 13, 557
 Protection afforded by, 13, 546
 Protection where act was negligently
 done, 13, 547
- Revocation**, 12, 747; 13, 548
 Commencement of action, 13, 557
 Compared with easement, 13, 541
 Destruction of the building or struc-
 ture licensed to be erected, 13, 555
 Dissolution of partnership, 13, 557
 Distinction between a license to do
 an act upon the land of a licensor
 and a license to do an act upon
 the land of the licensee, 13, 553
 Effect of the conveyance of the land,
 13, 555
 Effect of the death of licensor, 13,
 554
 * Examples of cases where licenses
 have been held irrevocable after
 expenditure of money, 13, 553

LICENSE—Cont'd**Real Estate Law—Cont'd****Revocation—Cont'd**

Examples of revocable licenses, 13, 551

Expenditure of money, 13, 550

In general, 13, 548

Injunction, 13, 551

License to do a single act, 13, 550

Notice of revocation, 13, 557

Parol license, 13, 548

Use inconsistent with enjoyment of license, 13, 556

Ways in which a parol license may be revoked, 13, 556

Where license amounts to a grant, 13, 550

Where money has been expended, 13, 550

Rights of Licensee, 13, 544

Compliance with terms of license, 13, 545

In general, 13, 544

Title to real estate, 13, 542

Water, 13, 540

Whether assignable, 13, 545

Within what time act must be performed, 13, 544, 545

Right of Way

Acquisition by License or Implied Grant, 19, 858

Enforcement of license in equity, 19, 859

Revocable at will, 19, 858, 859

Right of railroad to enter under parol license, 19, 858

To connect tracks with road, 19, 859

Where licensee has made improvements, 19, 859

Width of land, 19, 858

Rights and duties of, 13, 515

Sales

Buyer's License to Enter Seller's Premises, 21, 527

Examples, 21, 527, 528

Implied license, 21, 527

In general, 21, 527

License coupled with an interest, 21, 527

Whether license may be revoked, 21, 527

Statute of frauds, 8, 667

Taxation distinguished from, 13, 532; 25, 15

Taxation for occupation, privilege, and business taxes, see TAXATION.

Telegraph companies, 13, 523

Theaters, see THEATERS.

To enter upon land to cut and remove trees, 4, 894

Trade-marks, 26, 397

War

To trade with the enemy, 28, 610

Watercourses, 28, 1020

Assignability, 28, 1023

Contract conveying no interest in the land, 28, 1021

Examples, 28, 1020-1026

In general, 28, 1020

Justification, 28, 1021

Part performance, 28, 1024

Release, 28, 1022

Relief in equity, 28, 1024

Revocation, 28, 1023, 1024

Revocation of executed license, 28, 1025

Statute of frauds, 28, 1022

When license takes effect, 13, 515

LICENSE (PATENT LAW), 13, 557**Assignment**

Of license, 13, 568

Subsequent, 13, 567

Building, 13, 565

By agreement, 13, 559

By grantee, 13, 559

By tenant in common, 13, 559

Conditions, 13, 565

Construction, 13, 563

Building, 13, 565

Circumstances, nature, and words of grant, 13, 563

Conditions in license rights, 13, 565

Duration of right to make and sell, 13, 565

Duration of right to use, 13, 564

Generally, 13, 563

Granting of licenses to others, 13, 566

Hands employed, 13, 566

Implied licenses, 13, 567

Licenses by agreement, 13, 563

Number of articles made, 13, 566

Number of machines to be used, 13, 565

Place, 13, 565

Price, 13, 566

Prosecution of infringer, 13, 566

Railroads, 13, 565

Restrictions, 13, 565

Right to dispose of right to use, 13, 564

Territory, 13, 565

What rights are not implied, 13, 564

When right to manufacture is implied, 13, 564

When right to sell implied, 13, 564

When right to use implied, 13, 564

Definition, 13, 557**Estoppel of Licensor, 13, 559**

Allowing use, 13, 559

Employee and employer, 13, 559

Inducing party to use invention, 13, 559

Introduction into mill without consent, 13, 560

Evidence of contract, 13, 559

Forfeiture, 13, 572

Constructive abandonment, 13, 572

Express authority, 13, 572

Manner of forfeiture, 13, 572

Refusal to pay license fee, 13, 572

Result of forfeiture, 13, 573

When forfeiture incurred, 13, 572

Hands employed, 13, 566

How contract may be made, 13, 559

Implied License, 13, 559

See infra, ESTOPPEL OF LICENSOR.

Acquiescence of licensor, 13, 560

Construction, 13, 567

From Consideration Received, 13, 561

Infringer who has paid damages, 13, 562

Infringer who has paid license fee, 13, 563

Payment of judgment or decree, 13, 562

Payment of nominal damages, 13, 563

Purchase of machine from infringer who has paid judgment, 13, 563

Purchase of patented devices, 13, 561

Purchase of single article, 13, 561

Purchaser from grantee of territorial interest, 13, 562

Purchaser of machine previously purchased, 13, 561

Right of purchaser from territorial grantee to sell, 13, 562

Sale of machine under execution, 13, 561

Unrestricted purchase, 13, 562

Personal rights, 13, 567

Statute, 13, 560

Where no license is implied, 13, 563

Joint tenants and tenants in common, 18, 129

Licensee's title no greater than that of licensor, 13, 567

Notice of License

In general, 13, 567

Necessity of recording, 13, 567

Recording license, 13, 567

Number of articles made, 13, 566

Number of machines to be used, 13, 556

Parol contract, 13, 559

Prices, 13, 566

Railroads, 13, 565

Recording license, 13, 567

Restrictions, 13, 565

Rights, etc., of licensee of assignable license, 13, 569

Rights, etc., of licensee under unassignable license, 13, 569

Right to repair purchased machine, 13, 568

Royalty, 13, 571

Adequate remedy at law, 13, 571

Defense, 13, 571

Eviction, 13, 571

Fraud, 13, 571

Measure of royalty in absence of patent fee, 13, 572

Right of licensor to sue in equity, 13, 571

Statute of limitations, 13, 572

Subsequent license, 13, 567

Territory, 13, 565

When license is assignable, 13, 568

When right to manufacture implied, 13, 564

When right to sell implied, 13, 564

When right to use implied, 13, 564

LICITATION, 2, 721; 13, 573

LICK, 13, 573

LIE, 13, 626

Lying about, 13, 626

LIEGE, 13, 574

LIEN PRIORITY, see JUDGMENT LIEN.

LIENS, 13, 574

See BOTTOMRY; DISTRESS; LIS PENDENS; MARITIME LIENS; MECHANIC'S LIEN; RAILROAD SECURITIES; STOPPAGE IN TRANSITU.

As to owelty of partition, see PARTITION.

Commission merchants and factors, see COMMISSION MERCHANTS AND FACTORS.

For lien of decedent's debts, see DEBTS OF DECEDENTS.

On real property, see MORTGAGES; REAL PROPERTY; VENDOR'S LIEN.

Sale of personalty, see SALES.

Tax liens, see TAXATION.

Agent's lien for compensation, 1, 428

Agisters, 9, 770; 11, 40

Agister, see infra, LIVERY STABLE KEEPERS.

Agricultural, 4, 901; 12, 757c, 757d, 757f; 13, 594

At common law, 13, 594

Express agreement, 13, 594

Assignment, 13, 624

Debt secured by mortgage, see MORTGAGES.

Subrogation, see SUBROGATION.

At common law, 13, 624

Attorney's lien, 13, 626

Equitable liens, 13, 625

Possession of property, 13, 625

Statutory liens, 13, 625

Whether assignable, 13, 624

Attachment, 1, 918

Lis pendens, 13, 904

Attorney and Client, 13, 614, 626

Attachment of Judgment and Insolvency of Client, 13, 621

Assignment prior to commencement of suit, 13, 621

Equity and law, 13, 621

Priority of attorney's lien, 13, 621

Champerly, 3, 86

Equitable lien on amount recovered, 13, 609

Execution, 7, 119

Executors and administrators, 7, 309

For contingent fee, 3, 79

General or Retaining Lien, 13, 614

At common law, 13, 614

Attorney's remedy, 13, 616

Character of the lien, 13, 614

Collusion of parties, 13, 616

Detention of papers, 13, 615

Disputed fee, 13, 615

Distinguished from special charge in lien, 13, 615

Extent of attorney's retaining lien, 13, 615

Money collected, 13, 615

Money paid for specific purpose, 13, 616

LIENS—Cont'd

Attorney and Client—Cont'd

General or Retaining Lien—Cont'd

- Money paid to discharge mortgage, 13, 616
- Money paid to settle suit, 13, 616
- Payment into court of funds detained, 13, 616
- Power of court, 13, 616
- Right of sale, 13, 615
- To what the lien is confined, 13, 615
- To whom the lien extends, 13, 615
- When no lien attaches, 13, 616

Lis Pendens, 13, 903

- Chancery, 13, 904
- Fee fixed by contract, 13, 903
- Lien established by state law, 13, 904
- Remedies for enforcing an attorney's lien, 13, 621

Set-Off, 13, 620; 22, 426

- Adverse judgments in the same cause, 22, 463
- Adverse judgments in the same transaction, 22, 463
- Attorney's right where mutual executions are set off, 22, 461

Bill in Equity or Action at Law, 22, 464

- Upon motion, 22, 464
- When lien will be regarded, 22, 464

- By judgment debtor, 13, 620
- Conflict of authority, 13, 620
- Court sustaining lien of attorney, 22, 462

Discretion of court, 22, 463

Judgment for Costs, 22, 455

- Costs in separate actions, 22, 455
- Settlement of attorney's claim, 22, 455
- When set-off will be denied, 22, 455
- Where claims arise in the course of the suit, 22, 455

Lien for costs and disbursements, 22, 462

Right of parties to set off judgment, 22, 462

States in which set-off is allowed, 13, 620

States in which set-off is not allowed, 13, 620

Statutes, 22, 463

Unliquidated claim of opposite party, 22, 464

When lien not paramount, 22, 463

Where judgment creditor assigns judgment to attorney, 13, 621

Whether equitable or legal rules apply, 22, 463

Special or Charging Lien, 13, 616

- Costs, 13, 616
- Counsel fees, 13, 617
- Disbursements, 13, 617
- General balance for services, 13, 617
- Judgment, 13, 616
- Nature of the lien, 13, 616

Statutory Liens of Attorneys, 13, 617

- Collusive settlement, 13, 619
- Distinguished from general lien, 13, 615
- In Arkansas, 13, 617
- In Colorado, 13, 617
- In Dakota, 13, 617
- In Georgia, 13, 617
- In Indiana, 13, 618
- In Iowa, 13, 618
- In Kansas, 13, 618
- In Kentucky, 13, 618
- In Massachusetts, 13, 618
- In Michigan, 13, 618
- In Minnesota, 13, 618
- In Montana, 13, 618
- In Nebraska, 13, 619
- In New York, 13, 619
- In Oregon, 13, 619
- In Virginia, 13, 619
- In Washington, 13, 619
- Parties defeating attorney's lien, 13, 619
- When lien attaches, 13, 619

Auctioneer's, 1, 983

Bailee of animals, 1, 589

Ballees

For hire, 2, 50

Banks and Banking, 13, 578

- Account as "agent," 13, 579
- Account as executor and administrator, 13, 579
- Account as trustee, 13, 579
- Debts not due, 13, 578
- For balance of depositor's account, 13, 578
- Identity of the individual, 13, 578
- Individual in trust capacity, 13, 579
- Indorsement "for collection," 13, 579
- In general, 13, 578
- Judicial notice, 13, 578

Lien on Funds of Depositor, 2, 97; 5, 188

- How lost, 2, 99
- Property subject to a trust, 2, 98
- Securities deposited for a special purpose, 2, 98
- Upon plate deposited, 2, 98
- When the lien will attach, 2, 99

National Banks

- By-law creating a lien upon shares of stockholders of national bank, 2, 707
- Lien by bank on its stock, 16, 201
- Paper received for collection, 13, 579
- Property not known as trust property, 13, 579
- Quasi bankers, 13, 578
- Securities Deposited to Cover a Particular Loan, 13, 578
- Surplus, 13, 579
- Several counts by same individual, 13, 579
- What the lien covers, 13, 578

Boom companies, 2, 473

Brokers, 2, 572

Brokers, lien of insurance broker, 2, 594

Building and loan association for dues, 2, 619

Carriers of Goods, 8, 696; 13, 580; 22, 746

See infra, EXPRESS COMPANIES.

Agent's authority to contract, 8, 970

At common law, 13, 580

Charges for storage, 13, 585

Connecting carrier's lien, 8, 970, 971

Contract fixing time of payment, 8, 980

Dependent upon contract, 8, 969

Effect of custom upon carrier's lien, 8, 975

Effect of mistake upon carrier's lien, 8, 970

Effect of notice upon carrier's lien, 8, 971

Effect of Ownership of Goods Upon Carrier's Lien, 8, 972

Carrier acquiring goods from tortious holder, 8, 973

In England, 8, 973

In the United States, 8, 973

Where consignor has been clothed with apparent ownership, 8, 974

First carrier consignor's agent, 8, 970

Generally, 8, 969

Goods sent to wrong place, 8, 970

Import duties, 13, 585

Lien as affected by set-off, 8, 977

Lien for freight advanced to other carriers, 8, 971

Necessity of existence of relation of debtor and creditor, 8, 972

On goods delivered by wrongful possessor, 2, 50

Priority of carrier's lien, 8, 969

Reasonable time for payment of charges, 8, 979

Remedies involving carrier's lien, 8, 978

Replevin, 8, 978

Right to inspect goods, 8, 979

Right to prepayment, 8, 969

Right to sell property, 8, 979; 13, 580

Sale to enforce lien, 8, 979; 13, 580

Set-Off, 8, 977

Damage done by prior carrier, 8, 971

Damage for goods, 8, 977

In England, 8, 977

In the United States, 8, 977

Where damage equals freight, 8, 977

Statutory Lien, 13, 580

In Alabama, 13, 580

In Arizona, 13, 580

In California, 13, 580

In Colorado, 13, 580

In Connecticut, 13, 581

In Dakota, 13, 581

In Delaware, 13, 581

In Georgia, 13, 581

In Illinois, 13, 581

In Indiana, 13, 581

In Iowa, 13, 581

In Kansas, 13, 581

In Louisiana, 13, 582

In Maine, 13, 582

In Maryland, 13, 582

In Massachusetts, 13, 582

In Michigan, 13, 582

In Minnesota, 13, 582

In Mississippi, 13, 582

In Missouri, 13, 582

In Nebraska, 13, 582

In Nevada, 13, 583

In New Jersey, 13, 583

In New Mexico, 13, 583

In New York, 13, 583

In North Carolina, 13, 583

In Ohio, 13, 583

In Oregon, 13, 583

In Pennsylvania, 13, 583

In Rhode Island, 13, 583

In South Carolina, 13, 583

In Tennessee, 13, 583

In Texas, 13, 584

In Utah, 13, 584

In Vermont, 13, 584

In Virginia, 13, 584

In Washington, 13, 584

In Wisconsin, 13, 584

In Wyoming, 13, 584

Stolen goods, 13, 585

Stoppage in transitu, *see* STOPPAGE IN TRANSITU.

Stoppage in transitu, 13, 584; 23, 933

To what charges the lien extends, 13, 585

Trover, 8, 978

Upon goods carried, 13, 580

Usages and Customs, 27, 880

Stowage, 27, 874, 880

Waiver of Lien, 8, 978; 13, 585

Attaching property, 13, 586

Conditional delivery, 13, 585

Delivery, 8, 978

Delivery by means of fraudulent representations, 8, 978

Delivery obtained tortiously, 8, 978

Giving credit, 13, 586

Importing of goods, 13, 585

Partial delivery, 13, 585

Warehouse charges, 8, 969

What Is Included in the Lien, 8, 975

Back freight where charges have been prepaid, 8, 977

Charges for keep of goods, 8, 977

Charges strictly connected with transportation, 8, 975

Custom or usage to retain lien on general balance, 8, 976

Demurrage, 8, 976

Effect of delivery of part, 8, 976

Goods of different owners, 8, 977

Lien apart from possession, 8, 975

Lien for general balance, 8, 975

Part of goods, 8, 976

Tender to consignee, 8, 977

When carriers are entitled to lien, 8, 970

Where connecting carrier has been paid in advance, 8, 972

Where first carrier makes a guaranty, 8, 972

LIENS—Cont'd

Carriers of Goods—Cont'd

Where second carrier knows of the wrong, 8, 971

Whether carrier had knowledge of wrong route question for jury, 8, 972

Carriers of passengers, 13, 585

Carrier who is not a common carrier, 2, 777

Classes, 13, 574

Common Law, 13, 575, 576

Definition of general lien, 13, 577

Definition of particular liens, 13, 576

How general lien may arise, 13, 577

How particular liens may arise, 13, 576

Nature and characteristics, 13, 575

Necessity of possession, 13, 577

Notice of lien, 13, 577

Particular and general liens, 13, 576

Whether attachable to person, 13, 576

Creditors' bills, 4, 576

Crops, see *infra*, AGRICULTURAL.

Debts of decedents, 13, 603

Decree in equity, 5, 386

Definition, 13, 574

Detinue, 18, 526, 527

Discharge and Waiver of, 13, 621

Agreements inconsistent with the lien, 13, 623

Effect of taking security, 13, 622

Examples of taking security, 13, 622

In general, 13, 621

Landlord and tenant, 13, 622

Tender, and when it should be made, 13, 624

Warehouseman and wharfingers, 13, 622

Distinguished from charge, 3, 118

Dower, 5, 887

Effect of discharge in bankruptcy, 11, 226

Eminent Domain

Lien for Damages, 6, 596

Against lessee of company, 6, 596

Against mortgagee of company, 6, 596

Against vendee of company, 6, 596

Equitable assignments, 13, 610

Equitable Liens, 6, 719; 13, 577, 608

Assignment of choses in action, see ASSIGNMENT.

Deposit of title deeds, see EQUITABLE MORTGAGE.

Equitable assignments, see EQUITABLE ASSIGNMENTS.

Partnership liens, see PARTNERSHIP.

Arising from express contract, 13, 608

Arising from implied contracts, 13, 610

Attorney's lien on amount recovered, 13, 609

Corporations, 13, 612

Definition, 13, 608

Distinguished from common-law lien, 13, 608

Enforcement of equitable lien, 13, 613

Form and nature of contract, 13, 608

Grant of land subject to support of grantor, 13, 609

Identification of property, 13, 609

Indorsement of note specifying security, 13, 608

Removing legal impediments, 13, 614

Sale of property, 13, 614

Stockholders, 13, 613

Sufficient remedy at law, 13, 613

Execution, 7, 143

Alias writ destroying lien, 7, 144, 145

Execution first issued and levied, 7, 145

Expiration of lien, 7, 144

From what time a lien, 7, 143

Growing crops, 8, 989

Instructions not to sell, 7, 144

Issuance of alias writ, 7, 144

Levied in the order in which officer received them, 7, 145

Loss of lien, 7, 144

Maxim of *qui prior est tempore, potior est jure*, 7, 145

Maxim of *vigilantibus et non dormientibus jura subserviunt*, 7, 145

Neglect to force a levy and sale, 7, 144

Postponement of lien, 7, 144

Preserving or continuing lien, 7, 144

Priorities of liens, 7, 145, 152

Property acquired while execution is in force, 8, 989

Express Companies

See *infra*, CARRIERS OF GOODS.

Connecting carrier, 7, 570

Priority, 7, 570

Sale of goods, 7, 570

Stoppage in transitu, 7, 570

Where goods are received from a tortious holder, 7, 570

Whether delivery of part of the goods is a waiver, 7, 570

Factors

When pledged to extent of lien, 3, 322

Finder of Property, 7, 987; 13, 592

Where no reward is offered, 7, 987

Where reward is offered, 7, 987

Foreclosure

Joinder Under Codes, 11, 1010

Liens on realty and personal liability, 11, 1011

Parties liable for debt secured by mortgage, 11, 1012

Personal judgment with mortgage foreclosure, 11, 1011

Proceedings to establish mechanic's lien, 11, 1011

Provisions not compulsory, 11, 1014

Same transaction, 11, 1011

Several proceedings to foreclose, 11, 1010

Statutes authorizing joinder of liens on realty and personal liability, 11, 1011

Statutory provisions authorizing personal judgment, 11, 1012

Subsequent purchasers from mortgagor, 11, 1013

Vendor's lien, 11, 1013

Freight, see *infra*, CARRIERS OF GOODS.

Future-Acquired Property, 8, 987

- By agreement, 8, 987
- Execution lien, 8, 989
- In California, 8, 987
- In Dakota, 8, 987
- Lien of judgment on after-acquired land, 8, 988
- Statutory lien on, 8, 987

Garnishment, 8, 1101

- Priority of lien, 8, 1124
- General, 13, 577
- General and particular liens, 15, 8
- General average, 8, 1307

Horses, 9, 769

- Agister's lien, 9, 770
- Auctioneer's lien, 9, 769
- Farrier's lien, 9, 770
- Horse breaker's lien, 9, 770
- Keeper's lien, 9, 769
- Livery stable keeper's lien, 9, 770; 11, 40; 13, 593, 943, 953
- Seller's lien for price, 9, 769
- Trainer's lien, 9, 770

Improvement, 13, 599

As to owelty in partition, see PARTITION.

Interference by equity, 13, 599

Joint Tenants and Tenants in Common, 13, 601

- At common law, 13, 601
- Contribution, 13, 602
- Creditor's priority, 13, 602
- Discharge of mortgage, 13, 602
- Notice of repair, 13, 601
- Partition, 13, 602
- Permanent repairs, 13, 602
- Property liable to decay, 13, 601
- Rents, 13, 602
- Repairs, 13, 601

Made by mistake, 13, 599

Occupants generally, 13, 599

Owner's silence, 13, 600

Purchase by trustee of trust property, 13, 600

Set-off at law, 13, 600

Set-off in equity, 13, 600

Statutory Liens, 13, 600

- Examples of statute, 13, 601
- Nature of statute, 13, 601

Tenant for Life or Years, 13, 603

- General rule, 13, 603
- Lessor liable by contract, 13, 603
- Unfinished house, 13, 603
- When allowed, 13, 600

Inns and Innkeepers, 11, 33, 37, 45, 49; 13, 590

Agisters and livery stable keepers, see infra, LIVERY STABLE KEEPERS.

Against Whom It May Be Exercised, 11, 41

- Boarders, 11, 41
- Boarding house keeper, 11, 41
- By whom lien may be exercised, 11, 40
- Conflict of opinion, 11, 45
- Dependent on liability, 11, 38, 45
- Enforcement, 11, 46
- Missouri statute, 11, 47

Nature of remedy, 11, 47

Sale of horse for keeping, 11, 46

Sale without judicial process, 11, 46

Statutory regulations, 11, 47

Exempt property, 11, 39

General and special lien, 11, 46

General doctrine, 11, 38

Goods of Third Persons, 11, 39

American doctrine, 11, 42

At common law, 11, 41

English doctrine, 11, 41

Knowledge of Ownership by Innkeeper, 11, 42, 43

Drummer's goods known to belong to employer, 11, 44

Hired carriage, 11, 45

Known ownership of piano loaned by manufacturers, 11, 43

Want of knowledge of ownership of consigned piano, 11, 44

Statutory regulations, 11, 43

When lien extends to, 11, 39

In general, 11, 45

Innkeeper accustomed to taking boarders, 11, 49

Lien of boarding house keeper, 11, 49

Livery stable keeper who is also an innkeeper, 13, 952

Lodgings and apartments, 13, 1008

On drummer's goods, 11, 44

Qualified denial of lien, 11, 38

Restricted to guest, 11, 12

Rights in general, 11, 37

Under Massachusetts statutes, 11, 49

Under New York statutes, 11, 49

Waiver of, 11, 47

Agisters and livery stable keepers, 11, 48

By loss of possession, 11, 47

By selling chattel, 11, 48

By taking security, 11, 49

Drummer's goods, 11, 47

Fraudulent inducement to part with possession, 11, 48

What Covered by, 11, 45

All goods brought by guests, 11, 45

Carriage and horses, 11, 46

Exempt property, 11, 39

Quantity covered by, 11, 39

What quantity covered, 11, 39

When it exists, 11, 38

Insurable interests, 11, 315

Insurance agent, 13, 587

Insurance Broker's, 2, 594

Extent of, 2, 594

Subagents of broker, 2, 594

What it attaches to, 2, 595

Where principal is agent of third party, 2, 595

Judgment, 7, 143; 12, 104

As to judgment creditors, 12, 105

As to subsequent purchasers, 12, 105

Character of cause of action, 12, 104

Compliance with law governing docketing, 12, 105

Cost and damages, 12, 105

Creation of lien, 12, 104

LIENS—Cont'd

Judgment—Cont'd

Discharge, 12, 119

By death of judgment debtor, 12, 120

By payment in whole or in part of judgment, 12, 119

By reversal of judgment, 12, 120

By tender, 12, 119

Formation of new county, 12, 120

Docketing for too small a sum, 12, 106

Effect on lien after payment, 12, 119

Extension, 12, 117

By issue of execution, 12, 117

Diligence, 12, 117

Inability to execute process, 12, 117

Revival by scire facias, 12, 117

Stay of execution, 12, 117

Failure to enforce, 12, 118

Included judgment, 12, 105

Indexed in docket, 12, 105

Interest of judgment, 12, 105

Judgment against donee of power, 18, 987

Judgment by default, 12, 104

Judgment indexed under wrong letter, 12, 106

Judgment must be for specific sum of money, 12, 105

Judgment of federal court, 12, 104

Judgment that execution might issue on, 12, 104

Justice of the peace, 12, 470, 474

Lien of judgment against the partnership on firm's realty, 17, 959

Liens in general, 12, 104

Married women, 14, 662

Mechanic's lien, 15, 9

Name of debtor incorrectly spelled, 12, 106

Nature of lien, 12, 104

Necessity of final judgment, 12, 104

On after-acquired land, 8, 988

Partnership, 17, 967, 1328

Judgment given partner in whose name title stands, 17, 968

Lien of judgment given one partner, 17, 967

Partnership real estate, 17, 967

Purchase for, 17, 1338

Real property, 17, 1338

Whether judgment of firm debt is lien on separate property, 17, 1328

Whether judgment of separate creditor is lien on firm property, 17, 1329

Priority, 10, 383; 12, 110; 23, 550

Advances to be made, 12, 115

Costs incurred on judgment, 12, 116

Debts due the United States, 12, 116

Judgment docketed on day real estate is sold under senior judgment, 12, 116

Judgment entered on same day, 12, 116

Lien of judgment rendered during same term, 12, 115

Mortgage of real estate on day judgment lien attaches, 12, 116

Prior equitable lien, 12, 110

Purchase of real estate on day judgment lien attaches, 12, 116

Superior equity where judgment is entered on same day, 12, 116

Vendor and Purchaser

Bankruptcy, 12, 112

Issuance to secure payment of purchase-money, 12, 114

Land conveyed by mistake, 12, 114

Lease of debtor, 12, 112

Lien against vendee on day conveyance was made, 12, 114

Lien of judgment against vendee, 12, 113

Mortgage not for purchase-money given the day of conveyance, 12, 114

Real estate subsequently acquired by debtor, 12, 114

Sale relating back to time judgment attached, 12, 113

Sale under junior judgment, 12, 112

Subsequent conveyance of debtor, 12, 111

Subsequent mortgage of debtor, 12, 111

Unrecorded deed, 12, 111

Unrecorded deed where judgment creditor has no notice, 12, 111

Vendee under valid contract to purchase, 12, 113

Vendee who has paid full purchase price, 12, 113

Vendee without notice of existence of judgment, 12, 113

Vendor of real estate, 12, 113

Where vacated judgment is restored, 12, 118

Whether judgment in foreclosure extinguishes mortgage lien, 12, 115

Wife's Dower Interest, 12, 110

Judgment rendered after marriage, 12, 111

Judgment rendered before marriage, 12, 111

Property Subject to Lien

All interest in real estate, 12, 107

At common law, 12, 107

Attaches to precise interest of debtor, 12, 109

Conveyance of homestead, 12, 109

Easements, 12, 107

Equitable estate, 12, 107

Equity of redemption, 12, 108

Estate in remainder or reversion, 12, 108

Executors and administrators, 12, 110

Fixtures, 12, 108

Homestead, 12, 108

Judgment debtor no real interest, 12, 109

Judgment entered after death, 12, 110

- Land fraudulently conveyed by debtor, 12, 108
- Leasehold estate, 12, 108
- Liable at common law only as to equitable estate, 12, 107
- Officers of corporation, 12, 110
- Personal property, 12, 107
- Priority of lien, 12, 110
- Property exempt from execution, 12, 108
- Public lands, 12, 107
- Relinquishment of homestead claim, 12, 109
- Rents and profits, 12, 108
- Reservation of rent charge, 12, 108
- Subsequent occupation of premises as homestead, 12, 109
- Trustee, 12, 110
- Where evidence of debtor's interest has not been registered, 12, 109
- Real estate subject to execution, 12, 104
- Relief in equity, 12, 117
- Stay of Execution**
 - Effect of, 23, 549
 - In general, 23, 548
 - Priority, 23, 550
 - Priority of subsequent creditors, 23, 550
 - Statutory period of limitation, 23, 550
- Suspension**, 12, 117
 - By agreement not to take out execution, 12, 118
 - By capias ad satisfaciendum, 12, 118
 - By stay of execution, 12, 118
- United States courts, 27, 625
- Whether it attaches before execution, 12, 107
- Whether it may be limited to specific property, 12, 104
- Landlord and Tenant**
 - Discharge, 13, 622
- Legacies and Devises**, 13, 603
 - For liens of debts, see DEBTS OF DECEDENTS.*
 - Liens of legacies, see LEGACIES AND DEVISES.*
 - As to whether the debts or legacies are a charge upon the land, see DEBTS OF DECEDENTS and LEGACIES AND DEVISES.*
 - Lien of debts, 13, 603
 - Lien of legacies, 13, 606
 - When lien by devise arises, 13, 603
- Lien for deposit made at auction sale, 1, 1000
- Lien of Mechanics on Personal Property**, 13, 590
 - Examples of liens, 13, 590, 591
 - For what charges lien attaches, 13, 590
 - In general, 13, 590
 - Manufacturer, 13, 590
 - Printer, 13, 590
 - Request of owner, 13, 591
 - Sawing logs, 13, 590
 - Skill increasing value of personal property, 13, 590
 - Slaughtering, 13, 590
 - Specific lien, 13, 590
 - Statutory mechanic's lien, 13, 592
 - Stipulation for certain price, 13, 590
 - Tailor, 13, 590
 - To whom the lien extends, 13, 591
 - Waiver by inconsistent agreement, 13, 592
- Lis Pendens**, 13, 903, 910
 - Attachment, 13, 904
 - Attorney's fees, 13, 903
 - Creditor's bills, 13, 905
 - Foreclosure of mortgages, 13, 905
 - Liens as affected by lis pendens, 13, 903
 - Vendor's lien, 13, 904
- Livery Stable Keepers**, 9, 770; 11, 40; 13, 593, 943, 953
 - Agister, 9, 770; 11, 40; 13, 943, 944
 - As lessor, 13, 952
 - At common law, 13, 943
 - Borrower of an animal, 13, 954
 - By deputy sheriff's employee engaged as agister, 13, 948
- Effect of Loss of Possession**, 13, 965
 - Effect of owner's acquiescence, 13, 967
 - Leaving animals, 13, 968
 - Ohio statute, 13, 968
 - Permitting occasional rides by owner, 13, 969
 - Permitting use by owner, 13, 969
 - Possession essential, 13, 965
 - Removal of animal from stable, 13, 966
- Enforcement of Lien**, 13, 961
 - Lien upon excess of proceeds of sale, 13, 962
 - Replevin for wrongful removal, 13, 962
 - Trainer's irregular mode of sale, 13, 961
- Evidence admissible, 13, 951
- Examples of statutes, 13, 945-950
- Farmer caring for neighbor's stock, 13, 947
- Feeding live stock, 13, 946
- General rule, 13, 943, 951
- Groom's lien, 13, 950
- Grounds for denying lien, 13, 943, 944
- In absence of contract, 13, 943, 951
- Lien by agreement, 13, 945
- Lien of farrier, 13, 944
- Lien on mare covered by stallion, 13, 944
- Local usage, 13, 951
- Mortgagee, 13, 955
- Mortgagor as lawful possessor, 13, 954
- Notice of Lien**, 13, 959
 - Charges prior to notice, 13, 959
 - Notice of time and place of sale, 13, 961
 - Sale before notice, 13, 960
 - Statute in New York, 13, 959
 - Notice, waiver by omission to give, 13, 965
 - Pleading, 13, 951

LIENS—Cont'd
Livery Stable Keepers—Cont'd
Priority Over Chattel Mortgage, 13, 955

Examples, 13, 955

Previously recorded mortgage, 13, 956

Property left by mortgagor without mortgagee's permission, 13, 959

Stallion, 13, 958

Property of third persons, 13, 954

Scope of statutory regulations, 13, 945

Statute to cover care and feeding of animals, 13, 949

Statutory liens, 13, 945

Trainer's lien, 13, 950

Veterinary surgeon, 13, 944

Veterinary surgeon's services, 13, 951

Waiver of Lien, 13, 963

Levy and execution, 13, 963

Waiver by claiming too much, 13, 964

Waiver by disclaimer, 13, 963

Waiver by omission to give notice, 13, 965

What Lien Attaches, 13, 953

Articles not named in statute, 13, 953

Examples, 13, 953

Exempt property, 13, 953

When lien does not exist, 13, 951

When lien exists, 13, 950

Who is also an innkeeper, 13, 952

Local Assessments, 10, 294; 24, 76; 25, 566

Authority of legislature, 24, 76

Construction of statutes, 24, 76

Decree, 25, 567

Enforcement, 25, 567

Examples, 24, 76

Extent, 25, 566

Foreclosure proceedings, 25, 567

For the benefit of contractor, 25, 566

In absence of legislative creation, 25, 566

In general, 24, 76; 25, 566

Lot owned by two or more, 25, 567

Personal liability, 25, 566

Power of legislature to modify or destroy, 24, 76

Priorities, 25, 566

Proceedings to enforce must comply with statutory provisions, 25, 567

Purchasers pendente lite, 24, 76

Sale of land to enforce, 25, 567

Time when lien attaches, 25, 566

Lodgings and apartments, 13, 1008
Logs and Lumber, 13, 1039, 1043

Amendment of petition, 13, 1046

Assignability, 13, 1043

At common law, 13, 1039

Discharge of lien, 13, 1044

For advances, 13, 1039

For Labor and Services, 13, 1040

Contractors, 13, 1041

Cooking, 13, 1041

Expenses incurred in getting into woods, 13, 1041

Extent of lien, 13, 1041

General rule, 13, 1040

In California, 13, 1041

In Maine, 13, 1040

In Michigan, 13, 1040

In Wisconsin, 13, 1041

"Labor and services," 13, 1041

Subcontractors, 13, 1041

Team, 13, 1041

Want of privity between owner and laborer, 13, 1041, 1042

What persons included, 13, 1040

Judgment, 13, 1044

Notice, 13, 1043

Petition, 13, 1045, 1046

Pleading, 13, 1045

Priority of lien, 13, 1043

Proceedings to enforce, 13, 1044

Property subject to lien, 13, 1043

Sawing logs into lumber, 13, 590

Sufficiency of judgment, 13, 1045

Supplies and Materials, 13, 1042

In Georgia, 13, 1042

In Wisconsin, 13, 1042

Time within which lien must be secured, 13, 1043

Waiver, 13, 1044

Lost property, 7, 987; 13, 592

Marine insurance, 14, 322

Mines and Mining Claims, 13, 597; 15, 608

Construction, 15, 609

Examples, 15, 608, 609

Foreman, 15, 609

In California, 13, 597

In Colorado, 13, 598

In Dakota, 13, 599

In Idaho, 13, 599

In Indiana, 13, 599

In Michigan, 13, 599

In Montana, 13, 599

In Nevada, 13, 599

In New Mexico, 13, 599

In Oregon, 13, 599

In Utah, 13, 599

In Virginia, 13, 599

Revised statutes of the United States, 13, 597

Superintendent, 15, 609

National bank, see *infra*, **BANKS AND BANKING.**

Notice, 13, 577

Particular liens, 13, 576

Particular malice, 17, 469

Parties to Actions

Enforcement, 17, 655

Partition, 17, 783

Effect of partition upon lien upon an undivided interest, 17, 783

Effect of partition upon lien upon the whole premises, 17, 783

Partnership, 17, 931, 1197, 1198

Dormant partner, 17, 931

Effect of Partner's Lien Upon Dissolution and Winding up, 17, 1199, 1200

Allowance of interest, 17, 1203

Bankrupt member of firm, 17, 1204

By Surviving Partner

- Winding up in case of death, 17, 1204
- Conversion of separate debt into joint one, 17, 1201
- Conveyance in fraud of creditor, 17, 1199
- Creditor's right to be paid out of assets, 17, 1200
- Death or bankruptcy of partner, 17, 1200
- Existence of lien during partnership, 17, 1199
- Joint estate to joint creditors, 17, 1202
- Partner's right, 17, 1199
- Preference of individual creditor over joint one, 17, 1202
- Priority of separate creditors in separate assets, 17, 1202
- Priority of the government, 17, 1204
- Proof by One Estate Against the Other,** 17, 1207
 - Attachment and garnishment of individual assets, 17, 1211
 - Bankrupt estate of partner's firm, 17, 1207
 - Creditor having several promises of individual partners, 17, 1210
 - Creditor in ignorance of partnership relation, 17, 1208
 - Effect of lien upon separate property, 17, 1212
 - Execution for joint debt levied upon separate property, 17, 1211
 - Fraudulent claim, 17, 1208
 - Fraudulent conversion of property, 17, 1207
 - Lien of judgment upon separate estate, 17, 1211
 - Marshaling assets, 17, 1212
 - Partner who has been discharged in bankruptcy, 17, 1208
 - Separate creditor having security upon joint property, 17, 1210
 - Solvent partner's claim arising out of fraud, 18, 1209
 - Subrogation, 17, 1212
 - Two firms with distinct trades, 17, 208
- Pro rata distribution, 17, 1204
- Separate estates in court for distribution, 17, 1205
- Separate estate to separate creditors, 17, 1202
- Statutes making debts joint and several, 17, 1204
- To what lien extends, 17, 1204
- When accounts have to be taken, 17, 1200
- When joint creditors are entitled to prove against separate estate, 17, 1206
- Where creditor and debtor are partners, 17, 1201
- Where there is no joint estate, 17, 1205

- Where there is no separate estate, 17, 1205
- Where there is nothing from which joint creditor can realize, 17, 1206
- Whether creditor has a lien, 17, 1199
- Partner's lien in partnership realty, 17, 954
- Property in hands of debtor, 17, 1198
- Separate property, 17, 1199
- To what lien attaches, 17, 1198
- Pilots,** 18, 454
 - Contract, 18, 454
 - Examples, 18, 454
 - Foreign vessel, 18, 454
 - Generally, 18, 454
 - Proffered service, 18, 454
 - Refusal of services, 18, 454
 - Waiver of lien, 18, 455
- Pleading in detinue, 5, 656
- Possession,** 13, 577
 - By agent, 13, 577
 - Deposit with party for a particular purpose, 13, 577
 - Effect of alienation by owner, 13, 577
 - Fraudulent, 13, 577
 - Illegal, 13, 577
 - Nature of, 13, 577
 - Necessity to common-law lien, 13, 577
- Printer, 13, 590
- Priority**
 - Priority of maritime liens, see* MARITIME LIENS.
 - Actual knowledge, 10, 390
 - Actual notice, 10, 391
 - Agreement Affecting Priority**
 - Agreement as notice to judgment creditors of grantee, 10, 385
 - Agreement for advances, 10, 385
 - Agreement that fourth mortgage should rank first, 10, 385
 - Agreement to give mortgage to mechanic's lien, 10, 385
 - Effect of agreement of third persons, 10, 386
 - Good faith in agreement, 10, 386
 - Relative rank fixed by, 10, 384
 - Right of such agreement to record, 10, 385
 - Assignee claimant where assignor could not, 10, 386
- Bona Fide Purchaser,** 10, 378
 - Person taking mortgage for existing debt, 10, 388
- Competing Liens**
 - Liens of mortgage and one of execution, 10, 395
 - Taxes as mortgages, 10, 395
 - Unrecorded mortgage and judgment liens, 10, 395
- Competing mortgages, 10, 380
- Defects and Omissions**
 - Correction of priority, 10, 394
 - Defects in description, 10, 394
 - Examples, 10, 393, 394
 - Omission in index, 10, 393
 - Subsequent cure of defects, 10, 393
- Dower, 5, 908

LIENS—*Cont'd*

Priority—*Cont'd*

Effect of circumstances showing knowledge, 10, 379

Effect of not recording mortgage, 10, 377

Effect of recording assignment, 10, 386

Equities existing between claimants, 10, 380

Exception cases, 10, 380

Fraudulent mortgage, 10, 389.

General rule, 10, 376

Homestead right as to recording, 10, 384

Imperfect mortgages, 10, 377

Judgment liens, see *infra*, JUDGMENT.

Judgment, 10, 383

Junior mortgages, 10, 381

Knowledge with reference to, 10, 390

Mechanic's liens, 10, 385

Mortgagee acting in good faith, 10, 391

Mortgage executed to secure sureties, 10, 387

Mortgage priority, 10, 376

Mortgage security for preëxisting debt, 10, 391

Mortgages of even date, 10, 381

Mortgage to secure dower rights, 10, 388

Mortgage to secure present and future indebtedness, 10, 388

Notice, 10, 378

Of mortgages, 10, 385

Of recorded assignment over unrecorded mortgage, 10, 386

Rank of judgment lien of later registry, 10, 377

Recording as notice, 10, 379

Recording not necessary as to mortgagor, 10, 378

Reinscription, 10, 397

Diligence, 10, 397

Louisiana law, 10, 397

Necessity of, 10, 397

Relative to assignment, 10, 386

Release and assignment, 10, 396

Release of lien, 10, 396

Statutory liens, 10, 383

Unrecorded mortgage, 10, 378

Unrecorded mortgage and consequent judgment, 10, 378

Unrecorded mortgage and executed levy, 10, 392

Unrecorded mortgage and sale without consideration, 10, 392

Unrecorded mortgage recorded within legally prescribed time, 10, 392

Vendee notified of defective mortgage, 10, 380

Vendee notified of unrecorded mortgage, 10, 379

Public Officers

On papers or documents, 19, 539

Railroads

Services and Material, 19, 879

In general, 19, 879

Priorities, 19, 879

Upon what a lien exists, 19, 879, 880

Receivers

Corporations, 20, 281

Effect of appointment upon lien of judgment creditor, 20, 281

Setting apart a fund, 20, 282

Wages, 20, 282

When receiver not entitled to possession, 20, 283

Effect of sale, 20, 151

Enforcement of equitable liens, 20, 48

Generally subject to all subsisting liens, 20, 138

Property passes to purchaser subject to, 20, 151

Receivers of Railroads

As to priority of claims or liens, see RECEIVERS OF RAILROADS.

Rent, 12, 757c

By Contract, 12, 757c

Advances made to tenant, 12, 757c

Crops, 12, 757c; 13, 594

Improvements, 12, 757d

Personal property, 12, 751d

Property of stranger, 12, 757e

Real property, 12, 757c

Subtenant, 12, 757d

Third person in possession, 12, 757e

What it may embrace, 12, 757c

Crops, 4, 901; 13, 594

Advancements, 12, 757d

Attachment of crops, 12, 757c

By Statute, 12, 757f

In Alabama, 12, 757f

In Arkansas, 12, 757f

In District of Columbia, 12, 757f

In Florida, 12, 757f

In Georgia, 12, 757f

In Illinois, 12, 757f

In Indiana, 12, 757f

In Iowa, 12, 757f

In Kansas, 12, 757g

In Kentucky, 12, 757g

In Louisiana, 12, 757g

In Mississippi, 12, 757g

In New Jersey, 12, 757g

In North Carolina, 12, 757g

In Pennsylvania, 12, 757g

In South Carolina, 12, 757g

In Tennessee, 12, 757g

In Texas, 12, 757g

Distinct parcel of land demised, 12, 757e, 757f, 757h

Extent of lien, 12, 757g

Generally, 12, 757c

Grown on the track, 12, 757e

In advance of their being planted, 12, 757d

In North Carolina, 12, 757d

Of subtenant, 12, 757d

Priority

Action for damages against purchaser, 12, 757h

Action to enforce landlord's lien, 12, 757h

Judgment creditor, 12, 757j

Mortgagee, 12, 757i
 Notice to purchaser, 12, 757l
 Purchaser, 12, 757j
 Purchaser without notice, 12, 757m
 Where purchaser without notice may hold against landlord's lien, 12, 757m
 Time of taking effect, 12, 757p
Waiver, 12, 757n
 As to part of crops, 12, 757n
 Giving a note for rent, 12, 757o
 Landlord taking personal judgment against tenant, 12, 757n
 Of lien, 12, 757n
 Taking mortgage on crops, 12, 757o
 Tender, 12, 757o
 Where lien attaches, 12, 757g
 Whether extends to entire crop or each parcel, 12, 757e, 757f
 Extent of lien, 12, 757h
 General nature of lien, 12, 757g
Priority
 Of Lien, 12, 757i
 Lien of judgment creditor, 12, 757j
 Lien of mortgagee, 12, 757i
 Purchase of tenant's crop, 12, 757j
 Relation of landlord and tenant, 12, 757g
Statute, 12, 757f
 In Alabama, 12, 757f
 In Arkansas, 12, 757f
 In District of Columbia, 12, 757f
 In Florida, 12, 757f
 In Georgia, 12, 757f
 In Illinois, 12, 757f
 In Indiana, 12, 757f
 In Iowa, 12, 757f
 In Kansas, 12, 757g
 In Kentucky, 12, 757g
 In Louisiana, 12, 757g
 In Mississippi, 12, 757g
 In New Jersey, 12, 757g
 In North Carolina, 12, 757g
 In Pennsylvania, 12, 757g
 In South Carolina, 12, 757g
 In Tennessee, 12, 757g
 In Texas, 12, 757g
 Superiority of other lien, 12, 757h
 When lien attaches, 12, 757g
 Res judicata, 21, 184
Revenue Laws, 21, 319
 Government lien on goods, 21, 319
 Priority as between salvors and government, 21, 319
 When lien attaches, 21, 319
Rewards, 13, 593
 Detention of property upon another ground, 13, 593
 Ignorance of offer of, 13, 593
 Revocation of offer, 13, 593
 Whether finder has lien, 13, 593
 Savings banks, 21, 722
Set-Off, 22, 245
 Attorney's lien, see *infra*, ATTORNEY AND CLIENT.

Carrier's lien for freight, see *infra*, CARRIERS OF GOODS.
 Specific lien, 13, 576
Statute of Frauds
 Promise to answer for debt in order to secure surrender of lien, 8, 681
 Promise to answer for debt of another where promisor is interested in land, 8, 681
 Relinquishment of lien as a consideration for original promise, 8, 682
Statutory Liens, 12, 757f; 13, 578
Stock
 For lien of corporation on stockholder's shares for debt, see STOCK.
 Stockbrokers, 13, 587
 Succession taxes, 24, 484
Supplementary Proceedings, see SUPPLEMENTARY PROCEEDINGS.
 Lien proceedings, 7, 165
 Rights of bona fide purchasers, 7, 165
 When it avails, 7, 165
 Tailor, 13, 590
Taxation
 Intoxicating liquor license, 11, 671, 672
Tender
 Effect of Tender, 25, 927
 By whom made, 25, 928
 Discharge of lien, 25, 927
 In general, 25, 927
 Lienor's right to possession, 25, 929, 931
 Necessity of keeping tender good, 25, 929
 Necessity of paying money into court, 25, 929
 Tender after default, 25, 929
 Tender must cover whole debt, 25, 928
 To what liens doctrine applicable, 25, 931
 Where possession has been taken, 25, 929
To Secure Reimbursements, 11, 1109
 Sale of interest of one tenant, 11, 1109
Trover
 By Liencee, 26, 756
 Common-law lien, 26, 756
 Contract lien, 26, 756
 How liencee's rights are lost, 26, 757
 Property obtained by theft or fraud, 26, 756
 Right dependent upon possession, 26, 757
 Right of liencee to maintain trover, 26, 756
 Sale by liencee, 26, 757
 Statutory lien, 26, 756
 Transferring goods subject to lien, 26, 757
 Trustee, 27, 178
United States
 Priority, 27, 542
 Upon corporation affected by consolidation, 4, 272p
 Upon logs and lumber, 13, 593
 Upon personal property, 13, 578

LIENS—Cont'd

- Upon real property, 13, 594
- eterinary surgeon, 13, 944, 951
- Waiver of liens*, see *infra*, DISCHARGE AND WAIVER OF LIENS.
- War, 28, 609
- Warehouse and Warehouseman**, 13, 593; 28, 663
 - Advances, 28, 665
 - Balance of account, 28, 664
 - Credit to bailor, 28, 666
 - Debt, 28, 665
 - Examples, 28, 663-667
 - How lien lost, 28, 666
 - In general, 28, 664
 - Mortgaged goods, 28, 664
 - Necessity of possession, 28, 667
 - Parting with goods, 28, 666
 - Possession, 28, 666
 - Recovery of possession, 28, 666
 - Revival of lien, 28, 666
 - Rights from lien, 28, 663, 664
 - Specific, 28, 664
 - Statutes, 28, 664, 665
 - To what lien extends, 28, 664
 - Waiver of, 28, 666
 - When lien does not exist, 28, 666
 - When lien ends, 28, 666, 667
- Wharfinger**, 2, 50; 13, 593; 29, 98
 - Advances for freight, 29, 99
 - Examples, 29, 98, 99
 - Extent of lien, 29, 98
 - General balance, 29, 98
 - Lien under statute, 29, 102
 - On goods, 29, 98
 - On Vessel**, 29, 100
 - Admiralty jurisdiction, 29, 100
 - Enforcement, 29, 102
 - Foreign and domestic vessels, 29, 100
 - For wharfage charges, 29, 100
 - Priority, 29, 101
 - Termination of bailor's liability, 29, 100
- LIEU**, 13, 627
 - In lieu of, 23, 488
- LIFE**, 13, 628
 - Presumption as to continuance, 1, 40
- LIFE ESTATES**, see REMAINDERS.
- LIFE INSURANCE**, 13, 629
 - See ACCIDENT INSURANCE.
 - See generally, INSURANCE.
 - See INSURANCE AGENTS; MUTUAL INSURANCE; TONTINE INSURANCE.
 - As to concealment, see INSURANCE.
 - As to insurance agencies, see INSURANCE AGENTS.
 - As to premiums, see INSURANCE.
 - As to reinsurance, see INSURANCE.
 - As to remedies, see INSURANCE.
 - As to reputation, see INSURANCE.
 - As to waiver and estoppel, see INSURANCE.
 - Rescission, see RESCISSION.
 - Service of process, see SERVICE OF PROCESS.
 - Subrogation, see SUBROGATION.

- Travel*, see *infra*, RESIDENCE AND TRAVEL.
- Usages and customs*, see USAGES AND CUSTOMS.
- Violating law*, see VIOLATING LAW.
- Voluntary exposure*, see VOLUNTARY EXPOSURE.
- Age, 13, 635
- Amount of Recovery**, 13, 659
 - By statute, 13, 660
 - Forfeiture by reason of non-payment, 13, 659, 660
 - Governed by terms of policy, 13, 659
 - Total sum of insurance, 13, 659
- Assignment of Policy**, 13, 646, 647; 26, 68
 - Action by assignee, 13, 650
 - Assignment by sons to secure debts of father, 13, 647
 - Assignment of wife's policy to secure husband's debts, 13, 647
 - Beneficiaries, 13, 648; 14, 583
 - Delivery of policy, 13, 649
 - Endowment policy, 13, 646
 - Enforcement in equity, 13, 647
 - Execution of Assignment**, 13, 649
 - Consent of company, 13, 649
 - Delivery of policy to assignee, 13, 649
 - Notice to company, 13, 649
 - Verbal assignment, 13, 649
 - Whether assignment must be in toto, 13, 649
 - Fraud, 13, 647
 - Husband and wife, 13, 647; 14, 583
 - In absence of prohibition by company, 13, 646
 - In absence of statute, 13, 646
 - Insurable interests of assignee, 13, 650
 - Insured not the beneficiary, 13, 648
 - Notice and Consent of Company**, 13, 649
 - Necessity, 13, 649
 - Time of notice, 13, 649
 - Verbal notice, 13, 649
 - Waiver, 13, 649
 - Payment of debt, 13, 648
 - Policy reached by creditor, 13, 648
 - Reversion, 13, 648
 - Suicide, 13, 645
 - Surplus, 13, 648
 - To Secure Creditor**, 13, 647, 648
 - Assignment by son to secure debt of father, 13, 647
 - Wife's policy to secure husband's debts, 13, 647
 - Wager policy, 13, 650
 - When not forbidden, 13, 646
- Burden of Proof**
 - Insanity, 13, 644
 - Intemperance, 13, 641
 - Suicide, 13, 645
- Cancellation**, 13, 631
 - Governed by provisions of policy, 13, 631
 - Implied power, 13, 631
- Collateral inheritance tax, 24, 470
- Countersigning, 13, 631

Death by his own hand, see *infra*,
SUICIDE.

Death in violating law see VIOLATING
LAW.

Definition, 13, 629

Assured, 13, 630

Beneficiary, 13, 630

Insured, 13, 630

Life insurance, 13, 629

Denial of specified disease, though tem-
porarily attacked, 11, 291

Die by his own hand, see *infra*, IN-
SANTY.

Disease, 5, 682

See *infra*, HEALTH.

Disorder

Tending to shorten life, 13, 634

Distribution of dividends, 26, 62

Drunkennes, see *infra*, TEMPERATE
HABITS.

Forfeiture of Policy, 8, 447; 26, 61

Massachusetts statute, 26, 61

Gift causa mortis of policy, 8, 1344; 13,
632

Gift of policy, 8, 1330

"Good Health," 8, 1360; 11, 296; 13, 632

See *infra*, HEALTH.

Hand, see *infra*, INSANTY; SUICIDE.

Health

Bright's disease, 13, 634

Cancer, 13, 632

Change in, 13, 633

Concealment, 13, 633

Consumption, 13, 633

"Disorder tending to shorten life,"
13, 634

Dyspepsia, 13, 632

Good health, 8, 1360; 11, 296; 13,
632

Headache, 13, 634

Ignorance of disease, 13, 633

Materiality of answer, 13, 633

Other hereditary diseases, 17, 283

Pregnancy, 13, 633

Question as to sickness within a limited
period, 13, 634

Sound health, 22, 840

"Spitting of blood," 2, 427

Truth of answer, 13, 633

What sicknesses must be revealed, 13,
634

Husband and Wife

Life Insurance for Benefit of Spouse, 14,
582

Assignment, 13, 647; 14, 583

Creditors, 14, 583, 584

Duress, 14, 583

Fraud, 14, 583

Fraud on creditors, 14, 583

Husband's rights where he sur-
vives his wife, 14, 583

Right, 14, 583

To defeat children's rights, 14, 583

Insured Surviving Beneficiary

Creditors, 14, 583, 584

Fraud on creditors, 14, 583, 584

Unreasonable insurance, 14, 584

Separate property, 14, 582

Validity, 14, 582

Imprisonment, 13, 637

Insanity, 13, 643

Assessed while insane, 11, 137

Burden of proof, 11, 139; 13, 644

Conflict of authority, 13, 643, 644

"Die by his own hand," 11, 137; 13,
643

Die by his own hand or act, voluntary
"or otherwise," 13, 646

Die by his own hand, sane or insane,
11, 139

"Die by suicide," 13, 644

In Massachusetts, 13, 644

In Pennsylvania, 13, 644

Insane delusion, 13, 644

Insanity as excuse for non-payment of
premium, 11, 140

Intent, 13, 643

Killing result of insane impulse, 11, 138

Knowledge, 13, 643

Non-professional witness to proof, 13,
645

Person conscious of his act, 11, 137

Presumption as to sanity, 13, 644

Proof of insanity, 13, 644

Provision against suicide without re-
ference to insanity, 13, 643

Provision that suicide clause shall ap-
ply to sane or insane, 13, 645

Uncontrollable impulse, 13, 644

United States courts, 13, 644

Where there is no provision against
suicide, 13, 643

Where there is no provision as to in-
sanity, 13, 643

Insurable Interests, see INSURANCE.

Assignment, 13, 650

Married or Single, 13, 635

In general, 13, 635

Reputed wife, 13, 636

Medical Attendant, 13, 636

Breach of the warranty, 13, 636

Effect of untruthful statement, 13,
636

Examples, 13, 636, 637

Family physician, 13, 636

Forfeiture of policy, 13, 636

Unusual medical attendance, 13, 637

Military or naval service, 13, 637

Mortuary tables, 15, 881

Negligence

Insurance company as party to action,
16, 470

Notice and Proof of Death, 13, 656

Age of insured, 13, 657

Compliance with requirements of pol-
icy condition precedent to recovery,
13, 656

Informal notice, 13, 657

Power of guardians, 13, 658

Presumption after absence of insured
seven years, 13, 658

Proof by husband, 13, 658

Reasonable time, 13, 658

Statement of physicians, 13, 657

LIFE INSURANCE—Cont'd**Notice and Proof of Death—Cont'd**

Two policies in the same company, 13, 658

Waiver, 13, 658

Effect of, 13, 658

Examples, 13, 659

Of defects, 13, 658

Oral notice, 13, 659

Refusal of payment, 13, 658

Refusal to send customary blanks, 13, 659

Silence, 13, 659

What amounts to a, 13, 658

What proof insured required to make, 13, 657

Occupation, 13, 635; 17, 31

Change of, 13, 635

Correct statements, 13, 635

Examples, 13, 635, 637

Misrepresentation, 13, 635

Violation of policy, 13, 635

Open sore, 17, 195**Other Application, 13, 637**

Effect of false answer, 13, 637

Other insurance, 13, 631**Parties to Action, 17, 522**

See *infra*, TITLE TO POLICY.

Assignments, 17, 525

Beneficiary named in the policy, 17, 522

Codes and statutes, 17, 525

In whose name actions should be brought, 17, 524, 525

Pledge of policy, 18, 651**Policy, 13, 630**

See *infra*, ASSIGNMENT OF POLICY.

See INSURANCE.

See *infra*, REFORMATION OF INSTRUMENTS; TITLE TO POLICY.

Cancellation, 13, 631

Governed by provisions of policy, 13, 631

Implied power, 13, 631

Countersigning, 13, 631

Duration, 13, 630

Application after sickness, 13, 630, 631

General rule, 13, 630

• Gift donatio mortis causa, 8, 1344; 13, 632

Other insurance, 13, 631

Power of insured to dispose of, by will, 13, 631

Right of heirs of insured to change policy, 13, 632

Validity, 13, 630

Power of insured to dispose of, by will, 13, 631

Presumption of death, 13, 658**Probate**

Claim against insurance company, 19, 168

Proof of death, see *infra*, NOTICE AND PROOF OF DEATH.

Receipts, 19, 1126

Parol evidence, 19, 1118, 1126

Whether conclusive upon the company, 19, 1126

Whether conclusive upon the insurer, 19, 1126

Referee, 20, 712

Reference to referees, 20, 675

Reformation of Instruments, 15, 671

Examples, 15, 671-673

Form of policy, 15, 673

In general, 15, 671

Mistake of law, 15, 671

Parol testimony, 15, 673

Renewal, 15, 672

Relation, 20, 736

Reputed wife, 13, 636

Residence, 13, 635

Residence and Travel, 13, 638

Effect of stipulation, 13, 638

Examples of waiver, 13, 638

License to go to sea, 13, 639

Limit, 13, 638

Permission to go without the limits, 13, 639

Reading of stipulation, 13, 638, 639

Return within prescribed time, 13, 639

Waiver of stipulation, 13, 638

Right of heirs of insured to change policy, 13, 632

Severe illness, 11, 292, 293; 22, 492

Succession taxes, 24, 476

Suicide, 13, 628, 642; 24, 492

See VIOLATION OF LAW.

Accidental death, 13, 643

Burden of proof, 13, 645

Death by his own hand, 13, 642

Definition, 13, 642

"Die by his own hand," 13, 643

Drunkenness, 13, 643

Effect of suicide in absence of provision, 13, 642

Insanity, 13, 643

Burden of proof, 13, 644

Conflict of authority, 13, 643, 644

"Die by his own hand," 13, 643

Die by his own hand or act, voluntary "or otherwise," 13, 646

"Die by suicide," 13, 644

In Massachusetts, 13, 644

In Pennsylvania, 13, 644

Insane delusion, 13, 644

Intent, 13, 643

Knowledge, 13, 643

Non-professional witness to proof, 13, 645

Presumption as to sanity, 13, 644

Proof of insanity, 13, 644

Provision against suicide without reference to insanity, 13, 643

Provision that suicide clause shall apply to sane or insane, 13, 645

Uncontrollable impulse, 13, 644

United States courts, 13, 644

Where there is no provision against suicide, 13, 643

Phraseology of stipulation, 13, 642

Poison by accident, 13, 643

Previous assignment of policy, 13, 645

- Stipulation against, 13, 642
 Synonymous phrases, 13, 642
 Whether the stipulations as to death in
 "violation of law" apply, 13, 642
- Temperate Habits**, 9, 258; 11, 296; 13,
 636, 639
 Burden of proof, 13, 641
 Change of habits, 11, 300
 Death by reason of intemperance, 13,
 640
 Death from use of intoxicating liquors,
 13, 640
 Effect of provision, 13, 639, 641
 Indirect cause of death, 13, 641
 Injury received while in a state of in-
 toxication, 13, 636
 Injury to health, 13, 639
 Involuntary use, 13, 640
 Nature of the provision, 13, 639
 Scope of the warranty, 13, 636
 Suicide, 13, 643
 Waiver, 13, 636
 What use of intoxicating liquors comes
 within provision, 13, 636, 639, 640
- Title to Policy and Its Proceeds**, 13,
 650
See infra, PARTIES TO ACTION.
- Change of Beneficiary**, 13, 655
 Change can be made only as pro-
 vided, 13, 655
 Divesting beneficiary of his rights,
 13, 655
 Husband and wife, 13, 656
 Intentional lapse, 13, 656
 Policy payable to children of bene-
 ficiary, 13, 655
 Several beneficiaries, 13, 656
 Stranger to contract, 13, 656
- Creditors**, 13, 651
**Creditors, when payable to wife and
 children**, 13, 652
**Creditor where insurance is on life of
 debtor**, 13, 654
 Divorce, 13, 652
 Heirs, 13, 651
 Payable to wife or children, 13, 653
 Presumption as to policy on the life of
 another, 13, 654
- Representatives**, 13, 650
 When payable to wife and children,
 13, 652
 Where insurance is on life of debtor,
 13, 654
 Where exempt from debts, 13, 651
- Where Insurance Is on Life of Debtor**, 13,
 653
 Balance, 653
 Creditor's rights, 13, 653
 Debt and premiums paid by debtor,
 13, 654
 Insurable interests, 13, 654
 Representative's rights, 13, 654
 Voluntary payment of premiums, 13,
 654
- Where Insured Survives Beneficiaries**, 13,
 654
 Paid-up policy, 13, 655
- Policy in favor of beneficiary and his
 administrators, 13, 654
 Reversion to the estate, 13, 654
- Where Payable to Children of Beneficiary
 in Case of Survivorship**, 13, 652
 Adopted child, 13, 653
 Beneficiary's title, 13, 653
 Children of two marriages, 13, 653
 Children's title on survivorship, 13,
 653
 Creditors, 13, 652
 Divorce, 13, 652
 One child dead, 13, 653
- Where Payable to Life Insured**, 13, 650
 Creditors, 13, 651
 Executors and administrators as as-
 signs, 13, 651
 Legal representatives of insured, 13,
 651
 Policy payable to heirs or represen-
 tatives, 13, 651
- Where payable to third party**, 13, 651
- Where Payable to Wife and Children**, 13,
 653
 Death of one of the children, 13, 653
 Death of wife, 13, 653
 Where there are no children, 13, 653
 Whether they take equally, 13, 653
- Wager Policy**, 8, 1002
 Assignment, 13, 650
- Warranty**, *see infra*, AGE; HEALTH;
 IMPRISONMENT; MARRIED OR SIN-
 GLE; OCCUPATION; OTHER APPLI-
 CATION; RESIDENCE; TEMPERATE
 HABITS.
- See INSURANCE.*
 Whether a trust relationship exists,
 26, 64
- WILL**
 Disposal of policy by will, 13, 631
- LIFE TABLES**, *see* DAMAGES.
 Admissibility in evidence, 7, 513
- LIGAN**, 13, 660
- LIGHT**, *see* EASEMENTS; NAVIGATION.
 Eminent domain, 6, 547
 Fences obstructing, 26, 593
- Obstructing Lights**
 Survival of action, 7, 267
 Prescription, 19, 27
- LIGHT AND AIR**, *see* EASEMENTS; EASE-
 MENTS OF LIGHT AND AIR; ELEVATED
 RAILROADS.
- LIGHTER**, 13, 660; 28, 440
- LIGHTERAGE**, 13, 660
- LIGHTNING**, 13, 660
 Fire by, 7, 994
- LIKE**, 13, 661
 Like circumstances, 13, 661
 Like crimes, 13, 661
 Like description, 13, 661
 Like effect, 6, 171; 13, 662
 Like kinds, 13, 662
 Like manner, 13, 663
 Like nature, 13, 663
 Like offenses, 13, 664
 Like procedure, 13, 664
 Like remedies, 13, 664

LIKE—Cont'd

Like services, 13, 664

Like sums, 13, 664

LIKELY, 13, 665**LIKEWISE, 13, 665****LIMESTONE, 15, 501****LIMESTONE QUARRY, 15, 501****LIMIT, 13, 666****LIMITATION IN INSTRUMENTS, see DEEDS.****LIMITATIONS, see REMAINDERS AND EXECUTORY INTERESTS.***Executory limitations, see REMAINDERS AND EXECUTORY INTERESTS.***LIMITATION OF ACTIONS, 7, 371; 13, 667***See ADVERSE POSSESSION; CRIMINAL PROCEDURE, for limitation of crimes; DEBTS OF DECEDENTS, for the statutes of non-claim; LACHES; PRESCRIPTION.***Absence, 13, 741**

Beyond the seas, 2, 189; 13, 741

Accounts, 13, 724**Merchants', 13, 764**

Distinguished from mutual accounts, 13, 765

Repeal, 13, 764

Statutory provisions, 13, 764

Mutual, 13, 764

As an acknowledgment, 13, 765

Distinguished from merchants' accounts, 13, 765

From date of last item, 13, 765

General rule, 13, 765

Mere payment against creditors, 13, 766

Stated accounts, 1, 116, 13, 766

When mutual account is terminated, 13, 766

When statute runs, 13, 765

Stated, 1, 116; 13, 766

Accretion, 13, 724**Acknowledgment of Debt, 13, 718***Acknowledgment, see infra, NEW PROMISE.*

Orders, 17, 225

Action of covenant, 4, 549

Action on new promise, 13, 771, 772

Action Upon Coupons, 4, 434

Not barred unless action upon bond would be barred, 4, 444

When statute begins to run, 4, 444

Admission of joint heir, 9, 341

Affects the remedy, 13, 703

After judgment by default, 5, 496²⁸⁸

Against banker's indebtedness, 2, 102

Agreements to Waive Statute

Acknowledgment, 13, 718

Consideration, 13, 717

Estoppel, 13, 717

Forbearance to sue, 13, 717

New promise, see infra, NEW PROMISE.

Statute, 13, 717

Where they are contrary to public policy, 13, 718

Whether binding, 13, 717

Amendment, 13, 746

Amendment of parties, 17, 627

Annuity, 13, 724

Appeal bonds, 13, 724

Application of payment, 13, 757

Arrest of judgment, 12, 147^c

Assumed name, 13, 736

At common law, 13, 668

At what moment the running of the statute is deemed complete, 13, 747

Authority to sell lands of a decedent barred by statute of limitations, 5, 273, 274

Bankruptcy, 13, 737

Bar of principal does not release collateral, 13, 704

Beyond the Seas, 13, 741

Definition of, 2, 189

Bill in Equity**Allegations in**

Where statute would be a bar, 2, 212

Bill of revivor, 2, 274

Bills and Notes, 2, 396; 13, 722

When no date is mentioned, 5, 528²⁸⁴**Bond, 13, 724**Of executor or administrator, 2, 466^v

Burden of proof, 13, 771

By and Against Whom Available, 13, 709

Persons in privacy, 13, 710

Stranger to claim, 13, 710

Cause of Action*As to when cause accrues, see infra,***WHEN STATUTE BEGINS TO RUN.**

Certified checks, 3, 220

Change of limitation; presumed not to be retroactive, 13, 701

Charitable trusts, 3, 137

Chattel mortgages, 3, 201

Claim

For dividend, 5, 732

In statute, 3, 275

Computation of Time, 13, 747; 26, 6

Computation from an event, 13, 747, 748

Day or date, 13, 747

Exclusion of day, 13, 748

General rule, 13, 747, 748

*Concealment, see infra, WHEN STATUTE BEGINS TO RUN.***Conflict of Laws, 3, 583; 13, 768**

Claim barred by law of state where suit is brought, 13, 768

Contract made between residents of different state, 3, 585

Extra-territorial force, 13, 768

Foreign corporation, 8, 399

Foreign judgments, 3, 584

Lex Fori, 13, 768

Determining, 2, 333

Statute Providing that the Bar of the State Where Action Accrued Shall Apply, 13, 769

Between residents of foreign states, 13, 769

Cause of action accruing abroad, 13, 769

- Intermediate states, 13, 769
- Where statute does not specify cause of action shall not accrue abroad, 13, 769
- Suits concerning realty, 13, 768
- Constitutionality of Statutes**, 13, 695
 - Affecting value without impairing obligation, 13, 695
 - Bar of statute complete, 13, 697
 - Divesting title to property, 13, 695
 - Fourteenth amendment, 13, 697
 - Impairing obligation of contracts, 3, 755; 8, 624; 13, 695
 - "Property" in the bar of the statute, 13, 697
 - Reasonable time given to creditor, 13, 696
 - Rendering contract unenforceable, 13, 695
 - Repeal of statute, 13, 696, 697
 - Retroactive effect, 13, 703
 - Statutory residence, 13, 742
- Construction of Statutes**, 13, 691
 - Liberal construction, 13, 692
 - Where language admits of but one meaning, 23, 301
- Constructive trusts, 10, 84
- Contracts under seal, 3, 829
- Contribution, 4, 3
- Counterclaim**
 - Pleadings, 22, 431
- Coupons, 15, 1261
- Covenant, 13, 724
- Cverture*, see *infra*, MARRIED WOMEN.
- Criminal law**, see CRIMINAL PROCEDURE.
- Curtsey, 14, 657
- Day**, 13, 747
 - Computation from an event, 13, 747, 748
 - Day or date, 13, 747
 - Exclusion of, 13, 748
 - General rule, 13, 747, 748
- Deed**
 - Void deed, 13, 726
- Demand**, 13, 721, 722
 - From time of, 13, 721
 - Note payable after, 13, 722
 - Note payable on, 13, 722
- Demurrer, 13, 770, 771
- "Depart from state," 5, 568
- Deposit, 5, 579
- Distributive share, 7, 406
- Divorce**, 5, 827
 - When statute begins to run, 5, 827
- Double disability, 14, 657
- Dower, 5, 920; 13, 768
- Effect of death of debtor or creditor upon statute, 5, 136
- Effect of statutes, 13, 693, 703
- Effect Upon Equitable Remedies**, 12, 570
 - In cases of exclusive equitable jurisdiction, 12, 570
 - Laches of plaintiff, 12, 572
 - Lapse of time within statutory limitation, 12, 572
 - Removal of disability, 12, 571
- Where delay has not prejudiced the party, 12, 572
- Where jurisdiction is concurrent, 12, 570
- Ejectment**, 6, 204, 235
 - At common law, 6, 235
 - In Delaware, 6, 204
 - In Louisiana, 6, 204
 - In Maine, 6, 204
 - In Minnesota, 6, 204
 - In Nebraska, 6, 204
 - In New Hampshire, 6, 204
 - In North Carolina, 6, 204
 - In Pennsylvania, 6, 204
 - In South Carolina, 6, 204
 - Pleading, 6, 235
 - Under the statute, 6, 235
- Election**
 - Of Remedies**
 - May defeat plea of statute of limitations, 6, 248
- Elevated Railroads**
 - Common-law action for damages, 23, 1049
- Recovery of Damages by Owners of Abutting Property**, 23, 1083
 - Delay in bringing suit, 23, 1085
 - Examples, 23, 1083, 1085
 - Implied acquiescence, 23, 1083, 1085
 - In common-law action, 23, 1083
 - In general, 23, 1083
 - Proceedings by injunction, 23, 1083
 - Right to acquire title to easements by adverse possession, 23, 1084
- Eminent Domain**, 6, 633
 - Power of legislature, 5, 633
 - Title by adverse possession, 6, 633
- Estoppel**, 13, 719
 - Agreement to waive statute, 13, 718
 - Defendant misleading plaintiff, 13, 719
- Exceptions by necessity, 13, 736
- Execution, 13, 724
- Executors and Administrators**, 7, 370; 13, 686, 710
 - Actions abated by death, 7, 371
 - Bond of administrator, 7, 229
 - Debt charged upon land, 7, 406
 - Delay of executor in taking probate, 7, 186
 - Distributive share, 7, 406
 - Effect of death upon the statute, 7, 405
 - Fraud or mistake, 7, 405
 - In equity, 7, 405
 - Laches, 7, 405
 - Legacy, 7, 406
 - Liability for allowing debt to become barred by, 7, 348
 - New promise, 13, 762
 - Plea of, 7, 387
- Power to Waive**, 7, 282; 13, 762, 707
 - Debt barred by the statute before death of decedent, 7, 282
 - Necessity of pleading as a bar to just debt, 7, 282
 - Promise to pay by executor, 7, 282
 - Rights of residuary legatees and distributees, 7, 282

LIMITATION OF ACTIONS—Cont'd**Executors and Administrators—Cont'd****Power to Waive—Cont'd**

Where bill is brought to charge real estate of deceased with debts, 7, 282

Qualification of personal representatives, 13, 737

Statutory provisions, 7, 371

Waiver, 7, 282; 13, 707, 708, 762

Executor's debt, 13, 709

What stops running of the statute, 7, 405

When statute begins to run, 7, 371

Ex post facto laws, 7, 528

"Flee from justice," 8, 66

Forcible Entry and Detainer, 8, 157

Possession must be adverse, 8, 157

Usual period, 8, 157

When statute begins to run, 8, 158

Foreclosure of Mortgage, 8, 199, 213; 13, 704

Acknowledgment of debt, 8, 202, 203

Action on note barred, 8, 201

Lapse for twenty years, 8, 199

Less than twenty years, 8, 203

Payment of debt, 8, 203

Removal of bar of statute, 8, 201

Right of mortgagee after remedy is barred, 8, 203

Suspension of statute, 8, 200

When statute begins to run, 8, 200

Foreign Corporations, 8, 397; 13, 711, 745

In New York, 8, 397

Known place of business in state, 8, 397

Liability to service of process, 8, 397

Test as to running of statute, 8, 397

Whether corporation doing business is a non-resident, 8, 397

Fraudulent concealment, see *infra*, WHEN STATUTE BEGINS TO RUN.

Garnishment

Garnishee's defense, 8, 1213

"Good faith," 8, 1361

Government, 13, 711; 23, 366

Adverse possession by, 13, 716

As defendant, 13, 715

As trader, 13, 713

As transferee, 13, 716

As transferor, 13, 716

Cities, 13, 715

Controversy between states, 13, 712

Counties, 13, 715

General rule, 13, 711

Municipal corporations, 13, 714

Nominal party, 13, 712

Not a governmental matter, 13, 713

Nuisance, 13, 715

Officers, 13, 712

Pleading statute, 13, 715

Presumption of payment, 13, 672

School districts, 13, 715

State banks, 13, 713

State statute, 13, 712

Taxes, 13, 715

Towns, 13, 715

United States, 27, 533, 677

Whether acts apply to, 23, 366

Guardian and Ward, 13, 687

Accounts, 9, 148

Failure to appoint guardian ad litem,

9, 159

Guardian's bond, 9, 137

Homicide, 9, 618

See **CRIMINAL PROCEDURE**.

At common law, 9, 618

Manslaughter, 9, 618

Murder, 9, 618

How long the statute runs, 13, 731

How Statute Regarded as a Defense, 13, 692

General consideration, 13, 692

Statute of repose, 13, 692

Husband and Wife, 13, 687, 707, 711

New promise, 14, 618

Ignorance, see *infra*, WHEN STATUTE BEGINS TO RUN.

Ignorance of fact, 9, 871

Impairment of obligation of contracts, 3,

755; 8, 624; 13, 695

Implied trusts, 27, 101

Implied Warranty

Where statute begins to run upon breach, 10, 125

Imprisonment, 13, 732, 741

In Equity, 5, 556; 13, 674

See *LACHES*.

See *infra*, TRUSTS AND TRUSTEES.

Plea of, 6, 793

Infancy, 13, 725, 733, 735, 740

And coverture, 13, 732, 733; 14, 657

And insanity, 13, 733

Disability of ancestor, 13, 741

Exceptions must be express, 13, 735

Executor who might sue, 13, 740

Guardian who might sue, 13, 740

In general, 13, 740

Trustee who might sue, 13, 740

Injunction, 13, 719

Defendant imposing legal obstacle to suits, 13, 719

Insanity, 13, 741

Insanity plus infancy, 13, 733

Installments, 13, 725

Insurance, 11, 349

Conditions precedent to payment, 11, 352

Delay fraudulently induced by insurers, 11, 352

Effect of specific limitations, 11, 350

Excuses for not bringing suit within time limited, 11, 352

Fault of insurers, 11, 352

Limitation to a year, 11, 350

Limitation waived by insurers, 11, 352

New promise, 11, 351

Promise to extend time, 11, 351

Proof of waiver, 11, 352

Shorter period than that allowed by statute of limitations, 11, 349

Specification as to what time right shall accrue, 11, 350

Waiver, 11, 351

- War intervening, 11, 352
- When limitation begins to run, 11, 351
- Insolvency proceedings, 13, 710
- Interest, 13, 725
- Interruptions*, see *infra*, TOLLING THE STATUTE.
- Invincible necessity, 13, 737
- Joint Tenants and Tenants in Common**, 11, 1103
 - As to adverse possession*, see **JOINT TENANTS AND TENANTS IN COMMON**.
 - Statutes running against co-tenant, 11, 1138
- Judgment of sister states, 12, 149a, 149b
- Justice of the peace, 12, 452
- Legacies and Devises**, 7, 460; 13, 190, 686
 - In general, 13, 190
 - Legacies charged on land, 13, 190
 - Waiver, 13, 708
- Larceny**
 - Indictment, 12, 823
- Libel and Slander**, 13, 454
 - Date of publication, 13, 454
 - Disability, 13, 454
 - From when the statute runs, 13, 454
 - Pleading, 13, 478
 - Repetition, 13, 377
 - Words not actionable per se, 13, 454
- License (patent law), 13, 572
- Limitation to six months, 11, 350
- Lost wills, 13, 1138
- Malicious prosecution, 14, 45
- Married Women**, 13, 735; 14, 656
 - Coverture**, 13, 735, 739
 - Before married women's acts, 13, 739
 - Curtesy, 14, 657
 - Effect of double disability, 13, 732; 14, 657
 - Effect of married women's acts, 13, 739
 - Examples, 14, 656
 - Exception of persons "under disabilities," 14, 657
 - Exceptions must be express, 13, 735
 - In New York, 13, 740
 - "Persons under legal disabilities," 13, 739
 - Presumption of payment, 14, 656
 - Saving in favor of married women, 14, 656
 - Statutes, 14, 656
 - When statutes begin to run, 14, 656
 - Where the statute has begun to run, 14, 657
 - Whether married women's statute repeals saving clause, 14, 656
 - Who may plead the statutes, 14, 657
- Master and servants, 13, 726
- Mechanics' liens, 15, 115
- Merchants' accounts, 15, 311
- Military law, 15, 469
- Mines and mining claims, 15, 558-578
- Minutes of corporation as contract in writing, 17, 87
- Mistake**, 13, 725, 730; 15, 634
 - See *infra*, WHEN STATUTE BEGINS TO RUN.
- Mortgages**, 13, 704
 - Debt barred, 13, 705
 - Right to Redeem**, 20, 627
 - Absence from the state, 20, 628
 - Acknowledgment or New Promise**, 20, 629
 - Assignment of mortgage, 20, 629
 - Bill to foreclose, 20, 629
 - Devise by will, 20, 629
 - Form, 20, 628
 - In general, 20, 628
 - Letters, 20, 628
 - Proceedings to enforce lien, 20, 629
 - Recitals in deed, 20, 629
 - Rendering account, 20, 628
 - Verbal admissions, 20, 629
 - Coverture**, 20, 628
 - Fraud, 20, 628
 - Infancy, 20, 628
 - Rendering account, 20, 628
 - Time, 20, 627
 - War, 20, 628
 - When cause of action accrues, 20, 627
 - When statute of limitations begins to run, 20, 627
- Municipal corporations**, 13, 725
- Municipal Securities**, 15, 1261
 - Coupons, 15, 1261
 - Form of action, 15, 1262
 - In general, 15, 1261
 - Warrants, 15, 1222
- Mutual insurance, 16, 93
- New Promise**, 3, 840; 13, 718
 - As to partnership*, see *infra*, PARTNERSHIP.
- Executor or administrator*, see *infra*, EXECUTORS AND ADMINISTRATORS.
- Ability to pay, 13, 755
- Account stated as, 1, 123
- Acknowledgment**, 13, 750
 - After claim is barred, 13, 758
 - Alone, 13, 750
 - Must be clear, 13, 755
 - Must be unequivocal, 13, 755
 - To a stranger, 13, 759
- Admission that debt was once due, 13, 756
- Agreement**
 - That certain property shall be applied to indebtedness, 13, 755
 - To compromise, 13, 756
 - To settle, 13, 756
 - To submit to arbitration, 13, 756
 - To waive statute, 13, 718
- Application in case of several debts, 13, 757
- Assignment for benefit of creditors, 13, 764
- Barred claim, 13, 758
 - Before, 13, 758
- By joint contractor, 7, 67
- By Whom Acknowledgment or Payment Must Be Made**, 13, 760
 - Agents, 13, 760
 - Attorney and client, 13, 760

LIMITATION OF ACTIONS—Cont'd**New Promise—Cont'd****By Whom Acknowledgment or Payment****Must be Made—Cont'd**

By assignee for the benefit of creditors, 13, 764

Mortgagor, 13, 760

One of several joint debtors, 13, 762

Partner, 13, 761

Partner after dissolution, 13, 761

Power of attorney, 13, 760

Stranger, 13, 760

Surety, 13, 763

To debtor, 13, 760

Claim that debt has been satisfied, 13, 756

Communication by stranger to creditor, 13, 759

Conditional acknowledgment, 13, 754

Credit, 13, 751

Debtor's promise to pay as soon as he can, 13, 755

Diversity in construction, 13, 749

Effect, 13, 749, 750

Express promise, 13, 750

Giving collateral security, 13, 759

Hopes of paying, 13, 756

Husband and wife, 14, 618

Implied promise, 13, 750

Implying inference of new promise, 13, 753

Indorsement, 13, 752

As evidence of part payment, 13, 752

By creditor, 13, 752

By debtor, 13, 752

Showing that it represents voluntary payment, 13, 752

When presumptive of evidence, 13, 752

Inference must arise naturally, 13, 753

In general, 13, 749

Judgment, 13, 749

Mere acknowledgment alone, 13, 753, 754

Must Be Definite, 13, 756

As to indebtedness, 13, 756

As to sum, 13, 756

Burden of proof, 13, 757

But one indebtedness between the parties, 13, 757

Question for jury, 13, 757

Where debt is identified, 13, 756

Necessity of express promise, 13, 753

Paper found among debtor's papers after his death, 13, 760

Part Payment, 13, 750, 751

Inference must arise naturally, 13, 754

Intended to be final, 13, 753

Must be voluntary, 13, 753

Payment of interest, 13, 751

Promise by one of joint executors and administrators, 11, 1020

Qualified acknowledgment, 13, 752, 754, 755

Specialty, 13, 749

Sunday, 24, 567

Suretyship, 13, 763; 24, 772

Theory of their operation, 13, 749

Time of acknowledgment, 13, 758

To whom acknowledgement of payment must be made, 13, 759

Usurious interest, 13, 752

What is sufficient, 13, 752

When part payment a new promise, 13, 751

Whether applicable to torts, 13, 749

Willing to pay, 13, 753, 754

Writing, 13, 759

Partly oral and partly written, 13, 772

Pleading, 13, 772

Nonsuit, 13, 746

Novation, promise for benefit of third person, 16, 690

Nuisance, 13, 723; 16, 988

Open and close, 17, 201

Orders, 17, 225

Out of the country or state, 17, 290

Partition, owelty of partition, 17, 757

Partnership, 13, 687, 711**Accounting, 17, 1282**

Application of statutory provisions, 17, 1283

Equitable limitation, 17, 1284

Final statement of accounts, 17, 1284

In case of fraud and concealment, 17, 1284

Laches, 17, 1285

Lapse of time as a bar, 17, 1285

Mere delay, 17, 1284

New firm, 17, 1285

Right to land, 17, 1284

Surviving partner, 17, 1284

Surviving partner's claim against executors, 17, 1284

When Statute Begins to Run, 17, 1283

After dissolution, 17, 1283

At some time after dissolution, 17, 1283

Demand, 17, 1284

In case of fraud or concealment, 17, 1284

Whether right to account barred by, 17, 1282

Admission of partner, 9, 342

Assumption of debts by purchasing partner, 17, 1113

Right of Partner to Revive After Dissolution, 17, 1146

Acknowledgment by partner, 17, 1146

Admissions, 17, 1148

Contribution, 17, 1148

Declarations, 17, 1148, 1149

In general, 17, 1146

Partner who has assumed payment of debts, 17, 1147

Part payment, 17, 1146

Part payment not made with partnership funds, 17, 1147

Representatives of deceased partner, 17, 1147

- Reviving of debt by partner as to himself, 17, 1148
- Surviving partner, 17, 1147
- Where statute does not run against a partner by reason of non-residence, 17, 1148
- Part payment*, see *infra*, NEW PROMISE.
- Patent Law**
 - State statutes, 18, 66
- Payment**, 13, 724
 - By mistake, 13, 725
- Pendency of Legal Proceedings**, 13, 745
 - Amendment, 13, 746
 - Distinguished from disability, 13, 745
 - Failure through matter of form, 13, 745
 - Nonsuit, 13, 746
 - Whether statute runs against claim in litigation, 13, 745
- Petition for leave to sell real estate for payment of decedent's debts, 5, 265
- Pleading**, 13, 769; 18, 553
 - After Hiliary Rules, 18, 553
 - Alleging new promise in writing, 13, 772
 - Debt, 18, 523
 - Declaration or petition shows upon its face that claim is barred, 18, 553
 - Demurrer, 13, 553, 771; 18, 554
 - Ejectment, 13, 770
 - In equity, 1, 608; 13, 770
 - Justice of the peace, 12, 452
 - New promise, 13, 771
 - Special demurrer, 18, 553
 - Trover, 18, 527
 - Where answer has superseded the plea, 18, 553
 - Whether statute must be specially pleaded, 13, 769; 18, 553
- Plea of limitation by married women, 14, 661
- Pledge**, 18, 734
 - Pledgor's right to redeem, 18, 734
 - Recovery of property, 18, 735
 - Remedy barred, 18, 735
 - Where debt is barred, 18, 734
- Presumption of Payment**, 13, 669, 731; 18, 207
 - Affirmative relief, 13, 674
 - After sixteen years, 18, 209
 - After thirty years, 18, 208
 - After twenty years, 18, 207
 - Against government, 13, 672
 - Anticipating operation of statutes, 13, 670
 - Application to trust, 13, 671
 - Character of the creditor, 18, 210
 - Concurrent remedy, 13, 670
 - Contract for purchase of land, 18, 208
 - Decree in equity, 18, 210
 - Effect of debtor's absence, 13, 671
 - Effect of other disabilities, 13, 671
 - Effect of presumption, 13, 669
 - Examples, 18, 207-211
- Executors and Administrators**
 - Waiver, 13, 708
 - General rule, 18, 207
 - In case of trusts, 13, 670
- Independent of statute of limitations, 13, 670
- Judgment, 18, 210
- Less than twenty years, 13, 673; 18, 209
- Mere lapse of time, 13, 672
- Period of twenty years, 13, 672
- Pleading, 13, 674
- Promptness in collecting a debt, 18, 210
- Question of law and fact, 18, 209
- Rebutting presumption, 13, 669, 670, 673
- Revised statutes of North Carolina, 18, 209
- Rule of common law, 13, 669
- Simple contracts, 13, 669
- Specialties, 13, 669
- To whom presumption applies, 18, 208, 209
- War, 13, 672
- What evidence will rebut presumption, 13, 673
- Where there are no statutes, 13, 670
- Whether debt is necessarily satisfied, 13, 211
- Who entitled to benefit of presumption, 18, 210
- Public officers, 13, 725
- Quo Warranto**, 19, 667
 - Discretion of court, 19, 668
 - In absence of statute, 19, 667
 - In general, 19, 667
- Receipts, 19, 1130
- Recoupment, 22, 354
- Relation**
 - Conflict of authority, 20, 732
 - Ejectment, 20, 733
 - Purchaser at execution sale, 20, 731
- Religious societies, 20, 822
- Remainderman, 13, 720
- Repeal of statute, 13, 697
- Residence*, see *infra*, ABSENCE.
- Retroactive Statutes**, 13, 691
 - Change of limitation; presumed not to be retroactive, 13, 701
 - Intent of legislature, 13, 702
 - Reasonable time, 13, 702
 - Suits already pending, 13, 702
- Right to several actions one of which is barred, 13, 691
- Services, 13, 726
- Set-Off**, 13, 767; 22, 271
 - Claim alive when suit was commenced, 13, 767
 - Demand barred by statute, 22, 271
 - Demand revived by new promise, 22, 277
 - Expiration of statutory period, 22, 278
 - General rule, 13, 767
 - In Alabama, 22, 349
 - Judgment on outlawed claims, 13, 767
 - Plaintiff refused right of discontinuance where counterclaim would be barred, 22, 443
- Pleading**, 22, 339
 - Counterclaim, 22, 431
 - Recoupment, 22, 354

LIMITATION OF ACTIONS—Cont'd**Set-off—Cont'd**

- Replication, 22, 338
- Statute suspended by bringing of suit, 13, 767
- What must be shown in order to defeat set-off, 22, 278
- Whether set-off may be barred, 13, 767

Sovereignty

- Public lands, 19, 359

Special Limitations, 13, 689

- In contracts of insurance, see INSURANCE.*

- Conflict of laws, 13, 689
- Distinguished from statutes, 13, 689
- Effect, 13, 689
- Effect of fraud, 13, 690
- Pleading, 13, 690
- Validity everywhere, 13, 689
- Whether toll by disabilities, 13, 690

Specific performance, 22, 922**Statute of**

- Distinguished from limitations by express contract, 13, 689
- Distinguished from special limitation restricting a statutory right, 13, 688
- Forms no part of contract, 13, 691
- Generally, 13, 688
- In Delaware, 6, 204
- In Louisiana, 6, 204
- In Maine, 6, 204
- In Minnesota, 6, 204
- In Nebraska, 6, 204
- In New Hampshire, 6, 204
- In North Carolina, 6, 204
- In Pennsylvania, 6, 204
- In South Carolina, 6, 204

Statutory limitation on lien of debt of decedent to real property of estate, 5, 308**Stockholders, 23, 888**

- Examples, 23, 888, 889
- In California, 23, 888
- Penal liability, 23, 873, 874
- Period of the Limitation, 23, 889**
 - Examples, 23, 889
 - In general, 23, 889
 - National banks, 23, 889
 - Specially provided by statute, 23, 889
 - United States courts, 23, 889
 - Where liability is contractual, 23, 889
 - Where liability is penal, 23, 889

Subscriptions, 23, 814

- Calls by court, 23, 814
- Date of call, 23, 814
- In general, 23, 814
- Necessity of call, 23, 814
- What statutes govern, 23, 814
- When corporation ceases to do business, 23, 814
- Where statute runs, 23, 814
- When statute begins to run, 23, 888
- Where stockholders may be sued immediately, 23, 888

Street Railways

- Ordinary railways in streets, 23, 1132, 1133

Streets and Sidewalks

- Obstructions and encroachments, 24, 112

Submission of barred claims to arbitration, 1, 661**Subrogation, 24, 322**

- Examples, 24, 322, 323
- In general, 24, 322
- When statute begins to run, 24, 323
- When statute begins to run against surety, 24, 323
- Where surety pays judgment against himself and principal, 24, 322

Succession taxes, 24, 485, 486**Summons, 24, 510****Sunday, 24, 567**

- Whether promise bars the statute, 24, 567

Supplementary proceedings, 24, 611

- Surety of notary public, 16, 784

Suretyship

- New promise, 24, 772
- Statute of limitations as between surety and principal, 24, 792
- Surface waters, 24, 957

Taxation

- Action against collector, 25, 353
- Action by taxpayer to recover illegal taxes, 25, 474

Action for taxes, 25, 326**Tax Titles, 25, 736**

- Action to recover real estate sold for taxes, 25, 736
- Actual possession disputed, 25, 740
- As against the original owner, 25, 737
- Constructive legal possession, 25, 739
- Cure all irregularities, 25, 738
- Deed void on its face, 25, 740
- Effect of statutes, 25, 738
- Impairing the obligation of contracts, 25, 741
- Infants, 25, 741
- In favor of original owner, 25, 739
- In favor of tax title claimant, 25, 739
- Neither party in actual possession, 25, 739
- Operates in favor of party in possession, 25, 738
- Owners under disabilities, 25, 741
- Period shortened by subsequent legislation, 25, 740
- Persons disqualified to acquire title, 25, 737
- Retrospective statutes, 25, 740
- Special statutes, 25, 736
- Statutes, 25, 736
- Suits to quiet title, 25, 737
- To what actions special limitations applicable, 25, 737
- When time begins to run, 25, 736
- Where there was no assessment, levy, or sale, 25, 738

Telegraphs and Telephones

Requiring claim to be presented within a certain time, 25, 800

Tenants in common, 13, 687

Title, 13, 703; 26, 26

See ADVERSE POSSESSION.

See *infra*, WHETHER STATUTES CAN AFFECT TITLE.

Tolling the Statute, 13, 742

Coverture, see *infra*, MARRIED WOMEN.

Imprisonment, see *infra*, IMPRISONMENT.

Infancy, see *infra*, INFANCY.

Insanity, see *infra*, INSANITY.

Pendency of legal proceedings, see *infra*, PENDENCY OF LEGAL PROCEEDINGS.

Absence of a few days, 13, 742

Absence of defendant, 13, 742

Accumulated returns to state, 13, 744

Assumed name, 13, 736

Attachable property in state, 13, 744

Bankruptcy, 13, 736

Co-existing disabilities, 13, 735

Continuous absence for more than a year, 13, 744

Courts closed by war, 13, 739

Courts not closed by war, 13, 739

Coverture, 13, 733

Cumulative disability, 13, 734

Death, 13, 732, 733

Disability existing when cause of action accrues, 13, 733, 734

Disability must have existed when cause of action accrued, 13, 732

Exceptions by necessity, 13, 736

Executors and administrators, 13, 737

Foreign corporations, 13, 745

General rule, 13, 732

In New York, 13, 743

In rem and in personam, 13, 744

Joint defendants, 13, 745

Necessity of residence out of state, 13, 742

No one in company capable of suing or being sued, 13, 736

Particular disabilities of defendant, 13, 742

Presumption as to continuance, 13, 745

Protracted absence, 13, 743

Residence out of state, 13, 742

Service of government, 13, 744

Statutory provisions, 13, 738

United States statute as to war, 13, 738

War, 13, 738; 28, 605.

War defined, 13, 738

When one disability may be tacked to another, 13, 734

When statute is once in motion, 13, 731

Whether exceptions must be expressed, 13, 735

Whether one disability can be tacked to another, 13, 732

Torts, 13, 722

Trespass, 13, 726

Trover

Election between trover and assumpsit, 26, 798

Trust Deeds and Power of Sale Mortgages, 26, 898

Action on debt barred by statute, 26, 899

Examples, 26, 898, 899

In general, 26, 898

Power limited by its own terms, 26, 899

Trusts and Trustees, 13, 683

See *infra*, IMPLIED TRUSTS.

Executors and administrators, see *infra*, EXECUTORS AND ADMINISTRATORS.

Husband and wife, see *infra*, HUSBAND AND WIFE.

Partnership, see *infra*, PARTNERSHIP.

Tenants in common, see *infra*, JOINT TENANTS AND TENANTS IN COMMON.

Accounts, 27, 106

Beneficiary guilty of laches, 27, 107

Effect of demand, 27, 107

Express trusts, 27, 107

How far account will be carried back, 27, 107

Jurisdiction of equity to compel accounting, 27, 106

Legal limitation, 27, 107

Rents and mesne profits, 27, 107

When account required, 27, 106

Application confined to pure trusts, 13, 684

As Between Trustee and Beneficiary, 27, 100

Acquiescence in transaction, 27, 106

Examples, 27, 100-106

Express or direct trusts, 27, 100, 101

Implied trusts, 27, 101

Laches less than statutory time, 27, 104

Pleading, 27, 106

Possession by trustee as possession of cestui que trust, 27, 101

Possession of cestui que trust not adverse to that of trustee, 27, 104

Presumption as to abandonment of rights, 27, 105

Presumption as to release of disability, 27, 105

Presumption from lapse of time, 27, 105

Presumption of conveyance, 27, 105

Presumption of payment, 27, 105

Repudiation must be clear and unequivocal, 27, 104

Statute of limitation has no application unless trust has been repudiated by trustee, 27, 101

What constitutes disavowal of a trust, 27, 104

Whether cestui que trust can set up statute, 27, 104

LIMITATION OF ACTIONS—Cont'd**Trusts and Trustees—Cont'd****As Between Trustee or Beneficiary and****Stranger, 27, 99**

Changing tribunal, 27, 99

Fraudulent concealment, 27, 100

Ignorance or mistake, 27, 100

In general, 27, 99

Laches less than the full statutory period, 27, 99

Part payment by trustee, 27, 100

Party in possession, 27, 99

Whether where trustee is barred beneficiary is barred, 27, 99

Between trustee and cestui que trust, 13, 683

Cestuis que trustent, 13, 710

Concurrent remedy at law, 13, 685

Disavowal of trusts, 13, 688

Implied or constructive trusts, 13, 684

In general, 27, 98

Instances of implied trusts, 13, 685

Instances of pure trusts, 13, 684

Lapse of time, 13, 684

Possession presumed to be that of cestui que trust, 13, 684

Presumption of payment, 13, 671, 683, 684

Trustee barred, 13, 710

What amounts to a disavowal, 13, 688

United States Courts, 13, 772; 27, 636

Claims against the United States, 27, 533, 677

Equity courts, 27, 636

Examples, 27, 636, 637, 677, 678

Following state law, 3, 584; 13, 772; 27, 636

In general, 27, 636

Power of congress, 27, 677

Prosecution for crimes, 27, 636

Subject over which congress has exclusive control, 13, 773

Suits against the United States, 27, 636

United States statutes, 13, 772; 27, 636

Upon injunction bonds, 2, 466t

Upon official bonds, 2, 466o

Usury, 13, 726; 27, 962

Application of payments, 27, 964

National Banks

Defense of usury, 16, 178

Reserved by way of discount, 16, 177

"Transaction," 16, 177

When limitation begins to run, 16, 177

Vendor's Lien, 13, 705; 28, 144

Express reservation, 28, 193

Where vendor retains title under contract of sale, 28, 199

Wages, 14, 782

Waiver, 13, 706, 769*See infra*, AGREEMENTS TO WAIVE STATUTE; EXECUTORS AND ADMINISTRATORS.

Husband and wife, 13, 707

War, 13, 738; 28, 605

Warrant of attorney to confess judgment, 28, 699, 702

What postpones or interrupts its running, see infra, TOLLING THE STATUTE.*What starts the statute afresh, see infra*, NEW PROMISE.**What Terminates Statute's Running, 13, 746**

At what time running of statute is deemed complete, 13, 747

Bringing suit, 13, 746

Computation of time, 13, 747

Date of writ, 13, 747

Effects after it was run, 13, 748

Fractions of a day, 13, 747

Necessity of recovering judgment, 13, 746

What constitutes bringing suit, 13, 746

What sufficient, 13, 746

When suspension begins, 13, 746

When cause of action accrues, see infra, WHEN STATUTE BEGINS TO RUN.*When not available, see infra*, GOVERNMENT.**When Statute Begins to Run, 13, 720**

Against a bank, 2, 102

Fraudulent Concealment, 13, 727, 729; 23, 301

Affirmative acts, 13, 729

At law, 13, 727

Concealment, 13, 729

Constructive fraud, 13, 729

Discovery, 13, 730

Improper act, 13, 728

In equity, 13, 727

In Ohio, 13, 727

Limit after discovery, 13, 728

Mistake, 13, 728

Moral turpitude, 13, 729

Silence, 13, 729

Statutory provisions, 13, 728

Whether fraud implied exception to statute, 13, 728, 729

Ignorance, 13, 730

Mistake, 13, 730

When Cause of Action Accrues, 13, 720

Account, 13, 724

Accretion, 13, 724

Annual payment, 13, 724

Annuity, 13, 724

Appeal bond, 13, 724

Balance, 13, 724

Bank deposits, 13, 721

Bills and notes, 13, 721, 722

Bonds, 13, 724

Breach of contract, 13, 722

Conspiracy, 13, 724

Conversion, 13, 724

Covenants, 13, 724

Demand, 13, 721

Execution, 13, 724

Forgery, 13, 725

Fresh damage, 13, 723

From time of injury, 13, 722

Infancy, 13, 725

In general, 13, 720

Interest, 13, 725

Money paid by mistake, 13, 725

Vol. I.

- Municipality, 13, 725
 Note payable after demand, 13, 721
 Note payable on demand, 13, 722
 Nuisance, 13, 723
 Nuisance is of a permanent character, 13, 723
 Payment by installments, 13, 725
 Public officers, 13, 725
 Rape, 13, 725
 Remainderman, 13, 720
 Right dependent upon contingencies, 13, 720
 Seduction, 13, 725
 Services, 13, 726
 Stock subscription, 13, 721
 Torts, 13, 722
 Trespass, 13, 726
 Usury, 13, 726
 Void deed, 13, 726
Whether Plaintiff Can Defer Running by
 Laches, 13, 726
 At common law, 13, 727
 General rule, 13, 726
 In equity, 13, 727
 Must perfect cause within reasonable time, 13, 726, 727
 What time is reasonable, 13, 727
 Where period has run, title to property vests absolutely, 5, 230
 Whether defense favored by court, 13, 692
Whether Statutes Can Affect Title, 13, 693
 In case of personalty, 13, 693
 In case of realty, 13, 693
 Right to sue for value, 13, 694
 Within 29, 522
LIMITED ADMINISTRATION, see EXECUTORS AND ADMINISTRATORS.
 Bond, 7, 211
LIMITED PARTNERSHIP, 13, 802
 See generally, JOINT STOCK COMPANIES; PARTNERSHIP.
 Actions, see *infra*, EVIDENCE; PLEADING.
 Actions by and Against, 13, 835
 Action for dissolution, 13, 836
 Actions by one partner against another, 13, 837
 Against whom brought, 13, 835
 Alteration, 13, 836
 By whom brought, 13, 835
 Capital withdrawn by special partner, 13, 835
 Death of special partner, 13, 836
 Foreign partnership, 13, 836
 Fraud of partners, 13, 836
 Joinders of parties, 13, 835-837
 Judgment, 13, 839
 Parties plaintiff, 13, 836
 Parties to the action, 13, 835, 836
 Rule after dissolution, 13, 836
 Suit between partners, 13, 835
 Verdict, 13, 839
 When special partner must be joined, 13, 835
 When special partners may be joined, 13, 835
 Actions to collect assets, 13, 842
 Affidavit, see *infra*, CERTIFICATE AND AFFIDAVIT.
 Alteration, 13, 823, 824
 Loan, 13, 824
 Renewal of partnership, 13, 828
 "And company," 13, 817
 Application for publication, 13, 816
 Branch business, 13, 811
 Certificate and Affidavit, 13, 808
 Acknowledgment, 13, 808
 Description, 13, 808
 False statements in certificate, 13, 809, 810
 General partner, 13, 809
 Liability of special partners where provisions are not complied with, 13, 809
 Mandatory nature of the provision, 13, 809
 Misleading statements, 13, 808
 Provisions of the statute, 13, 808
 Registry, 13, 809
 Renewal of partnership, 13, 827
 Residence, 13, 808
 Unintentional false statement, 13, 810
 Where conditions as to certificate in affidavit are not complied with, 13, 809
 Change of general unlimited partnership, 13, 811
 Conduct of business, 13, 821
 Conflict of Laws, 13, 818, 819
 Construction of contract, 13, 819
 In general, 13, 819
 Liability of special partners, 13, 819
 Contribution, 13, 812
 Accident, 13, 812
 Compliance with requirements, 13, 812
 Different use of fund, 13, 813
 General partners, 13, 812
 Good faith of payment, 13, 813
 Injury to creditor by non-compliance, 13, 814
 In property, 13, 812
 More than one special partner, 13, 814
 Of property, 13, 815
 Payment not in cash, 13, 812
 Payment of contribution, 13, 812
 Renewal of partnership, 13, 828
 Security, 13, 813
 Special partners, 13, 812
 Stock of goods, 13, 812
 Substitute, 13, 813
 Unqualified payment, 13, 813
 Death
 Dissolution, 13, 841
 Defective Partnership
 Defective formation, 13, 820
 Definition, 13, 803
 Design, 13, 806
 Dissolution, 13, 825, 839
 Abandonment, 13, 841
 As representative, 13, 841
 By act of parties, 13, 840
 By alteration, 13, 823
 By bankruptcy, 13, 839

LIMITED PARTNERSHIP—Cont'd**Dissolution—Cont'd**

- By expiration of period, 13, 839
- Death, 13, 841
- Death of special partner, 13, 841
- Fraudulent transfers, 13, 831
- Grounds for application in equity, 13, 839, 841
- In general, 13, 839
- Intervening contracts, 13, 841
- Nature of notice, 13, 840
- Necessity of notice, 13, 840

Evidence

- Foreign law, 13, 838
- Formation, 13, 838
- Proof of limited partnership, 13, 838
- Regularity of proceedings, 13, 838
- Sufficiency of proceedings, 13, 838
- Failure to comply with conditions precedent, 13, 811

Formation of partnership, 13, 807

Fraudulent conveyances, see *infra*, **INSOLVENCY**.

History, 13, 804

How constituted, 13, 807

Insolvency, 13, 829, 832

Assignment for the Benefit of Creditors

- By general partner, 13, 832
- Rights of assignee, 13, 833
- Without consent of special partner, 13, 832

Assignments of separate property by special partner, 13, 830

Collusion, 13, 829

Confession of judgment, 13, 829

Dissolution, 13, 839, 841

General rule, 13, 829

Inability to pay, 13, 830

Liability of special partner, 13, 831

Meaning of insolvency, 13, 830

Preferences to creditor, 13, 829

Preferences to partner, 13, 829

Rights in Case of, 13, 831

- Appointment of receiver, 13, 832
- Creditor's application to equity, 13, 832

Creditor's rights, 13, 831

Evidence of insolvency, 13, 832

General creditor, 13, 831

Intervention of equity, 13, 832

Judgment creditor, 13, 832

Partner's right, 13, 832

Priority obtained by judgment in execution, 13, 831

When trust commenced, 13, 831

Winding up concern, 13, 832

Special Partner as Creditor, 13, 834

Advances, 13, 834

Corporation in which special partner is stockholder, 13, 834

Loans, 13, 834

Meaning of term "insolvency," 13, 834

Payment made by partner after dissolution, 13, 834

Priority over other creditors, 13, 834

Who may claim protection of statute, 13, 834

Transfers after dissolution of firm, 13, 831

Validity, 13, 829

Validity as between assignor and assignee, 13, 830

Validity as to creditors, 13, 830

Who may take advantage of invalidity, 13, 830

Interference, 13, 825

Advice by special partner, 13, 826

Consultation, 13, 826

Dissolution, 13, 825

Effect of special partner's, 13, 827

Liability of special partner, 13, 827

Purchase by special partner, 13, 826

Representations, 13, 826

Sale to special partner, 13, 826

Special partner's power, 13, 825

Transaction of business by special partner, 13, 825

When partnership becomes general, 13, 826

Winding up, 13, 825

Judgment, 13, 839

Liability of Special Partner, 13, 809

See *infra*, **CONTRIBUTION**.

Alteration, 13, 823

Conflict of laws, 13, 818

False statements in certificate, 13, 809

For withdrawal, 13, 822

Fraudulent transfers, 13, 831

Holding himself out as general partner, 13, 818

Interfering with management of firm, 13, 825, 827

Unauthorized acts of general partners, 13, 827

Unintentional false statement, 13, 810

Where conditions as to certificate in affidavit are not complied with, 13, 809

"Limited," 13, 817

Loan, 13, 824

Buying up claims against firm, 13, 824

Change of membership, 13, 824

Examples, 13, 824

Liability of special partner, 13, 825

Renewal of partnership, 13, 824

Retroactive effect, 13, 824

Sale of partner's interest, 13, 824

Tendering partnership property as security, 13, 824

"Mercantile," 13, 818

Name of Partnership, 13, 817

"And company," 13, 817

Compliance with statutory provisions, 13, 817

"Limited," 13, 817

Name of partners, 13, 817

Use of name, 13, 817

Notice, 13, 820

See *infra*, **PUBLICATION OF NOTICE**.

Notice of change from general to special partnership, 13, 820

Notice of defective formation, 13, 820

Notice of Dissolution, 13, 840

Death, 13, 841

Dissolution by operation of law, 13, 840
 Dissolution by operation of parties, 13, 840
 Expiration of time for which partnership was created, 13, 840
 Insolvency, 13, 841
 Necessity, 13, 840
 Partnership defectively performed, 13, 840
 Publication, 13, 840
 Origin, 13, 804
Pleading, 13, 837
 Averment of special partnership, 13, 837
 Distinction between general and special partners, 13, 837
 Establishing general liability of special partners, 13, 837
 Forfeiture of privileges of special partnership, 13, 838
 Formation of partnership, 13, 837
 General denial, 13, 837
 General liability of special partners, 13, 837
 Setting up special partnership, 13, 837
Publication of Notice, 13, 815
 See infra, NOTICE OF DISSOLUTION.
 Application for publication, 13, 816
 Change of name of paper, 13, 816
 Effect of error in publication, 13, 816
 Effect of failure, 13, 815
 Harmless mistake, 13, 816
 Necessary statements, 13, 815
 Statutory provisions, 13, 815
 Terms of certificate, 13, 815
 Typographical error, 13, 816
 Weekly publication, 13, 816
Record
 Renewal of partnership, 13, 827
Registry, 13, 808, 809
 At what time record must be made, 13, 811
 Branch business, 13, 811
 Neglect of recording officer, 13, 811
 Neglect to file certificate, 13, 811
 Removal of firm, 13, 811
Relation of the partners, *see infra*
SPECIAL PARTNER'S INTEREST.
 Removal from county, 13, 811
Renewal of Partnership, 13, 827
 Alteration of renewal, 13, 828
 Contribution by special partner, 13, 828
 Dissolution by death, 13, 841
 Formality, 13, 827
 Interval between expiration and renewal, 13, 828
 Strict compliance with statute, 13, 827
 Scope of the business, 13, 818
 Sign, 13, 817
Special Partner's Interest, 13, 819
 Priority of special partner, 13, 820
 Where formation is defective, 13, 820
 Whether special partner is creditor of the firm, 13, 819
 With regard to general partners, 13, 820

Statutes, 13, 805
Construction, 13, 806
 Compliance with provisions, 13, 807
 Conditions precedent, 13, 807
 Defects of form, 13, 807
 Law, 13, 807
 Liberal, 13, 807
 Strictness required, 13, 807
 Verbal mistakes, 13, 807
 Reference to enactment, 13, 805
 Verdict, 13, 839
 What business may be carried on, 13, 818
Winding up, 13, 825, 841
 Action to collect assets, 13, 842
 Distribution of assets, 13, 842
 General creditors, 13, 842
 Interference by special partner, 13, 841
 Suit by special partner, 13, 842
Withdrawal of Profits or Capital, 13, 821
 Creditor's course, 13, 823
 Equitable resource, 13, 823
 General partner's remedy, 13, 823
 How long prohibition against withdrawal lasts, 13, 822
 Liability for withdrawal, 13, 822
 Liability of special partner, 13, 822
 "May annually receive interest," 13, 822
 Suit against special partner, 13, 823
 Whether there may be a withdrawal, 13, 821
LIMITED TICKETS, *see* TICKETS AND FARES.
LINE, 13, 842
 Along the line, 13, 843
 Line of buildings, 13, 843
 On the line, 13, 843
LINEAL, 13, 844
LINEN, 13, 844
LINSEED, 13, 844
LIQUID, 13, 845
 Debt, 5, 165
LIQUIDATE, 13, 845
LIQUIDATED DAMAGES, 13, 847
 Building contracts, *see* WORKING CONTRACTS.
 Building and loan associations, fines of as, 2, 620
 Construction, 13, 848
 Contract against public policy, 13, 847
 Contract vitiated by fraud, 13, 847
 Definition, 13, 847
 Distinguished from Penalty, 13, 848
 See infra, WHEN A STIPULATION WILL BE TREATED AS A LIQUIDATION OF DAMAGES; WHEN A STIPULATION WILL BE TREATED AS A PENALTY.
 Ability to estimate damages, 13, 851
 Circumstances of the parties, 13, 851
 Conclusiveness of terms, 13, 848-851
 Fixed and settled damages, 13, 851
 Force of the term "liquidated damages," 13, 850
 Force of the term "penal sum," 13, 651
 Force of the term "penalties," 13, 850

LIQUIDATED DAMAGES—Cont'd**Distinguished from Penalty—Cont'd**

- Forfeit and pay, 13, 851
- General rule, 13, 848
- Importance of the distinction, 13, 852
- Intention of parties, 13, 848
- Large amount of stipulated damages, 13, 854
- Question of construction, 13, 848
- Subject-matter of contract, 13, 851
- Tendency of the court, 13, 853
- Usages and customs, 13, 851
- Fixed and settled damages, 13, 851
- Forfeit and pay, 13, 851
- Intention of parties, 13, 848, 853, 860
- "Liquidated damages," 13, 850
- Manner of Liquidation, 13, 847**
 - Part of contract, 13, 847
 - Standard named, 13, 848
 - To be determined by person agreed upon, 13, 848
 - Whether liquidation necessarily part of contract, 13, 847

Measure and Amount of Damages, 13, 867

- Actual damage, 13, 868
- Amount greater than that named as penalty, 13, 867
- Penalty of debts due, 13, 868
- Whether stipulation is held to be liquidated damages, 13, 867
- Whether stipulation is held to be penalty, 13, 867
- Measure of recovery, 5, 24
- Municipal corporations, 15, 1081
- Partnership, 17, 910
- Penal sum, 13, 850
- Penalty, 13, 850
- Proof required for recovery, 13, 852
- Set-off, 22, 255
- Statute of frauds, 13, 847
- Suretyship, 24, 757
- Tendency of the courts, 13, 853
- Theaters, 25, 1051

When a Stipulation Will Be Treated as a Liquidation of Damages, 13, 854

See infra, DISTINGUISHED FROM PENALTY.

- Business secrets, 13, 858
- Completion of construction of building, 13, 856
- Contracts as to deeds, 13, 858
- Damages unascertainable, 5, 25; 13, 854
- Examples, 13, 855-860
- General rule, 13, 854
- Not to practice trade or profession, 13, 855, 856
- Promise to marry, 13, 857
- Reasonable stipulation, 13, 854
- When a Stipulation Will Be Treated as a Penalty, 13, 860**
 - Breach of promise of marriage, 13, 863
 - Certain and uncertain covenants, 13, 865
 - Contract of carriage, 13, 861, 862
 - Contract to give possession, 13, 864
 - Contract to perform labor, 13, 861

Damages easily ascertainable, 5, 25; 13, 860

- Disproportionate damages, 13, 860, 861
- Entire sum for breach of any or several covenants, 13, 865
- Examples, 13, 861-866
- General rule, 13, 860
- Increased rate of interest, 13, 864
- Intention of parties doubtful, 13, 860
- Sales, 13, 861
- Stipulation to pay greater sum on default for the payment of lesser, 5, 26; 13, 864
- Work or services, 13, 862
- When damages may be liquidated, 13, 847

Whether Stipulated Damages, or Liquidated Damages, or Penalty, 5, 24

- Construction, 5, 24
- Construction in doubtful cases, 5, 27
- Construction in favor of penalty, 5, 27
- Contracts for the payment of money, 5, 25
- Large sum payable for lesser, 5, 26; 13, 864.
- Several stipulations and lump sum payable for gross breach of any, 5, 26
- Statutory penalty, 5, 27
- Stipulation that obligor should not practice his profession in a particular place, 5, 26
- Use of the word penalty or liquidated damages not conclusive, 5, 24
- When damages can be computed with certainty, 5, 25; 13, 860
- Where damages cannot be calculated with any certainty, 5, 25; 13, 854
- Where larger sum is payable for lesser, 5, 26

LIQUIDATION, 13, 845**LIQUOR CONTRACTS, see INTOXICATING LIQUORS.**

Liquor licenses issued on ministerial act, 12, 38

LIQUORS, 21, 303

See INTOXICATING LIQUORS.

Champagne as, 3, 68

LIS PENDENS, 13, 868, 872

See FORMER SUIT PENDING.

As a defense, see FORMER SUIT PENDING.

Actions in another state, 12, 148m

Actions in personam, 13, 879

Actions in Which There Is No Lis Pendens, 13, 879

- Actions ex contractu, 13, 879
- Actions ex delicto, 13, 879
- Actions in personam, 13, 879
- Alimony, 13, 880
- Examples, 13, 879-881
- Maintenance, 13, 880, 881
- Alimony, 13, 880, 881
- Amendment, 13, 885, 886
- A plea of abatement to the writ, 1, 10
- Appeal, 13, 886
- Attachment, 13, 904
- Burden of proof, 13, 910

- Commencement**, 13, 883
 Amended bill, 13, 885
 Appeal, 13, 886
 Bankruptcy, 13, 884
 Common-law rule, 13, 883
 Delivery, 13, 885
 Filing nunc pro tunc, 13, 886
 Filing of bill, 13, 883
 In Illinois, 13, 887
 In Iowa, 13, 887
 In Texas, 13, 887
 Knowledge of purchaser, 13, 885
 Presumptions, 13, 885
 Service antedated, 13, 885
 Service by publication, 13, 885
 Service of subpoena, 13, 883
 Service of writ, 13, 885
 Statutes, 13, 894
 Subpoena issued before bill filed, 13, 884
 Substituted service, 13, 884
 Supplemental proceedings, 13, 884
 Time at which court first acquires jurisdiction, 13, 883
 Writ of error, 13, 886
- Conflict of laws**, 3, 711; 13, 892
- Constitutional law**, 13, 892
- Continuity**, 13, 887
 Appeal, 13, 886
 Failure to make full prosecution, 13, 887
 Mere lapse of time, 13, 887
 Writ of error, 13, 886
- Costs**, 13, 910
- Coupons**, 13, 875
- Creditors' bills**, 4, 576; 13, 905
- Decree in Equity**, 5, 383
 Lis pendens is notice of what, 5, 383
 Notice from time bill was filed, 5, 383
 Persons not parties nor privies, 5, 383
 Property must be definitely pointed out, 5, 383
 Purchaser after final decree, 5, 383
 Where bill is amended, 5, 383
- Definition**, 13, 869
- Ejectment**, 13, 898
- Essential Elements of Lis Pendens**, 13, 877
See infra, ACTIONS IN WHICH THERE IS NO LIS PENDENS; JURISDICTION; SUFFICIENT DESCRIPTION IN PLEADING.
- Estoppel**, 13, 891
- Eviction**, 13, 899
- Exceptions**, 13, 874
- Foreclosure of mortgages**, 13, 898, 905
- Full Prosecution**, 13, 889
 Abandonment, 13, 889
 Bringing suit to a close within limited time, 13, 889
 Continuity, 13, 887
 Depending upon facts of each case, 13, 890
 Discretion of court, 13, 890
 Estoppel, 13, 891
 Examples, 13, 890, 891
 Forty years, 13, 890
 "Intermission," 13, 889
- Left off docket for purpose of decree, 13, 890
- Reasonable diligence, 13, 890
- Twenty-seven years, 13, 890
- What constitutes, 13, 889
- Furniture**, 13, 873
- General nature**, 13, 869
- General principles**, 13, 909
- Improvements**, 13, 899
- Intermission**, 13, 889
- In What Sense Lis Pendens May Be Termed Notice**, 13, 893
 Stranger ignorant of suit, 13, 894
- Jurisdiction**, 13, 881
 Both of the res and person, 13, 881
 Claimant must be impleaded, 13, 882
 General rule, 13, 881
 Persons not made parties, 13, 882
 Pleading, 13, 882
- Liens**, 13, 903, 910
 As affected by lis pendens, 13, 903
 Attachment, 13, 904
 Attorney's fees, 13, 903
 Creditor's bills, 13, 905
 Foreclosure of mortgages, 13, 905
 Vendor's lien, 13, 904
- Local limits**, 13, 892
- Maintenance**, 13, 880
- Married women**, 13, 872
- Money in custody of law**, 13, 876
- Mortgagees**, 13, 900
- Movable property**, 13, 876
- Municipal bonds**, 13, 875
- Municipal securities**, 15, 1289
- Necessary Parties to Suit**
Purchasers Pendente Lite, 13, 900
 Assignee in bankruptcy, 13, 902
 Discretionary power of court, 13, 901
 Ejectment, 13, 901
 General rule, 13, 900
 Grantor representing purchaser's interest, 13, 900
 Purchasers not parties to litigation, 13, 902
- Negotiable paper**, 13, 874
- Notice**
See infra, DECREE IN EQUITY; RECORDING.
- In What Sense Lis Pendens May Be Termed**, 13, 893
 Stranger ignorant of suit, 13, 894
- Statute**, 13, 894
 Actions not embraced by, 13, 896
 Actual notice, 13, 895
 Amendment, 13, 896
 Attachment, 13, 895
 Court's power over notice, 13, 895
 Destruction of notice, 13, 896
 Loss of notice, 13, 896
 Misdescription of property, 13, 896
 Necessity of actual notice, 13, 895
 New parties brought in, 13, 896
 Notice by an ejectment, 13, 895
 Proof of filing, 13, 895
 Recording before bill of petition, 13, 896

LIS PENDENS—Cont'd**Notice—Cont'd****Statute—Cont'd**

Where notice is not filed or recorded,
13, 895

Whether notice is object of the rule,
13, 870

Object of the Rule, 13, 870

Whether the object is notice, 13, 870

Origin, 13, 869

Patent law, 18, 111

Personalty, 13, 872

Persons not made parties to the action,
13, 882

Pleading

Sufficient description of the res, 13,
877, 882

Power of arbitrator to award costs when
submitted to arbitration, 1, 687

Presumptions, 13, 909

Property Subject to, 13, 872

Coupons, 4, 436; 13, 875

Exceptions, 13, 874

Furniture, 13, 873

Money in custody of law, 13, 876

Movable property, 13, 876

Municipal bonds, 13, 875

Negotiable paper, 4, 436; 13, 874

Personalty, 13, 872

Real estate, 13, 872

Steamboats, 13, 873

Stocks, 13, 873

Prosecution of suit, see infra, FULL

PROSECUTION.**Purchasers, 5, 383; 13, 897**

Correction of mistake, 13, 900

Ejectment, 13, 898

Eviction, 13, 898

Executory contracts, 13, 900

Foreclosure proceedings, 13, 898

How affected by, 13, 897

Improvements, 13, 899

Injunction, 13, 898

Judgment against grantor, 13, 897

Mortgagees, 13, 900

Necessary Parties to Suit, 13, 900

Assignee in bankruptcy, 13, 902

Discretionary power of court, 13, 901

Ejectment, 13, 901

General rule, 13, 900

Grantor representing purchaser's in-
terest, 13, 900

Purchasers not parties to litigation,
13, 902

Personal liability, 13, 898

Purchaser prior to commencement of
suit, 13, 899

Purchaser's rights, 13, 987

Rents and profits, 13, 899

Sale pending suit, 13, 897

Real estate, 13, 872

Reasonable diligence, 13, 890

Receivers, 20, 33, 322

Recording, 13, 894, 895

Actions not embraced by statute, 13,
896

Actual notice, 13, 895

Amendment, 13, 896

Attachment, 13, 895

Court's power over notice, 13, 896

Destruction of notice, 13, 896

Effect of Registry Laws, 13, 906

Bill to modify or annul unrecorded
deed, 13, 907

Holder of unrecorded deed, 13, 907

In general, 13, 906

Injunction, 13, 907

Notice of purchase, 13, 907

Who regarded as purchasers, 13,
906

Loss of notice, 13, 896

Misdescription of property, 13, 896

Necessity of actual notice, 13, 895

New parties brought in, 13, 896

Notice by an ejectment, 13, 895

Proof of filing, 13, 895

Recording before a bill or petition, 13,
896

Where notice is not filed or recorded,
13, 895

Rents and profits, 13, 899

Res

Jurisdiction, 13, 879

Necessity of, 13, 879

Sufficient description in pleading, 13,
877, 882

Sheriff's sales, 22, 635

Specific Performance

As defect in title, 22, 955

Statutes, 13, 894

Commencement, 13, 894

Construction, 13, 894

Examples, 13, 894

Modifying, 13, 896

Notice, 13, 894

Actions not embraced by statutes,
13, 896

Actual, 13, 895

Amendment, 13, 896

Attachment, 13, 896

Court's power over notice, 13, 896

Destruction of notice, 13, 896

Loss of notice, 13, 896

Misdescription of property, 13, 896

Necessity of actual, 13, 895

New parties brought in, 13, 896

Notice by an ejectment, 13, 895

Proof of filing, 13, 895

Recording before bill or petition, 13,
896

Where notice is not filed or recorded,
13, 895

Steamboats, 13, 873

Stocks, 13, 873

Sufficient Description in Pleading, 13, 877, 882

Examples, 13, 877, 879

General rule, 13, 877

What is not a sufficient description,
13, 879

Supplementary relief, 13, 888

United States courts, 13, 910

Vendor's lien, 13, 904

What truth applicable, 13, 871, 872

- When Lis Pendens Ends**, 13, 888
 Dismissal of cause, 13, 888
 Final decree of judgment, 13, 888
 Nature of judgment, 13, 888
 Supplementary relief, 13, 888
Whether binding beyond local jurisdiction, 13, 892
Whether pendency of a suit in another state can be pleaded in bar, 3, 711; 13, 892
 Writ of error, 13, 886
LIST, 13, 911
 List of voters, 13, 913
 Subscription list, 13, 913
LITERARY, 13, 914
See COPYRIGHT; LETTERS; LITERARY PROPERTY.
LITERARY PROPERTY, 13, 916
See COPYRIGHT; LETTERS.
 Actions for infringement, 13, 923
At Common Law, 13, 916
 Author of letters or papers, 13, 917
 Author's general property, 13, 916
 Author's redress, 13, 916
 Author's rights, 13, 919
 Dedication to the public, 13, 917
 Effect of publication by author, 13, 918
 General rules, 13, 917
 Independent of copyright laws, 13, 916, 917
Author's Rights, 13, 919
 At common law, 13, 919
 Dramas, 13, 919
 Exclusive right, 13, 919
Dedication to the Public, 13, 917
 Drama, 13, 920
 Performance on the stage, 17, 213
 Permitting circulation of copies, 13, 918
 Printing and publishing, 13, 918
 Used for purpose of instructing others, 13, 918
 When complete, 13, 918
Definition, 13, 916
Dramas, 13, 919
 Author's right, 13, 919
 Dedication to the public, 13, 920
 Injunction, 13, 921
 Reproduction from memory, 13, 921
 What is publication, 13, 920
 Dramatic productions, 25, 1054
 Lectures, 13, 922
 Nature of the right, 13, 916
 Parting with a manuscript, 13, 923
 Transfer of, 13, 923
 Works of art, 13, 922
LITHOGRAPH, 13, 923
See THEATERS.
 Signature, 15, 1227
LITIGATED, 13, 925
LITIGATION, 13, 925
LITIGIOUS, 13, 926
LIVE, 13, 926
 Joint lives, 13, 930
 Live and dead stock, 5, 114
 Live animals, 13, 926
 Live stock, 13, 928
 Live together, 13, 929
 To live and carry on business, 13, 928
LIVELIHOOD, 13, 930
 Seeking a, 13, 931
LIVERY, 13, 934
 Livery of seisin, 13, 934
 Livery stock, 13, 970
 Registration as equivalent to, 20, 568
LIVERY STABLE KEEPERS, 13, 934
See generally, BAILMENTS.
See HORSES.
 Definition, 13, 935
 Disclaimer, 13, 963
Duties and Liabilities, 13, 938
Injury to Animals, 13, 939
 Liability founded upon negligence, 13, 939
 Ordinary care of bailee, 13, 939
 Duty as to sick animals, 13, 939
 Duty to take ordinary and reasonable care, 13, 938
 Feed stable, 13, 935
 Groom's lien, 13, 950
Hiring Horses, 9, 767
 Competency of horse to perform journey, 9, 767
 Expenses incurred during journey, 9, 767
 Hirer of kicking horse, 13, 942
 Hirer's liability; 2, 44; 9, 767
 Keeping horse beyond stipulated time, 9, 767
 Owner's liability, 9, 768
 Using differently from agreement, 9, 767
Injury to Animals, 13, 939
 Liability founded upon negligence, 13, 939
 Ordinary care of bailee, 13, 939
Liability for Defects in Vehicles, 13, 940
 Defects which might have been discovered, 13, 940
 General rule, 13, 940
 Hidden defects, 13, 940
 Negligence, 13, 941
 Passenger carrier's liability, 13, 941
 Liability for personal injuries, 13, 943
 Liability of, 2, 44; 9, 767
 Liability of hirer of horse, 2, 44; 9, 767
 Liability of horse, etc., to distress for rent, 13, 937
 Libel and slander, 13, 359
 License, 13, 515, 516
Liens, 9, 770; 11, 40; 13, 943, 953
 Agister, 13, 943, 944
 At common law, 13, 943
 Borrower of an animal, 13, 954
 By agreement, 13, 945
 By deputy sheriff's employee engaged as agister, 13, 948
Effect of Loss of Possession, 13, 965
 Effect of owner's acquiescence, 13, 967
 Leaving animals, 13, 968
 Ohio statute, 13, 968

LIVERY STABLE KEEPERS—Cont'd**Liens—Cont'd****Effect of Loss of Possession—Cont'd**

Permitting occasional rides by owner, 13, 969

Permitting use by owner, 13, 969

Possession essential, 13, 965

Removal of animal from stable, 13, 966

Enforcement of, 13, 961

Lien upon excess of proceeds of sale, 13, 962

Replevin for wrongful removal, 13, 962

Trainer's irregular mode of sale, 13, 961

Evidence admissible, 13, 951

Examples of statutes, 13, 945-950

Farmer caring for neighbor's stock, 13, 947

Feeding live stock, 13, 946

General rule, 13, 943, 951

Groom's lien, 13, 950

Grounds for denying lien, 13, 943, 944

In absence of contract, 13, 943, 951

Livery stable keeper as lessor, 13, 952

Livery stable keeper who is also an innkeeper, 13, 952

Local usage, 13, 951

Mortgagee, 13, 955

Mortgagor as lawful possessor, 13, 954

Notice of, 13, 959

Charges prior to notice, 13, 959

Notice of time and place of sale, 13, 961

Sale before notice, 13, 960

Statute of New York, 13, 959

Waiver by omission to give, 13, 965

Of farrier, 13, 944

On mare covered by stallion, 13, 944

Pleading, 13, 951

Priority Over Chattel Mortgage, 13, 955

Examples, 13, 955

Previously recorded mortgage, 13, 956

Property left by mortgagor without mortgagee's permission, 13, 959

Stallion, 13, 958

Property of third persons, 13, 954

Scope of statutory regulations, 13, 945

Statute to cover care and feeding of animals, 13, 949

Statutory, 13, 945

Trainer's lien, 13, 950

Upon animals entrusted to his care, 1, 590

Veterinary surgeon, 13, 944

Veterinary surgeon's services, 13, 951

Waiver, 13, 963

Levy and execution, 13, 963

Loss of possession, 13, 965

Waiver by claiming too much, 13, 964

Waiver by omission to give notice, 13, 965

Waiver of disclaimer, 13, 963

What Lien Attaches to, 13, 953

Articles not named in statute, 13, 953

Examples, 13, 953

Exempt property, 13, 953

When lien does not exist, 13, 951

When lien exists, 13, 950

Livery stables as nuisances, 13, 935

Master and Servant, 14, 811

Incompetency of servant, 14, 811, 812

Responsibility of livery stable keeper, 14, 811

Nuisances, 16, 928, 954

Whether a nuisance per se, 16, 938

Ordinary Care

Defects in vehicles, 13, 941

Injury to animals, 13, 939

In general, 13, 938

Pleading

Lien, 13, 951

Possession, see *infra*, LIENS.

Replevin, 13, 962

Restrictive clause in deed, 13, 936

Sick animals, 13, 939

Statutes Concerning, 13, 937

In New Jersey, 13, 937

In Pennsylvania, 13, 937

In Rhode Island, 13, 937

Stranger entering free carriage, 13, 942

Sunday

Horses Hired on Sunday, 24, 553

Contract of hiring, 24, 553

Examples, 24, 553, 554

Horses injured by over-driving, 24, 553

Recovering for tort, 24, 553

Taxation, 13, 936

Trainer, 13, 961

Trainer's lien, 13, 950

Veterinary surgeon, 13, 944, 951

LIVING, 13, 970; 29, 415

Living in adultery, see ADULTERY;

LEWD AND LASCIVIOUS COHABITATION AND CONDUCT.

Living apart, 1, 612; 13, 971

Living at death, 11, 901

Living at time of my decease, 13, 972

Living person, 13, 970

Still living, 13, 971

Then living, 25, 1056

Trade of living, 13, 971

LOAD, 13, 973

Distinguished from ton, 13, 974

Load and unload, 13, 974

LOADING, 13, 974

In bill of lading, 2, 238

Loading and unloading, 13, 974

Loading in turn, 13, 976

Loading off shore prohibited, 13, 975; 14, 331

Risk suspended while loading, 13, 976

LOANED, 13, 979**LOANS, 2, 43; 13, 976**

See BAILMENT; BORROW.

For building and loan associations, see

BUILDING AND LOAN ASSOCIATIONS.

For gambling purposes, see GAMBLING CONTRACTS.

By What Law Governed

Contracts for loan of money, 3, 550

False Pretenses, 7, 752

As to securities, 7, 753

Existing facts, 7, 754

False pretenses of an existing fact, 7,

752

False promise, 7, 754

Instances, 7, 752, 754

Money obtained as a loan, 7, 752

Used for various purposes, 7, 752

Gratuitous, 2, 43

Interest, 11, 395Action for money had and received,
11, 396Advancements by parent to child, 11,
396Money advanced by agent or factor,
11, 395

Money loaned, 11, 395

Money paid on account for the use and
benefit of another, 11, 396Partnership liability to partner, 11,
396

When chargeable with, 11, 395

Loan certificate, 13, 979

Loan for consumption, 13, 978

Loan for use, 13, 978

Loan of money, 13, 977, 979

Loans on credit, 13, 979

Payment or loan, 18, 205

Sunday, 24, 568

Usury, 27, 1027

Chattels, 27, 1027

Exchange of securities, 27, 1028

United States bonds, 27, 1027

Use of cattle, 27, 1027

LOBBY, 13, 979**LOBBYING, see ILLEGAL CONTRACTS.****LOCAL, 13, 980***For constitutionality of local statutes,*
see CONSTITUTIONAL LAW.

As applied to statutes, 3, 695

Local and special distinguished, 3,
696Local and temporary distinguished, 3,
696

Local bill, 13, 984

Local disease, 13, 989

Local freight, 13, 989

Local office, 13, 986

Local prejudice, 13, 987

Local purpose, 13, 987

LOCAL AND TRANSITORY ACTIONS,
*see ACTIONS.***LOCAL ASSESSMENTS, 25, 494***See EMINENT DOMAIN.**Actions, see infra, COLLECTION.*

"Adjacent," 25, 520

Adjoining, 25, 520

Ad valorem assessments, 10, 296

Agricultural lands, see infra, RURAL
LANDS.

Appeal, 24, 82; 25, 571

Apportionment, 25, 516

According to area, 25, 526

According to Frontage, 10, 306; 25, 524

Corner lots, 25, 525

Examples, 25, 524-526

In general, 25, 524

Narrow strip of land, 25, 525

Rural lands, 25, 525

According to value, 25, 526

"Adjacent," 25, 520

"Adjoining," 25, 520

Adjoining property, 25, 520

Assessment of unplatted lands, 25, 517

Assessment to center of block, 25, 517

By Benefits, 10, 297; 25, 522

English rule, 25, 524

Examples, 25, 522-524

In general, 25, 522

By whom made, 25, 555

Certiorari, 25, 520

Construction of statutes, 25, 517

Discretion of legislative body, 25, 516

Discretion of legislature, 25, 522

District defined by legislative authority,
25, 519District defined by local officers, 25,
519

In general, 25, 516

Interference by court, 25, 518

"In the vicinity of," 25, 520

Mode, 25, 516

More than one street in one district,
25, 519

Power, 25, 516

Power of municipality, 25, 518

Property fronting on highway, 25, 521

Several districts for single work, 25,
519

Street intersections, 25, 521

Area, 25, 526

Assessment, see infra, CONFIRMATION
OF REPORT AND ASSESSMENT; DE-
TERMINATION OF BENEFITS; PLANS
AND ESTIMATES OF EXPENSES;
*TIME OF ASSESSMENT.**Assessment by de facto officers, 10, 298**Assessment proceedings, 10, 531**Assessor, see infra, COMMISSIONERS.**Assumpsit, 25, 565***Benefits, 2, 181; 25, 496***See infra, COMMISSIONERS.**As to apportionment by benefit, see in-*
*fra, APPORTIONMENT.**Determination of benefits, see infra,*
DETERMINATION OF BENEFITS.

Benefit exceeding damage, 10, 291

Necessity of benefit, 10, 295; 25, 496

Only benefit can be assessed to lot,
6, 13

Special benefits defined, 10, 295

Bills to quiet title, 25, 575

Bridges, 10, 297; 25, 515

Burden of proof, 10, 321

Burden of proof, assent by property
owners, 25, 537

Certificate, 10, 307

Certiorari, 24, 81; 25, 520, 572

Collection, 25, 564

Action, 25, 568

LOCAL ASSESSMENTS—Cont'd**Collection—Cont'd****Assessments for Streets and Sidewalks,**
24, 77

Action at law, 24, 77

Conflict with statutes, 24, 77

Control of the legislature, 24, 77

Enjoining sale and collection, 24, 80

Examples, 24, 77-81

Fine for enforcing assessment, 24, 79

Foreclosure, 24, 79

From what fund assessment may be
collected, 24, 81

In general, 24, 77

Sale upon assessment, 24, 78, 80

Suit in equity, 24, 77

Summary proceedings, 24, 77

Tax bills, 24, 78

Whether statutory remedy exclusive,
24, 77**Defenses, 25, 570**

Absence of valid contract, 25, 571

Assessment illegal in part, 25, 571

Examples, 25, 571

Extravagant price paid for work,
25, 571

In general, 25, 570

Quality of the work, 25, 570

Repairs, 25, 571

Set-off, 25, 571

Street not dedicated to the public,
25, 570, 571What defense may be interposed,
25, 570**Demand, 25, 564****Evidence, 25, 569**

Acceptance of the work, 25, 570

Assessment roll, 25, 569

Examples, 25, 569, 570

Special tax bills, 25, 570

Warrant and affidavit of demand, 25,
569**Fines, 25, 565**In whose name suit should be brought,
25, 568

Parties to action, 25, 568

Personal Liability, 25, 564

Assumpsit, 25, 565

Clear expression of legislative will,
25, 565

Distress and sale, 25, 565

Fines and penalties, 25, 565

In general, 25, 564

Liability not implied, 25, 564

Unconstitutional statutes, 25, 565

Validity of statutes, 25, 564

Value of property assessed, 25, 565

Pleadings, 25, 569**Who May Collect, 25, 567**

Contractor, 25, 568

In general, 25, 567

In whose name suit should be
brought, 25, 568

Municipality, 25, 567

Parties, 25, 568, 569

Suit by contractor in his own name,
25, 568**Commissioners, 10, 298; 25, 554**

Appointment, 25, 554

Duty in Assessing Benefits, 25, 556

Acting as a body, 25, 556

Action of majority, 25, 556

Actual benefits, 25, 556

Assessing lands separately, 25, 558

Omitted lands, 25, 558

Other interests besides ownership of
fee, 25, 557

Rule of apportionment, 25, 556

Strict compliance with authority,
25, 556

Title, 25, 557

What to be taken into consideration,
25, 556, 557

Oath, 25, 555

Qualification, 25, 555

Removal, 25, 554

Report of Commissioners, 25, 558

As evidence, 25, 539

Description of land, 25, 559

Duty to make report, 25, 558

Examples, 25, 558-560

Name of owner, 25, 559

Unknown owners, 25, 559
What report should contain, 25,
558

Writing, 25, 558

Compliance with statutory provisions,
25, 531**Conditional Authorization to Make Improve-
ments**

Limited authorization, 10, 281

Necessity of compliance with con-
ditions, 10, 280

Condition precedent, 25, 531

**Confirmation of Report and Assessment,
25, 560**

By whom, 25, 560

Effect of confirmation, 25, 562

Finality of judgment, 25, 560

In general, 25, 560

Necessity, 25, 560

Objections, 25, 561

Time of making objections, 25, 561

Weight of report, 25, 560

When set aside, 25, 560

Consent of property owners, see infra,
PETITION OF PROPERTY OWNERS.*Constitutionality, see infra, POWER TO
MAKE.***Constitutional Law**

Personal liability, 25, 564

Constitutional provisions, 10, 270

Construction of statutes, 23, 396; 25,
504, 507

Corner lots, 25, 525

Demand, 25, 564

Determination of Benefits, 25, 554*As to duty of commissioners in assess-
ing benefits, see infra, COMMISS-
SIONERS.**As to report of commissioners, see in-
fra, COMMISSIONERS.*

Appointment of officer, 25, 554

Assessors, 25, 554

- By whom apportionment can be made, 25, 555
 Commissioners, 25, 554
 Legislature designating officer, 25, 554
 Oath, 25, 555
 Qualifications of officers, 25, 555
Determination of Necessity, 25, 532
 Examples, 25, 532, 533
 In general, 25, 532
 Necessity of ordinance or resolution, 25, 532
 Ordinances, 25, 532
 Sufficiency of resolution, 25, 533
 District in the vicinity, 25, 520
Drains and Sewers, 6, 12, 20; 10, 307, 309; 25, 510
 Apportionment, 6, 20, 21; 25, 516
 Arbitrary assessments, 6, 20
 Assessment by area of lots, 6, 21
 Assessment by front-footage, 6, 20
 Cost in proportion to abutting owners, 6, 13
 Drains, 25, 512
 Examples, 25, 510-513
 Further assessment for continuation of sewer, 6, 21
 Grant of power to improve streets, 25, 510
 In England, 25, 511
 In general, 25, 510, 620, 621
 Lands benefitted though not in the line of sewer, 6, 21
 Legislature prescribes modes of meeting expenses, 6, 13
 Must be uniform, 6, 12
 Only property which is actually benefitted can be assessed, 6, 13
 Power to assess property, 25, 510
 Pumping works, 25, 512
 Right of legislature to confer power upon municipality, 6, 20
 Sewers, 6, 20; 25, 510
 Sewers in another town, 25, 512
 Two sewers to one assessment, 10, 300
 Due process of law, 6, 49; 25, 502
Equality and Uniformity, 10, 273, 277; 25, 495, 502, 504
 Distinction between taxation and special assessments, 10, 273
 Examples, 10, 273-275
 Frontage, 10, 274
 Front-foot assessment, 10, 274
 Police power, 10, 274
 True value of property, 10, 274
 Equalization and review, 25, 242
Equitable Relief, 25, 572
See infra, INJUNCTION.
 Absence of adequate remedy at law, 25, 572
 Action to quiet title, 25, 575
 Assessment invalid in part, 25, 574
 Examples, 25, 572-574
 In general, 25, 572
 Requiring complaining party to pay what is justly due by him, 25, 573
 Statutory relief, 25, 573
Estimate of expenses, *see infra*, PLANS AND ESTIMATES OF EXPENSES.
Estoppel, 25, 576
 Failure to make objections, 25, 576
 In general, 25, 576
 Petition, 25, 576
 Petition of property owners, 25, 535
 Proceedings entirely void, 25, 576
Exemptions, 24, 67
Whether Included in General Exemptions from Taxation, 25, 160
 Examples, 25, 160-162
 Held not to be included within the exemption, 25, 161
 Held to be included within the exemption, 25, 161
 In general, 25, 160
 Municipal taxes, 25, 161
Expenses
As to estimate of expenses, *see infra*, PLANS AND ESTIMATES OF EXPENSES.
 Fines, 25, 565
 Fine to enforce assessment, 24, 79
Frontage
Apportionment according to frontage, *see infra*, APPORTIONMENT.
Hearing, *see infra*, NOTICE.
 Highways, 25, 515
 Illegal in part, 10, 302
Improvements for Which Made, 25, 507, 515
See infra, DRAINS AND SEWERS; LEVEES AND DYKES; PARKS; STREETS AND SIDEWALKS; WATER PIPES.
 Bridge, 25, 515
 Construction of turnpike, 25, 515
 Fences, 25, 515
 Highways, 25, 515
 Miscellaneous cases, 25, 515
 Sweeping and sprinkling streets, 25, 515
Injunction, 10, 960; 25, 574
 Acquiescence, 10, 961
 Adequate remedy at law, 25, 574
 Allowing improvement to be carried on without objection, 10, 961
 Examples, 25, 574
 In general, 25, 574
 Notice to property owner, 10, 960
 Sale and collection, 24, 80
 When granted, 25, 574
 Jury trial, 25, 502
 Landlord and tenant, 12, 692
Legislative Power to Validate Void Assessments, 15, 988; 25, 562
 Assessment fundamentally defective, 25, 563
 Assessment made valid from the beginning, 25, 563
 Examples, 25, 562-564
 In general, 25, 562
 In the absence of constitutional inhibition, 25, 562
 Retrospective enactment, 25, 562

LOCAL ASSESSMENTS—*Cont'd***Levees and Dikes**, 25, 513

Examples, 25, 513, 514

In general, 25, 513

Power to make assessments, 25, 513

Liens, 24, 76; 25, 566

Authority of legislature, 24, 76

Construction of statutes, 24, 76

Decree, 25, 567

Enforcement, 25, 567

Examples, 24, 76

Extent, 25, 566

Foreclosure proceedings, 25, 567

For the benefit of contractor, 25, 566

In absence of legislative creation, 25, 566

In general, 24, 76; 25, 566

Lot owned by two or more, 25, 567

Personal liability, 25, 566

Power of legislature to modify or destroy, 24, 76

Priorities, 25, 566

Proceedings to enforce must comply with statutory provisions, 25, 567

Purchasers pendente lite, 24, 76

Sale of land to enforce, 25, 567

Time when lien attaches, 25, 566

Linear rule, 10, 306**Location of man-holes**, 25, 541**Majority of commissioners act**, 25, 556**Majority of property owners**, 10, 285; 25, 536**Man-holes**, 25, 541**More than one improvement under single authorization**, 10, 279**Nature and purpose**, 25, 494**Necessity**, see *infra*, DETERMINATION OF NECESSITY.**Notice**, 25, 545

Compliance with statutory provisions, 25, 547

Description, 10, 298

Certainty required, 10, 298

Necessity of incidental work not mentioned, 10, 298

Work must conform with, 10, 298

Legislative discretion, 25, 547**Manner**, 25, 546**Necessity**, 10, 272, 286; 25, 501, 545

Discretionary assessment, 25, 546

Due process of law, 25, 545

Foreclosure of lien, 25, 546

Validity of assessment, 25, 545

When not necessary, 25, 545

Proof of notice, 25, 548**Protest**, 25, 549**Publication of ordinance**, 25, 544**Purpose of notice**, 10, 287; 25, 548**Reasonable notice**, 25, 547**Remonstrance**, 25, 549**Requisites**, 10, 298; 25, 546**Right to be heard**, 25, 548**Streets and Sidewalks**, 24, 72

In general, 24, 72-76

Notice held sufficient, 24, 74

Statutes providing for, 24, 73

Whether necessary, 24, 72

Time, 25, 546**Waiver**, 25, 550

Within what time protest must be filed, 25, 550

Notice to Owners of Property, 25, 506

By publication, 25, 504

Constitutionality of statute not providing for, 25, 501

Examples, 25, 501-503

Necessity, 25, 501

Number of petitioners, 25, 535**Objections**

Time when objections may be taken, 25, 561

Objections to report, 25, 561**Ordinances, Resolutions, etc.**, 10, 281; 25, 537

Construction, 25, 540

Describing improvements, 10, 283; 25, 540

Description

Amount to be raised and expended, 10, 283

Construction of sewerage system, 10, 284

Diagrams, 10, 284

Maps, 10, 284

Necessity, 10, 281, 283

Proposed expense to be borne by abutter, 10, 291

Ratification of order for improvement, 10, 284

Details, 25, 543**Determination of necessity**, 25, 532**Enactment**, 25, 537

Examples, 25, 539

Manner, 25, 538

Number of votes, 25, 538

Signature, 25, 539

Statutory requirements, 25, 537-540

Two-third vote, 25, 539

Examples of sufficiency, 25, 540, 541**Fixing grade**, 25, 541**Location of improvements**, 25, 542**Location of man-holes**, 25, 541**More than one improvement**, 25, 542**Necessity of**, 25, 532, 537**Positiveness**, 25, 540**Publication**, 25, 544**Requisites as to form**, 25, 540**Term "street improvements,"** 10, 282**Validity of resolution**, 25, 537**Variance between resolution and contract**, 25, 543**When resolution is sufficient**, 25, 537**Writing**, 25, 540**Parks and Public Squares**, 17, 414; 25, 514**Abutting lots**, 17, 414**Assessment of park property for public improvements**, 17, 414**Board of park commissioners**, 17, 414**Examples**, 17, 414**In general**, 17, 414**Lands outside of city**, 17, 414**Payment**, see *infra*, RECOVERY BACK.

Payment voluntary, 18, 220; 25, 575, 576
Personal liabilities, see *infra*, COLLEC-
 TION.

Petition of Property Owners, 10, 285; 25, 533

Burden of proving assent by property owners, 25, 537

Compliance with statute, 25, 535

Estoppel, 25, 535, 576

Form, 25, 535

In California, 10, 285

In general, 25, 533

In Indiana, 10, 285

Majority of owners, 10, 287; 25, 536

Necessity of consent of property owners, 25, 533

Number of petitioners, 25, 535

Power to act dependent upon, 25, 533

Signature by agent, 25, 536

Validity of proceedings without pe-
 tition, 25, 534

Who may sign, 25, 536

Plans and Estimates of Expenses, 25, 552

By whom made, 25, 552

Condition precedent, 25, 552

Cost necessary to complete work, 25, 553

In general, 25, 552

Necessity, 25, 552

What to Be Included, 25, 553

Compensation to owner, 25, 553

Costs of collecting assessment, 25, 554

Engineering and surveying, 25, 553

Examples, 25, 553, 554

Fees of commissioners, 25, 554

In general, 25, 553

Interest on money borrowed, 25, 554

Printing and advertising, 25, 553

Salary of superintendent, 25, 553

Power to Make, 25, 498

Constitutionality, 25, 501

Assessment without reference to
 benefit, 10, 272

As valid exercise of taxing power,
 25, 501

Cash value, 10, 271

Due process of law, 25, 502

In general, 25, 501

Jury trial, 25, 502

Limitations, 10, 276

Necessity of notice, 10, 272, 286;
 25, 545

Notice by publication, 25, 504

Notice to owner, 25, 501

Opportunity to be heard, 25, 501

Personal judgment against land-
 owner, 25, 506

Police power, 10, 275

Sanitary purpose, 10, 275

Standard of assessment, 10, 271

Taking private property, 25, 506

Taking private property for public
 use without compensation, 10, 271

Uniformity and equity, 25, 504

Whether property must border on
 street, 25, 502

Delegation of municipal corporation,
 25, 498

Discretion of municipality, 25, 500

Examples, 25, 498-500

Implied power, 25, 499

In general, 25, 498

Municipality delegating its power, 25,
 500

Municipal power, 25, 500

Necessity of express grant, 25, 499

Power to drain, 25, 500

Power to lay sidewalks, 25, 499

Power to macadamize street, 25, 499

Power to pave, 25, 500

Whether inherent in municipality, 25,
 498

Principle of the imposition, 25, 496

Property Assessable, 25, 527

See *infra*, STREETS AND SIDEWALKS.

In general, 25, 527

Personal property, 25, 527

Public property, 25, 527

Railroad Property, 25, 528

Drainage assessments, 25, 529

Examples, 25, 528-531

In general, 25, 528

Roadbed or right of way, 25, 528

Stations, 25, 528

Street railways, 25, 530

Rural lands, 25, 531

School lands, 25, 528

Protest, 25, 549

Publication of ordinance, 25, 544

Public lands, 25, 527

Quiet title, 25, 575

Railroad property, 10, 303; 25, 528

Railroads

Benefit to Railroad Property, 10, 303

Railroad rights and property, 10,
 303

Statute of limitations, 10, 303

Ratification, see *infra*, LEGISLATIVE
 POWER TO VALIDATE VOID ASSES-
 SMENTS.

Ratification by legislature, 15, 998

Reassessment, 24, 83; 25, 562

Authority of legislature, 25, 562

In general, 24, 83

Power of legislature, 24, 83; 25, 562

Power of municipal corporation, 24,
 83

Power of municipality, 25, 562

Retrospective laws, 24, 83

When made, 25, 562

Recovery Back, 25, 575

Assessment invalid upon its face, 25,
 576

Payment of apparently valid assess-
 ment, 25, 575

Payment under protest, 25, 576

Proceedings regular upon their face,
 25, 575

When payment is voluntary, 18, 220;
 25, 575, 576

**Remainder, Reversions, and Executory In-
 terests**, 13, 215

Apportionment, 13, 218

LOCAL ASSESSMENTS—Cont'd

Remedies, 25, 571

See *infra*, APPEAL; CERTIORARI;
EQUITABLE RELIEF; RECOVERY
BACK.

Remonstrance, 25, 549

Reports of commissioners, see *infra*,
COMMISSIONERS; CONFIRMATION OF
REPORT AND ASSESSMENT.

Resolutions, see *infra*, ORDINANCES.

Retroactive Statutes

Legislative Power to Validate Void
Assessments, 25, 562

Assessment fundamentally defective,
25, 563

Assessment made valid from the be-
ginning, 25, 563

Examples, 25, 562-564

In general, 25, 562

In the absence of constitutional in-
hibition, 25, 562

Retrospective enactment, 25, 562

Right to be heard, see *infra*, NOTICE.

Rural Lands, 10, 306; 24, 70; 25, 525, 531

Whether Assessable, 25, 531

Constitutionality of statutes per-
mitting assessments, 25, 531

In general, 25, 531

School lands, 25, 528

Set-off, 25, 571

Sewers, see *infra*, DRAINS AND SEWERS.

Signature

Apportionment, 25, 536

Ordinances, 25, 539

Resolutions, 25, 539

Stations, 25, 528

Statutes, construction, 23, 396; 25, 504,
507

Streets and Sidewalks, 10, 298, 300, 301;
25, 507

Property assessable, see *infra*, Ex-
EMPTIONS.

"Adjoining" property, 24, 68

Assessment of owner of land taken,
25, 507

Authority to assess, 24, 65; 25, 507

Benefits common to the neighborhood,
25, 508

Collection and Enforcement, 24, 77

Action at law, 24, 77

Conflict with statutes, 24, 77

Control of the legislature, 24, 77

Enjoining sale and collection, 24, 80

Examples, 24, 77-81

Fine for enforcing assessment, 24, 79

Foreclosure, 24, 79

From what fund assessment may be
collected, 24, 81

In general, 24, 77

Sale upon assessment, 24, 78, 80

Suit in equity, 24, 77

Summary proceedings, 24, 77

Tax bills, 24, 78

Whether statutory remedy exclusive,
24, 77

Compensation to abutters, 25, 507

Contiguous, 24, 69

Description of owners, 24, 71

Description of property, 24, 71

Direct and special benefits, 25, 508

Discretion of legislature, 24, 69-71

Examples, 25, 507-510

Grading, widening, 25, 507

How made, 24, 70

In general, 24, 65; 25, 507

Lien of the Assessment, 24, 76

Authority of legislature, 24, 76

Construction of statutes, 24, 76

Examples, 24, 76

In general, 24, 76

Power of legislature to modify or
destroy, 24, 76

Purchasers pendente lite, 24, 76

Lot frontage, 24, 70

Municipal corporation's authority, 24,
65; 25, 507

Name of person, 24, 72

Notice to Owners, 24, 72

In general, 24, 72-76

Notice held sufficient, 24, 74

Statutes providing for, 24, 73

Whether necessary, 24, 72

Objections to Assessments, 24, 76

Examples, 24, 74-76

In general, 24, 74

Time for objections, 24, 75

Waiver, 24, 75

Personal Liability, 24, 77

Conflict of authority, 24, 77

Constitutionality of statutes impos-
ing, 24, 77

In general, 24, 77

Property Assessable, 24, 66

Adjacent property, 24, 68

Adjoining property, 24, 68

Cemetery property, 24, 67

Contiguous property, 24, 69

Examples, 24, 66-69

In general, 24, 66

Railroads, 24, 67

School property, 24, 67

Proportionate area of lot, 24, 70

Proportions to be borne by abutters
and general public, 24, 71

Reassessment, 24, 83

In general, 24, 83

Power of legislature, 24, 83

Power of municipal corporation, 24,
83

Retrospective laws, 24, 83

Repaving of street, 10, 304

Sidewalks, 25, 508

Streets, 25, 507

Streets include sidewalks, 25, 509

Sweeping and sprinkling streets, 25,
515

System or mode of assessment, 24, 69

Unknown owners, 24, 72

Urban property, 24, 70; 25, 525, 531

Vacation of assessment, 24, 81

Summary proceedings, 24, 77; 25, 565

Taxation distinguished from, 25, 14, 494

Time of Assessment, 25, 551

After completion of work, 25, 551

- Before city acquires title, 25, 552
 Before completion of work, 25, 551
 Condemnation and assessment proceedings, 25, 552
 Discretion of municipal authority, 25, 551
 Examples, 25, 551, 552
 Legislative discretion, 25, 551
 Turnpikes, 25, 515
 Unplatted lands, 25, 517
 Vacation of assessment, 10, 311; 24, 81
 Valuation, 25, 526
 Variance between resolution and contract, 25, 543
 Vicinity, 25, 520
Void Assessments
As to legislative power to validate, see infra, LEGISLATIVE POWER TO VALIDATE VOID ASSESSMENTS.
 Waiver of notice, 25, 550
 Water pipes, 25, 514
 Who may assess, 10, 297
LOCAL IMPROVEMENTS, 13, 986
See LOCAL ASSESSMENTS; MUNICIPAL CORPORATIONS.
Whether a special assessment is within a covenant against incumbrances, see REAL COVENANT.
LOCAL OPTION, 13, 990
Adoption, 11, 622
 At a general election, 11, 622
 Ballot, 11, 624
 Conformity with prescribed regulations, 11, 622
 Language of order declaring result of election, 11, 625
 Notice of election, 11, 624
 Number of votes required, 11, 624
 Order declaring result not in words of statute, 11, 625
 Order of election, 11, 624
Petition, 11, 623
 Counter petition, 11, 624
 Election without, 11, 623
 Notice of filing, 11, 624
 Reference to statutes, 11, 623, 624
 Requisites generally, 11, 623, 624
 Posting notice, 11, 624
 Presumption as to appointment of officers, 11, 626
 Record showing compliance with law, 11, 625
 Regularly adopted, 11, 623
 Regularly ordered, 11, 623
 Result of election, 11, 624
 Texas local option law, 11, 623
Constitutionality, 6, 283; 11, 619; 13, 990
 Act authorizing certain bodies to prohibit sale at certain times, 11, 619
 Calling aid of people to legislature, 11, 620
 Delegation of legislative power, 11, 620; 13, 990
 Depending only on a contingency, 13, 992
 Grounds of holding local option laws valid or invalid, 11, 620
 In general, 11, 619; 13, 990
 Issue of county bonds, 13, 992
 Law complete when enacted, 13, 992
 Local and special laws, 11, 662; 13, 994
 Location of county buildings, 13, 991
 Matters of local concern, 13, 993
 Regulations of commerce, 11, 621
 Statute depending upon some act of the people, 11, 619
 Statute not perfect, 11, 619
 Submission to vote of people, 11, 619
 Taking private property for public use, 11, 621
 Titles contested, 11, 619
 Unjust discrimination, 11, 622
 Within the police power, 11, 621
Definition, 13, 990
 Effect of prohibitory laws upon brewery and distillery property, 5, 70
Elections, 13, 994
 Declaration of result, 13, 995
 What constitutes a majority, 13, 994
 General law prohibiting sale in particular locality, 11, 606
Indictment, 11, 764
 For violating local option law, 4, 740
 Law acts as repeal of other laws, 11, 630
Legislative Power to Enact Local Option Laws, 11, 606, 618
 Delegation of legislative power, 11, 619; 13, 990.
 Municipality invested with power, 11, 618
 Precluding fulfillment of existing contracts, 11, 618
 Vote of people, 11, 618
 Power of legislature, 11, 606, 618
 Prohibiting the sale of liquors outside of town and city, and permitting it within town and city, 11, 607
Repeal, 11, 630
 Division of districts, 11, 632
 Effect of pending cases, 11, 633
 Subdivision of county, 11, 632
Validity of Ordinances Adopting, 11, 626
 Absolute prohibition, 11, 627
 As to particular time, 11, 628
 Compliance with statute, 11, 627
 Declaring sale a nuisance, 11, 627
 Due process of law, 11, 629
 Fixing punishment, 11, 627
 Imposing fine, 11, 627
 In general, 11, 626
 Ordinances relating licenses, 11, 628
 Property rights, 11, 629
 Prospective and retrospective operation, 11, 626
 Regulation of commerce, 11, 629
 Restraint of trade, 11, 629
 Sunday, 11, 628
 Unlawful search, 11, 629
Violation, 11, 633
 Indictable offense, 11, 633
 Prosecution after appeal, 11, 633, 634
 Where district is changed, 11, 632
LOCAL STATUTES, *see* STATUTES.
LOCATE, 13, 995; 19, 835

LOCATED, 13, 996

National banks, 16, 147

Shall be hereafter located, 13, 996

LOCATING, 13, 998**LOCATION**, 13, 997; 15, 505

Practical location, 19, 1

LOCATION OF RAILROADS, see **RAILROADS**.**LOCATOR**, 13, 998**LOCOMOTIVE**, 13, 999**LOCO PARENTIS**, see **PARENT AND CHILD**.**LODE**, 13, 999; 15, 501**LODE COMPARED WITH VEIN**, 15, 504**LODGE**, 13, 999**LODGED**, 13, 999**LODGER**, 1, 723; 2, 679; 13, 1003See **LODGINGS AND APARTMENTS**.

Distinguished from guest at inn, 11, 19

On sleeping car, 13, 1000

Who is, 1, 723

LODGINGS AND APARTMENTS, 13, 1004See generally, **INNS AND INNKEEPERS**;
LANDLORD AND TENANT; **LEASE**.

Action of ejectment against lodger, 13, 1007

Action of trespass by lodger, 13, 1007

Apartment houses, 13, 1015

Bell, 13, 1015

Building leased in distinct portions, 13, 1006

Deduction by absence, 13, 1009

Definition, 13, 1003

Apartments, 13, 1003

Lodger, 13, 999, 1003

Destruction of Building by Fire

Rent, 12, 742

Distinguished from hotel, 9, 777

Distinguished from inns, 11, 7, 8

Distinguished from tenant, 13, 1004, 1005

Distress, 13, 1008

Furnished apartments, 13, 1015

Exclusive possession of whole premises,
13, 1004

Flats, 13, 1015

Forcible entry by officer, 13, 1007

French flats, 13, 1015

Furnished Apartments, 13, 1014Accident occurring through defect in
machinery, 13, 1014

Apartments uninhabitable, 13, 1014

Bells, 13, 1015

Contagious disease, 13, 1015

Distress, 13, 1014

Fitness for habitation, 13, 1015

Ingress and egress, 13, 1015

Rents, 13, 1014

Repairs, 13, 1014

Statute of frauds, 13, 1014

Health, 9, 322

Implied warranty, 13, 1012

Ingress and egress, 13, 1015

Interest in Realty, 13, 1004, 1007

Flats and apartments, 13, 1016

Lease renewable forever, 13, 1007

Liability for rent, 13, 1007

Liability of Landlord

Repairs, 13, 1014

Responsibility for repairs, 13, 1012

Responsibility for safety of building,
13, 1012, 1013Where landlord has not exclusive con-
trol of building, 13, 1012, 1013**Liability of Tenant of Apartment**, 13, 1004,
1010Failure to keep building in repair, 13,
1010Liability of one tenant for negligence
resulting in injuries to another, 13,
1011

Negligence, 13, 1011

Lien of landlord, 13, 1008, 1012

Lodger, 13, 999, 1003

Lodging house keeper distinguished from
innkeeper, 13, 1000

Nature of lodger's interest, 13, 1004

Necessity of special contract, 11, 11

Personal contract, 13, 1004

Relation of Landlord and Tenant, 13, 1004

Flats and apartments, 13, 1016

Rent, 13, 1014, 1017

Abandonment of apartments, 13, 1017

Construction of building, 13, 1016

Destruction by fire, 12, 742

Goods liable for distraint, 13, 1017

Misconduct of landlord, 13, 1017

Repairs

Furnished apartments, 13, 1014

Landlord's liability, 13, 1012, 1014

Tenant's liability, 13, 1012

Rights of Lessees and Tenants, 13, 1009

Examples, 13, 1009

One tenant impairing the rights of co-
tenant, 13, 1009

What rights pass, 13, 1009

Right to sublet, 13, 1005

Sleeping car, 13, 1000

Statute of Frauds, 8, 666; 13, 1007

Furnished apartments, 13, 1014

Tenement houses, 13, 1015**Termination of Rights**, 13, 1016

Destruction of building, 13, 1016

Rent and destruction of building, 13,
1016

Weekly or monthly lease, 13, 1017

What Constitutes a Lodger, 13, 999, 1003,
1005Action of ejectment against lodger, 13,
1007

Action of trespass by lodger, 13, 1007

Building leased in distinct portions, 13,
1006

Deduction by absence, 13, 1009

Distinguished from tenant, 13, 1004,
1005

Distress, 13, 1008

Exclusive possession of the whole
premises, 13, 1004

Forcible entry by officer, 13, 1007

Interest in realty, 13, 1004, 1007

Lease renewable forever, 13, 1007

Liability for rent, 13, 1007

Lien of landlord, 13, 1008

- Nature of lodgers' interest, 13, 1004
- Personal contract, 13, 1004
- Right to sublet, 13, 1005
- Statute of frauds, 13, 1007
- What constitutes tenancy, 13, 1008
- When lodger becomes tenant, 13, 1005
- Whether relation of landlord and tenant exists, 13, 1004
- What constitutes tenancy, 13, 1008
- When lodger becomes tenant, 13, 1005
- Whether relation of landlord and tenant exists, 13, 1004, 1016
- LOG ROLLING**, 9, 901, 903; 13, 1017
- LOGS AND LUMBER**, 13, 1018
- See **BOOM COMPANIES**; **DAMS**; **TREES**.
- Advances, 13, 1028
- Burden of proof, 13, 1035
- Chutes, required by statute, 4, 977
- Condition of goods, 19, 1100
- Compensation for Driving, Intermingling, or Obstructing Logs**, 13, 1037
- Amount of compensation, 13, 1038
- Good faith, 13, 1037
- Logs carried beyond their destination, 13, 1037
- Statutory provisions, 13, 1037
- Who is liable for compensation, 13, 1038
- Confusion of Goods**, 13, 1036
- Burden of proof, 13, 1037
- Compensation, 13, 1037
- Compensation for driving, intermingling, or obstructing logs, 13, 1037
- Logs distinctly marked, 13, 1036
- Statutory provisions, 13, 1037
- When doctrine applicable, 13, 1036
- Where logs have been sawed into lumber, 13, 1037
- Willful confusion, 13, 1037
- Without the fault of either party, 13, 1036
- Construction of Particular Contract**, 13, 1028
- "Clear," 13, 1030
- Examples, 13, 1028, 1030
- Guaranty of laborer's wages, 13, 1029
- More or less, 13, 1029
- Sufficient to keep mill running, 13, 1030
- To furnish lumber, 13, 1028
- "Workmanlike manner," 13, 1030
- Contract for advances and supplies**, 13, 1028
- Contract of Sale**, 13, 1019, 1021, 1026
- See generally, **SALES**.
- See *infra*, **WARRANTY**.
- Acceptance**, 13, 1024
- See *infra*, **DELIVERY AND ACCEPTANCE**.
- Breach of contract, 13, 1026
- Damages, 13, 1026
- Delivery*, see *infra*, **DELIVERY AND ACCEPTANCE**.
- Entirety of contract, 13, 1020
- Expenses, 13, 1022
- Inspection, 13, 1022
- Interference by one party causing breach, 13, 1026
- Payment**, 13, 1022
- Agreement to pay vendor's creditor, 13, 1022
- When payment is necessary, 13, 1022
- Right of rescission, 13, 1026
- Separation according to length, 13, 1022
- Statute of frauds*, see *infra*, **STATUTE OF FRAUDS**.
- What constitutes, 13, 1019
- When severable, 13, 1020
- When Title Passes**, 13, 1023
- Agreement of parties, 13, 1023
- Delivery, 13, 1023
- Intention of the parties, 13, 1023
- Measurement after delivery, 13, 1023
- Setting aside specific property, 13, 1024
- Something remaining to be done, 13, 1024, 1025
- Symbolic delivery, 13, 1024
- Conversion**, 13, 1046
- Demand, 13, 1046
- Evidence of conversion, 13, 1046, 1047
- Examples, 13, 1046
- Measure of Damages**, 13, 1047
- Exemplary damages, 13, 1048
- Mistake, 13, 1047
- Willful wrong, 13, 1047
- Damages**, 13, 1026
- Definition**, 13, 1018
- Logs, 13, 1018
- Lumber, 13, 1019
- Stumpage, 13, 1019
- Timber, 13, 1019
- Delivery**
- When Title Passes**, 13, 1023
- In general, 13, 1023
- Particular place designated, 13, 1023
- Something remaining to be done, 13, 1023, 1024
- Symbolic delivery, 13, 1024
- Delivery and Acceptance**, 13, 1025
- Acceptance necessary to passage of title, 13, 1024
- Delivery at stated intervals, 13, 1026
- Delivery extending over period of time, 13, 1026
- Demand, 13, 1026
- Notice of readiness to deliver, 13, 1026
- Waiver of condition for delivery, 13, 1026
- What sufficient acceptance, 13, 1025
- What sufficient delivery, 13, 1025
- Demand**, 13, 1022, 1026
- Delivery, 13, 1026
- Expenses, 13, 1022
- Floating, 13, 1038
- Garnishment, 8, 1157
- Implied warranty, 13, 1027
- Inspection, 13, 1022
- Labor and services*, see *infra*, **LIENS**.
- License to Cut**, 13, 1030
- Assignability, 13, 1031
- Co-tenants, 13, 1031
- Implication, 13, 1031

LOGS AND LUMBER—Cont'd**License to Cut—Cont'd**

Parol contracts, 13, 1030

Reasonable time, 13, 1031

Revocation, 13, 1032

After trees are cut, 13, 1032

At what time it may be revoked, 13, 1032

Conveyance of property, 13, 1032

Death of licensor, 13, 1032

Title to timber, 13, 1031

Within what time right must be exercised, 13, 1031

Lien, 13, 1039, 1043

Amendment of petition, 13, 1046

Assignability, 13, 1043

At common law, 13, 1039

Discharge of lien, 13, 1044

For advances, 13, 1039

For Labor and Services, 13, 1040

Contractors, 13, 1041

Cooking, 13, 1041

Expenses incurred in getting into woods, 13, 1041

Extent of lien, 13, 1041

General rule, 13, 1040

In California, 13, 1041

In Maine, 13, 1040

In Michigan, 13, 1040

In Wisconsin, 13, 1041

"Labor and services," 13, 1041

Subcontractors, 13, 1041

Team, 13, 1041

Want of privity between owner and laborer, 13, 1041, 1042

What persons included, 13, 1040

Judgment, 13, 1044

Notice, 13, 1043

Petition, 13, 1045, 1046

Pleading, 13, 1045

Priority of lien, 13, 1043

Proceedings to enforce, 13, 1044

Property subject to lien, 13, 1043

Sawing logs, 13, 590

Sufficiency of judgment, 13, 1045

Supplies and Materials, 13, 1042

In Georgia, 13, 1042

In Wisconsin, 13, 1042

Time within which lien must be secured, 13, 1043

Waiver, 13, 1044

Lost logs, 13, 1039

Marks, 13, 1032

Navigable waters, 16, 269

Parol contract, see *infra*, STATUTE OF FRAUDS.

Payment, 13, 1022

"Personal services," 18, 407

Rafting, 13, 1038

Rescission, 13, 1026

Salvors, 13, 1039

Scaling, 13, 1033

Certificate of scaler, 13, 1034

Evidence, 13, 1034

Burden of proof, 13, 1035

Identifier of scale bill, 13, 1035

Scale bill as, 13, 1034

Expenses of, 13, 1034

In absence of statutory provisions, 13, 1033

Provision for measurement according to a particular scale, 13, 1033

Scale bill as evidence, 13, 1034

Scale by person agreed upon, 13, 1034

Standard at time of contract, 13, 1033

Standard at time of scaling, 13, 1033

Standard to govern, 13, 1033

Statutory requirements, 13, 1035

Statute of Frauds, 8, 667; 13, 1020

Parol contract as license, 13, 2021

Payment subsequent to time of making contract, 13, 1021

Performance within a year, 13, 1021

Recovery on quantum meruit, 13, 1021

Services to be performed within a year, 13, 1021

Whether interest in land, 13, 1020

Statutory regulations for floating and rafting, 13, 1038

Stranded logs, 13, 1039

Stumpage, 13, 1019

Supplies and materials, 13, 1028, 1042

Taxation, 13, 1049; 25, 141

In general, 25, 141

Place of Taxation, 25, 141

Delivery to common carrier, 25, 142

What constitutes transit, 25, 142

When in transitu, 25, 141

Timber, 26, 2

See TIMBER.

Tolls, 13, 1038

Trover

Measure of damages, 26, 833

Warranty, 13, 1027

Distinction between words of warranty and description, 13, 1027

Waiver of, 13, 1027

LONDON

Customs of, 8, 290

LONG, 13, 1050

As long as she lives, 13, 1050

Long account, 13, 1050

Long price, 13, 1050

Long time, 13, 1050

LONG AND SHORT HAUL, see FREIGHT.**LOOKOUT, see SHIPPING; NAVIGATION.****LOOMS, 13, 1051****LOOSE, 13, 1051****LORD'S DAY, see SUNDAY.****LOSE, 13, 1051****LOSS**

Total loss, see MARINE INSURANCE.

Loss by theft, 13, 1057

Loss of freight, 13, 1057

Loss of situation, 13, 1056

Loss or damage, 13, 1052

Pecuniary loss, 18, 256

LOST, 13, 1058

Lost or damaged, 13, 1058

Lost or not lost, 13, 1058

Utterly lost, 13, 1054

LOST PAPERS, 13, 1059

See NOTICE TO PRODUCE PAPERS; REWARDS.

Affidavit of Loss, 13, 1104

Affidavit of persons not parties, 13, 1105

Necessity of production, 13, 1104

Reasonable search, 13, 1104

Statutes, 13, 1105

Sufficiency of affidavit as proof, 13, 1104

What affidavit must contain, 13, 1104

When affidavit may be dispensed with, 13, 1104, 1105

Bill of equity, see *infra*, RECOVERY OF SPECIFIC LOST PAPERS.

Bills and Notes

Action to recover, 13, 1063

Bona fide purchaser, 13, 1149

Bona fide purchaser before maturity, 13, 1149

Bond of indemnity, 13, 1113

Burden of proving mala fides, 13, 1153

Caution, 13, 1153

Declarations, bills, petitions, etc., 13, 1086

Demand of payment, 13, 1147

Evidence of original existence, 13, 1088

Finder, 13, 1149

Gross negligence, 13, 1152

Gross negligence an element of mala fides, 13, 1152

Indemnity, 13, 1146

Insufficient proof of loss, 13, 1109

Notice of non-payment, 13, 1148

Parties to action, 13, 1083

Payment, 13, 191

Present for acceptance, 13, 1147

Purchaser after maturity, 13, 1151

Purchaser before maturity, 13, 1150

Review of decisions, 13, 1153-1156

Rights, duties, and liabilities of acceptor, 13, 1146

Rights, duties, and liabilities of loser, 13, 1146

Rights, duties, and liabilities of maker, 13, 1146

Rule in United States supreme court, 13, 1156

Secondary evidence, 13, 1145

Thief, 13, 1149

Trover, 13, 1146

Bond of Indemnity, 13, 1113

Examples, 13, 1114, 1115

Exceptions Where Indemnity Is Not Required, 13, 1117

Paper not negotiable, 13, 1117

Paper payable to order, 13, 1117

Paper proven to have been destroyed, 13, 1117

Paper specially indorsed, 13, 1117

Paper traced to custody of defendant, 13, 117

When defendant is protected by statute of limitation, 13, 1117

General rule, 13, 1113

Indemnity for lost halves of bank notes, 13, 1116

Necessity, 13, 1113, 1118

Where tender of indemnity must be made, 13, 1118

Who entitled to indemnity, 13, 1116

Choses in action, 7, 989

Declaration, Bill, Petition, etc., 13, 1084

Lost deed, 13, 1084

Lost will, 13, 1085

Negotiable instruments, 13, 1086

Definition, 13, 1060

Demand of payment, 13, 1147

Depositions, 5, 620

Detinue, 13, 1062

Evidence of Loss, see *infra*, AFFIDAVIT OF LOSS.

Burden of proving loss, 13, 1095

Examples of Insufficient Proof, 13, 1106

Lost account books, 13, 1107

Lost bills and notes, 13, 1109

Lost bonds, 13, 1108

Lost contracts, 13, 1107

Lost deeds, 13, 1108

Lost letters, 13, 1107

Lost papers generally, 13, 1106

Lost records, 13, 1108

Lost wills, 13, 1109

Memorandum, 13, 1107

What sufficient search, 13, 1109

Original Existence, 13, 1088

Bills and notes, 13, 1088

Bonds, 13, 1090

Deeds, 13, 1089

Delivery of deed, 13, 1089

In general, 13, 1088

Records, 13, 1090

Various papers, 13, 1090

Will, see *infra*, LOST WILLS.

What Is Sufficient Proof of Loss, 13, 1095

Character of paper, 13, 1096

Discretion of court, 13, 1095

Good faith, 13, 1096

Lost account books, 13, 1102

Lost articles of partnership, 13, 1103

Lost bills and notes, 13, 1100

Lost bills of lading, 13, 1097-1103

Lost contracts, 13, 1099

Lost deeds, 13, 1100

Lost lease, 13, 1103

Lost letters, 13, 1098

Lost postal cards, 13, 1099

Lost receipts, 13, 1103

Lost records, 13, 1102

Lost stock books, 13, 1102

Lost telegrams, 13, 1099

Lost warranty, 13, 1101

Lost wills, 13, 1102

Reasonable diligence, 13, 1096

Reasonable proof, 13, 1096

Search, 13, 1096

Various examples, 13, 1103

Forgery

Indictment, 8, 514

Halves of bank notes, 13, 1116

Judgment of sister state, 12, 1484

Judgments, 12, 1496

LOST PAPERS—Cont'd

Libel and slander, 13, 484

Lost account books, 13, 1107

Lost Bonds*See infra*, RAILROAD BONDS.

Secondary evidence, 13, 1131

Lost Deeds

Declaration, bill, petition, etc., 13, 1084

Evidence of original existence, 13, 1088

Presumption of delivery, 13, 1089

Secondary evidence, 13, 1129

Lost execution, 7, 123

Lost Letters

Action to recover, 13, 1063

Insufficient proof of loss, 13, 1107

Secondary evidence, 13, 1126

Lost Mortgages

Secondary evidence, 13, 1132

Lost Receipts

Secondary evidence, 13, 1127

Lost Records, 13, 1156

Copy, 13, 1157

Insufficient proof of loss, 13, 1108

Jurisdiction of equity, 13, 1158

Memory of witness, 13, 1157

Oral evidence, 13, 1157

Order of court to reestablish its own records, 13, 1159

Recitals in deeds, 13, 1157

Secondary evidence, 13, 1156

Tax record, 25, 197

Lost Wills

Action to Establish and Probate Lost and Spoiled Wills, 13, 1078

Chancery jurisdiction, 13, 1081-1083

Illustrative cases, 13, 1081-1083

Jurisdiction in various cases, 13, 1081-1083

Probate courts, 13, 1077

Admissibility of declarations as to lost will, 5, 368

Animo revocandi, 13, 1092

Burden of proof, 13, 1095, 1136

Conflict of Law, 13, 1143

Foreign wills of realty, 13, 1143

Jurisdiction, 13, 1145

Law of place of domicil, 13, 1144

Mode of administration, 13, 1145

Construction of statutes relating to proof of execution, 13, 1092, 1094

Costs, 13, 1143

Declaration, bill, petition, etc., 13, 1084

Declarations of testator, 13, 1137

Decree, 13, 1142

Degree of proof, 13, 1136

Destruction by administrator, 13, 1142

Evidence of Execution, 13, 1091

Declaration of testator, 13, 1091

Strict proof required, 13, 1091

Testimony of one witness, 13, 1092

Evidence of Loss

Animo revocandi, 13, 1092

Exact words of original, 13, 1138

Foreign will, 13, 1143

Implied trusts, 13, 1141

Issue, 13, 1142

Laches, 13, 1138

Limitation of action, 13, 1138

Party to action, 13, 1083

Presumption of revocation, 13, 1093

Revocation, 13, 1092, 1139

Secondary Evidence, 13, 1132

Admission against interest, 13, 1136

Authenticated copy, 13, 1134

Best evidence, 13, 1134

Declaration of testators, 13, 1134

Draft, 13, 1134

Examples, 13, 1132, 1132

Loss before or after death of testator, 13, 1133, 1134

Memorandum, 13, 1134

Proof of part of contents, 13, 1132

Substance, 13, 1133

Testimony of witnesses who have read the will, 13, 1134

Spoliation by insane testator, 13, 1139

Spoliation through accident, 13, 1139

Spoliation through fraud, 13, 1139

Statute of fraud, 13, 1138

Statute of limitations, 13, 1138

Temporary administration, 13, 1141

Trial, 13, 1142

Verdict, 13, 1142

What is sufficient proof, 13, 1095

Where destruction was procured by compulsion, 13, 1095

Where destruction was procured by fraud, 13, 1095

Witnesses, 13, 1137

Beneficiary, 13, 1137

Competency, 13, 1137

Number, 13, 1137

Statutory regulations, 13, 1137

Words of original, 13, 1138

Marriage settlements, 14, 548

Memorandum, 15, 276

Municipal warrants, 15, 1217

New Trial, 16, 547

Examples, 16, 547, 548

Failure to ask for a continuance, 16, 547

In general, 16, 548

Nonsuit, 16, 547

Production of paper supposed to be lost, 16, 548

Stenographer's notes, 16, 548

Notice

Advertising, 13, 1110

Necessity of notice, 13, 1109, 1110

Parties liable, 13, 1109

Public notice of loss, 13, 1110

To opposing party to produce paper withheld by him, 13, 1112

Parties to Action, 13, 1083

Lost negotiable instrument, 13, 1083

Lost will, 13, 1083

Pleas, 13, 1087

Presumption, 13, 1112

Proof, 11, 509

Proof of handwriting, 9, 266

Questions of law and fact, 19, 629

Railroad Bonds, 19, 728, 741
 Indemnity, 19, 741
 Indemnity furnished upon each payment of interest, 19, 741
 Whether payment will be enforced in chancery, 19, 741

Record, 12, 149

Recording Acts

In general, 20, 602
 Statute relating to, 20, 603
 Where both instrument and record is destroyed, 20, 603

Recovery of Specific Lost Papers, 13, 1062

Action at law, 13, 1062

By Bill in Equity, 13, 1063

Choses in action, 13, 1066
 Deeds or writings, 13, 1064
 Equitable jurisdiction in recovery of specific chattels, 13, 1063

Fiduciary Relationship, 13, 1067

Bank notes, 13, 1067
 Deeds, 13, 1067
 Examples, 13, 1063-1068
 Plans and maps, 13, 1067
 Reexecution, 13, 1068
 Stock of corporation, 13, 1067
 Notes under seal, 13, 1066
 Pretium affectionis, 13, 1063
 Surveyor's furniture, maps, instruments, etc., 13, 1065

Detinue, 13, 1062

Letters, 13, 1063

Notes and bills, 13, 1062

Replevin, 13, 1062

Title deeds, 13, 1062

Trover, 13, 1062

Recovery on Lost Paper, 13, 1069

Jurisdiction, 13, 1069

Action to establish and probate lost or spoliated wills, 13, 1077
 Concurrent jurisdiction at law, 13, 1074
 Interpretation of statute, 13, 1076

Jurisdiction in Equity, 13, 1069

Effect of statutes conferring jurisdiction upon court of law, 13, 1073-1076

General discussion on the subject, 13, 1069-1074

Grounds for original jurisdiction, 13, 1069

Judicial legislation, 13, 1075

Original jurisdiction, 13, 1069

Profert, 13, 1070

Relief in property, 1, 85

Replevin, 13, 1063

Search, 13, 1096, 1097

Essential, 13, 1097

Insufficient, 13, 1109

Necessity, 13, 1096

Secondary Evidence, 13, 1119; 21, 989

See generally, SECONDARY EVIDENCE.

Definition, 13, 1120

Degrees of Secondary Evidence, 13, 1121

American rule, 13, 1121

Conflict of authority, 13, 1121

English rule, 13, 1124

Examples, 13, 1119, 1120

Examples of lost papers, 13, 1127, 1128

Lost account books, 13, 1127

Lost bills and notes, see *infra*, **BILLS AND NOTES**.

Lost bonds, 13, 1131

Lost certificate of incorporation, 13, 1127

Lost contracts, 13, 1128

Lost deeds, 13, 1129-1131

Lost letters, 13, 1126

Lost minute book, 13, 1127

Lost mortgages, 13, 1132

Lost papers under seal, 13, 1129

Lost receipts, 13, 1127

Lost telegrams, 13, 1126

Lost will, see *infra*, **LOST WILLS**.

Nature of secondary evidence, 13, 1120

Papers not under seal, 13, 1126

Photographs, 13, 1121

To what rule applies, 13, 1119

What Evidence Admissible, 13, 1060

Actually lost, 13, 1060

Beyond jurisdiction of court, 13, 1061

Hands of adversary, 13, 1060

Hands of party who has right to retain it, 13, 1061

Out of power of party to produce it, 13, 1062

Public document, 13, 1061

When lost, 13, 1060

Specific performance, 22, 947

Statute of limitation, 13, 1117

Statutes Relating to, 13, 1159

British statutes, 13, 1160

In Alabama, 13, 1160

In Arizona, 13, 1160

In Arkansas, 13, 1160

In California, 13, 1160

In Colorado, 13, 1160

In Dakota, 13, 1160

In Delaware, 13, 1160

In Florida, 13, 1160

In Georgia, 13, 1160

In Idaho, 13, 1160

In Illinois, 13, 1160

In Indiana, 13, 1160

In Iowa, 13, 1160

In Kansas, 13, 1160

In Kentucky, 13, 1160

In Louisiana, 13, 1160

In Maine, 13, 1160

In Massachusetts, 13, 1160

In Michigan, 13, 1160

In Minnesota, 13, 1160

In Mississippi, 13, 1161

In Missouri, 13, 1161

In Nebraska, 13, 1161

In New Hampshire, 13, 1161

In New Jersey, 13, 1161

In New York, 13, 1161

In North Carolina, 13, 1161

In Ohio, 13, 1161

In Oregon, 13, 1161

In Pennsylvania, 13, 1161

LOST PAPERS—*Cont'd***Statutes Relating to**—*Cont'd*

- In Rhode Island, 13, 1161
- In South Carolina, 13, 1161
- In Tennessee, 13, 1161
- In Texas, 13, 1161
- In Utah, 13, 1161
- In Vermont, 13, 1161
- In Virginia, 13, 1161
- In West Virginia, 13, 1161
- In Wisconsin, 13, 1161
- In Wyoming, 13, 1161

Stock

- Certificates, 23, 599

Streets and Sidewalks

- Order to establish streets, 24, 27

Trover, 13, 1062

- Bills and notes, 13, 1146

Wills, see *infra*, LOST WILLS.**Witnesses**, 29, 548**LOST PROPERTY**, see FINDER OF PROPERTY.**Abandonment of**, 1, 2**Larceny**, 12, 786

- Inference of intent, 12, 787
- Intent, 12, 786
- Intent at the time of taking, 12, 786
- Knowledge of owner, 12, 787
- Marked property, 12, 787
- Means of knowing the owner, 12, 787
- No felonious intent, 12, 788
- Place of finding, 12, 788
- Stray cattle, 12, 787
- Time of finding, 12, 788
- What not, 12, 788
- Whether subject of, 12, 786

Mandate, 14, 247**Rewards**, 21, 403**Trespass**, 26, 612**Trover**, 26, 759**LOT**, 13, 1161

- Homestead lot, 13, 1162
- Lot of land, 13, 1162
- Lot of logs, 13, 1161
- Lot under water, 13, 1163
- Plat of lots, 13, 1162
- Public lot, 13, 1163
- Surface lot, 13, 1162
- Town or city lot, 13, 1163

LOTTERIES, 13, 1164*See generally*, GAMBLING CONTRACTS; GAMING; ILLEGAL CONTRACTS.**Action against lottery keeper for prizes**, 8, 1002**Advertisements**, 13, 1175, 1176**Agent refusing to account for lottery tickets**, 8, 1002**Art unions**, 13, 1181**Conflict of laws**, 3, 509, 556; 8, 1002**Constitutional Law**

- Franchise, 13, 1167, 1168

Contracts connected with lotteries, 13, 1187**Criminal Law**

- Art unions, 13, 1181
- Construction of words of statutes, 13, 1187, 1188

Drawings, 13, 1181**Evasions**, 13, 1178**Evidence**, 13, 1184, 1186**Examples of devices**, 13, 1178, 1180**Gift enterprises**, 13, 1181**Indictment**, 13, 1183**Information**, 13, 1184**Police power**, 13, 1169, 1171**Postal laws**, 13, 1177; 18, 859**Proceedings**, 13, 1182, 1187**Prohibitions**, 13, 1174**Punishment for violation of statutes**, 13, 1182**Purchaser of ticket**, 13, 1167**Schemes falling within the prohibitions**, 13, 1178**Statutes**, 13, 1175**Advertising**, 13, 1175**Examples of offenses against**, 13, 1174-1177**Lottery of foreign country**, 13, 1175**Promoting and aiding**, 13, 1174**Sale of tickets**, 13, 1174**Selling fictitious tickets**, 13, 1177**Setting up or carrying on lotteries**, 13, 1174**Deeds****Of land executed for prizes in lottery**, 8, 1002**Definition**, 13, 1164**Evasions of the law**, 13, 1178**Evidence**, 13, 1184, 1186**Foreign corporations**, 8, 335**Franchise**, 13, 1164**Constitutional law**, 13, 1167**Construction of statutes confirmed**, 13, 1165**Obligation of contracts**, 13, 1167**Purposes for which authorized**, 13, 1164**Quasi public character**, 13, 1165**Subject to police power**, 13, 1169**Whether contract**, 13, 1167, 1168**Gift enterprises**, 13, 1181**History**, 13, 1164**Ignorance of prohibition**, 8, 1002**Information**, 13, 1184**Lottery Tickets**, 8, 1002**In the mail**, 13, 1177; 18, 859**Negotiable**, 16, 484**Newspapers**, 13, 1175, 1176**Police power**, 13, 1169; 18, 750**Postal laws**, 13, 1177; 18, 859**Privileges**, 13, 1164**Prize**, 13, 1166**Prohibitions**, see *infra*, STATUTES.**Constitutional inhibitions**, 13, 1173**In Delaware**, 13, 1172**In New York**, 13, 1172**United States in general**, 13, 1172**Rights and Liabilities of Owners or Managers**, 13, 1165**Compliance with statute conferring privilege**, 13, 1165**Enjoyment of privilege**, 13, 1165**Officers of beneficiary**, 13, 1165

- Privilege given for benefit of corporation, 13, 1165
 Taxing power of state, 13, 116
- Rights of Ticket Owners or Shareholders,** 13, 1166
 Control of drawing, 13, 1166
 Division of land, 13, 1167
 Enforcement of contract, 13, 1166
 Exclusive right, 13, 1165, 1166
 In general, 13, 1165, 1166
 Liability of owners and managers for payment, 13, 1166
 Necessity of drawing, 13, 1166
 Owner of prize, 13, 1166
 Prize, 13, 1166
 Prohibited lottery, 13, 1167
 Recovery of money paid for ticket, 13, 1167
 Sale of tickets, 13, 1166
 Ticket as valid consideration, 13, 1166
 Tickets sold in other states, 13, 1167
 Transfer of ticket, 13, 1166
- Search warrants, 21, 959
- Tickets, see *infra*, RIGHTS OF TICKET OWNERS OR SHAREHOLDERS.**
 Recovering double value, 13, 1177
 Sale of, 13, 1174
 Tontine insurance, 26, 58
 Violation of law, 13, 1172
- LOW, 13, 1189**
 Low Water Mark, 13, 1189; 29, 26
 Ordinary low water mark, 17, 273
- LOWER, 13, 1190**
 Lower floor, 13, 1191
 Lower rates, 13, 1190
- LOWEST, 13, 1191**
 Lowest responsible bidder, 21, 291
- LOWEST BIDDER, 10, 292**
See WORKING CONTRACTS.
- Municipal Corporations**
Advertising and letting contract to lowest bidder, see MUNICIPAL CORPORATIONS.
- LOYAL, 13, 1191**
 "Loyal voters," 6, 445
- L. S., 13, 1191**
- LUCID INTERVALS, see INSANITY.**
 Lucrative offices, 13, 1192
- LUGGAGE, 19, 913**
See BAGGAGE.
- LUMBER, 27, 815**
See LOGS AND LUMBER.
- LUMINOSITY, 13, 1193**
- LUNAR**
 Lunar month, 15, 712
- LUNATIC, 5, 496f**
See INSANITY.
- Foreclosure of Mortgages**
 When necessary parties, 8, 217
- LYING, 13, 626, 1193**
 Lying at anchor, 13, 626, 1193; 14, 332
 Lying days, 13, 626
 Lying in wait, 13, 627, 1193
 "Concealed" not synonymous with, 3, 407
 Lying on, 13, 627
 Lying up, 13, 627, 1194
- M., 13, 1194**
- MACADAMIZE, 13, 1194**
- MACHINE, 13, 1194**
- MACHINERY, 13, 1194**
See FIXTURES; MASTER AND SERVANT.
 And effects, 6, 191
 Fixed, 13, 1196
 In insurance policies, 7, 1007
 New machinery, 16, 489
- MADE, 13, 1196**
 Made payable, 13, 1197
 Made up, 13, 1198
 Made void, 13, 1197
 May be made, 14, 984
- MAGISTRATE, 13, 1198**
See JUSTICE OF THE PEACE.
- MAIL, 13, 1200, 1201**
See EMBEZZLEMENT.
See generally, ADDRESS OF LETTERS; LETTERS.
See POSTAL LAWS.
Notice by publication, see NOTICE.
- Carriers of, 2, 785; 13, 1201**
 Liability of carriers, 13, 1201
 Personal injury, 13, 1201
- Contributory negligence, 13, 1204**
Decoy letters, see DECOY LETTERS.
 Definition, 13, 1200
- Embezzlement, 6, 493**
 Generally, 6, 493
Indictment, 6, 498n
 Charging several distinct acts, 6, 498n
 Dead letter, 6, 498o
 Dead-letter clerk, 6, 498n
 Description of bank notes or other articles, 6, 498n
 Insufficient allegation, 6, 498n
 Official character of accused, 6, 498o
 Ownership of letter embezzled, 6, 498o
 Particular description of letter, 6, 498n
 Sufficient allegation, 6, 498n
- Individuals not connected with the service, 6, 495**
 Mail carriers and riders, 6, 495
 Money order funds, 6, 494
 Postal clerks, 6, 495
 Taking letter from post-office, 6, 494
 United States statute, 6, 494
- Knowingly deposited, 12, 525**
 Liability of carriers, 13, 1201
 Liability of contractor for default of agent, 1, 395
 Loss of letters through negligence, 13, 258
- Lotteries in, 13, 1177; 18, 859**
 Mail contractors not common carriers, 2, 785
 Negligence, 13, 1201
 Newspapers, 16, 491
- Obscene Matter in, 17, 7**
 Abusive language, 17, 8
 Advertisements, 17, 9
 Constitutionality of the act, 17, 8

MAIL—*Cont'd***Obscene Matter in**—*Cont'd*

- Examples, 17, 8, 9
- Extracts from surgical works, 17, 8
- Imputing illicit intercourse to a person, 17, 9
- Meaning of the statutory words, 17, 8
- Motive, 17, 9
- "Obscene, lewd, lascivious, and indecent," 17, 8
- Private communications, 17, 8
- Profanity, 17, 8
- Provisions of United States statute, 17, 7
- Punishment, 17, 8
- Test of obscenity, 17, 8
- Obstructing the mail, 18, 855
- Personal injury, 13, 1201
- Postmasters not common carriers, 2, 785
- Presumptions, 19, 80
- Railway mail agents, 13, 1204
- Service of Process**, 22, 159
 - Address, 22, 160
 - Examples, 22, 160
 - In general, 22, 159
 - Postage prepaid, 22, 160
 - Requisites, 22, 160
 - Statute strictly followed, 22, 160
 - Statutory process, 22, 159
 - When service is complete, 22, 160
- Stealing from**
 - Whether an infamous crime, 4, 646
- Sunday, 24, 536
- Turnpikes, 27, 339

MAIM, see MAYHEM.**MAIMING**

- Merger, 15, 366

MAIN, 14, 1, 985

- Main channel, 14, 1
- Main river, 14, 1
- Main sea, 14, 1

MAINER, 14, 1**MAINPRISE**, 14, 1**MAINSWORN**, 14, 2**MAINTAIN**, 14, 2

- Maintain a building, 14, 3
- Maintain an action, 14, 2
- Maintaining and sustaining, 14, 3

MAINTENANCE, 14, 3

- See ALIMONY; CHAMPERTY AND MAINTENANCE; HUSBAND AND WIFE; SUPPORT.

Embracery, 6, 507, 508

- Attempt, 6, 508
- Definition, 6, 507
- Offenses at common law, 6, 507
- Solicitations by juror, 6, 507
- Who may be guilty of the offense, 6, 508

- Lis pendens, 13, 880, 881

MAJORITY, 14, 3

- See INFANCY.

- In bankruptcy act, 14, 3
- In value of the creditors, 14, 3
- Of electors, 15, 1280
- "Of qualified voters," 6, 445
- Of shareholders, 14, 3

Of voters, 6, 445; 15, 1279

"Of voters voting," 6, 445

What constitutes a, 13, 994

What is a majority of the electors necessary to ratify constitutional amendment, 3, 672

MAKE, 14, 4

Make over, 14, 4

MAKER, 14, 4**MAKING**, 14, 4

Making a price, 23, 702

Making distress, 14, 4

Making up record, 13, 1107

Whether making includes delivery, 13, 1197

MALE, 14, 5

First heir male, 8, 21

Male children, 14, 5

Male heirs, 14, 5

MALFEASANCE, 14, 5; 15, 621**MALICE**, 4, 681; 14, 5

See MALICIOUS PROSECUTION; MURDER. Libel and slander, see LIBEL AND SLANDER.

Aforethought, 1, 321

An element of statutory crime, 4, 644

Implied malice, 14, 6

Instruction, examples of, 11, 269, 271, 272, 274

Intoxication as a rebuttal of malice, 4, 711

"Malice aforethought," 10, 598

Malice in fact, 7, 659; 14, 6

Malice in law, 14, 5

Negligence

Distinction between, 16, 394

Particular malice, 17, 469

Presumptions

From burning dwelling house, 1, 773

In civil cases, 19, 66

In Criminal Cases, 19, 65

Homicide, 19, 66

In general, 19, 65

Whether a presumption of law, 19, 66

When presumed, 4, 682

MALICIOUS, 14, 6, 995; 29, 116**MALICIOUSLY**, 4, 747; 14, 7; 27, 696

Maliciously, feloniously, and malice aforethought, 9, 630

MALICIOUS MISCHIEF, 14, 8

At common law, 14, 8

Damages, 14, 12

Definition, 14, 8

Distinguished from larceny, 12, 789

Essentials of offense, 14, 11

Indictment, 4, 750; 14, 12

Allegation of ownership, 14, 12

"Break, destroy, or injure," 14, 13

Examples, 14, 12-15

Injury to cattle, 14, 13

Injury to two animals one offense, 14, 14

Malice, 14, 13

"Maliciously," 14, 13

Nature and extent of injuries, 14, 12

Necessary allegation, 14, 12

"Willfully," 14, 13

- Injuries, 14, 12
- Injuries to building, 14, 10
- Injuries to Cattle and Other Animals**, 14, 9
 - Docking horses, 14, 9
 - Examples, 14, 9, 10
 - Injuries to sheep, 14, 9
 - Killing, maiming, and disfiguring, 14, 9
 - Maliciously killing dog, 14, 9
- Injuries to grains or crops, 14, 10
- Injuries to trees and timber, 14, 10
- Injuring and interfering with machinery, 14, 10
- Intent**, 14, 15
 - See infra*, MALICE.
 - Charge to jury, 14, 15
 - Evidence, 14, 15
 - Legal advice, 14, 15
 - Right of possession by defendant, 14, 15
 - Whether material, 14, 15
- Jurisdiction, 14, 16
- Larceny, 12, 789
- Malice**, 14, 11
 - Examples, 14, 12
 - How defined, 14, 11
 - Malicious injury by owner, 14, 12
 - Toward property injured, 14, 12
- Miscellaneous cases, 14, 10
- Statutes, 14, 9
- Throwing stones at railroad train, 14, 10
- Whether indictable at common law, 14, 8
- MALICIOUS PROSECUTION**, 14, 16
 - See generally*, FALSE IMPRISONMENT; PROBABLE CAUSE.
 - Abatement, 14, 51
 - Accusation, 14, 19
 - Advice of Counsel**, 14, 53
 - Advice of justice of the peace, 14, 57
 - Examples, 14, 53-58
 - Good faith of plaintiff, 14, 56
 - Knowledge of plaintiff, 14, 56, 57
 - Question of law and fact, 14, 58
 - Showing probable cause, 14, 55
 - What sufficient, 14, 57
 - Whether a defense, 14, 53
 - Whether a fair statement was made to counsel, 14, 58
 - Advice of justice of the peace, 5, 48; 14, 57
 - Agents, 14, 39
 - Answer**, 14, 45
 - Guilt of plaintiff, 14, 45
 - Probable cause, 14, 45
 - What may be shown under general denial, 14, 45
 - Attachment, 14, 36
 - Attorney's, 14, 39
 - Authenticated copy of record, 14, 58
 - Ball**
 - In actions for, 2, 36
 - Bankruptcy, 14, 36
 - Burden of proof, 2, 652; 14, 46
 - Character**, 14, 59
 - Bad character of plaintiff as mitigation, 5, 48; 14, 75
 - Evidence, 14, 59
 - Good character of accused, 14, 60
 - Hostility toward defendant, 14, 60
 - Of Plaintiff**
 - In evidence, 3, 113
 - Question of damages, 14, 60
 - Civil Actions**, 14, 32
 - Action not malicious, 14, 35
 - Action not without probable cause, 14, 35
 - Arrest of person, 14, 32
 - At common law, 14, 32
 - Bankruptcy, 14, 35
 - Ejectment, 14, 34
 - Excessive bail, 14, 36
 - Forcible entry and detainer, 14, 36
 - Garnishee, 14, 36
 - General doctrine, 14, 32
 - Injunction, 14, 36
 - In United States, 14, 32
 - Proceedings for contempt, 14, 36
 - Seizure of property, 14, 32
 - Statute of Marlbridge, 14, 32
 - Complaint**, 14, 42
 - Averments, 14, 42
 - Conclusions, 14, 44
 - Damages, 14, 44
 - Indictment, 14, 44
 - Joint conspiracy, 14, 44
 - Joint liability, 14, 44
 - Special damages, 14, 44
 - Termination, 14, 43
 - Want of probable cause, 14, 42
 - Compromise, 14, 20
 - Conviction, 14, 44
 - Corporations**, 14, 39
 - Actions against, for malicious prosecution, 4, 279
 - Early view, 14, 39
 - Later views, 14, 40
 - Liability for, 4, 257; 14, 39
 - Ultra vires, 14, 39
 - Criminal Action**, 14, 19, 21
 - Bastardy proceedings, 14, 22
 - Court's want of jurisdiction, 14, 21
 - Examples, 14, 21
 - General rule, 14, 21
 - Indictment rejected by grand jury, 14, 21
 - Insufficient affidavit, 14, 21
 - Lunacy proceedings, 14, 22
 - Criminal conspiracy, 4, 600, 607
 - Damages**, 14, 71
 - Amount, 14, 75
 - Approval of unlawful arrest, 14, 74
 - Attachment suit, 14, 74
 - Attorney's fees, 14, 73
 - Compensation as to exemplary damages, 14, 73, 74
 - Consequential damages, 14, 72
 - Different counts, 14, 75
 - Exemplary damages, 14, 73
 - Exemplary damages where no actual damages have been sustained, 14, 74
 - Financial condition of defendant, 14, 74
 - Hurt to his person, 14, 71
 - In general, 14, 71
 - Injury to feelings, 14, 71
 - Injury to reputation, 14, 71
 - Loss of liberty, 14, 71

MALICIOUS PROSECUTION—Cont'd**Damages—Cont'd**

- Measure, 5, 48
- Mental strain, 14, 71
- Mitigation**, 14, 75
 - Advice of magistrate, 5, 48
 - Evidence of general bad reputation of plaintiff, 5, 48; 14, 75
 - Malice, 14, 75
 - Plaintiff's bad character, 14, 75
 - Reason to believe accused was guilty, 5, 48
 - Waiver of preliminary examination, 14, 75
- Pecuniary damages, 14, 72
- Rule in libel and slander, 14, 71
- Defective affidavit, 14, 21
- Defective indictment, 14, 19
- Defective information, 14, 19
- Defenses**, 14, 51
 - Probable cause*, see *infra*, WANT OF PROBABLE CAUSE.
 - Generally, 14, 51
 - Guilt of plaintiff, 14, 52
 - Proof that defendant did not institute action, 14, 51
 - Sufficient affidavit, 14, 58
- Definition, 14, 16
- Directing verdict, 14, 51
- Distinguished from false imprisonment, 7, 663
- District attorney, 14, 41
- Essentials, 14, 17
- Evidence**, 14, 58
 - Authenticated copy of record, 14, 58
 - Character, 14, 59
 - Connection of defendant with prosecution, 14, 59
- Malice**, 14, 61
 - Duress, 14, 62
 - Examples, 14, 61-63
 - Good faith of plaintiff, 14, 62
 - How proven, 14, 61
 - Inference, 14, 61
 - Insult, 14, 62
 - Necessity of proof, 14, 61
 - Oppression, 14, 62
 - Questioning defendant as to motive, 14, 62
 - Want of probable cause, 14, 61
 - When inferred, 14, 61
- Of end of prosecution, 14, 59
- Preponderance of evidence, 14, 63
- Record of former conviction, 14, 58
- Strict rules of evidence, 14, 58
- Want of Probable Cause**, 14, 63
 - Accused generally suspected, 14, 68
 - Acquittal, 14, 65
 - Attachment, 14, 67
 - Bail required of plaintiff, 14, 67
 - Burden of proof, 14, 63
 - Character of evidence, 14, 64
 - Civil actions, 14, 68
 - Competency of acquittal, 14, 65, 66
 - Compromise, 14, 66
 - Conviction obtained by false testimony of defendant, 14, 66

- Conviction of plaintiff, 14, 66
- Disagreement of jury, 14, 67
- Discharge of defendant upon preliminary examination, 14, 64
- Dismissal of the charge, 14, 66
- Failure to proceed with prosecution, 14, 66
- Felony and misdemeanor, 14, 68
- Hesitation of jury as to acquittal, 14, 67
- Illustrations, 14, 69-71
- Malice as evidence of, 14, 64
- Nolle prosequi upon new trial, 14, 66
- Non-appearance of prosecutor, 14, 66
- Preliminary examination partaking of the nature of trial, 14, 65
- Reversal on appeal, 14, 68
- Sufficiency of evidence, 14, 64
- Suspicious behavior of plaintiff, 14, 64
- Technicality, 14, 66
- Waiver of preliminary examination, 14, 67
- Existence of probable cause, 14, 24
- Facts of affidavit true, 19, 516
- Forcible entry and detainer, 14, 36
- General principles, 14, 19
- Guilt of accused, 14, 24
- Guilt of Plaintiff**, 14, 26, 27
 - See *infra*, WANT OF PROBABLE CAUSE.
- Answer, 14, 45
- Husband and wife, 14, 37
- Imprisonment for debt, 10, 230
- Indictment**, see *infra*, DEFECTIVE INDICTMENT.
 - For conspiracy, 4, 627
 - Rejected by grand jury, 14, 21
- Infants, 14, 41
- Injunctions, 19, 518
- Instruction, examples of, 11, 267-273, 275
- Interference with business, 4, 607
- Joinder**
 - False imprisonment, 14, 16
 - Libel and slander, 13, 458
 - Of parties, 17, 601
 - Slander, 14, 16
 - Under codes, 11, 1008
 - With false imprisonment, 7, 687
- Jurisdiction**, 14, 45
 - Want of, as a defense, 14, 58
- Legal rights, 14, 20
- Malice**, 14, 17, 22
 - See *infra*, EVIDENCE.
 - Advice of counsel, 14, 55
 - And legal rights, 14, 20
 - Carelessness, 14, 23
 - Definition, 14, 22
 - Examples, 14, 22-24
 - Guilt of accused, 14, 24
 - Implied malice, 14, 46
 - In fact, 14, 18
 - Inferred from want of probable cause, 14, 46, 47
 - Probable cause, 14, 24
 - Question for jury, 14, 46
 - Wanton, 14, 23

- What inferred, 14, 23
 Whether implied, 14, 46-48
 Whether want of probable cause inferred from, 14, 48
 Master and servant, 14, 826
Mitigation of damages, see *infra*, DAMAGES.
Motive, 14, 17
 See infra, MALICE.
 Nature, 14, 16
 New trial, 16, 592
 Ordinary and regular course of justice, 14, 19, 22
 Partners, 14, 39
Pleading, see *infra*, ANSWER; COMPLAINT.
 Practice, 14, 45-51
Probable Cause, see *infra*, WANT OF PROBABLE CAUSE.
 Advice of counsel, 14, 55
 As defense, 14, 52
 Burden of proof, 2, 652
Public Officers, 14, 41
 District attorney, 14, 41
 General rule, 14, 41
 Presumption in favor of, 14, 41
 Sheriff, 14, 41
 Punitive damages, 14, 72
Question of Law and Fact
 Advice of counsel, 14, 58
 Malice, 14, 46
 Probable cause, 12, 51
 Record of former conviction, 14, 58
 Searches and seizures, 21, 962
 Search warrant, 14, 22
 Set-off, 14, 75
 Sheriff, 14, 41
 Statute of limitations, 14, 45
Termination of Former Action, 14, 28
 Accused having opportunity to be heard, 14, 29
 Appeal, 14, 28
 Bar to subsequent proceedings, 14, 29
 Civil suit, 14, 32
 Complaint, 14, 43
 Conviction, 14, 29
 Conviction obtained by fraud, 14, 29
 Discharge of accused, 14, 30
 Discharge on habeas corpus, 14, 32
 Evidence, 14, 59
 Ex parte proceedings, 14, 29
 Grand jury ignoring bill, 14, 29
 Injunction, 14, 29
 Necessity, 14, 28
 Nolle prosequi entered, 14, 30
 Revival, 14, 31
 Surety to keep the peace, 14, 29
 That terminates prosecution, 14, 29, 31
 Verdict of not guilty, 14, 29
 What defense sufficient, 14, 29
Termination of suit, 14, 18
 Trespass on the case, 26, 705
 Verdict, 14, 48
Want of Probable Cause, 14, 18, 24
 See infra, EVIDENCE.
 Advice of counsel, see *infra*, ADVICE OF COUNSEL.
 Answer, 14, 45
 Belief of defendant, 14, 26
 Character as evidence of, 14, 60
 Complaint, 14, 42
 Definition of probable cause, 14, 24
 Degree of caution to be exercised, 14, 26
 Directing verdict, 14, 51
 Evidence of malice, 14, 62
 Examples of probable cause, 14, 24-28
 Guilt of accused, 14, 26, 27
 Just cause, 14, 27
 Malice inferred from, 14, 46, 47
 Mere belief alone, 14, 26
 Probable cause unknown to defendant, 14, 27
 Question of law or fact, 14, 51
 Reasonable cause, 14, 27
 Where no indictment has been preferred, 14, 21
 Whether inferred from malice, 14, 48
Who May Be Sued, 14, 38
 See infra, INFANTS; PUBLIC OFFICERS.
 Agents, 14, 39
 Attorney's, 14, 39
Corporations, 14, 39
 Early view, 14, 39
 Later views, 14, 40
 Liability of corporations, 14, 39
 Ultra vires, 14, 39
 Partners, 14, 39
Who May Sue, 14, 37
 Assignment, 14, 37
 At common law, 14, 37
 Codes, 14, 37
 Husband and wife, 14, 37
 In general, 14, 37
 Jointly or severally, 14, 37
 Married women's acts, 14, 37
 Willfully, 14, 23
MALPRACTICE, 14, 76
 See ABORTION.
 Accidental death where physician uses his best skill and judgment, 4, 687
 Action barred by recovery for services, 14, 83
Burden of Proof
 Care and skill, 14, 78
 Contributory negligence, 14, 82
 Injuries resulting from want of care, 14, 78
Care, Skill, and Diligence
 Adoption of the latest methods and appliances, 14, 79
 Different schools, 14, 79
 Duration of attendance, 14, 79
Duty to Exercise Reasonable Care, Skill, and Diligence, 9, 320; 14, 76
 Burden of proof, 14, 78
 Examples, 14, 77
 General rule, 14, 76
 Injury resulting from want of care, 14, 78
 Negligence in examination of alleged lunatic, 14, 77
 Effect of locality upon standard of care and skill, 14, 79

MALPRACTICE—Cont'd**Care, Skill, and Diligence—Cont'd**

Errors of judgment, 14, 80

Evidence, 14, 78

Failure to give instructions, 14, 78

Methods of practice, 14, 79

"Reasonable and ordinary" equivalent words, 14, 78

What constitutes reasonable and ordinary care, 14, 78

Consultation with Others, 14, 81

Duty of physician, 14, 81

Effect of refusal to accept assistance of another, 14, 81

Contributory Negligence of Patient or Attendant, 14, 81

Burden of proof, 14, 82

Patient relying on own judgment, 14, 82

Physical weakness of patient, 14, 82

Whether bar to recovery, 14, 81

Criminal Liability, 14, 85

Gross ignorance, 14, 85

Homicide by ignorance or inattention of physician, 4, 679

In general, 14, 85, 86

Manslaughter, 9, 590; 14, 85

Misdemeanor, 14, 86

Damages, 14, 84

Amount of, 14, 85

Compromise verdict, 14, 85

Excessive, 14, 85

Expense, 14, 84

For what damages may be recovered, 14, 84

Loss of time, 14, 84

Pain and suffering, 14, 84

Temporary or permanent injury, 14, 84

Who may recover, 14, 84

Definition, 14, 76

Ignorant malpractice, 14, 76

Negligent malpractice, 14, 76

Willful malpractice, 14, 76

Degree of skill required, 9, 320; 14, 76**Duration of attendance, 14, 79****Errors of judgment, 14, 80****Evidence, 14, 83***Expert evidence*, see **EXPRESSION AND OPINION EVIDENCE.***Medical works as evidence*, see **BOOKS AS EVIDENCE.**

Exhibition of injured limb to jury, 14, 84

Failure to effect cure, 14, 83

General skill, 14, 83

Hypothetical questions, 14, 84

General rule as to liability, 9, 319**Gratuitous services, 14, 81****Instruction, examples of, 11, 268, 274****Manslaughter, 9, 590; 14, 85****Misjoinder, 14, 83****Necessity of defendant holding himself out as a physician, 9, 320****Negligence of surgeon following injury by defendant, 16, 441**

Obedience required of patient, 9, 320

Partnership liability, 14, 82

Pleading, 14, 83

Quacks, 14, 79

Res Judicata

Recovery for services, 21, 229

Specialists, 9, 320

Surgical operation on person incapable of assent, 3, 666

Survival of actions, 14, 85

Whether there is implied warranty to cure, 14, 80

Who may bring action, 14, 84

MALT, 14, 330**MALTREATMENT, 14, 86****MAN, 14, 86**

Including "woman," 14, 86

Man and wife, 14, 86

MANAGE, 14, 87

Manage and superintend, 14, 87

Manage an estate, 14, 87

MANAGEMENT

Care and management, 2, 732

MANAGER, 14, 87

In sense of receiver, 20, 11

MANAGING AGENT, 14, 88See **FOREIGN CORPORATIONS.****MANDAMUS, 15, 88**

Abatement, 14, 223

Acknowledgment, correcting mistake in, 1, 149

Affidavit, 14, 227

Requisites of, 14, 228

Against county commissioners, 4, 400

Alternative Writ, 14, 211, 212, 221, 227

Affidavit, 14, 227

Amendment, 14, 224

Definition, 14, 212

Discretion, 14, 213

Distinguished from peremptory writ, 14, 211

Ex parte, 14, 213

Necessary averments, 14, 212

Of necessity, 14, 215, 216

Quashing, 14, 213

Refusal to allow, 14, 213

Return

Admissions, 14, 230

Allegations, 14, 230

Denial of facts, 14, 230

Effect of insufficiency, 14, 231

Failure to deny, 14, 230

Function of return, 14, 230

How sufficiency questioned, 14, 231, 232

Motion to quash, 14, 232

Sufficiency, 14, 231

Rule to show cause, 14, 227

Specific act to be performed, 14, 213

What must be set forth, 14, 212

When issued, 14, 213

Amendment, 14, 224

Examples, 14, 224

Fatal defect in alternative mandamus, 14, 224

Return, 14, 238

Whether writ open to, 14, 224

Appeal, 14, 226*See infra*, INFERIOR COURTS.

Settlement of case, 22, 483

Attachment

Reinstating, 14, 117

Attorney, 1, 948; 14, 130

Admissions, 14, 130

Improperly debarred, 1, 948; 14, 131

To compel recognition of district attorney, 14, 130

To restore debarred attorney, 1, 948; 14, 131

Auditing and Payment of Claims

Affixing seals to warrant, 14, 151

Auditing claim, 14, 178

Auditing officers, 14, 147

Auditor of state, 23, 112

Auditor refusing to act upon claim, 14, 148

Auditor's compensation, 14, 149

Awarding public contract, 14, 150

Board claiming to have no jurisdiction, 14, 179

Claim payable out of specific appropriation, 14, 150

Conveying title, 14, 151

County Commissioners

Allowance of fee, 14, 206

Creditor obtaining preference, 14, 177

Determining right to office, 14, 181

Discretion of auditing boards, 14, 183

Dispute as to amount due, 14, 178

Disputing accounts, 14, 178

Distribution of funds, 14, 151

Doubt as to right of application, 14, 177

Exceptions to general rule, 14, 183

Exercise of jurisdiction, 14, 179

Expenses not warranted by authority, 14, 179

Finality of action of board, 14, 184

Fraud or mistake, 14, 184

Generally, 14, 176

Issuing warrant for salary, 14, 149

Judgment, 14, 182

Laches, 14, 186

Levying tax, 14, 148

Materials furnished state under contract, 14, 150

Misappropriation, 14, 184

Municipality, 14, 213

Order legally drawn upon funds, 14, 177

Payment of judgment, 14, 182

Payment of Salary, 14, 180

De facto officers, 14, 181

De jure officers, 14, 181

Examples, 14, 180, 181

School laws, 14, 181

Where action at law lies, 14, 181

Where officer cannot sue, 14, 180

Whether the proper remedy, 14, 180

Payment of state taxes, 14, 151

Payment of warrant, 14, 180

Payment to wrong person, 14, 184

Relator's action at law, 14, 176

Statute of limitations, 14, 186.

To determine validity of claim, 14, 148

To pay sheriff's fee, 14, 149

To Sign Warrant, 14, 179

Treasurer, 14, 179

Valid contract or municipal corporation, 14, 179

Where act as law would lie, 14, 179

To test jurisdiction, 14, 179

Unreasonable delay, 14, 178

Want of Funds, 14, 184

Auditing account, 14, 185

Invalid assessment, 14, 185

No funds in treasury, 14, 184

Payment to wrong person, 14, 184

Warrants, 14, 179, 180, 185

Where relator has adequate remedy, 14, 176

Where salary has been paid to third person, 14, 149

Where state does not recognize liability, 14, 150

Where there is no appropriation, 14, 150

Bill of Exceptions, 14, 122

After term of office has expired, 14, 126

Answer

Duty, 14, 126

Of judge, 14, 126

Positive allegations of fact, 14, 127

Setting forth cause of refusal, 14, 126

Case tried before judge's predecessor, 14, 125

Chancery courts, 14, 127

Charge to jury, 14, 127

Compelling judge's signature to, 2, 221

Conclusiveness of judge's instructions as to what occurred at trial, 14, 123, 124

Correction of bill, 14, 123

Delay, 14, 125

Demand and refusal, 14, 124

Determination as to incidents of trial, 14, 123

Discretion of judge, 14, 123

Judge who tried case, 14, 125

Justice courts, 14, 127

Knowledge and recollection of judge, 14, 124

Laches, 14, 124

Referee, 14, 127

Refusal by judge, 14, 126

To compel judge to settle, 14, 122

To compel judge to sign, 14, 122, 128

When judge has already signed one bill, 14, 124

Bond

Approval of, 14, 168

Doing unlawful act, 14, 168

Interest upon, 14, 190

Issuing of, 14, 169

Judicial powers, 14, 168

Legality of, 14, 170

Levy of tax to pay, 14, 190

Liquor, 14, 169

Official discretion, 14, 168

Payment of, 14, 169

To compel action, 14, 168

MANDAMUS—Cont'd**Bond—Cont'd**

To compel city treasurer to pay interest, 14, 169

To compel taxation for raising funds, 14, 169

When mandamus lies to municipality, 14, 190

Books and records, see *infra*, CORPORATIONS; MUNICIPAL CORPORATIONS.

Bridge, 2, 564; 14, 205

Acceptance by authorities, 14, 209

Examples, 14, 205

Repairing public bridges, 14, 205

Repairs, 14, 209

When writ will lie, 14, 205

Canals, 14, 163

Change of Venue, 14, 115

Discretion of judge, 14, 115

Whether change of venue can be compelled by, 14, 115

Clerks of Courts, 14, 132; 19, 562*g*

Approval of bond, 14, 133

Clerk ousted from office, 14, 133

Inspection of public records, 19, 562*g*

Issuing certificates of election, 14, 133

Record an instrument, 14, 132

Statute duty, 14, 132

To compel issue of process, 14, 132

To furnish copy of record, 14, 132; 19, 562*h*

To issue process, 19, 562*h*

Transcript of record, 14, 133

What the writ lies to, 14, 132

Whether other remedies exist, 14, 132

Compelling judge to preside, 12, 3

Conformity

Alternative writ, 14, 214

Constitutional Law

Right to trial by jury, 14, 225

Contempt, 14, 129, 240

Continuance, 14, 114

Corporations, 4, 289; 8, 615; 14, 152

See *infra*, RAILROAD COMPANIES.

Religious corporations, see RELIGIOUS SOCIETIES.

Admission to society, 14, 154

Affixing seal, 14, 153

At motion of private persons, 8, 618

Books and Records, 14, 155

Books of trading corporation, 14, 156

Demand and refusal, 14, 156

Inspection of books, 14, 156

Surrender of books, 14, 155

Controversies of private corporations, 14, 152

Discretion of attorney-general, 8, 617

Duty imposed by statutes, 14, 152

Election of officers, 14, 155

General rule as to transfer of stock, 14, 157

Illegal expulsion from, 1, 562

Instances of when mandamus lies to railroad company, 8, 616

Municipal corporation, see *infra*, MUNICIPAL CORPORATIONS.

Necessity of previous demand upon, 4, 291

Reinstatement of member, 14, 153

Rights and duties must be legal, 8, 617

To compel a corporation to recognize a person as a member, 4, 289

To compel an act forbidden by injunction, 4, 291

To compel directors to call a meeting for election of officers, 4, 289

To compel exhibition of corporate books, 4, 290

To compel issuance or transfer of certificates for specific shares of stock, 4, 291

To compel operation of railroad, 8, 615, 616

To compel railroad to exercise duties as carrier of goods, 8, 615

To issue certificates of stock, 14, 158

To reinstate or admit directors to office, 4, 289

To whom writ should be addressed, 4, 291

Transfer of stock, 14, 157

When corporator entitled to be reinstated by, 1, 562

When court will interfere, 14, 152

When court will not interfere, 14, 152

When it lies to, 4, 289-291

Where duty is created by contract, 4, 289

Where specific duties are imposed on, 4, 289

Costs, 14, 239

Discretion of court, 14, 239

General rule, 14, 239

Review or appeal, 14, 239

County Commissioners, 14, 203

See *infra*, HIGHWAYS.

Discretionary power, 14, 204

Examples, 14, 204

To compel performance of duty, 14, 203

When it lies, 4, 400, 401

When writ will not lie, 14, 204

County Seat, 14, 208

Location, 14, 208

Removal, 14, 208

To compel officer to keep office at county seat, 14, 208

Courts, see INFERIOR COURTS.

Courts acting under special commission, 14, 120

Courts Which May Issue, 14, 93

Appellate Courts, 14, 93, 138

In general, 14, 139

Original jurisdiction, 14, 138

At common law, 14, 93

County courts, 14, 139

Court of common law jurisdiction, 14, 93

Court of last resort, 14, 93

Federal courts, 14, 93

In Arkansas, 14, 94

In California, 14, 94

In District of Columbia, 14, 94

- In Kentucky, 14, 94
- In Louisiana, 14, 94
- In Minnesota, 14, 94
- In Missouri, 14, 94
- In Texas, 14, 94
- State Courts**, 14, 138
 - State to federal courts, 14, 138
- United States Courts**
 - Original jurisdiction, 14, 137
 - Supreme court of United States, 14, 137
 - Supreme court to circuit court, 14, 137
 - Supreme court to court of claims, 14, 137
- De Facto Officers**, 14, 181
 - Municipal officers, 14, 207
 - Removals, 14, 201-207
 - To compel to perform official acts, 14, 207
- Defenses*, see *infra*, RETURN
- Definition*, 6, 378; 14, 91
- Demand and Refusal**, 14, 106
 - Bill of exceptions, 14, 124
 - Inspection of corporation books, 14, 157
 - Necessity, 14, 106
 - Omission or neglect, 14, 106
 - Public officers, 14, 141
 - Levying of taxes, 14, 189
 - Refusal by conduct, 14, 106
 - What amounts to refusal, 14, 106, 107
 - When sufficient, 14, 106
- Demurrer**, 14, 224, 232
 - Return, 14, 234
 - Judgments non obstante, 14, 233
 - Special demurrer, 14, 232
- Denial of motion to remand to state court by supreme court of the United States, 7, 967
- Discharging rule to show cause, 14, 238
- Discretion of Courts**, 14, 108, 215
 - As to discretion of inferior courts, see *infra*, INFERIOR COURTS.
 - As to issuing, 14, 97
 - Whether absolute, 12, 111
- Dismissal*, see *infra*, BILL OF EXCEPTIONS.
- Dismissal of causes, 14, 116
- Disobedience of as contempt, 3, 781
- Distinguished from injunction, 14, 93
- Distinguished from procedendo, 19, 219
- Distinguished from Prohibition**, 19, 264
 - In general, 19, 264
- Distinguished from quo warranto, 6, 379; 19, 663
- Druggists**
 - To compel acceptance of bond, 11, 680
- Elections**, 6, 378
 - Against board of canvassers, 6, 383
 - Against clerks, 6, 383
 - At what time awarded, 6, 380
 - Belief that officers have no authority to act, 6, 382
 - Canvassing returns, 14, 198
 - Canvass of votes at illegal elections, 6, 382
- Certificate, 14, 145, 198
- Discretion of public officers, 14, 201
- Effect of adjournment of board, 6, 381
- For what office canvass may be compelled, 6, 382
- Judicial errors, 14, 201
- Mistake of law as to jurisdiction, 6, 382
- Municipal Officers**
 - Authority to exclude votes, 14, 199
 - Counting votes as for separate persons, 14, 199
 - Examples, 14, 198
 - Generally, 14, 196
 - Issue of certificates of election, 14, 198
 - Ministerial acts, 14, 197
 - To city council, 14, 197
 - To compel holding of elections, 14, 196
 - Validity of election, 14, 197
 - Not authorized by law, 6, 385
- Pleadings**, 6, 394
 - Allegations, 6, 395
 - Also by way of confession and avoidance, 6, 396
 - Joinder of improper parties, 6, 394
 - Parties defendant, 6, 394
 - Presumption in favor of officer, 6, 395
 - Refusal of officer, 6, 395
 - Return or answer, 6, 395
 - Statement of alternative writ or petition, 6, 395
 - Subsequent pleadings, 6, 397
 - Suit upon relation of private party, 6, 395
 - Traverse of facts and not legal conclusion, 6, 395
 - What defenses are sufficient, 6, 396
 - Who may be relator, 6, 394
- Testing prima facie right, 6, 384
- To compel administration of an oath, 6, 385
- To compel approval of a bond, 6, 385
- To compel call of, 6, 379
- To compel complete canvass, 6, 380
- To compel forwarding of returns, 6, 383
- To compel giving certificate of elections, 6, 379
- To compel issuance of certificates, 14, 133
- To compel issue of commission, 6, 379
- To compel recognition, 6, 385
- To compel recount, 6, 381, 382
- To compel registration of qualified voters, 6, 379
- To compel rejection of illegal return, 6, 380
- To compel restoration to office, 6, 385
- To compel surrender of public buildings, 6, 384
- To enforce duties growing out of election, 6, 384
- To governor, 14, 145
- To try title to office, 6, 383
- To whom the writ may issue, 6, 383

MANDAMUS—Cont'd**Elections—Cont'd**

Where prior certificate has been issued, 6, 381

Where relator is not eligible, 6, 385, 386

Where result has been declared, 6, 381

Where there is a special method to obtain books of the office, 6, 384

Where title is clearly void, 6, 384

Eminent Domain, 6, 596

Assessment of damages, 14, 210

Payment of damages, 14, 210

Enforcement of contract, 14, 104

Equitable relief, 14, 102

Exercise of jurisdiction, 14, 112

Foreign corporations, 8, 356, 377

For illegal expulsion, 5, 689

Former suit pending, 14, 226

Form of the writ, 14, 211

Gas companies, 8, 1289

Governor, 3, 685; 8, 1405; 14, 143; 25, 965.

Conflict of opinion, 8, 1405

Discretionary powers, 14, 143

Examples, 14, 143, 144

In Georgia, 8, 1406

In Illinois, 8, 1405

In Indiana, 8, 1406

In Louisiana, 8, 1405

In Maine, 8, 1406

In Michigan, 8, 1406

Ministerial duties, 14, 143

To compel governor to perform municipal act, 8, 1405

To compel him to sign patent, 8, 1405

To compel issuance of a certificate to person elected to office, 8, 1405

To declare person elected, 14, 145

To deposit bill with secretary of state, 14, 145

To issue commission, 12, 17; 14, 144

When granted, 14, 143

When mandamus will lie, 8, 1405

When mandamus will not lie, 8, 1405

When refused, 14, 144

Granting license, 14, 118

Guardian, 14, 165

Habeas Corpus, 9, 182

To compel issuance of writ, 9, 182

To compel judicial officer to hear evidence, 9, 183

To compel vacating of an order discharging prisoner, 9, 183

When it will not lie, 9, 183

Highways, 14, 204

Allowance of fees, 14, 206

Compelling board to proceed, 14, 211

Discretion of officer, 14, 211

Obstruction in streets and highways, 14, 206

Remedy at law for obstructions, 14, 206

Scope of the writ, 14, 211

To compel commissioners to open road, 14, 204

When Writ Lies, 14, 209

To compel to levy taxes, 14, 209

To compel to open road, 14, 209

When writ lies to commissioners, 14, 204

When writ not allowed for obstructions, 14, 206

Indictment, 14, 103

Infants, 14, 165

Inferior Courts, see *infra*, CHANGE OF VENUE; JUDGMENT; SUPERSEDEAS.

Adequate remedy existing at law, 14, 119

After appeal, 14, 111

Appeal, 14, 120

Appeal bond, 14, 121

Case unappealable, 14, 121

Correcting, 14, 121

Dismissing, 14, 122

Justice of the peace, 14, 133

Reinstating, 14, 122

Suspensive, 14, 121

To compel inferior courts to allow, 14, 120

To compel settlement of case, 14, 128

What entitles to a writ, 14, 121

Compelling Court to Act, 14, 109, 110, 112

Exercise of jurisdiction, 14, 112

Pleading, 14, 112

Continuance, 14, 114

Correcting error of inferior courts, 12, 110

Courts acting under special commission, 14, 120

Discretion, 12, 94; 14, 98, 108

Compelling courts to act, 14, 109

Compelling exercise of discretion, 14, 109

Correction of error of inferior tribunals, 14, 110

Failure of justice from delay, 14, 110

Refusal of judge to hold court, 14, 109

Reviewing discretion of inferior tribunals, 14, 111

Whether it may be controlled, 14, 108-110

Dismissal of causes, 14, 116

Enforce payment of debt, 14, 119

Examples, 14, 111

Generally, 14, 108

Granting license, 14, 118

Granting or dissolving injunctions, 14, 117

Ordering special term, 14, 120

Other Remedies, 14, 118

Correcting of errors of subordinate tribunal, 14, 119

Province of the writ, 14, 119

Writ of appeal, 14, 118

Writ of error, 14, 118

Refusal to award costs, 14, 120

Reinstating of causes, 14, 117

Removing cause from docket, 14, 116

Setting aside summons, 14, 117

Stipulation to settle, 14, 120

Where courts have no jurisdiction, 14, 130

- Injunctions**, 10, 986; 14, 105
 Enjoining proceedings for writ of mandamus, 10, 986
 Examples, 10, 986
 Granting or dissolving, 14, 117
 Mandamus to compel grant or dissolution of injunction, 10, 986
 Stay of proceedings by, 10, 986
 To compel grant of appeal, 10, 986
 Whether peremptory writ can be stayed by, 14, 217
- Intoxicating Liquors**
 License, 11, 662
 Arbitrary exercise of discretion, 11, 663
 Exercise of discretion, 11, 662
 General rule, 11, 662
 Refusal to hear testimony, 11, 663
- Joinder**, 14, 219, 225
- Judge**, 14, 127
 See *infra*, BILL OF EXCEPTIONS; COURTS.
 Delay in judgment, see *infra*, JUDGMENT.
 Admissibility of evidence, 14, 129
 Case in which writ will lie, 14, 128
 Case in which writ will not lie, 14, 129
 Contempt, 14, 129
 In general, 14, 127
 Ministerial duties, 14, 127
 Motion for new trial, 14, 128
 Rehearing, 14, 129
 Search warrant, 14, 129
 Settle case for appeal, 14, 128
 Signing judgment, 14, 129
 Statement on motion for new trial, 14, 128
 Supersedeas bond, 14, 129
 To accept bond, 14, 128
 To issue warrant to county treasury, 14, 129
 Where judge has no jurisdiction, 14, 130
- Judgment**, 14, 112, 182, 238
 Compelling court to enter, 14, 112
 Demand of levy, 14, 189
 Directing particular judgment, 14, 113
 Directing what judgment shall be rendered, 14, 113
 Duty to pay, 14, 188
 Enforcing, 14, 113
 Justice of the peace, 14, 134
 Levying of taxes, 14, 188
 Municipal aid bonds, 14, 195
 Obtained by fraud, 14, 190
 Proceeds of taxation, 14, 188
 To compel entry of, 14, 134
 To compel inferior courts to proceed to, 14, 117
 United States courts, 14, 188
 Unreasonable delay, 14, 127
 When the writ lies, 14, 188, 189
 When the writ will not lie, 14, 190
 Where judge has no jurisdiction, 14, 130
 Where judgment has been erroneously entered, 14, 112
- Judicial notice**, 14, 223
- Judicial Officers**, see *infra*, ATTORNEY; CLERKS OF COURTS; JUDGE; SHERIFF.
- Judges**, 14, 127
- Jurisdiction**, 14, 101, 225
- Jury and jury trial**, 14, 225, 236
- Justice of the Peace**
 Appeal, 14, 134
 Correction of errors, 14, 136
 Discretion, 14, 134
 Dismissing writ of replevin, 14, 135
 Docket entries, 14, 135
 Examples, 14, 134, 135
 Filing transcript, 14, 135
 Issuing execution, 14, 135
 To compel entry of judgment, 14, 134
 When the writ lies, 14, 133
- Laches**, 14, 107
 Auditing claims, 14, 178
 Bill of exceptions, 14, 124
 Payment of claims, 14, 186
- Married women**, 14, 242
- Ministerial duties**, see *infra*, WHEN ISSUED.
- Misappropriation of bonds**, 14, 184
- Municipal Aid Bonds**, 14, 192; 15, 1259
 Another action pending, 14, 195
 Circuit court of United States, 14, 196
 Compelling officers to subscribe, 14, 194
 Conditions, 14, 194
 Corporation concluded by judgment, 14, 195
 General rule, 14, 192
 Issue of bonds, 14, 194
 Judgment upon, 14, 195
 Necessity of judgment, 14, 193
 Presentation for allowance, 14, 193
 Signature by town clerk, 14, 195
 Subscriptions, 14, 194
 Surrender of illegal bonds, 14, 196
 United States courts, 14, 193
 Validity of bonds, 14, 194
 When writ lies, 14, 192, 193
 Whether mandamus lies to compel, 14, 194
- Municipal Corporations**, 14, 165
- Bonds**
 As to approval, issue, etc., see *infra*, BOND.
 Improvement, see *infra*, HIGHWAYS.
- Advertising and letting contract to lowest bidder**, 15, 1093, 1097
- Amendment of record**, 15, 1078
- Books and Records**
 To Compel Delivery, 14, 207
 Amendment of records, 14, 208
 Correction of records, 14, 208
 When officer has been duly removed, 14, 207
 Contract for public work, 14, 167
 Contract of municipality, 14, 209
 Custody of municipal books, 14, 173
 Debt due to the state, 14, 174
 Demand of performance, 14, 167
 Discretion of municipal authorities, 14, 210
 Distribution of public funds, 14, 173

MANDAMUS—Cont'd**Municipal Corporations—Cont'd**

Duty imposed by legislature, 14, 165

Eminent domain, 14, 210

Estimates, 14, 210

Generally, 14, 165

Granting License, 14, 170

Arbitrary discrimination, 14, 171

License refused by mistake, 14, 171

Signing license, 14, 171

Whether writ will lie, 14, 170

Improvements, 14, 209Discretion of municipal authorities,
14, 210

Erection of public buildings, 14, 209

Estimates, 14, 210

Generally, 14, 209

To compel performance of duty, 14,
209

Inspection of poll books, 14, 173

Inspection of Public Records, 14, 171

Continuous use of the office, 14, 171

Whether open to all, 14, 172

Whether writ would lie, 14, 171

Instance in which writ lies, 14, 210

Limitation of municipal indebtedness,
15, 1140

Ministerial duty, 14, 165

Neglect by municipal officer, 14, 166

Payment and assessment of damages,
14, 210

Presentation of claims, 15, 1195

Taxes collected by county treasurer,
14, 174

To correct records, 14, 173

To enforce by taxation payment of
judgment, 15, 1201

To pay over state funds, 14, 174

To pay proportion of taxes, 14, 174

When writ will be granted, 14, 165

Municipal Officers, see COUNTRY COMMISSIONERS.**To Admit to Office, 14, 197, 201**

De facto officers, 14, 201

Disputing title, 14, 201

Effect of neglect, 14, 202

Improper removal, 14, 202

Qualification of electors, 14, 203

Term expiring pending proceedings,
14, 202

When the writ lies, 14, 201

Where the writ will not lie, 14, 203

Municipal Securities, 15, 1259, 1312Appropriation of money in treasury,
15, 1312

Confers no power, 15, 1313

Directed to county officers, 15, 1311

From federal court, 15, 1314

Levy of taxes, 15, 1313

Limitation of time, 15, 1314

Penalty for refusing to pay writ, 15,
1314

Res adjudicata, 15, 1314

To compel delivery of bonds, 15, 1312

To obtain judgment, 15, 1313

Municipal Taxation

Demand of levy, 14, 189

Duty to pay, 14, 188

Erroneous assessments, 14, 192

Exhausted funds, 14, 187

Indebtedness uncertain, 14, 187

Interest upon bond, 14, 190

Judgment obtained by fraud, 14, 190

Levying taxes, 14, 187, 188

Levy of tax to pay bonds, 14, 190

Payment of debts, 14, 186

Payment of taxes, 14, 191

Proceeds of taxation, 14, 188

Refunding taxes illegally collected, 14,
192

School purposes, 14, 191

Taxation in excess of amount author-
ized by law, 14, 187

To compel payment of taxes, 14, 192

Unconstitutionality of law, 14, 187

United States courts, 14, 188

Unliquidated indebtedness, 14, 187

Validity of claim questioned, 14, 187

When mandamus lies to municipality,
14, 190

When the writ lies, 14, 188, 189

Where supervisors have no power to
levy tax, 14, 187

Mutual insurance, 16, 78, 91

Nonsuit, 14, 226

Notice, 14, 107, 228

*Officers, see infra, PUBLIC OFFICERS.***Officers and Agents of Private Corporations**

To affix seal, 17, 149

Official Bonds

Mandamus to compel approval, 6, 385

Omissions of duty, 14, 105

Ordering special term, 14, 120

Origin and nature of the remedy, 14, 92

Overseers of the poor, 14, 176

Parties**Relators, 14, 217**

Considered as civil action, 14, 217

Death of relator, 14, 219

Degree of interest, 14, 218

Enforcement of private right, 14, 218

Enforcement of public right, 14, 218

Joinder of interests, 14, 219

Real parties, 14, 217

State, 14, 217

Who proper, 14, 218

Respondents, 14, 219

Municipal corporations, 14, 220

Official capacity of officer, 14, 219

Petition against two persons, 14, 220

Proper defendants, 14, 218

Successors in office, 14, 220

To whom writ should be addressed,
14, 219

Who may intervene, 14, 221

To an Action

In election cases, 6, 394

Real party in interest, 17, 551

Who may intervene, 14, 221

*Payment of claims, see infra, AUDITING
AND PAYMENT OF CLAIMS.***Peremptory**

Motion for, 14, 238

Return, 14, 238

Peremptory Writ, 14, 211

- As to public officer, 14, 216
- Certainty required, 14, 216
- Conformity to alternative writ, 14, 214
- Distinguished from alternative writ, 14, 211
- Ex parte applications, 14, 216
- In the nature of execution, 14, 214
- Legal duty of respondent, 14, 215
- Necessity of alternative writ, 14, 215
- Necessity of previous alternative writ, 14, 215
- Quashing, 14, 214
- Refusal to award, 14, 216
- Return, 14, 215
- Return to alternative mandamus, 14, 215
- Return to alternative writ, 14, 232
- Review, 14, 216
- Setting aside, 14, 214
- When granted, 14, 214, 215
- When issue in first instance, 14, 214
- When it may be issued, 14, 232
- Whether peremptory writ can be staid by injunction, 14, 217

Pleading, 14, 221

- Abatement, 14, 223
- Allegations, 14, 221
- Alternative writ*, see *infra*, **ALTERNATIVE WRIT**.
- Amendment*, see *infra*, **AMENDMENT**.
- General principles, 14, 221

Practice, 14, 226

- Ex parte, 14, 226
 - Prima facie case, 14, 227
- Requisites of Petition, 14, 222**
- Examples, 14, 222
 - Facts showing relator's rights, 14, 222

General allegations, 14, 222**Statutes, 14, 223****Public, 14, 223****Title of relator to relief, 14, 221****Verification, 14, 223****Practice****Generally, 14, 226****Preliminary examination, 12, 419****Prerogative features, 14, 92****Private persons, 14, 165****Production of Documents, 19, 230****Books of Corporation, 19, 235****Affidavits, 19, 236****For inspection before trial, 19, 234****In general, 19, 234****Making demand, 19, 236****Necessity of demand, 19, 236****Reasons must be clear, 19, 235****Refusal of demand, 19, 236****To whom writ is directed, 19, 237****Where suit is pending, 19, 234****Whether writ issues as a matter of course, 19, 235****Who are necessary parties, 19, 237****Properly Allowed****Whether final decree, 7, 962****Public Lands****Officers of land office, 19, 342****Patent, 19, 351****To have patent delivered up to party entitled, 19, 351****To the commissioners of the land office, 19, 351****To the secretary of the interior, 19, 351****Whether party entitled to writ to compel issuance, 19, 351****Public Officers, 14, 139****See *infra*, MUNICIPAL OFFICERS.****Governor of a state, see *infra*, GOVERNOR.****Act as law, 14, 183****Arbitrators, 14, 141****Auditing officers, see *infra*, AUDITING AND PAYMENT OF CLAIMS.****Books, 14, 147****Certificate of election, 14, 146****Clerks of Courts, 14, 132****Inspection of public records, 19, 562g****To furnish copy of record, 19, 562h****To issue process, 19, 562h****Commissioners, 14, 146****Commissioners of patents, 14, 143****Creation of new powers, 14, 139****Demand and refusal, 14, 141****Discretion of officer, 14, 140, 201****Examples, 14, 141, 146****Executive functions, 14, 140****Generally, 14, 139****Instance of relator, 14, 140****Land commissioners, 14, 146****Misappropriation of funds, 14, 184****Muniments of title, 14, 147****Papers, 14, 147****Postmaster general, 14, 143****Preference to veterans, 19, 413****Register of deeds, 14, 141****Scope of the writ, 14, 139****Secretary, 14, 145****Secretary of state, 14, 142, 146****Secretary of the interior, 14, 242****State boards, 14, 147****State officers generally, 14, 145****State representatives, 14, 146****Title to office, 14, 146****To affix official seal, 14, 146****To compel election of municipal officers, 19, 550****To compel officer to keep office at county seat, 14, 208****United States officers, 14, 142****When demand and refusal not necessary, 14, 141, 142****When writ does not lie, 14, 139, 140****When writ lies, 14, 139, 140****Quo warranto, 14, 97****Railroad Companies, 4, 290; 8, 615; 14, 158****Abandonment of road, 14, 162****At motion of private persons, 8, 618****Cases in which writ has been issued, 14, 159****Commutation tickets, 14, 162****Construction of stations, 14, 159**

MANDAMUS—Cont'd**Railroad Companies—Cont'd**

- Construction of viaduct, 14, 160
- Crossings, 14, 159
- Damages for land taken, 14, 162
- Discretion of attorney-general, 8, 617
- Discretion of company, 14, 158, 162
- Discrimination, 14, 162
- Enforcement of statutory duty, 14, 161
- Erect a bridge, 14, 159
- Erection of depot, 14, 162
- Examples, 14, 159
- Generally, 14, 158
- Instances of when mandamus lies to railroad company, 8, 616
- Not interfering with navigation, 14, 159
- Operation of road as one line, 14, 159
- Reestablishment of abandoned station, 14, 160
- Rights and duties must be legal, 8, 617
- Special statutory provisions, 14, 161
- To Compel Completion of Road, 8, 599**
 - In England, 8, 599
 - Where company has received municipal aid, 8, 602
- To compel construction, 14, 159
- To compel operation of railroad, 8, 615, 616
- To compel railroad to exercise duties as carrier of goods, 8, 615
- To compel restoration of highways, 14, 163
- To compel running of trains, 14, 159
- To receive and transport freight, 14, 160, 161
- When the writ should be granted, 14, 159
- When the writ should not be granted, 14, 158

Receivers, 20, 107

Records, see *infra*, CORPORATIONS.

Municipal, 14, 208

To clerks of court, 14, 132, 133

Refusal to award costs, 14, 120

Rehearing, 14, 129

Reinstating, 14, 122

Reinstating attachment, 14, 117

Relators, see *infra*, PARTIES.

Religious Corporations, 14, 153

Member expelled from membership, 14, 153

Real property, 14, 153

Religious Societies, 20, 923

Compelling attendance of vestry, 20, 824

Examples, 20, 823, 824

Mandamus to compel restoration of member, 20, 823

To trustees, 20, 823

Where expulsion was not corporate act, 20, 823

Where no property right is involved, 20, 823

Removal of Causes, 20, 984, 1015

To compel circuit court to assume jurisdiction, 20, 1019, 1020

Res Judicata

Identity of issues, 21, 231

Respondents, see *infra*, PARTIES.

Return, 14, 215

Admissions, 14, 230

Allegations, 14, 230

Alternative Writ

Admissions, 14, 230

Allegations, 14, 230

Denial of facts, 14, 230

Effect of insufficiency, 14, 231

Failure to deny, 14, 230

Function of return, 14, 230

How sufficiency questioned, 14, 231, 232

Motion to quash, 14, 232

Sufficiency, 14, 232

Amending and withdrawing, 14, 238

Answer to return, 14, 238

Damages for false, 14, 237

Defenses by, 14, 234

Argumentativeness, 14, 236

Compliance with the writ, 14, 236

Conclusive answer, 14, 235

Examples, 14, 234, 235

Number of defenses, 14, 234

Demurrer, 14, 234

Judgment non obstante, 14, 233

Special, 14, 232, 233

Denial of facts, 14, 230

Effect of insufficiency, 14, 231

Effect of neglect to make return, 14, 237

Evasive, 14, 237

Failure to deny, 14, 230

Function of, 14, 230

How sufficiency questioned, 14, 231, 232

Manner of making, 14, 236

Motion for peremptory mandamus, 14, 238

Motion to Quash, 14, 232

Examples, 14, 233

Right of relator in doubt, 14, 234

Technical objections, 14, 233

Technical objections to the writ, 14, 234

When it may be made, 14, 233

Neglect to make, 14, 237

Of peremptory mandamus, 14, 238

Sufficiency, 14, 231

Time of making, 14, 236

Withdrawing, 14, 237, 238

Review, 14, 213

Right to trial by jury, 24, 224

Rule to show cause, 14, 227

Salary, payment of, see *infra*, AUDITING AND PAYMENT OF CLAIMS.

School Boards, 14, 174

Admitting child to school, 14, 175

Adoption of text books, 14, 176

Discretion of board, 14, 174

Duty of trustee, 14, 174

Examples, 14, 174-176

New school district, 14, 175

Payment of funds to proper depository, 14, 175

- Restoring school house, 14, 175
- When board refuses to act, 14, 174
- When mandamus will issue, 14, 174
- When mandamus will not issue, 14, 174
- School order for salary, 14, 181
- Schools**
 - Admission of pupils, 21, 764
 - Colored pupils, 21, 767
 - Reinstatement of pupil, 21, 772
 - School superintendents, 21, 823
 - Taxes, 14, 191
 - To compel payment of teacher's salary, 21, 759
 - To reinstate teacher, 21, 763
 - To trustees, 21, 837
- Search warrant, 14, 129
- Secret Voting**
 - To compel filing of nomination papers, 21, 999
- Service, 14, 229**
 - Mode of, 14, 229
 - Time of, 14, 230
 - To whom made, 14, 229
- Setting aside summons, 14, 117
- Settled case on appeal, 22, 483
- Sheriff, 14, 136**
 - Examples, 14, 136
 - Office, 14, 136
- Sales**
 - To compel delivery of deed, 22, 688
 - When writ lies to, 14, 136
 - Writ of restitution, 14, 136
- Stations (Railroad)**
 - To compel establishment, 23, 116
- Statutory remedy, 14, 101
- Stay of Proceedings**
 - Abuse of discretion, 23, 530
- Stipulation to settle, 14, 120
- Stock**
 - Purchaser at judicial sale, 23, 634
- Wrongful Refusal to Register, 23, 666**
 - Applicant's right clear, 23, 667
 - Certificate issuing to another whose rights would be prejudiced, 23, 667
 - Conflict of authority, 23, 666, 667
 - In general, 23, 666
 - Relator guilty of bad faith, 23, 667
 - Whether the writ lies, 23, 666, 667
- Stock Exchange, 23, 774**
 - Improper Expulsion of Members, 23, 764**
 - Incorporated association, 23, 764
 - In general, 23, 764
 - Issuance authorized by statute, 23, 764
 - Unincorporated association, 23, 764
 - When the writ will issue, 23, 764
 - To enforce liability of stockholders, 23, 895
- Street Railways**
 - After city authorized, 23, 982
 - Repairs, 23, 990
- Suit, whether a, 24, 495
- Supersedeas, 14, 114**
 - Improper granting or refusing, 14, 114
 - Irregularity of procedure, 14, 114
 - Security, 14, 114
- Vacated, 14, 114
- When granted, 14, 114
- Supervisors, 14, 206
- Supreme Court of the United States**
 - Where writ of error is dismissed in lower court, 7, 974
- Taxation, see *infra*, MUNICIPAL TAXATION.**
 - Levy, 14, 148
 - Mandamus to compel assessors to make alterations, 25, 261
 - Payment of, 14, 151
 - Redemption from tax sale, 25, 436
 - Schools, 14, 191
 - Tax on dividend, 5, 744*d*
 - To compel collector to accept payment, 25, 280
 - To compel collector to pay over, 25, 356
 - To compel issuance of warrant, 25, 294
 - To compel officer to give receipt, 25, 284
 - To treasurer, 25, 442
- Tax Titles**
 - To Compel Execution of Deed, 25, 677**
 - Examples, 25, 677-679
 - Mandamus denied, 25, 678
 - Purchaser's right to mandamus, 25, 678
 - Second and corrected deed, 25, 678
 - To compel execution of deed under statutory form, 25, 683
- Telegraphs and Telephones, 4, 290; 8, 612; 14, 163**
 - Refusal of Telephone Companies to Afford Service, 25, 778**
 - Mandamus to compel company, 25, 778
 - Whether owner of patent right is necessary party, 25, 778
- Territories**
 - To governor, 25, 965
 - Title to office, 14, 146
 - To compel a county board to act upon a claim, 4, 370
 - To compel a county officer to pay a lawful debt, 4, 370
 - To compel a county to levy a tax, 4, 370
 - To compel a county to perform a public duty, 4, 370
 - To compel change of venue, 3, 91
 - To compel issuance of liquor license, 11, 637
 - To compel payment of dividend, 5, 732
 - To county commissioners to compel them to raise a tax, 4, 400
 - To enforce judgment against a county, 4, 373
- Towns and Townships, 26, 116**
 - To compel election, 26, 103
- Trees**
 - Trees in highways and streets, 26, 563
- Trover**
 - Detinue, 14, 97
- United States Courts, 27, 635**
 - See infra*, COURTS WHICH MAY ISSUE.
 - Ancillary mandamus, 27, 635

MANDAMUS—Cont'd**United States Courts—Cont'd**

Municipal aid bonds, 14, 196

Right to issue, 27, 635

Supreme court, 27, 635, 639

Universities and Colleges

Mandamus to visitors, 27, 686

Unlawful act, 14, 104

Unliquidated damages, 14, 104

Variance, 14, 226

Verification, 14, 223

Violation, 14, 239

Want of Funds

Auditing and payment of claims, 14, 184

Warrants, see *infra*, AUDITING AND PAYMENT OF CLAIMS.**When Issued, 14, 94**

Abuse of discretion, 14, 99

Against inferior courts, see *infra*, INFERIOR COURTS.

By statutes, 14, 102

Discretionary requirements, 14, 98

Discretion of courts, see *infra*, DISCRETION OF COURTS.

Discretion vested in public board, 14, 99

Enforcement of contracts, 14, 104

Equitable Relief, 14, 102

In general, 14, 102

Where relators have resorted to court of chancery, 14, 102

Examples in which writ refused, 14, 100

General rule, 14, 94

Judgment of discretion of lower court, 14, 99

Ministerial Duties, 14, 99

Defined, 14, 100

General rule, 14, 99

Subordinate judicial tribunals, 14, 99, 100

Omissions of duty, 14, 105

Other legal remedy, 14, 94

Remedy by indictment, 14, 103

Statutory remedy, 14, 101

Statutory rights, 14, 102

To compel action, 14, 98

To compel exercise of discretion, 14, 98

Unconstitutional Legislature, 14, 101

Acts compelled by law, 14, 100

Consent of person, 14, 101

Jurisdiction, 14, 101

Unlawful act, 14, 104

Unliquidated damages, 14, 104

Useless act, 14, 104

Where detainee will lie, 14, 97

Where quo warranto would lie, 14, 97

Whether criminal procedure, 14, 92

Whether inferior public bodies like board of supervisors are subject to mandamus apart from statute, 4, 400

Whether writ is ordinary action, 14, 92

Writ of error, 14, 216

MANDATE, 14, 240

See generally BAILMENTS.

See MANDAMUS.

Act to be done, 14, 242

Bailee's right to possession, 2, 56

Bankruptcy, 14, 248

Burden of proof, 14, 249

Compensation, 14, 242

Consideration for contract, 14, 241

Contracts made, 14, 242

Definition, 2, 43; 14, 240

Dissolution of, 14, 248

Change of status of the parties, 14, 248

Death of parties, 14, 248

Renunciation of the mandatary, 14, 248

Revocation of authority, 14, 248

Distinguished from deposit, 14, 241

Duress, 14, 243

Duties and Obligations of Parties, 14, 243

In general, 14, 243

Of the mandator, 14, 243

Of the Mandatary, 14, 243

Annuities, 14, 245

Bad faith of mandatary, 14, 244

Bank, 14, 245

Bank cashier, 14, 245

Bank directors, 14, 245

Bills and notes, 14, 246

Care to be exercised by the mandatary, 14, 244

Carrier without hire, 14, 246

Civil law and common law, 14, 243

Default of notaries, 14, 245

Delivery to unauthorized persons, 14, 244

Demand of payment, 14, 245

Disposition of property, 14, 244

Expert, 14, 247

Gross neglect, 14, 244

Insurance, 14, 247

Letters, 14, 247

Lost and stolen goods, 14, 247

Neglect of mandatary, 14, 244

Slight care, 14, 244

Evidence, 14, 249

Form, 14, 241

Gratuitously, 14, 242

Measure of damages for refusal to return, 14, 248

Parties, 14, 242

Performance cannot be compelled, 2, 44

Personal property, 14, 242

Pleading, 14, 249

Procurator, 14, 241

Question of law and fact, 14, 249

Requisites, 14, 242

Who may maintain suit, 14, 248

MANDATORY, 14, 249**MANDATORY STATUTES**, see STATUTES.**MANHOOD, 14, 249****MANIA, 14, 250**

See INSANITY.

Excuse for crime, 4, 720

MANIA A POTU

Excuse for crime, 4, 714

MANIFEST, 14, 250See generally, **BILLS OF LADING**.

Manifest errors, 14, 250

- Manifest impediment, 14, 251
 Manifestly designed, 14, 250
 Manifest reasons, 14, 251
- MANNER**, 14, 251
 In any manner, 14, 252
 In manner above mentioned, 14, 254
 In manner aforesaid, 14, 254
 In manner and form, 14, 254
 In manner following, 14, 254
 In same manner, 14, 252
 In such manner, 14, 253
 Like manner, 13, 663
- MANOR**, 14, 254
- MANSION**, 14, 255
See generally, BUILDINGS; DWELLING HOUSE.
- MANSION HOUSE**, 2, 671
- MANSLAUGHTER**, 9, 577
See generally, HOMICIDE.
See SELF-DEFENSE.
Jurisdiction, *see* HOMICIDE.
- Accessory before the fact, 9, 578
 Bail, 2, 7
- By Negligence**
 Merger, 4, 649
 Cooling time, 9, 580, 583
 Deadly weapon, 9, 587
 Definition, 9, 577
 Distinguished from murder, 9, 577
 Homicide in making arrest, 9, 587
- Indictment**, *see* HOMICIDE.
See generally, INDICTMENT.
 Conviction of assault and battery, 15, 366
 Where proof shows murder, 9, 577
- Instruction, examples of, 11, 267, 268, 270, 271, 273
- Involuntary**
 Accident and mistake, 9, 612
 By assault, 9, 591
 By attempting abortion, 9, 591
 By gross carelessness or negligence, 9, 588
 By obstructing a railroad track, 9, 592
 By threats causing fright, 9, 592
 By undue correction by person in authority, 9, 592
 Defective building material, 9, 591
 Definition, 9, 588
 Examples of negligence, 9, 589
 Examples of omissions of duty, 9, 589
 How committed, 9, 588
- Mutual Combat**, 9, 585
 Combat and assault by one for the purpose of killing another, 9, 585
 Sudden quarrel, 9, 585
 Negligence of officers of vessel, 9, 589
 Negligence of physician, 9, 590
 Omission to perform a prescribed duty, 9, 589
 Reckless driving, 9, 591
 Reckless handling or discharge of fire arms, 9, 589
 Rudeness of sport resulting in death, 9, 591
- Trespass**, 9, 586
 Intentional killing murder, 9, 586
- Killing in heat of passion, 9, 587
 Killing where trespasser resists, 9, 587
 Upon a person under arrest, 9, 592
- Killing adulterer, 9, 585, 812
 Kinds of, 9, 578
 Limitation of prosecution, 9, 618
 "Lying in wait," 13, 627
 Malice, 9, 577
 Malpractice, 14, 85
 Master of a vessel, 14, 975
 Prize fight, 19, 158
 Resistance of arrest, 9, 587
 Riot, 21, 410
- Voluntary**, 9, 578, 588; 28, 499
 Adequate provocation for passion, 9, 578
 Definition, 9, 578
 Homicide by committing an unlawful act less than a felony, 9, 588
 Homicide by one interfering to preserve the peace, 9, 588
 Intent to kill, 9, 579
 Intent to use unlawful force wrongfully, 9, 579
 Killing one in attempting to kill another, 9, 588
- Provocation**
 By adultery with slayer's wife, 9, 584, 812
 By assault, 9, 582
 By criminal intimacy with a relative, 9, 585
 By words, 9, 580
 Causing passion, 9, 579
 Cooling time, 9, 580
 Given by woman or child to a man, 9, 580
- Insulting Words Before a Female Relative**, 9, 581
 Defendant must be informed of the words, 9, 581
 Step-daughter, 9, 582
 Texas penal code, 9, 5
 Whether words must be uttered in presence of family, 9, 581
 Words spoken in defendant's absence, 9, 581
 Must arise at time of offense, 9, 579
 Must be cause of the passion, 9, 579
 Questions of law and fact, 9, 580
 What provocation is sufficient, 9, 579
 Words addressed to slayer, 9, 580
 Want of malice, 9, 578
 What constitutes the offense, 9, 578
- MANUAL**, 14, 255
 Manual labor, 14, 255
- MANUFACTORY**, 14, 256
- MANUFACTURE**, 14, 257
See MANUFACTURER.
 Bone, 14, 259
 Copper, 14, 259
 Coral, 14, 259
 Cotton, 14, 259
 Ebony, 14, 259
 Firewood, 14, 259
 Gas, 14, 259

MANUFACTURE—Cont'd

Glass, 14, 259
 Hair, 14, 260
 Hay, 14, 260
 Hemp, 14, 260
 Ice, 14, 260
 Iron, 14, 260
 Manufacture and keep, 14, 264
 Manufacture and sell, 14, 264
 Manufactured and used, 14, 264
 "Manufactured articles, goods," 14, 262
 Manufacture of metals, 14, 314
 Manufacturing establishment, 14, 264
 Manufacturing process, 14, 264
 Manufacturing purposes, 14, 264
 Marble, 14, 261
 Metals, 14, 261
 Place of manufacture, 14, 264; 18, 465
 Reeds, 14, 261
 Rocks, 14, 261
 Shells, 14, 262
 Silk, 14, 262
 Textile fabrics, 14, 262
 Wood, 14, 262
 Wool, 14, 262

MANUFACTURER, 14, 264

See MANUFACTURING CORPORATIONS.
 Distinguished from peddler, 9, 308
 Libel and slander, 13, 359
 License, 13, 527
 Printer of calicoes, 14, 267
 Publisher of newspaper, 14, 265
 Taxation, 14, 268
Trade-Mark, 14, 268; 26, 241
 Injunctions, 10, 937
 Under bankruptcy law, 14, 265
 Who is a manufacturer in bankruptcy laws, 22, 85

MANUFACTURING CORPORATIONS, 14, 269

See MANUFACTURE; MANUFACTURER;
 STOCKHOLDERS.
Municipal aid, see MUNICIPAL AID.
 Action by stockholders against company, 14, 311
Agents, see *infra*, OFFICERS AND AGENTS.
Annual Report, 17, 115, 116
 Answer, 17, 118
 Bad faith, 17, 117
 Complaint, 17, 118
 Fraudulent purpose, 17, 117
 Ignorance, 17, 117
 Intent, 17, 117
 Liability of directors for failing to file, 17, 116
 Purpose for which reports are required to be filed, 17, 116
 Statutory requirement, 17, 116
 What is sufficient compliance, 17, 117
 What officer liable, 17, 117
 Whether corporation must file report, 17, 115
 Who has right of action against directors, 17, 117
 Assignment for benefit of creditors, 14, 275

Bills and Notes, 14, 276
 Officers and agents, 14, 278
 Power to issue, 4, 224
Capital Stock, 14, 271
 Assessments on stock, 14, 272
 Certificates, 14, 271, 272
 In New York, 14, 271
 Necessity, 14, 271
Certificates, see *infra*, INDIVIDUAL LIABILITY OF TRUSTEES.
 Compliance with incorporation law, 14, 271
Contribution
 Among stockholders, 14, 306
 Trustees, 14, 290
 Debt contracted, 5, 156, 157
Definition, 3, 366; 14, 269
 Dock companies, 14, 269
 Gas company, 14, 270
 Mining corporation, 14, 269
 Oil company, 14, 270
 Printing and publishing company, 14, 270
Directors, see *infra*, OFFICERS AND AGENTS; INDIVIDUAL LIABILITY OF TRUSTEES.
Dissolution, 14, 313
 Action by receiver, 14, 314
 Examples, 14, 313, 314
 Grounds for dissolution, 14, 313
 When dissolution is effected, 14, 313
Filing certificate and report, see *infra*, INDIVIDUAL LIABILITY OF TRUSTEES.
 Implied power of business manager to employ surgical aid, 1, 364
Individual liability of stockholders, see STOCKHOLDERS.
Individual Liability of Trustees, 14, 279
 Attempt to collect for corporation, 14, 282
 Capital stock, 14, 281
 Compliance with statute, 14, 283
 Debts of company, 14, 281
 Defenses, 14, 283
 Election, 14, 280
 Enforcement of liability, 14, 282
 Expiration of term, 14, 280
 False certificate, 14, 280
Filing Certificates and Reports, 14, 284
 Allegations necessary in complaint, 14, 292
 Appointment of assignee in bankruptcy, 14, 292
 Appointment of receiver, 14, 292
 Arrest, 14, 294
 Bad faith, 14, 287
 Breach of contract, 14, 291
 Claims founded on judgment, 14, 291
 Complaint, 14, 292
 Compliance with statute, 14, 285
 Construction, 14, 294
 Continuance, 14, 289
 Continuance and cessation, 14, 289
 Contributions, 14, 290
 Debt of trustees, 14, 292
 Debts due non-residents, 14, 291

- Debts for which trustees are liable, 14, 291
 Enforcement of liability, 14, 291
 Extent and nature of liability, 14, 290
 False reports, 14, 287
 False statements, 14, 284
 Generally, 14, 284
 In New York, 14, 284
 Joinder of causes of action, 14, 292
 Judgment for costs, 14, 291
 Necessity of filing, 14, 285
 Necessity of publishing, 14, 285
 Neglect to publish annual report, 14, 285
 Newly elected trustee, 14, 289
 Penalty, 14, 290
 Presumption as to intention, 14, 287
 Remedy, 14, 293
 Report by part of the trustees, 14, 287
 Responsibility for debts of corporation, 14, 290
 Retiring of trustee, 14, 289
 Revival of action, 14, 293
 Secretary, 14, 290
 Specifications under New York act, 14, 286
 Statement that capital is paid, 14, 288
 Sufficiency of signature, 14, 287
 Time, 14, 285
 Trustees not signing report, 14, 289
 Validity of complaint, 14, 289
 Value of property, 14, 288
 What officers are liable, 14, 289
 When liability is incurred, 14, 285
 Where the action is local, 14, 293
 Whether liability is a "fine," 14, 293
 Whether liability is a "penalty," 14, 294
Who May Enforce Liability, 14, 290
 Creditors, 14, 290
 Debt owing to trustee, 14, 290
 Husband and wife, 14, 290
 One who has acted as trustee, 14, 290
 For what trustee is liable, 14, 280
 Insolvency, 14, 283
 Jointly or severally, 14, 280
 Necessity of valid claim against corporation, 14, 282
 President of company, 14, 280
 Stockholders, 14, 280
 Torts of corporations, 14, 282
 To whom liable, 14, 279
 Unlawful dividends, 14, 281
 Unlawful indebtedness, 14, 281
 Whether corporation must be joined, 14, 283
 Who is liable, 14, 280
Joinder
 Omission and failure to report, 14, 292
 Lease, 14, 276
 Manufacturing establishments, 6, 874
 Mercantile corporations, 14, 270
Mortgage, 14, 272
 Assent of stockholders, 14, 273
 Examples, 14, 272, 273
 Generally, 14, 272
 In New York, 4, 237; 14, 273
 Property which may be mortgaged, 14, 272
Officers and Agents, 14, 277
 See infra, **INDIVIDUAL LIABILITY OF TRUSTEES**, and *see generally*, **OFFICERS AND AGENTS OF PRIVATE CORPORATIONS**.
 Generally, 14, 277
Powers, 14, 277
 Directors, 14, 279
 General agent, 14, 278
 Managing agent, 14, 278
 President, 14, 277
 Treasurer, 14, 278
 Vice president and secretary, 14, 277
Organization, 14, 270
Partnership, 14, 276
Patents, 4, 250
Powers, 14, 272, 275
 See ASSIGNMENT FOR BENEFIT OF CREDITORS.
 See infra, **MORTGAGE; SALE AND TRANSFER OF GOODS; STOCK AND STOCKHOLDERS**.
 In general, 14, 275
 Lease of property, 14, 296
 Note, 14, 276
 Partnership, 14, 276
 Patents, 4, 250; 14, 275
 Reports, *see infra*, **INDIVIDUAL LIABILITY OF TRUSTEES**.
Restraint of Trade, 9, 887
 Promise not to manufacture at all for limited time, 9, 887
 Promise not to manufacture in single state, 9, 887
 State lines, 9, 887
 Sale and transfer of goods, 14, 274
Stock and Stockholders, 14, 274
 As to individual liability of stockholders, *see* **STOCKHOLDERS**.
 Debt due from stockholder, 14, 274
 Lien on stock, 14, 274
 Power to subscribe, 23, 799
 Purchase of company's own shares, 14, 275
 Shares of another company in payment of debt, 14, 275
Taxation, 25, 97, 487
 Exemption, 14, 311; 25, 174
 Business without the state, 25, 176
 Duration of exemption, 25, 177
 Electric light companies, 25, 175
 Gas companies, 25, 175
 In general, 25, 174
 Mining companies, 25, 175
 Newspaper publishing and printing business, 25, 175
 Organized exclusively for manufacturing purposes, 25, 176

MANUFACTURING CORPORATIONS—

Cont'd

Taxation—*Cont'd*

Exemption—*Cont'd*

Property incidentally employed, 25, 176

Property not employed, 25, 176

Unfinished factory, 14, 312

Who are manufacturing corporations, 25, 174

Trustees, see *infra*, **INDIVIDUAL LIABILITY OF TRUSTEES**.

Ultra vires, 27, 369, 370

What Companies May Be Formed Under

Manufacturing Acts, 14, 270

Gas companies, 14, 270

In Massachusetts, 14, 271

Oil companies, 14, 270

MANUMISSION, 14, 314

MANURE, 14, 314

See **FIXTURES**; **LANDLORD AND TENANT**.

Executors and administrators, 7, 250

Lead manure, 12, 974

Trover, 26, 777

MANUSCRIPT, see **COPYRIGHT**.

See **LETTERS**; **LITERARY PROPERTY**.

MANY, 14, 315

MAPS, 14, 315

Surveys, 24, 1021

MARAUDER, 14, 315

MARBLE

Manufacture of marble, 14, 261

MARE, 14, 316

MARGIN, 14, 316

See **GAMBLING CONTRACTS**.

Margin of a creek, 14, 317

MARINE, 14, 317

Marine contract, 14, 318

Marine interest, 14, 318

Marine league, 14, 318

MARINE INSURANCE, 14, 319

See **BOTTOMRY**; **GENERAL AVERAGE**; **INSURANCE**; **INSURANCE AGENTS**; **MASTER OF A VESSEL**.

As to premiums, see **INSURANCE**.

As to reinsurance, see **INSURANCE**.

As to remedies, see **INSURANCE**.

As to reputation, see **INSURANCE**.

As to waiver and estoppel, see **INSURANCE**.

Rescission, see **RESCISSION**.

Abandonment, 1, 3; 14, 394

See *infra*, **TOTAL LOSS**.

Acceptance, 14, 398

Action inconsistent with refusal, 14, 398

Definition, 14, 394

Effect, 14, 398

On freight, 14, 400

Notice of, 14, 395

Acceptance, 14, 398

Assignment of cause, 14, 397

By agent, 14, 395

By whom given, 14, 395

Causes insufficient to justify abandonment, 14, 397

Form of notice, 14, 397

Necessity, 14, 395

Notice to broker, 14, 396

Reasonable time, 14, 396

Reasonable time question of law, 14, 397

Time of notice, 14, 396

To whom given, 14, 396

Waiver of notice, 14, 397

When notice must be given, 14, 396

Property vested in underwriter, 14, 398

Right of, 14, 394

Unreasonable delay of the underwriter in refusing, 14, 398

Absolute Total Loss

Freight, 14, 388

Actual Loss

Necessity, 14, 323-338

Admiralty jurisdiction over, 1, 198

Ambiguity, 14, 329

Amount of Insurable Interest

Open Policies, 14, 335

Amount of interest at time of loss, 14, 337

Definition of open policy, 14, 335

Freight, 14, 336

Goods, 14, 336

The ship, 14, 336

Valued Policies, 14, 337

Actual interest less valuable, 14, 338

Cargoes, 14, 340

Conclusiveness of valuation, 14, 338

Constructive total loss, 14, 340

Definition of, 14, 337

Fraud, 14, 338

Freight, 14, 341

Goods, 14, 340

How amount is determined, 14, 340

Outward and home-coming cargoes, 14, 340

Partial loss, 14, 339

Prior insurance, 14, 339

Property that has not been at risk, 14, 339

Valuation at round sum, 14, 341

Amount recoverable, 14, 335

Apportionment, 14, 401

Arrests, 14, 378

Arrival, 14, 445

"Arrival at Port"

Meaning of, 1, 758

"At and from," 1, 890; 14, 343

At sea, 1, 893; 14, 333

Barratry, 14, 377, 378

Bottomry, 14, 322

Bottomry, interest in, 14, 327

Breakage, 14, 332

Burden of Proof

Seaworthiness, 14, 371

Bursting of boiler, 14, 332, 379

Capture, 14, 332

Absolute total loss, 14, 386

Cargo, 14, 386

Constructive total loss, 14, 389

Freight, 14, 393

Ship, 14, 386

- Cargo**, 2, 732; 14, 332
 And freight, 14, 332
 Covering goods stored upon deck, 2, 733; 11, 978
 Covering live stock, 2, 733
Carrier, 14, 326
Change of voyage, see *infra*, **DEVIATION**.
Charterer, 14, 325
Collision, 14, 377
Concealment, 14, 354
 See **INSURANCE**.
 Arrival of another vessel, 14, 359
 Completion of contract, 14, 362
 Delay in informing underwriter, 14, 360
 Definition, 14, 354
 Effect, 14, 354
 Examples, 14, 354-362
 Facts in regard to which there is a warranty, 14, 359
 Facts known to underwriter, 14, 357
 Fear that loss has occurred, 14, 355
 Generally, 14, 358
 Information pending negotiation, 14, 359
 Knowledge of agent, 14, 360
 Letters in post office, 14, 361
 Mere apprehensions, 14, 357
 Method of loading, 14, 358
 Nature of cargo, 14, 358
 Peril from severe storm, 14, 355
 Presence of enemies' vessels, 14, 354
 Presumption of knowledge, 14, 357
 Proof of knowledge, 14, 358
 Property liable to seizure, 14, 355
 Time of sailing, 14, 359
 Vessel wreck, 14, 355
 Waiver by underwriter, 14, 362
 What must be communicated, 14, 354
 What must be disclosed, 14, 354-357
 What must not be disclosed, 14, 357
Consignee, 14, 325
Construction, see *infra*, **POLICY**.
 Misrepresentation, 14, 352
Constructive total loss, see *infra*, **TOTAL LOSS**.
Contribution, 4, 7
Convoy, 14, 364
Deck Cargo, 2, 733; 11, 978
 Consent of owner, 11, 980
 Liability in Australia, 11, 978
 Liability in Canada, 11, 979
 Liability in United States, 11, 979
 Liability of underwriter, 11, 978
 Usage, 11, 978
 "Deduction," 5, 422
Definition, 14, 319
Departure, 5, 568
Destruction of ship to prevent her falling into the hands of enemies, 7, 995
Detainment, 14, 378
Detention, 14, 332
 Absolute total loss, 14, 386
 Cargo, 14, 386
 Constructive total loss, 14, 389
 Freight, 14, 393
 Ship, 14, 386
 Wages and provisions during detention of crew, 14, 404
Deviation, 5, 568, 658; 14, 373
 Change of voyage, 14, 373
 Definition, 5, 658
 Effect, 14, 373
 Examples, 14, 373
 For purpose of saving life, 5, 659
 From what time policy is avoided, 14, 373
 Saving property, 5, 659
 To avoid imminent peril, 5, 658
 What constitutes, 14, 373
 "Directly by a sea," 14, 332
Double Insurance, 14, 341
 Fraud, 14, 342
Duration of Risk, see *infra*, **VOYAGE AND TIME POLICIES**.
 Upon freight, 14, 350
 Upon the Cargo, 14, 348
 "At and from," 14, 349
 Delivery to assured, 14, 350
 From landing thereof on said ship, 14, 348
 Landings, 14, 349
 Reloading, 14, 348
 Special agreement, 14, 350
 Termination of risk, 14, 349
 To what goods policy attaches, 14, 349
 Wheresoever loaded, 13, 348
Upon the Ship, 14, 343
 Arrival, 14, 345
 "At and from" a port, 14, 343
 Clearing for another port, 14, 343
 Commencement of risk, 14, 343
 Compliance with special terms of the policy, 14, 344
 Delay in reaching port, 14, 344
 "From" a port, 14, 443
 Last port of discharge, 14, 346
 Opportunity to unload, 14, 345
 Physical safety, 14, 343-345
 Political safety, 14, 345
 Port of discharge, 14, 346
 Port risk, 14, 347
 Safety, 14, 344
 Termination of risk, 14, 344
 Time after arrival, 14, 345
 Voyage insured, 14, 343
Embargo, 6, 449
Enemy, 6, 641; 14, 378
Expert and Opinion Evidence, 7, 508
 Questions upon which expert testimony is admissible, 7, 508
 "For Whom It May Concern," 8, 87
 Construction of term, 8, 87-89
 Insurable interests in subject, 8, 88
 Persons in contemplation at time of insurance, 8, 89
Foundering, 14, 375
Fraud
 Double insurance, 14, 342
 Return of premium, 14, 402
 Valued policies, 14, 338
 Free from average unless general, 8, 898

MARINE INSURANCE—Cont'd

- Freight**, 14, 321, 333
 - Amount recoverable, 14, 337
- Constructive Total Loss**, 14, 393
 - Damaged cargo, 14, 393
 - Determination by facts at time of notice of abandonment, 14, 394
 - Different freight earned, 14, 393
 - Of vessel, 14, 393
 - Restitution of property, 14, 394
 - Rule in England, 14, 394
 - Rule in United States, 14, 393
- Duration of risk**, 14, 350
- Effect of abandonment**, 14, 400
- Interest in**, 14, 326
- Particular Average**, 14, 405
 - Examples, 14, 405, 406
 - Expense of forwarding to place of destination, 14, 407
 - Part of cargo lost, 14, 406
 - When it occurs, 14, 406
- Total Loss**, 14, 388
 - Damage of vessel, 14, 388
 - Earning freight, 14, 388
 - Freight on vessel, 14, 388
 - Vessel, justifiable loss, 14, 388
 - When freight might still be earned, 14, 388
- Valued policies**, 14, 341
- "From,"** 14, 443
- Funds**, 14, 404
- "Goods,"** 8, 1365; 14, 320
- Goods and cargo**, 14, 333
- "Held in trust,"** 14, 332
- Ice melting**, 14, 332
- Illegality**, 14, 374
 - Custom acts, 14, 374
 - Examples, 14, 374, 375
 - Intention to violate law, 14, 374
 - Return of premium, 14, 401
 - Voyage forbidden by law of underwriter's company, 14, 374
 - What avoids the policy, 14, 374
- Implied Warranty**
 - Diligence of carrier, 14, 372
 - Goods, 14, 371
 - Papers, 14, 371
- Seaworthiness**, 14, 366
 - At beginning of voyage, 14, 369
 - Burden of proof, 14, 371
 - Effect of breach, 14, 366
 - Failure to take pilot, 14, 371
 - Nature of vessel, 14, 368
 - Neglect of master or crew, 14, 370
 - Presumption, 14, 371
 - Seaworthiness unknown, 14, 367
 - Subsequent unseaworthiness, 14, 369, 370
 - Time policy, 14, 367
 - Vessel improperly built, 14, 368
 - Vessel in harbor, 14, 368
 - Vessel overloaded, 14, 368
 - Voyage in different stages, 14, 368
 - Voyage policy, 14, 368
 - What warranty requires, 14, 368
 - When underwriters have approved vessel, 14, 367

- Where statute requires pilot, 14, 371
- "Inboard cargo,"** 14, 332
- Inherent vice**, 14, 385
- Insurable Interests**, 14, 323
 - See **INSURANCE**.
 - Amount of insurable interest*, see *infra*.
- AMOUNT OF INSURABLE INTEREST**
 - At sea, 14, 333
 - Bottomry, interest in, 2, 490; 14, 327
 - Breakage, 14, 332
 - Bursting of the boilers, 14, 332
 - Capture, 14, 332
 - Cargo, 14, 332
 - Cargo and freight, 14, 332
 - Carrier, 14, 326
 - Charterer, 14, 325
 - Consignee, 14, 325
 - Detention, 14, 332
 - "Directly by a sea,"** 14, 332
 - Freight, 14, 333
 - Freight, interest in, 14, 326
 - Goods and cargo, 14, 333
 - "Held in trust,"** 14, 332
 - Ice melting, 14, 332
 - "Inboard cargo,"** 14, 332
 - In profits of voyage, 11, 317
 - Insurance as insurable interest, 14, 325
 - Interest of insurable interest, 14, 327
 - Invoice price, 14, 332
 - Knowledge of the usage, 14, 331
 - Leakage, 14, 332
 - Lender on bottomry, 14, 325
 - "Loading off shore prohibited,"** 14, 331
 - Lying at anchor, 14, 332
 - Mortgagee, 14, 325
 - Nature of interest, 14, 328
 - Owner, 14, 324
 - Owner who has conveyed vessel as security, 14, 324
 - Part owner, 14, 327
 - Passage money, 14, 327
 - Person who has contract to purchase vessel, 14, 325
 - Pickled fish, 14, 333
 - Policies for whom it may concern, 14, 324
 - Policy, interest in, 14, 327
 - Proceeds, 14, 332
 - Profits, interest in, 14, 326
 - Property, 14, 332
 - Property on board, 14, 332, 333
 - Purchase of unspecified goods, 14, 325
 - "Registered tonnage,"** 14, 332
 - Respondentia, interest in, 14, 327
 - Return of premium, 14, 401
 - Seller's interest, 14, 325
 - Thieves, 14, 332
 - To contradict plain words of policy, 14, 331
 - Usage must be general, 14, 331
 - Usage of a single port, 14, 331
 - Insurance as insurable interest, 14, 325
 - Invoice price, 14, 332
 - Leakage, 14, 332
 - Lender on bottomry, 14, 325

Liability for Damage

Caused by vessel, 16, 350

Liability of owners who contract to insure cargo, 22, 725

Loading off shore prohibited, 13, 975; 14, 331

Loss Not Covered, 14, 385

See *infra*, PROXIMATE AND REMOTE CAUSE.

Act of government of assured, 14, 385

Inherent vice, 14, 385

Loss caused through apprehension of a loss, 14, 383

Loss of freight, 13, 1058

"Lost or not lost," 13, 1058

Lying at anchor, 13, 1193; 14, 332

Lying up, 13, 1194

Matters Avoiding the Policy, 14, 350

See *infra*, CONCEALMENT; DEVIATION; ILLEGALITY; VIOLATION OF COVENANTS.

Misrepresentation, 14, 251

As to future conditions, 14, 352

Construction, 14, 352

Definition, 14, 351

Effect, 14, 351

Expectation or belief, 14, 352

False, 14, 352

Information, 14, 352

Intention, 14, 352

Loss not arising from any cause connected with, 14, 354

Material, 14, 353

Materiality, 14, 352, 353

Exact time of sailing, 14, 353

Examples, 14, 353

Presumption as to, 14, 353

Question for jury, 14, 353

Time policies, 14, 353

Return of premium, 14, 401

Statements made to prior underwriter, 14, 354

Substantially true, 14, 353

Mixed policies, 14, 335

Mortgagee, 14, 325

Nature of interest, 14, 328

Negligence, 14, 383

Assured loss through, 14, 384

Effect of, 14, 383

Of assured, 14, 384

Of master or crew, 14, 383

Neutrality, 14, 365

Notice of abandonment, see *infra*, ABANDONMENT.

"On board," 2, 429

One-third new for old, 14, 391, 403

Open policies, see *infra*, AMOUNT OF INSURABLE INTEREST.

"Other losses, perils, and misfortunes," 14, 379

Outfit, 14, 330

Owner, 14, 324

Implied warranty, 14, 371

Warranty of neutrality, 14, 265

Who has conveyed vessel as security, 14, 324

Partial Loss, see *infra*, PARTICULAR AVERAGE.

Valued policies, 14, 339

Particular Average, 14, 402; 17, 469

Definition, 14, 402

Distinguished from partial loss, 14, 402

Free from average unless general, 14, 408

On Cargo, 14, 407

Destruction of portion of cargo, 14, 407

Goods merely damaged, 14, 407

Sale of goods, 14, 407

When it occurs, 14, 407

On Freight, 14, 405

Examples, 14, 405, 406

Expense of forwarding to place of destination, 14, 407

Part of cargo lost, 14, 406

When it occurs, 14, 406

On Ship, 14, 403

Extraordinary expenses of raising funds, 14, 404

First voyage, 14, 404

Funds, 14, 404

Loss under a certain rate per cent., 14, 405

New for old, 14, 403

Repairs, 14, 403

Risks excluded by the memorandum, 14, 405

Value of old materials, 14, 404

Wages, 14, 404

Partial loss, 14, 402

Provisions of crew during detention for repairs, 14, 404

Terms of the policy, 14, 408

Parties to actions, 17, 522

Partnership, 17, 1212

Part owner, 14, 327

Passage money, 14, 327

People, 18, 296

Perils Insured Against, 14, 375

See *infra*, PERILS OF THE SEA.

Arrests, 14, 378

Barratry, 14, 378

Bursting of boiler, 14, 379

Collision, 14, 377

Detainment, 14, 378

Enemies, 14, 378

Fire, 14, 375

In general, 14, 375

Loss caused through apprehension of loss, 14, 383

Losses not covered, 14, 385

Negligence, 14, 383

"Other losses, perils, and misfortunes," 14, 379

Pirates, 14, 378

Restraints of person, 14, 378

Rovers, 14, 378

Taking unlawfully, 14, 378

Thieves, 14, 378

Worms, 14, 378

Perils of the Sea, 14, 375

Barratry, 14, 377

MARINE INSURANCE—Cont'd**Perils of the Sea—Cont'd**

- Definition, 14, 375
- Examples, 14, 375-377
- Freezing, 14, 376
- Injury by ice, 14, 376
- Leakage, 14, 377
- Loss by wreck, 14, 375
- Ordinary wear and tear, 14, 377
- Proof of sailing and non-arrival, 14, 376
- Rain, 14, 376
- Seawater, 14, 376
- Stranding, 14, 376
- Swell of a passing steamer, 14, 376
- What is not a peril of the sea, 14, 377
- Worms, 14, 377

Person who has contracted to purchase vessel, 14, 325

Pickled fish, 14, 333

Pilot

- Failure to take, 14, 371

Policy, 14, 328

See LIFE INSURANCE.

Construction, 14, 329

With reference to ways of the trade,
see *infra*, USAGES AND CUSTOMS.

Against underwriter, 14, 329

Ambiguity, 14, 329

Written and printed words, 14, 329

Definition, 14, 328

Effect of mistake in name, 14, 333

For whom it may concern, 14, 324

Interest in, 14, 327

Name of ship, 14, 333

Necessity, 14, 328

"On board ship or ships," 14, 333

Oral contract, 14, 328

Period greater than one year, 14, 328

Stamp in England, 14, 328

Sufficiency, 14, 328

Port, 14, 364; 18, 837

Port of discharge, 14, 346

Port risk, 14, 347

Presumptions, 19, 62

Priority, 14, 341

Prior policy, 14, 339-342

Proceeds, 14, 332

Profits, 14, 321

Profits, interest in, 14, 326

Property, 14, 332

Property on board, 14, 332, 333

Proximate and Remote Cause, 14, 380;

19, 301

Cargo sold for repairs, 14, 381

Cargo used for passengers, 14, 382

Direct and remote consequences, 14, 381

Examples, 14, 380, 381

Liability of underwriter, 14, 380

Provisions used during detention, 14, 382

Remote consequences, 14, 381

Rule in United States, 14, 382

What is proximate cause, 14, 380

Purchase of unspecified goods, 14, 325

Question of Law and Fact

Nature of misrepresentation, 14, 354

Seaworthiness, 14, 372

Recapture, 14, 386

Receipts, 19, 1126

Between underwriter and broker, 19, 1127

Conclusiveness of acknowledgment, 19, 1126

Examples, 19, 1126, 1127

In general, 19, 1126

"Registered tonnage," 14, 353

Repairs, see *infra*, PARTICULAR AVERAGE; TOTAL LOSS.

Respondentia, 14, 322

Respondentia, interest in, 14, 327

Restraint of person, 14, 378

Return of Premium, 14, 400

Contract void for illegality, 14, 401

Fraud of assured, 14, 402

Fraud of underwriter, 14, 402

Illegal voyage never entered upon, 14, 401

Misrepresentation, 14, 401

Over-insurance, 14, 402

Want of insurable interest, 14, 401

Where no risk has been run, 14, 400

Where policy is attached, 14, 401

Where policy is not attached, 14, 401

Where risk is apportionable, 14, 401

Risk suspended while loading, 13, 976

Rovers, 14, 378

Safety, 14, 344, 364

Physical, 14, 345

Political, 14, 345

Sailing, 14, 364

Seaworthiness, 14, 366

At beginning of voyage, 14, 369

Burden of proof, 14, 371

Effect of breach, 14, 366

Failure to take pilot, 14, 371

Nature of vessel, 14, 368

Neglect of master or crew, 14, 370

Presumption, 14, 371

Question for judge or jury, 14, 372

Subsequent unseaworthiness, 14, 369 370

Time policy, 14, 367

Unknown, 14, 367

Vessel improperly built, 14, 368

Vessel in harbor, 14, 368

Vessel overloaded, 14, 368

Voyage in different stages, 14, 368

Voyage policy, 14, 368

What the warranty requires, 14, 368

When underwriters have approved vessel, 14, 367

Where statute requires pilot, 14, 371

Seizure

Absolute total loss, 14, 386

Cargo, 14, 386

Constructive total loss, 14, 389

Freight, 14, 393

Ship, 14, 386

Seller's interest, 14, 325

"Ship" as covering the charts of a ship, 3, 138

Ship or ships, 14, 333

Stoppage in Transitu

Whether vendor entitled to insurance money, 23, 933

Stranding, 23, 938

Case in which vessel was held not to have been stranded, 23, 938

Case in which vessel was held to have been stranded, 23, 938

Definition, 23, 938

Examples, 23, 938

Subrogation, 24, 311

Against party primarily liable for loss of vessel, 24, 313

Examples, 24, 311-316

Insurer's right to freight earnings after abandonment, 24, 315

In whose name insurer may sue, 24, 305

In whose name suit should be brought, 24, 316

Name in which action should be brought, 24, 316

Owner who has been fully indemnified, 24, 314

Rejection of proffered abandonment, 24, 315

Rights acquired the same as assured, 24, 315

Subrogation to rights of owner, 24, 313

Underwriter's right, 24, 311

Where owner has not been fully indemnified, 24, 314

Where ship is abandoned at sea, 24, 311

Whether abandonment is necessary to underwriter's right, 24, 313

Surveys, 24, 1024

Definition, 24, 999

Taking unlawfully, 14, 378**Theft**, 13, 1058**Thieves**, 14, 332, 378**Time after arrival**, 14, 345**Time policy**, see *infra*, VOYAGE AND TIME POLICIES.

"To bring to port," 2, 568

To contradict plain words of policy, 14, 331

Total Loss, 1, 185; 13, 1053; 14, 385

See *infra*, ABANDONMENT.

Absolute, 14, 385

Capture, 14, 396

Capture of goods, 14, 387

Cargo, 14, 387

Decree of restoration, 14, 386

Definition, 14, 385

Detention, 14, 386

Detention of goods, 14, 387

Freight

Damage of vessel, 14, 388

Earning, 14, 388

On vessel, 14, 388

Vessel justifiably sold, 14, 388

When freight might still be earned, 14, 388

Goods so damaged as not to be worth carrying, 14, 287

Recapture, 14, 386

Sale by master, 14, 386

Sale not stringently necessary, 14, 387

Sale of goods, 14, 387

Seizure, 14, 386

Seizure of goods, 14, 387

Ship, 14, 385

Ship never heard from, 14, 386

Total physical loss of goods, 14, 387

Vessel not repairable, 14, 386

Vessel unable to complete voyage, 14, 387

When it occurs, 14, 385

Actual, 13, 1053

Constructive, 14, 389

Cannot be carried to destination, 14, 391

Cargo, 14, 391

Captured or detained, 14, 393

Changed into different species, 14, 391

Damage to part of goods, 14, 392

Justifiable sale by master, 14, 392

Liability of master to forward, 14, 392

Loss of the voyage, 14, 392

Value of part saved less than one-half of real value, 14, 392

Definition, 14, 389

Freight, 14, 393

Constructive total loss of vessel, 14, 393

Damaged cargo, 14, 393

Determination by facts at time of notice of abandonment, 14, 394

Different freight earned, 14, 393

Restitution of property, 14, 394

Rule in England, 14, 394

Rule in United States, 14, 393

How cost of repairs arrived at, 14, 391

Notice of abandonment, 14, 395

One third new for old, 14, 391

Repairs exceeding one-half value of vessel, 14, 390

Repairs exceeding value, 14, 390

Restraint or detention, 14, 389

Rule in United States, 14, 393

Sale by master, 14, 390

Ship, 14, 389

Shipwreck, 14, 389

Submersion, 14, 389

What constitutes, 14, 389

Definition, 14, 385

Touch and stay, 26, 79

Unseaworthiness, see *infra*, SEAWORTHINESS.

Usage must be general, 14, 331

Usage of a single port, 14, 331

Usages and Customs, see USAGES AND CUSTOMS.

"Blubber," 14, 330

"Corn," 14, 330

Examples, 14, 329, 334

General rule, 14, 329

Knowledge of the usage, 14, 331

"Malt," 14, 330

MARINE INSURANCE—Cont'd**Usages and Customs—Cont'd**

"Outfit," 14, 330

"Port," 14, 329

"Roots," 14, 330

"Salt," 14, 330

"Skins," 14, 330

Valued policies, see *infra*, AMOUNT OF INSURABLE INTEREST.

Violation of covenants, 14, 372

Voyage and Time Policies, 14, 334

Computation of time, 14, 335

Damages not ascertained until after expiration of time, 14, 335

Definition, 14, 334

Designation of terminus, 14, 334

"Mixed" policies, 14, 335

Policies continue until notice of discontinuance, 14, 335

Retrospective policy, 14, 334

Risk under time policy, 14, 334

Wages, 14, 323

Waiver of notice, 14, 397

Warranty, see *infra*, IMPLIED WARRANTY.See **INSURANCE**.

Acceptance of abandonment, 14, 366

Antecedent loss, 14, 363

Body of the policy, 14, 363

Breach of, 14, 362

Compliance, 14, 362

Convoy, 14, 364

Definition of express, 14, 362

Failure to sail as warranted, 14, 364

Necessity of the word "warrant," 14, 363

Neutrality, 14, 365

Concealment or destruction of papers, 14, 365

Documents, 14, 365

Effect of judgment of foreign court, 14, 366

Intention unaccompanied by act, 14, 366

Sailing for blockaded port, 14, 366

Simulated papers, 14, 365

Subsequent change of character, 14, 366

What the warranty requires, 14, 365

When risk begins, 14, 366

Of national character, 14, 366

Port, 14, 364

Safety, 14, 364

Sailing, 14, 364

Strictness required, 14, 362

What May Be Insured, 14, 319, 323

Advances, 14, 322

Alien enemy, 14, 323

Alien enemy with license to trade, 14, 323

Appurtenances to the ship, 14, 320

Bottomry, 14, 319, 322

Commissions, 14, 322

Freight, 14, 320

General average, 14, 322

Generally, 14, 319

Goods, 14, 320

Liens, 14, 322

Master's wages, 14, 323

Outfit, 14, 320

Passage money, 14, 322

Profits, 14, 321

Respondentia, 14, 319, 322

Vessel, 14, 319

Wages of seamen, 14, 323

Where voyage is unlawful, 3, 888

Who May Insure, see *infra*, INSURABLE INTERESTS.

Ship's agent, 22, 734

Worms, 14, 378

MARINER, 14, 409See **SEAMEN**.**MARIONETTES**

Theaters, 25, 1031

MARITIME, 14, 409**MARITIME CONTRACTS**, see ADMIRALTY; BILLS OF LADING; BOTTOMRY; MARINE INSURANCE; SEAMEN; SHIPS AND SHIPPING.**Usages and Customs**

Usage to explain, 27, 824

MARITIME LAW, 14, 409**MARITIME LIENS**, 1, 200; 14, 411See **BOTTOMRY**; **DEMURRAGE**.See *generally*, **LIENS**.See **MASTER OF A VESSEL**; **SALVAGE**; **SEAMEN**.**Advances of Money**, 14, 423

As an insurable interest, 14, 424

By part owner, 14, 424

Repairs and supplies, 14, 423

To discharge existing debts, 14, 424

Agent, 14, 434

Assignment of claim, 14, 453

At common law, 14, 453

Broker, 14, 434

Cargo, see *infra*, **LIEN OF SHIP ON CARGO**.

Lien on, 14, 436

Charterer's liability, 14, 420

Clerk, 14, 434

Collateral security, 14, 452

Compressed cotton, 14, 412, 434

Construction, 14, 421

Examples, 14, 421, 422

Jurisdiction in United States court, 14, 423

Local law, 14, 423

Original, 14, 421

Rebuilding portion of vessel, 14, 423

Reconstruction, 14, 422

Stores furnished under a contract to build and equip ship, 14, 422

Cooks, 14, 432

Damages, 14, 436; 16, 358

Cargo, 16, 358

Change of ownership, 16, 355, 358

How long it lasts, 16, 358

Inchoate, 16, 358

In general, 16, 358

Priority, 14, 436, 443

Removal of vessel into another jurisdiction, 16, 358

- Definition, 14, 410
 Delivery of goods as waiver, 14, 438
 Demurrage, 8, 976; 14, 439
 Destruction of vessel, 14, 452
Discharge, see *infra*, WAIVER, DISCHARGE, AND EXTINGUISHMENT.
 Dredges, 14, 411
 Dry docks, 14, 411
 Engineer, 14, 431
 Examples, 14, 411, 412
Extinguishment, see *infra*, WAIVER, DISCHARGE, AND EXTINGUISHMENT.
Foreign Port, 14, 417
 See infra, HOME PORT.
 Falsely holding vessel out as foreign vessel, 14, 420
 Foreign built ship, 14, 420
 Owner's dwelling in different states, 14, 417-420
 Residence of owner, 14, 417
 Vessel sailing under foreign registry and flag, 14, 419
For What a Lien May Exist, 14, 412
 Damage, see *infra*, DAMAGES.
 For advances of money, see *infra*, ADVANCES OF MONEY.
 For safe transport, see *infra*, SAFE TRANSPORT OF CARGO.
 For services, see *infra*, SERVICES.
 For towage, see *infra*, TOWAGE.
 Pilotage, see *infra*, PILOTAGE.
 Supplies and repairs, see *infra*, SUPPLIES AND REPAIRS.
 Freight, 14, 438; 22, 745
 Goods lost, 22, 745
Home Port, 14, 417
 See infra, FOREIGN PORT.
 Residence in different states, 14, 417-420
 Residence of owner, 14, 417
 Whether there is lien for supplies furnished at, 14, 417
Judicial Sale of Vessel
 Effect of lien, 14, 449
 Under state statute, 14, 449
 Jurisdiction of admiralty, 1, 200
Laches, 12, 576; 16, 358
 See infra, WAIVER, DISCHARGE, AND EXTINGUISHMENT.
 Different classes of liens, 12, 577
 Ocean-going vessel, 12, 576
 Purchaser charged with notice, 12, 577
 Subsequent purchase of liens, 12, 576
 Vessel sold before filling, 12, 577
 What amounts to, 12, 576
 Where no question of priority, 12, 578
Lien of Ship on Cargo, 14, 436, 438
 Delivery of goods as waiver of lien, 14, 438
 For demurrage, 14, 439
 For freight, 14, 438
 Lien of ship owner, 5, 546
 Lien on goods, 22, 745
 Maritime contract, 14, 318
Master of a Vessel, 14, 974
 Liability for ship, 14, 974
 Payment of seamen, 14, 974
 Wages, 14, 974
Master's lien for service, see *infra*, SERVICES.
 Mate, 14, 431
Necessaries, 14, 414
 Coal, 14, 414
 Copper sheathing, 14, 415
 Examples, 14, 412-416
 Necessity, 14, 414
 Rope, 14, 415
 Seamen's clothing, 14, 415, 416
 What are, 14, 414
 Other persons than seamen, 14, 432-434
 Owner of cargo, 14, 436
 Pilotage, 14, 434
 Pilots, 14, 455
 Presumption that supplies are furnished on credit of vessel, 14, 416
Priority, 14, 439
 As between different voyages, 14, 445
 Bottomry bonds, 14, 443
 Contemporaneous liens, 14, 440
 Damages, 14, 436, 443
 Domestic liens, 14, 446
 Domestic liens created by statute, 14, 444
 Foreign laws, 14, 445
 General principles, 14, 439
 Lien of statutory mortgage, 14, 445
 Liens of same rank, 14, 440
 Material men, 14, 443
 Proceeds of sale of vessel, 14, 439
 Pro rata discharge, 14, 440
Salvage Liens, 14, 442; 21, 702
 After priority of lien lost, 21, 703
 Government's claims for duties, 21, 702
 Lien for general average, 21, 702
 Lien for seamen's wages, 21, 702
 Liens of masters for wages and disbursements, 21, 703
 Priority over all other liens, 14, 442
 Prior maritime liens, 21, 702
 Seamen's liens, 14, 442
 Two liens for salvage, 14, 442
 Same voyage, 14, 440
 Seamen's wages, 14, 428, 442
Supplies and Repairs
 Antecedent bottomry bond, 14, 443
 Between different material men, 14, 443
 Later bottomry bond, 14, 443
 Where lien is not contemporaneous, 14, 441
 Rebuilding, 14, 421, 423
 Rebuttal of presumption that supplies are furnished on credit of vessel, 14, 417
Repairs, see *infra*, SUPPLIES AND REPAIRS.
 Residence of owner, 14, 417
 Safe transport of cargo, 14, 436
Salvage Lien, 14, 436; 21, 701
 Agreement to pay stipulated sum, 21, 703
 Expenses in arresting ship, 21, 702

MARITIME LIENS—Cont'd**Salvage Lien—Cont'd**

How lost, 21, 703

In general, 21, 701

Possession of salvors, 21, 702

Priority, 14, 442; 21, 702

After priority of lien lost, 21, 703

Government's claims for duties, 21, 702

Lien for general average, 21, 702

Lien for seamen's wages, 21, 702

Liens of masters for wages and disbursements, 21, 703

Over all other liens, 14, 442

Prior maritime liens, 21, 702

Seamen's liens, 14, 442

Two liens for salvage, 14, 442

Removal by owner without consent of salvors, 21, 702

Salvor holding mortgage upon vessel, 21, 703

Temporary leaving, 21, 703

War vessels, 21, 703

When owner entitled to possession, 21, 702

Whether actual possession is necessary, 21, 702

Scow platforms, 14, 412**Seamen's Wages**, 14, 425, 431

Agent, 14, 434

Assignee of seaman, 14, 428

Broker, 14, 434

Clerk, 14, 434

Compressing cotton, 14, 434

Cook, 14, 432

Engineer, 14, 431

Extra wages, 14, 425

Father, 14, 428

Fishermen, 14, 427

General rule, 14, 525

Illegal voyage, 14, 427

Lien in which claim must be asserted, 14, 428

Mate, 14, 431

Minor, 14, 429

On vessel, 14, 427

Other person than seamen, 14, 432-434

Part owner serving as seaman, 14, 429

Personal privilege, 14, 428

Priority, 14, 428, 442

Proceeds of sale of vessel, 14, 427

Relying upon exclusive credit of master, 14, 426

Representative of deceased seaman, 14, 428

Sale of vessel on execution, 14, 430

Serving only in port, 14, 425

Ship's husband, 14, 432

Special contract, 14, 425, 426

Stevedores, 14, 432

Upon freight, 14, 427

Watchman, 14, 433

Seine boat, 14, 412**Services**, see *infra*, **SEAMEN'S WAGES**.

Agent, 14, 434

Broker, 14, 434

By master, 14, 430

Clerks, 14, 434

Compressing cotton, 14, 434

Cook, 14, 432

Engineer, 14, 431

Mate, 14, 431

Other persons than seamen, 14, 432-434

Ship's husband, 14, 432

Stevedores, 14, 432

Subordinate officers, 14, 431

Watchmen, 14, 433

Ship's husband, 14, 432

Shipwright, 14, 453

Special apparatus, 14, 412

State Laws, 14, 454

As element of original contract, 14, 455

Divestment of state liens, 14, 456

Enforced in admiralty, 14, 454

In general, 14, 454

Pilots, 14, 455

Power of state, 14, 454

Reference to statutes, 14, 456

Towage, 14, 456

United States courts, 14, 454

When boat lien applies, 14, 455

Stevedores, 14, 432

Stores furnished under a contract to build and equip ship, 14, 422

Subordinate officers, 14, 431

Supplies and Repairs, 14, 412

Advances of money, 14, 423

Averages, 14, 416

Chartered vessels, 14, 420

Copper sheathing, 14, 415

Examples, 14, 412-420

Foreign Port, 14, 417See *infra*, **HOME PORT**.

Falsely holding vessel out as foreign vessel, 14, 420

Foreign built ship, 14, 420

Owners dwelling in different states, 14, 417, 420

Residence of owner, 14, 417

Vessel sailing under foreign registry and flag, 14, 419

Home Port, 14, 417See *infra*, **FOREIGN PORT**.

Residence in different states, 14, 417-420

Residence of owner, 14, 417

Whether there is lien for supplies furnished at, 14, 417

Must be necessary, 14, 412

Presumption that supplies are furnished on credit of vessel, 14, 416

Priority, 14, 443

Antecedent bottomry bond, 14, 443

Between different material men, 14, 443

Later bottomry bond, 14, 443

Rebuilding portion of ship, 14, 421, 423

Rebuttal of presumption that supplies are furnished on credit of vessel, 14, 417

Rope, 14, 415

- Seamen's clothing, 14, 415, 416
 Supplies of food, 14, 415
 What are necessities, 14, 414
- Supplies of food, 14, 415
- Taking Commercial Paper**
 Effect on lien, 14, 451
 Surrender of note or bill where lien is sought to be enforced, 14, 452
- Towage**, 14, 434, 456; 26, 93
 Tow's lien for damages, 26, 95
- Wages**, see *infra*, SEAMEN'S WAGES.
 Master of a vessel, 14, 974
- Waiver**, 14, 438
 Delivery of goods as, 14, 438
- Waiver, Discharge, and Extinguishment**, 14, 447
 At common law, 14, 453
 By assignment of claim, 14, 453
 By departure of vessel, 14, 453
 By destruction of vessel, 14, 453
 By *Laches*, 14, 447
 General rule, 14, 447
 Material man lien, 14, 448
 Subsequent incumbrances, 14, 447
 Subsequent purchasers, 14, 447
 Where no injury has resulted, 14, 448
 Where ownership has not been changed, 14, 448
 By taking collateral security, 14, 452
 By taking commercial paper, 14, 451
 Effect of private sale, 14, 449
 Judicial sale of vessel, 14, 449
 Judicial sale under state law, 14, 449
 State liens, 14, 456
- Watchmen**, 14, 433
- Wharfage**, 14, 434
- What Are Subject to**, 14, 411
 Compressed cotton, 14, 412
 Dredges, 14, 411
 Dry docks, 14, 411
 Examples, 14, 411, 412
 Scow platforms, 14, 412
 Seine boat, 14, 412
 Special apparatus, 14, 412
 Wrong done to vessel, 14, 436
- MARK**, 14, 457
 As signature, 9, 264
 Ear mark, 14, 457
 Forgery, 8, 464
 Logs and lumber, 13, 1032
 Low water mark, 13, 1189
 Necessity of witnesses, 9, 264
 Outward mark, 17, 294
Signature
 Frauds, statute of, 8, 717
 Statute of fraud, 14, 457
 Trade-mark, 14, 457
 Water mark, 29, 24
 Whether signature includes, 22, 781
- Wills**, 29, 169-171
 Subscribing witnesses, 29, 225, 226
- MARKET**, 14, 459
 See **MARKET OVERT**.
 Action against municipality for negligence, 14, 467
 Coming to, 3, 314
- Definition, 14, 459
 Discontinuance, 14, 467
 Dower in, 5, 891
 "Establish and regulate," 6, 874
 Foreign, 8, 280
 How to purchase land necessary for, 14, 460
 Injunctions, 14, 461, 462
 Inspection ordinances of municipal corporation, 15, 1175
 In streets, 14, 461
 Lands and house, 14, 460
 License, 14, 536
 Market garden, 14, 459
 Market place, 14, 459
Market Value, 14, 467
 Lease, 14, 468
 Depreciation in, 14, 469
- Municipal Regulations**, 14, 462
 Examples of ordinances, 14, 462, 463
 Levying tax for revenue, 14, 464
 Occupation of stalls and stands, 14, 465
 Prohibiting hawking and peddling, 14, 463
 Prohibiting sale at other places, 14, 463
 Sale, 14, 465
 Sale of fresh meat outside of market, 14, 464
 Unreasonable and illegal regulations, 14, 462
 What regulations may be adopted, 14, 462
- Municipal right to establish, 14, 460
- Nuisance**, 14, 461
 What constitutes a, 14, 461
 What not a, 14, 462
- Occupation of Stalls and Stands**, 14, 465
 Regulations, 14, 465, 466
- Ordinances**
 Reasonableness, 17, 249
 Unreasonableness, 17, 251
 Owned directly by individuals, 14, 461
 Power to build market house, 14, 460
 Prescription, 19, 29
 Prohibiting hawking and peddling, 14, 463
 Prohibiting sale outside of market, 14, 463
- Receivers**, 20, 31
- Removal**, 14, 467
- Right to establish garden, 14, 460
- Sales**, 14, 464
 By-laws and regulations, 14, 464
 Municipal regulations, 14, 464
 Perishable produce, 14, 465
 Right confined to stall owners, 14, 464
 Right of frequenter, 14, 464
 Statute of frauds, 8, 667
- Street**
 What constitutes a nuisance, 14, 461
 What not a nuisance, 14, 461
- Use of**, 14, 464
 By-laws and regulations, 14, 464
 Municipal regulations, 14, 465
 Perishable produce, 14, 465
 Right confined to stall owners, 14, 464
 Right of frequenter, 14, 464
 Whether public property, 14, 461

MARKETABLE, 15, 306

MARKETABLE TITLE, 28, 71

MARKET OVERT, 14, 458; 21, 461, 569;

22, 572

Sales, 21, 461

MARKET VALUE, 1, 186

MARQUE

Letters of marque, see **LETTERS OF MARQUE AND REPRISAL**.

MARRIAGE, 14, 470

See **BIGAMY**; **BREACH OF PROMISE OF MARRIAGE**; **CHASTITY**; **DIVORCE**; **DOWER**; **HUSBAND AND WIFE**; **LEGITIMACY**; **MARRIAGE SETTLEMENTS**; **MARRIED WOMEN**; **NULLITY**; **PEDIGREE**; **SEPARATE PROPERTY OF MARRIED WOMEN**.

Contract providing for marriage property rights, see **MARRIAGE SETTLEMENTS**.

For decree of divorce with prohibition against marriage, see **DIVORCE**.

Illegal contract, see **ILLEGAL CONTRACTS**.

Actual Marriage

When celebration and actual marriage must be proved, 14, 530

Admission

Husband and wife, 14, 527

Affinity and Consanguinity, 14, 496

Ecclesiastical law, 14, 496

Examples, 14, 496, 497

Incest, 10, 340; 14, 496

Necessity of nullity suit, 14, 497

Nullity suit, 14, 496

Statutes, 14, 496

Void or voidable, 14, 496

After continued absence of consort, 1, 38

Age, 10, 622; 14, 487

Acknowledgment, 14, 488

At common law, 14, 487

Cohabitation, 14, 488

Consent of parents, 14, 488

Construction of statutes, 14, 488

Female, 14, 487

Fraud, 10, 624; 14, 509

Guardian, 14, 489

How confirmed, 14, 488

In what states void, 10, 623

Judicial decree, 10, 623

Magistrate forbidden to issue certificates, 10, 623

Males, 14, 487

Nullity, 14, 489, 534

Parties over seven, 14, 488

Ratification inferred from cohabitation, 10, 622

Ratification of marriage, 10, 622

Statutory provisions, 10, 622

Validity of marriage, 10, 624; 14, 488

Voidable, 10, 622; 14, 488

Want of, 10, 622; 14, 487

When marriage can be annulled, 10, 623; 14, 489

Whether sufficient to support prosecution for bigamy, 10, 623

As an essential to curtesy, 4, 959

Bigamy, see *infra*, **FORMER MARRIAGE**.

Burden of Proof

As to incapacity to marry, 2, 652

Contract in evasion of marriage, 14, 482

Lucid intervals, 14, 491

By What Law Determined

Capacity to marry, 3, 599

Determination of question as to marriage, 3, 599

Marriage of persons leaving the state to avoid the laws of their domicil, 3, 600

Persons divorced for adultery, 3, 599

Rights dependent on marriage, 3, 598

Validity of marriage, 3, 598

Validity of marriage of divorced persons whose second marriage is forbidden, 3, 600

Capacity of Parties, 14, 484

See *infra*, **AFFINITY AND CONSANGUINITY**; **AGE**; **FORMER MARRIAGE**; **MENTAL CAPACITY**; **MISCEGENATION**.

Want of sexual capacity, see *infra*, **IMPOTENCE**.

Celebration, see *infra*, **CEREMONY**.

Ceremony

By whom performed, 14, 517

Celebration, 14, 517

Cohabitation and repute, 14, 528

Consent of parents, 14, 517

De facto officials, 14, 517

Effect, 14, 518

Nature, 14, 516

Necessity, 14, 514

At common law, 14, 514

In Alabama, 14, 515

In California, 14, 515

In England, 14, 515

In Georgia, 14, 515

In Illinois, 14, 515

In Iowa, 14, 515

In Kentucky, 14, 515

In Maryland, 14, 515

In Massachusetts, 14, 515

In Michigan, 14, 515

In Minnesota, 14, 515

In Mississippi, 14, 515

In Missouri, 14, 515

In New York, 14, 515

In North Carolina, 14, 515

In Ohio, 14, 515

In Pennsylvania, 14, 515

In Rhode Island, 14, 515

In Scotland, 14, 414

In Tennessee, 14, 515

In United States courts, 14, 515

What law governs, 14, 516

Performance, 14, 522

Qualification of celebrant, 14, 525

What essential to ceremony, 14, 518

When celebration and actual marriage must be proved, 14, 530

Certificates, 14, 523

Custody, 14, 524

- Family Bible, 14, 524
 Record as evidence, 14, 524
Cohabitation and Repute, 14, 527
 Acknowledgment, 14, 527
 Action against husband and wife, 14, 530
 Alimony, 14, 530
 Assumption of rights and duties, 14, 527
 Conclusiveness, 14, 528
 Connection innocent when it began, 14, 528
 Divorce cases, 14, 530
 Dower, 14, 529
 Evidence of celebration, 14, 529
 Intention that connection should be illicit, 14, 528
 Legitimacy, 14, 530
 Marriage rights, 14, 530
 Meaning of term, 14, 527
 Rebuttal, 14, 528
 Reputed in place of their residence, 14, 527
 Want of capacity, 14, 528
 What constitutes, 14, 527
 When celebration and actual marriage must be proved, 14, 530
 When proof sufficient, 14, 539
 Where celebration is necessary, 14, 527, 528
 Complaint, 14, 510
Conditions in Wills
In restraint of marriage, see *infra*, RESTRAINT OF MARRIAGE.
 Confession, 14, 526
 Confirmation, 14, 484
Conflict of Laws
 Ceremonies, 14, 516
Consanguinity and Affinity
 Nullity suits, 14, 536
 Consent of parents, 14, 488, 517
Consent of Parties, 14, 508
 Agreement to live together as husband and wife, 14, 512
 Assuming another person's name, 14, 508
 Consent per verba de futuro cum copula, 14, 513
Consent per Verba de Præsentì, 14, 512
 Cohabitation, 14, 512, 513
 Examples, 14, 512, 513
 Nature of the contract, 14, 512
 Necessity of plain intention, 14, 512
Duress, see *infra*, DURESS.
 Effect, 14, 514
 Effect of masquerading, 14, 508
 Essence of contract, 14, 511
Form, 14, 511
 Letters, 14, 511
 Oral, 14, 511
 Proxy, 14, 511
 Technical words, 14, 511
 Telephone, 14, 511
 Written, 14, 511
Fraud, see *infra*, FRAUD.
 Jest, 14, 508
Mentally incompetent, see *infra*, MENTAL CAPACITY.
 Mistake, 14, 508
 Mistake in fortune, 14, 509
 Mistake in health, 14, 509
 Mistake in person, 14, 508
 Mistake of character, 14, 509
 Necessity, 14, 508
 Secret reservation, 14, 512
 Stipulations inconsistent with law, 14, 512
 Youthfulness, 14, 509
Consideration, see MARRIAGE SETTLEMENTS.
 Fraudulent conveyances, 8, 760
 Trusts and trustees, 27, 44
Consummation, 14, 482, 518
 By assumption of rights, duties, and obligations of husband and wife, 14, 518
 By sexual intercourse, 14, 518
 Effect of refusal, 14, 519
 Ends of marriage, 14, 518
 Marriage per verba de futuro, 14, 519
 Necessity, 14, 519
 Setting aside afterwards, 14, 519
Contracts, 14, 473
Antenuptial Form
 Conflict of laws, 14, 551
 Essence of, 14, 511
 Not to marry, 14, 473
 To bring about marriage, 14, 474
 To marry, 14, 473
 Contracts in contemplation of, 4, 959
Contracts in Evasion of Marriage Rights, 14, 479
 Bona fide action, 14, 481
 Burden of proof, 14, 481
 Effect of separate property statute, 14, 481
 Evasion, 14, 479
 Husband, 14, 480
 Knowledge of conveyance before marriage, 14, 479
 Necessity of actual concealment, 14, 381
 Validity, 14, 479
 Valuable consideration, 14, 481
 What are, 14, 479
 Wife, 14, 480
Contracts in restraint of marriage, see *infra*, RESTRAINT OF MARRIAGE.
Criminal Conspiracy
 To procure fraudulent marriage, 4, 607
 Declaration, 14, 527
 Definition, 14, 470
Divorce, see DIVORCE.
 Doubt of statutory provision, 14, 484
Duress, 6, 81
 Examples, 14, 510, 511
 Nullity suit, 14, 534
 Validity of marriage of putative father while under arrest, 6, 63
 What invalidates marriage, 14, 510
 Effect of statute, 14, 482

MARRIAGE—Cont'd

- Ends of, 14, 519
 - English, 6, 645
 - Essentials of, 14, 482
 - Executrix or administratrix, 21, 369
 - Extinguishment of debts between parties subsequently marrying, 3, 928
 - False Pretenses**
 - Promise of marriage, 7, 748
 - Representing that one is single, 7, 748
 - False representations, 14, 510
 - False swearing to obtain marriage license, 7, 793
 - Family Bible, 14, 524
 - Fictitious name, 16, 119
 - Formalities, 14, 483-485
 - Former Marriage**, 14, 499
 - See* BIGAMY.
 - Civil law, 14, 500
 - Considered civilly, 14, 499
 - Legitimate children, 14, 500
 - Necessity of decree, 14, 500
 - Statute, 14, 499
 - Statute providing that marriage should be void from time that it is so decreed, 14, 500
 - Void or voidable, 14, 499
 - When there has been a decree appealed, 14, 503
 - When there has been a decree nisi, 14, 503
 - Where There Has Been a Decree of Nullity**, 14, 503
 - Voidable marriage, 14, 503
 - Void marriage, 14, 503
 - Where there has been a divorce*, see *infra*, DIVORCE.
 - Whether void ab initio, 14, 590
 - Woman deceived, 14, 500
- Fraud**, 14, 509
- Antenuptial unchastity, 14, 510
 - Assuming a false name, 14, 508
 - Coachman, 14, 509
 - Concealment of pregnancy, 14, 510
 - Conspiracy, 14, 510
 - Example, 14, 509
 - Falsely pretending to be pregnant, 14, 510
 - False pretense of affection, 14, 510
 - False representations as to character, 14, 510
 - False representations as to health, 14, 510
 - Nullity suits, 14, 534
 - Reputation before consummation, 14, 509, 510
 - Weak mind, 14, 509
 - What will invalidate marriage, 14, 509
 - Youthfulness, 10, 624; 14, 509
- Illegal**, 14, 483
- Whether pretended husband who knows of illegality of marriage is guilty of rape, 3, 666
- Impotence**
- Conception, 14, 495
 - Danger to health, 14, 494
 - Definition, 14, 492

- Ecclesiastical law, 14, 492
 - Examination of person, 14, 495
 - Existence at time of marriage, 14, 494
 - Expert evidence, 14, 495
 - Incurable, 14, 493
 - Lifetime of parties, 14, 495
 - Limitation, 14, 495
 - Proof, 14, 494, 495
 - Physical, 14, 493
 - Psychical, 14, 493
 - Reasonable delay, 14, 494
 - Statute, 14, 492
 - Void or voidable, 14, 492, 494
 - What sufficient, 14, 493, 494
 - Whether an impediment to marriage 14, 492
- Incest, 10, 340; 14, 486
- Infants*, see *infra*, AGE.
- Insanity*, see *infra*, MENTAL CAPACITY.
- Instruction, examples of, 11, 268, 270
- Intermarriage of debtor and creditor as a release, 5, 203
- Jactitation of marriage, 14, 532
- Justice authorized to celebrate a marriage out of his county, 3, 49
- Laws impairing obligation of contracts, 3, 753
- Legality of**
- After statutory period of absence, 2, 196
- Legal marriage, 14, 482, 483
- Letters, 14, 511
- License, 14, 483
- License, issuance by ministerial act, 12, 38
- 'Marriage in fact,' 7, 659
- Marriage of maker and payee of note, 2, 350
- Marriage per Verba de Futuro**
- Consummation, 14, 519
- Mental Capacity**, 14, 489; 11, 140
- After death, 14, 490
 - Avoidance, 14, 490
 - Burden of proof, 14, 491
 - Capacity to contract, 14, 490
 - Capacity to manage affairs, 14, 491
 - Collaterally questioned, 11, 140; 14, 490
 - Continuation, 14, 491
 - Death without lucid interval, 14, 491
 - Decree of nullity, 14, 492
 - Delusions which do not affect the subject-matter, 11, 140
 - Development of insanity after marriage, 14, 491
 - Dower in insane person's estate, 11, 140
 - In joint contract, 14, 490
 - Insanity as a defense to charge of adultery, 11, 141
 - Insanity as a defense to extreme cruelty, 11, 141
 - Insanity before marriage, 14, 491
 - Insanity subsequent to marriage, 11, 141
 - Lucid intervals, 14, 491
 - Mere weakness of understanding, 11, 140

- Nullity suits, 14, 492, 534, 536
 Ratification, 14, 489, 491
 Refusing to recognize marriage, 14, 491
 Time of marriage, 14, 491
 Validity of contract of marriage, 11, 140
 What mental capacity necessary, 14, 490
 Where insanity is fraudulently concealed, 11, 141
 Whether marriage is void, 11, 140; 14, 489
Minors, see *infra*, AGE.
Miscegenation, see MISCEGENATION.
 Construction of statute, 14, 498
 Fourteenth amendment, 14, 498
 Indians, 14, 498
 Mulattoes, 14, 498
 Negroes, 14, 498
 Statute forbidding, 14, 498
 Void or voidable, 14, 498
 Who a negro within statute, 14, 498
 Mistake, 14, 508
 Nature of relation, 5, 746
Nullifying Voidable Marriages Where Decree Is Necessary, 14, 535
 Consanguinity and affinity, 14, 536
Jurisdiction, 14, 535
 Application by state, 14, 536
 Causes, 14, 536
 Courts of equity, 14, 535
 Decree after death of one of the parties, 14, 536
 Disabilities, 14, 536
Effect of Decree, 14, 537
 Alimony, 14, 537
 Alimony pendente lite, 14, 537
 Consideration for marriage settlement, 14, 537
 Husband's right in wife's property, 14, 537
 Husband's right in wife's services, 14, 537
 Legitimacy of children, 14, 537
 Legitimacy under statute, 14, 538
 Marriage void that might have been valid, 14, 537
 Privileged communications, 14, 537
 Under statute, 14, 537
 For implication, 14, 535
 Impotence, 14, 536
 In England, 14, 535
 In United States, 14, 535
 Parties, 14, 536
 Statutory causes, 14, 536
 Third persons as parties, 14, 536
 Parent and child, 17, 397
Partnership
 Dissolution, 17, 1106
 Marriage of female partner, 17, 1106
 Marriage of partner, 17, 1106
 Statutes removing incapacity of married women, 17, 1106
 Penalties attending an illegal marriage, 14, 538
Pregnancy, 14, 510
 Concealment, 14, 510
 Pretending, 14, 510
Presumption, 8, 563; 14, 520; 19, 48
 Capacity of parties, 14, 520
 Cohabitation, 14, 520
 Coverture and cohabitation presumed continuous, 19, 77
 Divorce, 14, 521
 Foreign law, 14, 531
 Foreign marriage, 14, 531
 Man and woman living at common house, 9, 810
 Of authority of celebrant, 14, 522
 Of death, 14, 521
 Of innocence, 14, 520
 Of license, 14, 522
 Of performance of duty, 14, 522
 Of proper preliminaries, 14, 522
Regularity, 19, 47
 Burden of proof, 19, 57
 Cohabitation and reputation, 19, 47
 Conflicting with presumption of innocence, 19, 48
 Connection has an illicit origin, 19, 48
 Of divorce, 19, 48
 Validity presumed, 19, 47
 Validity of marriage, 14, 520
 Probate and letters of administration, 19, 197
Proof of, 14, 519
 See *infra*, CERTIFICATES; COHABITATION AND REPUTE; RECORDS; WITNESSES.
Adultery, see ADULTERY.
Bigamy, see BIGAMY.
Incest, see INCEST.
 Admissions, 9, 338
 Bigamy, 4, 852
 Capacity of parties, 14, 522
 Celebration, 14, 522
 Cohabitation and reputation, 7, 81
 Direct or indirect, 14, 522
Divorce
 By what proved, 5, 831
 Celebration, 5, 831
 Cohabitation and repute, 5, 832
 Contract, 5, 831
 One marriage alleged and another proved, 5, 832
Foreign Marriages, 14, 531
 Presumption as to celebration, 14, 531
 Presumption as to foreign law, 14, 531
 Proof of foreign law, 14, 531
 Record, 14, 531
 General reputation, 9, 331
 In general, 14, 519-522
 Presumption, see *infra*, PRESUMPTION.
 Record of celebration, 14, 523
Special Statutes, 14, 531
 In California, 14, 531
 In Massachusetts, 14, 531
 In Minnesota, 14, 531

MARRIAGE—Cont'd**Proof of—Cont'd**

Validity of marriage, 14, 522

Proxy, 14, 511

Records, 14, 523, 531

Conclusiveness, 14, 524

Decree of divorce, 14, 525

Entries in family Bible, 14, 524

Foreign, 14, 524

Foreign marriage, 14, 531

Identity of parties, 14, 525

Private records kept by clergyman, 14, 524

What can be proven by, 14, 523

What evidence of marriage, 14, 523

Relation and personal status, 5, 746

Relationship, see infra, AFFINITY AND CONSANGUINITY.

Reservation, 14, 512

Restraint of Marriage

Conditions in Wills, 29, 476

As to Personal Property, 29, 477

Conditions Precedent, 29, 479

Consent to marriage, 29, 479

Marriage with a particular person, 29, 479

Not to marry under a certain age, 29, 479

Condition subsequent, 29, 477

Examples, 29, 477-481

General restraint, 29, 477

Marriage at a particular age, 29, 478

Marriage with a particular person, 29, 478

Marriage without consent, 29, 478

Necessity of gift over, 29, 478

Partial restraint, 29, 478

As to Real Property, 29, 476

Examples, 29, 476, 477

General restraint, 29, 477

Reasonable restraint, 29, 476

Legacies charged on land, 29, 481

Legacies charged on proceeds of converted land, 29, 481

Performance, 29, 482

Consent of several persons, 29, 482

Consent of survivors, 29, 482, 483

Second marriage, 29, 483

Subsequent approbation, 29, 483

Testator's consent, 29, 483

Restraints upon second marriage of widows and widowers, 29, 481

Restriction in the form of a limitation, 29, 480

Waiver, 29, 482

Contracts in Restraint, 14, 474

Conditions, 14, 474

Conditions against particular marriage, 14, 476

Conditions in general, 14, 476

Conditions subsequent, 14, 476

Conditions subsequent as to person, 14, 477

Contract not to marry, 14, 473

Effect, 14, 474

First or second marriage, 14, 478

Illegality of marriage, 14, 476

Limitations, 14, 474

Limitations as distinguished from condition, 14, 475

Man or woman, 14, 478

Provision to provide for grantee until marriage, 14, 477

Validity, 14, 474

Validity of condition precedent, 14, 476

Contracts not to marry, 14, 473

Secret reservation, 14, 512

*Sexual capacity, see infra, IMPOTENCE.**Sexual Intercourse, see infra, CONSUMMATION.*

Refusal, 14, 519

Slaves and Slavery, 14, 497; 22, 789**Effect of Emancipation Upon Slave Marriage, 22, 790**

Effect of emancipation and cohabitation upon slave marriage, 22, 790

In Kentucky, 22, 791

In North Carolina, 22, 791

In those states where a formal solemnization is necessary, 22, 790

Marriage between master and slave, 22, 789

Practical questions, 22, 789

Slave marriage, 22, 789

Statutes Confirming Slave Marriages, 22, 791

In Alabama, 22, 492

In Arkansas, 22, 792

In District of Columbia, 22, 793

In Georgia, 22, 791

In Kentucky, 22, 492

In Mississippi, 22, 492

In North Carolina, 22, 793

In South Carolina, 22, 793

In Tennessee, 22, 793

In Texas, 22, 492

In Virginia, 22, 791

Validity of slave marriage, 22, 789

What effect given to marriage, 22, 789

Witnesses for and against each other, 22, 789

Solemnization by justice of peace, 12, 507

Statute of Frauds, 8, 684

Agreement to reduce to writing after marriage, 8, 684

Consummation of marriage as part performance, 8, 685

Contract merely in contemplation of marriage, 8, 684

Contract to marry, 2, 522

In Louisiana, 8, 684

In North Carolina, 8, 684

In Pennsylvania, 8, 684

In United States in general, 8, 684

Marriage must be consideration, 8, 684

Mutual promises of marriage, 8, 684

Promise of marriage not to be performed within a year, 8, 687

What agreement it implies, 8, 684

Sunday, 24, 573

- Telephone, 14, 511
 Valid, 14, 483
Valid, Void, Voidable, and Illegal Marriages, 14, 482
 See infra, AFFINITY AND CONSANGUINITY; AGE.
 See DIVORCE.
 See infra, FORMER MARRIAGE; MENTAL CAPACITY.
 Voidable marriage, 14, 484
 Void marriages, 14, 483, 513
Want of Capacity
 Nullity suits, 14, 534
Want of Consent
 Nullity suit, 14, 534
 Where neither object to be obtained, nor means to be employed, are illegal or unlawful, 4, 607
 Whether a contract, 14, 472
Witnesses, 14, 525
 Pedigree cases, *see* PEDIGREE.
 Celebrant, 14, 525
 Parties, 14, 526
 Bigamy, *see* BIGAMY.
 Admissions, 14, 527
 After party's death, 14, 526
 Common law, 14, 526
 Confession of marriage, 14, 526
 Declaration, 14, 527
 Prima facie marriage, 14, 526
 Proof of marriage, 14, 526
 Themselves, 14, 525
 Persons present, 14, 525
 Qualifications of celebrant, 14, 525
 Who may testify, 14, 525
MARRIAGE BROKERS, 2, 598
MARRIAGE SETTLEMENTS, 14, 538, 539, 587
 See COMMUNITY PROPERTY.
 See generally, SEPARATE PROPERTY OF MARRIED WOMEN.
 Acknowledgment, 14, 541
 Advancements, 14, 581
 See ADVANCEMENTS.
 Creditor, 14, 581, 582
 Rebutting presumption of, 14, 581
 What sufficient rebuttal, 14, 581
 Where husband buys with his own money in his wife's name, 14, 581
Agency, 14, 575
 Apparent or Pretended, 14, 576
 Apportionment in equity, 14, 578
 Claims of creditors, 14, 576
 Conducting business as his own, 14, 576, 577
 Examples, 14, 576
 Fortune amassed by efforts of husband, 14, 578
 Fraud, 14, 579
 Fraud on creditors, 14, 576-578
 Illustrations, 14, 579
 Question of law or fact, 14, 579
 Remedy of creditors, 14, 578
 Statutes, 14, 579
 Where wife cannot trade alone, 14, 578
 Where wife has no power to trade, 14, 578
 Whether business is husband's or wife's, 14, 579
 Wife's rights, 14, 578
 Agreement to live in particular place, 14, 539
Antenuptial, 14, 539
 See infra, BARRING DOWER; CAPACITY OF PARTIES; CONSIDERATION.
 Acknowledgment, 14, 541
 Agreement to live in particular place, 14, 539
 As to wife's services, 9, 818
 Compliance with statute, 14, 541
 Contract as to rights of property, 14, 539
 Contract that husband shall not be liable for wife's debts, 14, 539
 Delivery, 14, 542
 Form, 14, 540
 Recording, 14, 540
 Statutory, 14, 540
 Technical words, 14, 540
 What necessary, 14, 540
 Knowledge by wife that husband was indebted, 7, 252
 Knowledge of fraud by both parties, 7, 252
 Presumption of delivery, 14, 542
 Recording, 14, 540, 541
 Scope, 14, 539
 Settlement of third parties, 14, 539
 Status of husband and wife, 14, 539
 Statute of Frauds, 14, 542
 Consideration other than marriage, 14, 542
 Contract wholly performed, 14, 543
 Examples, 14, 543
 Letters, 14, 542
 Part performance, 14, 543
 Pleading, 14, 543
 Provisions in English statutes, 14, 542
 Signatures, 14, 542
 What sufficient writing, 14, 542
 Validity, 7, 252; 14, 539
Bank Deposits of Husband and Wife, 14, 572
 Agency of wife, 14, 572
 Delivery, 14, 573
 Deposit, 14, 572
 Deposit by husband in name of himself and wife, 14, 572
 Deposit for support of family, 14, 573
 Deposit in name of wife alone, 14, 573
 Whether a gift, 14, 572, 573
Barring Dower by Antenuptial Settlement, 5, 909
 At common law, 5, 909
 By legal jointure, 5, 909
 Enforcement in equity of, 5, 909
 In equity, 5, 909
 Statutes, 5, 909
 Statutes of uses, 5, 909
Barring Dower by Postnuptial Settlement, 5, 910
 At common law, 5, 910
 Collection, 5, 911

MARRIAGE SETTLEMENTS—Cont'd**Barring Dower by Postnuptial Settlement****—Cont'd**

Complying strictly with statutes relating to release of dower, 5, 910

Statutes giving married women full power to contract, 5, 910

Where wife has enjoyed consideration for release of dower, 5, 911

Bills and notes, 14, 585

By what law governed, 8, 283

Capacity of Parties, 14, 543

Postnuptial contracts, see **HUSBAND AND WIFE**; **MARRIED WOMEN**.

Contracts to bar dower, 14, 543

Infants, 14, 543

Contracts to bar dower, 14, 543

In absence of statute, 14, 543

In general, 14, 543

Statutory provisions, 14, 543

Void or voidable, 14, 543

When absolutely void, 14, 544

Wife's contract as to personality, 14, 544

In general, 14, 543

Statutory exceptions, 14, 543

Conflict of Laws, 14, 551, 567

As to effect, 14, 552

As to real estate, 14, 552

Invalid as to form in one place, valid in another, 14, 551

Invalid at place of contract, 14, 551

Postnuptial settlements, 14, 567

Prohibited by law of forum, 14, 551

Removal into state where contract is not in form, 14, 551

Valid where made, 14, 551

Consideration, 14, 544

See *infra*, **FRAUD AS AGAINST CREDITORS**.

See **MARRIAGE**.

Marriage as a consideration, see *infra*, **MARRIAGE AS A CONSIDERATION**.

Nullity of marriage, 14, 537

Postnuptial Contracts, 14, 554**Adequacy, 14, 557**

As against creditors, 14, 557

As evidence of fraud, 14, 557

Examples of inadequacy, 14, 557, 558

Good faith of settlee, 14, 558

Settlement as security for actual consideration, 14, 558

Whether inquired into, 14, 557

As against creditors, 14, 554

Executed contract, 14, 554

Executory contracts, 14, 554

Existing marriage, 14, 555

Natural love and affection, 14, 554

Necessity, 14, 554

Nominal Consideration, 14, 557

Dower previously released, 14, 557

Property previously voluntarily given up, 14, 557

Wife's property, 14, 557

Wife's services, 14, 557

Valuable Consideration, 14, 555

Antenuptial promise, 14, 556

Examples, 14, 555, 556

Homestead, 14, 555

Release of dower, 14, 555

Release of homestead, 14, 555

Release of previous settlements, 14, 555

Release of separate property rights, 14, 555

Upon existing debt, 14, 556

Wife's equity, 14, 556

Voluntary settlements, 14, 554

Where court of equity will compel execution, 14, 556

Construction, 14, 550, 567; 27, 66

Children taking as purchasers, 27, 67

Examples, 14, 550

Favor of issue, 14, 549

In general, 27, 66

Intention to provide for issue, 27, 66

Intent of parties, 14, 550

Postnuptial settlements, 14, 567

Reformation in equity, 27, 67

Contract as to rights of property, 14, 539

Contract that husband shall not be liable for wife's debts, 14, 539

Debtor and creditor, see *infra*, **FRAUD AS AGAINST CREDITORS**.

Deeds, 14, 567

Delivery in escrow, 14, 567

Effect in equity, 14, 567

Estoppel, 14, 567

Husband as trustee, 14, 567

In general, 14, 567

Intervention of trustee, 14, 567

Words necessary to exclude husband's rights, 14, 567

Definitions, 14, 539

Delivery, 14, 542

Earnings, 14, 574.

Partnership between husband and wife, see **MARRIED WOMEN**.

Abandonment of services as against creditors, 14, 575

Agency, 14, 575

Contract to pay for husband's services, 14, 575

General rule, 14, 575

Gift of accumulations, 14, 575

Husband and wife in business together, 14, 575

Implied Contracts, 14, 575

That wife shall pay for husband's services, 14, 575

Right to, by husband, 14, 574

Effect of divorce, 14, 549

Effect of marriage, 14, 548

Effect of misconduct, 14, 549

Enforcement, 9, 795; 14, 548

Acquiescence, 14, 549

After dissolution of marriage, 14, 548

By the issue, 14, 549

Consent of parties to modifications, 14, 548

Countermanded fraudulently, 14, 549

Divorce, 14, 549

- If executed, 14, 548
- If executory, 14, 548
- In equity, 14, 548
- Lost or destroyed, 14, 548
- Misconduct, 14, 549
- Modifications, 14, 548
- Reformation in equity, 14, 548
- Setting aside, 14, 548
- Form**, 14, 540
 - Recording, 14, 540
 - Statutory, 14, 540
 - Technical words, 14, 540
 - What necessary, 14, 540
- Fraud as Against Creditors**, 5, 183; 14, 560
 - See infra*, CONSIDERATION.
- Antenuptial Contracts**, 5, 183; 14, 547
 - Consideration, 14, 547
 - Intention of parties, 14, 547
 - Knowledge of indebtedness alone, 14, 547
 - Settlee having no notice, 14, 547
 - Settlee having notice of fraud, 14, 547
 - Validity of contract, 14, 547
- Postnuptial Settlements**, 5, 183; 14, 560
 - Construction of statutes, 14, 562
 - Early English statutes, 14, 561
 - Existing Creditors**, 14, 562
 - See infra*, CONSIDERATION.
 - Adequate value of consideration, 14, 562
 - Amount of indebtedness, 14, 563
 - General rule, 14, 563
 - Gift of all debtor's property, 14, 564
 - Husband's means, 14, 563
 - Insolvency of debtor, 14, 564
 - Intention, 14, 564
 - Intent of grantor, 14, 563
 - Preference, 14, 563
 - Property retained inaccessible, 14, 564
 - Property transferred, 14, 563
 - Reasonableness of the gift, 14, 563
 - Reasonableness of the provision, 14, 563
 - Triflingness of debts, 14, 564
 - Voluntary transfer, 14, 563
- Fraud in fact, 14, 561
- Fraud in law, 14, 561
- Fraudulent intent, 14, 562
- General rule as to fraudulent conveyances, 14, 561
- Homestead, 14, 565
- In general, 14, 560
- Property exempt, 14, 565
- Statutes declaratory of common law, 14, 561, 562
- Statutes protecting creditors, 14, 561
- Subsequent Creditors**, 5, 184; 14, 564
 - Action for intent to defraud, 14, 564
 - Consideration, 14, 564
 - In general, 14, 564
 - Validity, 14, 564
- Where settlement is set aside by existing creditors, 14, 564
- Void or voidable, 14, 562
- Wife's choses in action not reduced to possession, 14, 565
- Remedies**, 14, 566
 - Course creditor may pursue, 14, 566
 - Examples, 14, 566, 567
 - To encourage jurisdiction of law and equity, 14, 566
 - Who may invoke, 14, 566
- Fraud Between the Parties**, 14, 546
 - Antenuptial contracts, 14, 546
 - Burden of proof, 14, 546, 547
 - Concealment as to value of property, 14, 546
- Postnuptial Contracts**, 14, 559
 - Bona fide purchaser, 14, 559
 - Burden of proof on husband, 14, 559
 - Deed to third person, 14, 560
 - Good faith required, 14, 559
 - Husband's influence, 14, 559
 - Inadequacy of consideration, 14, 559
 - Mere fact of marriage, 14, 559
 - Necessity of proof of fraud or undue influence, 14, 559
 - Relief in equity, 14, 559, 560
 - Settlement for benefit of both, 14, 560
 - Settlement manifestly unreasonable, 14, 546
- Gifts**, 14, 567
 - Acceptance, 14, 572
 - Acceptance by donee, 14, 572
 - As against creditors, 14, 567, 568
- Bank Deposits**, 14, 572
 - Agency of wife, 14, 572
 - Delivery, 14, 573
 - Deposit, 14, 572
 - Deposit by husband in name of himself and wife, 14, 572
 - Deposit for support of family, 14, 573
 - Deposit in name of wife alone, 14, 573
 - Whether a gift, 14, 572, 573
- Delivery**, 14, 568
 - By order, 14, 571
 - Declaration in writing, 14, 570
 - Effect of promise without, 14, 570
 - Estoppel, 14, 570
 - Examples, 14, 570
 - Instrument under seal, 14, 570
 - Must be clearly proved, 14, 570
 - Necessity, 14, 570
 - Paraphernalia, 14, 570
 - Promise to make a gift, 14, 570
 - Proof of delivery between husband and wife, 14, 570
 - Purchase of property for wife, 14, 570
 - Recording instrument of gift, 14, 570
 - Revocation of order, 14, 571
 - To husband a delivery to wife, 14, 570

MARRIAGE SETTLEMENTS—Cont'd**Gifts—Cont'd**

- Donor's Intention**, 14, 568
- Examples, 14, 569
- Gift by wife to husband, 14, 569
- Necessity, 14, 568
- Presumption, 14, 568
- Promissory note payable to wife, 14, 569
- Proof, 14, 568
- Purchaser of property in wife's name, 14, 569
- Rebutting presumption, 14, 569
- Essentials of, 14, 568
- Fairness, 14, 568
- Gifts causa mortis, 14, 568
- Instrument under seal, 14, 570
- Reasonableness, 14, 568
- Recording instrument of gift, 14, 571
- Validity in equity, 14, 567
- When good in equity, 14, 568

Improvements, 14, 579

- Creditors, 14, 579
- Fixtures, 14, 580
- Liability for, 14, 580
- Reimbursement for, 14, 580
- Where land of one is liable for improvements placed upon the other, 14, 579

Infants, 27, 13

- Void or voidable, 10, 632

Insurance of life for benefit of spouse, 14, 582**Issue**, 11, 876; 14, 551**Labor**, see *infra*, EARNINGS.**Laches**, 14, 549**Marriage as a Consideration**, 14, 544

- Against collateral, 14, 545
- Against issue of former marriage, 14, 545
- Against settler, 14, 545
- Another consideration expressed in contract, 14, 546
- Collaterals, 14, 546
- Contract after marriage, 14, 546
- Existing marriage, 14, 546
- Invalid marriage, 14, 545
- Issue, 14, 545
- Settler's creditors, 14, 545
- Statute of frauds, 14, 542
- Strangers, 14, 545
- Where marriage does not take place, 14, 545
- Whether a valuable consideration, 14, 544

Mechanics' liens, 15, 22**Mingling of Husband's and Wife's Property**, 14, 573

- Where wife's money ascertainable, 14, 573
- Where wife's property is not ascertainable, 14, 574
- Wife as cestui que trust, 14, 574
- Wife's separate estate, 14, 574

Mortgages

- By wife for husband's debts, 14, 584, 585

Postnuptial Settlements, 14, 552

- As to creditors, 14, 552
- As to part of property, 14, 553
- Between the parties, 14, 552
- Bona fide purchaser for value, 14, 553
- Construction, 14, 567
- Debts subsequently incurred, 7, 253
- Earnings, see *infra*, EARNINGS.
- Enforcement, 14, 565
- Negligence, 14, 565
- Reformation, 14, 566
- Specific performance, 14, 565
- Examples of validity, 14, 552, 553

Form, 14, 553

- In general, 14, 553
- Necessity of writing deed, 14, 554
- Statutes, 14, 553, 554

Mingling of Husband's and Wife's Property, 14, 573

- Where wife's money ascertainable, 14, 573
- Where wife's property is not ascertainable, 14, 574
- Wife as cestui que trust, 14, 574
- Wife's separate estate, 14, 574
- Reserving power to husband to revoke limitations in favor of wife, 7, 253

Scope, 14, 552**Supported by a valuable consideration**, 7, 253**Under what circumstances they can be considered void**, 7, 252**Validity**, 14, 552**Validity as against creditors**, 7, 252**Validity as against husband and volunteers**, 7, 252**Void or voidable**, 14, 553**Wholly or partially valid**, 14, 552**Preferences**, see *infra*, FRAUD AS AGAINST CREDITORS.**Presumption of delivery**, 14, 542**Recording**, 14, 540, 551, 554**Antenuptial contract**, 14, 540**Effect of non-compliance**, 14, 541**Postnuptial contracts**, 14, 554**Statutes strictly construed**, 14, 551**Statutory provisions**, 14, 540**Validity between parties where unrecorded**, 14, 541**Reformation of instruments**, 15, 671**Rescission**, 21, 68**Resulting Trusts**, 14, 580**When Husband Buys with His Own Money in His Wife's Name**

- Enforcement, 14, 582
- Purchase by married woman in her own name, 14, 582
- Purchase with money of both in the name of one, 14, 582

When Husband Buys with Wife's Money in His Own Name, 14, 580, 581

- Bona fide assignee of husband, 14, 581
- Burden of proof, 14, 581
- Different intention on wife's part, 14, 580
- General rule, 14, 580

- Husband's creditors, 14, 581
- Wife's knowledge and consent, 14, 581
- Scope, 14, 539
- Settlement of third parties, 14, 539
- Shelley's case, 2, 511
- Status of husband and wife, 14, 539
- Statute of Frauds**, 8, 684; 14, 542
 - Agreement to reduce to writing after marriage, 8, 684
 - Consideration other than marriage, 14, 542
 - Consummation of marriage as part performance, 8, 685
 - Contract merely in contemplation of marriage, 8, 684
 - Contract to marry, 2, 522
 - Contract wholly performed, 14, 542
 - Examples, 14, 543
 - In Louisiana, 8, 684
 - In North Carolina, 8, 684
 - In Pennsylvania, 8, 684
 - In United States in general, 8, 684
 - Letters, 14, 542
 - Marriage must be the consideration, 8, 684
 - Mutual promises of marriage, 8, 684
 - Part performance, 14, 543
 - Pleading, 14, 543
 - Provisions in the English statute, 14, 542
 - Signatures, 14, 542
 - What agreement it implies, 8, 684
 - What sufficient writing, 14, 542
- Validity, 14, 539
- What renders settlement void, 7, 252
- Wife as Surety for Husband**, 14, 584
 - Assignments of personalty, 14, 585
 - Capacity limited by statute, 14, 585
 - Capacity under general powers, 14, 584
 - Contract otherwise binding, 14, 586
 - Implied suretyship, 14, 586
 - In absence of statutory prohibition, 14, 584
- Incidents of Her Suretyship**, 14, 587
 - After husband's death, 14, 587, 588
 - Discharge, 14, 588
 - Examples, 14, 588, 589
 - Exoneration, 14, 587
 - Extension of time, 14, 588
 - Reimbursement *pari passu* with other creditors, 14, 587
 - Release of other sureties, 14, 588
 - Same as other sureties, 14, 587
- In general, 14, 584
- Mortgages by wife, 14, 584
- Promissory note by wife, 14, 585
- Showing that debt was really wife's, 14, 587
- Statute forbidding contract between husband and wife, 14, 586
- MARRIED WOMEN**, 5, 496s; 14, 590
 - See* ACKNOWLEDGMENT; ALIMONY; CRIMINAL CONVERSATION; CURTESY; DIVORCE; DOMICIL; DOWER; HOME-STEAD; HUSBAND AND WIFE; MARRIAGE; MARRIAGE SETTLEMENTS; SEPARATE PROPERTY OF MARRIED WOMEN.
 - Acknowledgment*, *see* ACKNOWLEDGMENTS.
 - For crimes*, *see* HUSBAND AND WIFE.
 - For deeds of married women*, *see* DEEDS.
 - Separation between husband and wife*, *see* SEPARATION.
 - Set-off*, *see* HUSBAND AND WIFE.
 - Abatement**, 14, 650
 - Dissolution of marriage, 14, 651
 - Agency**, 1, 333, 334; 14, 681
 - As to estate or principal, 14, 684
 - As to personal rights and obligations of wife, 14, 683
 - As to third parties, 14, 684
 - As to wife's coverture, 14, 683
 - Capacity to contract, 14, 606
 - Carrying on Business as Agent of Husband**, 14, 671
 - Proof of agency, 14, 671
 - Compensation, 14, 684
 - Effect of coverture, 14, 683
 - Estoppel by contract, 14, 641
 - Estoppel in pais, 14, 645
 - Husband as agent, 14, 675
 - Husband's Consent**, 14, 683
 - At common law, 14, 683
 - Examples, 14, 683
 - Necessity, 14, 683
 - Husband's liability, 14, 684
 - Husband's rights and obligations, 14, 684
 - Married women as agents, 1, 334, 14, 681
 - Married women as husband's agents, 14, 681
 - Personal liability, 14, 681, 684
 - Rights of creditors, 14, 677
 - Torts, 14, 647
 - Trading, 14, 675
 - Whether married women personally liable, 14, 674
- Alien**
 - Capacity to contract, 14, 605
- Answer in equity by, 1, 608
- Arrest of judgment, 14, 656
- As incorporators, 14, 680
- At common law, 14, 591
- Attorney**, 14, 663
 - Appointment by Married Women**, 14, 663
 - At Common Law**, 14, 664
 - Agreement for alimony, 14, 664
 - Antenuptial appointment, 14, 664
 - Appearance by attorney, 14, 664
 - In Equity**, 14, 664
 - In general, 14, 664
 - Separate property, 14, 664
 - Under Statutes**
 - Statute expressly authorizing appointment, 14, 665
 - Statutes authorizing to sue independently, 14, 665
 - Compensation**, 14, 665
 - Equitable separate estate, 14, 667

MARRIED WOMEN—Cont'd**Attorney—Cont'd****Compensation—Cont'd**

- Husband's Liability**, 14, 665
 - Bringing and defending suit, 14, 666
 - In general, 14, 665
 - Legal expenses as necessities, 14, 665
 - Proceedings against husband, 14, 665
 - Suit for maintenance, 14, 665
- Money collected, 14, 666
- Next friend's liability, 14, 666
- Personal liability, 14, 666
- Statute authorizing suit, 14, 667
- To contract, 14, 667
- Trustee's liability, 14, 666
- Under statutes, 14, 666, 667
- Where she may employ counsel, 14, 667

When married woman bound by attorney's acts, 14, 665

Bill in Equity, 6, 740

- Against, 6, 745
- Joining with her husband, 6, 740
- Next friend, 6, 740
- Sueing as feme sole, 6, 740

Bills and Notes, 2, 346; 14, 623

- At common law, 14, 623
- Examples, 14, 623, 624
- Exceptions, 14, 624
- Indorsements, 14, 624, 626
- Mortgages, 14, 623
- Statutes, 14, 623
- Suretyship, 14, 623

Bond, see *infra*, COVENANTS AND BONDS.**Burden of Proof**

- Capacity to contract, 14, 605, 612

Civil Death, 14, 670

- Contract, 14, 605
- Wills, 14, 595

Conditions subsequent, 13, 779

Confession of judgment, 14, 663

Conflict of Laws, 3, 506

- Contracts**, 14, 618
 - As to immovables, 14, 618
 - As to movables, 14, 618
 - As to validity of, 14, 618
- Law at time of death, 14, 604
- Law at time of execution, 14, 604
- Law of domicil, 14, 603
- Personalty, 14, 603
- Real estate, 14, 603
- What law governs status of married women, 3, 575

Confirmation of contract, see *infra*, CONTRACTS.

Confirmation of married women's deeds, see *infra*, DEEDS.

Construction of Statutes Relating to Contracts, 14, 614

- Compliance with formalities, 14, 618
- "Concern," 14, 616
- Conflict of laws, 14, 618

Contracts in equity under married women's separate property acts, 14, 615

Contract "with reference to," 14, 616

Contract "with respect to," 14, 616

Examples of contracts, 14, 614-618

Execution in certain way, 14, 618

Express power to contract under married women's separate property acts, 14, 616

General rule, 14, 614-618

"Hold, enjoy, and possess her property as if sole," 14, 616

Implied power to contract under married women's separate property acts, 14, 615

"Relate to," 14, 616

Restriction implied, 14, 617

Statute creating married women's statutory separate estate, 14, 615

Statute expressly authorizing married women to contract as if unmarried, 14, 617

Statute expressly authorizing or prohibiting specified contracts, 14, 617

Statute not expressly referring to married women, 14, 614

Strictly construed, 14, 617

Validity of contracts, 14, 618

Contracts, 14, 604, 626

See *infra*, BILLS AND NOTES; CONSTRUCTION OF STATUTES; COVENANTS AND BONDS.

As to agreement to convey real property, see *infra*, DEEDS.

At Common Law

- Wife's abandonment, 14, 591
- Banishment of husband, 14, 605
- Burden of proving capacity, 14, 605
- By what law governed, 3, 575
- Capacity, 14, 604
- Capacity at common law generally, 14, 604

Capacity in Equity, 14, 606

- As to her general property, 14, 606
- As to her person, 14, 606
- Deeds, 14, 606

Equitable Separate Estate, 14, 606

- Contract by agent, 14, 607
- Contract in relation to separate property, 14, 609
- Contract to sell, 14, 606
- Estoppel, 14, 608
- Examples, 14, 606-609
- Expressly charged, 14, 608
- General rules determining liability, 14, 607, 609
- How intention to charge may be proven, 14, 608
- Implied charge, 14, 608
- Intention to charge, 14, 608
- Reasons for the rule, 14, 607
- Revocation, 14, 609
- Wife's deed as feme sole, 14, 606
- Independent of statute, 14, 606
- Separate property, 14, 606
- Validity, 14, 606

Capacity Under Statutes, 14, 609, 614
 Burden of proof, 14, 612
 Classes of contracts recognized as binding, 14, 609
 Compliance with formalities, 14, 618
 "Concern," 14, 616
 Conflict of laws, 14, 618
 Consent of husband, 14, 613
 Contract binding equitable separate property, 14, 611-613
 Contract expressly authorized by statute, 14, 612
 Contract impliedly authorized by statute, 14, 612
 Contract in equity under married women's separate property acts, 14, 615
 Contract "with reference to," 14, 616
 Contract "with respect to," 14, 616
 Decision on contracts of married women from various state courts, 14, 609, 612
 Examples of contracts, 14, 613, 614, 618
 Examples under statutes, 14, 613, 614
 Execution in certain way, 14, 618
 Express power to contract under married women's separate property acts, 14, 616
 General rule, 14, 614, 618
 "Hold, enjoy, and possess her property as if sole," 14, 616
 Implied power to contract under married women's separate property acts, 14, 615
 In California, 14, 609
 In District of Columbia, 14, 609
 In Florida, 14, 609
 In Georgia, 14, 610
 In Illinois, 14, 610
 In Indiana, 14, 610
 In Kansas, 14, 613
 In Kentucky, 14, 610
 In Maryland, 14, 616
 In Massachusetts, 14, 610
 In Michigan, 14, 610
 In Minnesota, 14, 610
 In Mississippi, 14, 610
 In Missouri, 14, 611
 In New Jersey, 14, 611, 613
 In New York, 14, 611
 In North Carolina, 14, 611
 In Ohio, 14, 611
 In Pennsylvania, 14, 611
 In South Carolina, 14, 612
 In Wisconsin, 14, 612
 Personal contract, 14, 609
 Power to charge, 14, 613
 Power to convey, 14, 613
 Purchase, 14, 614
 Remedy at law, 14, 612
 Remedy in equity, 14, 612
 "Relate to," 14, 616
 Restriction implied, 14, 617
 Statute creating married women's statutory separate estate, 14, 615

Statute expressly authorizing married women to contract as if unmarried, 14, 617
 Statute expressly authorizing or prohibiting specified contracts, 14, 617
 Statutes not expressly referring to married women, 14, 614
 Strictly construed, 14, 617
 Validity of contract, 14, 618
Confirmation, 14, 619
 Contract made during coverture, 14, 619
Deeds, see *infra*, DEEDS.
 Examples, 14, 619
 Implied promise, 14, 619
 In general, 14, 619
 Invalid deed, 14, 619
 Moral consideration for new promise, 14, 619
 New promise, 14, 619
 Recognition of the contract, 14, 619
 Revival of liability, 14, 619
 Survival of wife, 14, 619
 Consent, 14, 604, 605
 Deed where husband has left state, 14, 606
 Distinction between personal contracts of married woman and contract binding her property, 14, 620
Effect of Husband's Joining in Wife's, 14, 621
 Adjudication of bankruptcy, 14, 621
 As contract of husband alone, 14, 621
 Independent of statute, 14, 621
 Separate property, 14, 621
 Statutes, 14, 621
 Enforcement of equity, 14, 165
Estoppel, see *infra*, ESTOPPEL.
 Exceptions, 14, 605
 Exceptions at common law, 14, 605
 Exceptions in United States, 14, 605
 Females sole, 14, 605
 Grounds for invalidity, 14, 604, 605
 Husband an alien, 14, 605
 Husband civilly dead, 14, 605
 Husband's permanent departure from state, 14, 605
Implied Contracts, 14, 621
 Examples, 14, 621
 Necessity, 14, 621
 Statute of limitation, 14, 621
 To pay rent, 14, 621
 Where law would not recognize expressed contract, 14, 621
 In general, 14, 604
Made Before Marriage, 14, 618
 Effect of divorce, 14, 618
 Promise of payment during coverture, 14, 618
 Statute of limitations, 14, 618
 Statute removing husband's liability, 14, 618
 Suspension of remedies, 14, 618
 Termination of husband's liability, 14, 618
 Prima facie inability, 14, 605

MARRIED WOMEN—Cont'd**Contracts—Cont'd****Purchase and Sale**

Actual purchase, 14, 622

Actual sale, 14, 622

Agreement to sell, 14, 621

Generally, 14, 621

Of married women, 14, 621

Restoration of purchase-money, 14, 622

Validity, 14, 622

With regard to separate property, 14, 622

Receipt, 14, 624

Release, 14, 624

Rent, 14, 625

Rescission, 21, 41

Suretyship, 14, 626

Through Agent, 14, 620*See* HUSBAND AND WIFE.*See infra*, AGENCY.

At common law, 14, 620

Capacity to make contracts herself, 14, 620

Examples, 14, 620

Under married women's statutes, 14, 620

Torts Connected with, 14, 649

Examples, 14, 649

Liability for, 14, 649

Unity of husband and wife, 14, 604, 605

Costs, 4, 319; 14, 652**By Husband and Wife Jointly, 14, 652**

Allegation of wife's interest, 14, 652

At common law, 14, 652

Husband's liability, 14, 663

Married women defendants, 14, 652

Married Women Plaintiffs, 14, 652

At common law, 14, 652

Liability of equitable separate estate, 14, 652

Separate property, 14, 652

Sue alone, 14, 652

Suits by husband and wife jointly, 14, 652

Suits in equity, 14, 652

Modes in which married women's suits may be brought, 14, 652

Covenants and Bonds, 2, 349; 14, 622

By statute, 14, 622

Estoppel, 14, 622, 623

Examples of valid covenants, 14, 622, 623

In general, 14, 622

In regard to her separate estate, 14, 622

Validity, 14, 622

Creditors, 14, 676

As husband's agent, 14, 677

Examples, 14, 677

Husband's rights, 14, 677

Property in use in husband's business, 14, 677

Custom of London, 14, 671

Dedication to public by, 5, 399

Deeds, 14, 626*See infra*, ESTOPPEL.*As to estoppel*, *see* ESTOPPEL.**Acknowledgment, 14, 627-629***See* ACKNOWLEDGMENT; DEEDS; SEPARATE PROPERTY OF MARRIED WOMEN.

Against whom fraud may be claimed, 14, 633

Bona fide purchaser, 14, 633

Certificate, 14, 630

Bona fide purchasers, 14, 630

Conclusiveness, 14, 630

Necessity, 14, 630

Parol evidence, 14, 631

Perfect, 14, 633

Prima facie evidence, 14, 630

Reformation in equity, 14, 631

Validity of deed without, 14, 630

What it must show, 14, 630

Conclusiveness of certificate, 14, 633

Duress, 14, 633

Forgery, 14, 633

Fraud, 14, 633

Impeachment of certificate by officer, 14, 633

Party with notice of defects, 14, 633

Privy examination, 14, 629

Unsupported testimony of wife, 14, 633

When no special acknowledgment necessary, 14, 630

Whether husband and wife must acknowledge at same time, 14, 630

Agreement to Give, 14, 635

Acknowledgment, 14, 635

Enforcement in equity, 14, 635, 636

Equitable separate estate, 14, 636

Examples, 14, 635

Formalities, 14, 635

Husband's agreement to convey, 14, 637

Joinder of husband, 14, 636

Privy acknowledgment, 14, 635-637

Property held as trustee, 14, 635

Specific performance, 14, 637

Validity, 14, 635

When agreement is valid, 14, 636

Where her contracts are valid, 14, 636

At Common Law, 14, 626

Barring dower, 14, 627

Civilly dead, 14, 627

Fines and common recovery, 14, 627

In general, 14, 626

Joint deed of husband and wife, 14, 627

Statutes, 14, 627

Validity, 14, 626

When valid, 14, 627

Avoidance, 14, 633

Acknowledgment of signature, 14, 633

Against whom fraud may be claimed, 14, 633

Assent during coverture, 14, 634

Bona fide purchaser, 14, 633

Certificate perfect, 14, 633

Conclusiveness of certificate, 14, 633

Declaration, 14, 634

- Denying assent, 14, 634
 Denying having read deed, 14, 634
 Duress, 14, 633
 Examples, 14, 634
 Forgery, 14, 633
 Fraud, 14, 633
 Impeachment of certificate by officer, 14, 633
 Party with notice of defect, 14, 633
 Res gestæ, 14, 634
 Unsupported testimony of wife, 14, 633
Confirmation, 14, 628, 631
 By act of party, 14, 631
 By Courts of Equity, 14, 632
 Capacity of party, 14, 632
 Deeds which should be recognized in good conscience, 14, 633
 Examples, 14, 632, 633
 In general, 14, 632
 Invalid at law, 14, 632
 Reformation, 14, 632
 To prevent injustice, 14, 633
 When grantor has power to convey, 14, 632
 By Curative Statutes, 14, 631
 Validity, 14, 631
 When authorized by constitution, 14, 631
 By parol, 14, 619
 By reacknowledgment and recording, 14, 619
 Effect of subsequent assent, 14, 631
 Illustration, 14, 631
 Intermediate deed, 14, 631
 Necessity of reacknowledgment, 14, 631
 Necessity of redelivery, 14, 631
 Parol adoption, 14, 631
Coverture and Infancy, 14, 593
 Attainment of full age, 14, 593
 Estoppel, 14, 594
 How wife can confirm deed, 14, 593
 Making another conveyance, 14, 594
 Restoration of consideration, 14, 594
 Separate property, 14, 594
 Termination of coverture, 14, 593
 Whether deed can be avoided during coverture, 14, 593
Equitable Separate Property, 14, 628
 Capacity, 14, 628
 Formalities, 14, 628
 Rule to determine capacity, 14, 628
 Execution, 14, 629
 Husband permanently non-resident, 14, 605
Joinder of Husband, 14, 629
 At common law, 14, 629
 Necessity, 14, 629
 Signature alone, 14, 629
 When unnecessary, 14, 629
 Legal capacity of grantee, 9, 39
 Married woman as grantee, 5, 431
Married Woman as Grantor, 5, 430;
 9, 31
 At common law, 9, 31
 In Alabama, 9, 33
 In Arkansas, 9, 33
 In California, 9, 33
 In Colorado, 9, 33
 In Delaware, 9, 33
 In Georgia, 9, 33
 In Illinois, 9, 33
 In Indiana, 9, 33
 In Iowa, 9, 33
 In Kentucky, 9, 33
 In Louisiana, 9, 33
 In Maryland, 9, 33
 In Michigan, 9, 33
 In Missouri, 9, 33
 In Nebraska, 9, 33
 In Nevada, 9, 33
 In New Jersey, 9, 32
 In New York, 9, 32
 In Ohio, 9, 32
 In Pennsylvania, 9, 32
 In South Carolina, 9, 33
 In Texas, 9, 33
 In Wisconsin, 9, 33
 Joint deed of husband and wife, 9, 32
 Under statutes, 9, 32
Powers of Attorney, 14, 634
 Executing private power, 14, 634
 Formalities, 14, 635
 Joinder of husband, 14, 635
 Necessity of privity examination, 14, 635
 Power by implication, 14, 634
 Property held as at common law, 14, 634
 Release of dower, 14, 634
 Revocation by marriage, 14, 635
 Statutory regulations, 14, 634
 Unconnected with conveyance of land, 14, 635
 When she has powers of feme sole, 14, 634
 Privy examination, 14, 629
 Recording, 14, 629
Statutory Separate Property, 14, 628
 Capacity in general, 14, 628
 Compliance with statute, 14, 628
 Confirmation, 14, 628
 Examples, 14, 628
 Particular mode of execution, 14, 628
 Where no forms are prescribed by statute, 14, 628
Under Statute
 Acknowledgment, 14, 627
 Compliance with statutes, 14, 627
 General scope, 14, 627
Defences, 14, 655, 659
 See infra, PLEA.
 Demurrer, 14, 655-660
 Disability to convey land at common law, 1, 163
Domicil
 Change of, 5, 868
 Cannot acquire separate domicil from husband, 5, 868
 Changes with change of husband's domicil, 5, 868
 Divorced women, 5, 869

MARRIED WOMEN—Cont'd**Domicil—Cont'd****Change of—Cont'd**

- Domicil of husband, 5, 868
- In case of desertion, 5, 869
- Where wife lives apart from her husband, 5, 868, 869
- Widow, 5, 869

Dower

- Estoppel, 14, 640

Duress

- Deed, 14, 633

Earnings, 14, 667, 668

- See HUSBAND AND WIFE; SEPARATE PROPERTY OF MARRIED WOMEN.

Effect of modern statutes, 14, 592**Election, 6, 253**

- Equitable conversion, 6, 673

"Engagement," 6, 643**Equitable Conversion**

- Election, 6, 673

Error, writ of, 14, 660**Escape, 14, 649****Escrow, 6, 871****Estoppel**

- By Deed, 7, 4; 14, 639
 - Acknowledgment, 14, 639
 - After-acquired title, 14, 640
 - Deed made without consideration, 14, 639
 - Denying having read, 14, 639
 - Denying signature, 14, 639
 - Dower, 14, 640
 - Estoppel of purchase-money, 14, 639
 - Examples, 14, 639, 640
 - Infancy, 14, 639
 - Invalid deed, 14, 639
 - Ratification, 14, 639
 - Restoration of consideration, 14, 639
 - Seal, 14, 639
 - Where purchase-money becomes separate estate, 14, 639

Contracts, 14, 637**Covenants, 14, 622****Deeds, 14, 637****Dower, 14, 640****False Representations**

- As to being unmarried, 14, 644
- As to coverture, 14, 644
- Examples, 14, 644
- Representing property as her husband's, 14, 644
- Torts unconnected with contract, 14, 644

General rules, 14, 637**In Pais, 7, 24; 14, 640****Acts of Husband, 14, 644**

- Agency, 14, 645
- Bona fide purchaser, 14, 646
- Creditors, 14, 646
- Examples, 14, 645
- Fraud, 14, 645
- In general, 14, 644
- Separate property, 14, 645
- Title to realty in husband's name, 14, 646

Acts While Sole, 14, 646

- After dissolution of marriage, 14, 646

Consideration, 14, 644**Examples, 14, 646, 647****Contracts, 14, 640**

- Allowing property to be improved, 14, 641

Capacity to contract, 14, 640**Contract as if unmarried, 14, 641****Dower, 14, 641****Equitable separate property, 14, 641****Examples of contract, 14, 640****Husband as agent, 14, 641****Implied assent, 14, 640****Permitting money to be paid to husband, 14, 640****Property sold under void judicial proceedings, 14, 641****False Representations, 14, 641**

- Absence of fraudulent intent, 14, 641

Conduct, 14, 642**Disability of infancy, 14, 642****Examples, 14, 641, 642****Guilty knowledge, 14, 641, 642****In general, 14, 641****Mere promise, 14, 641****Representation as to separate property, 14, 642****Representations relating to capacity, 14, 642****Representing that she is unmarried, 14, 642****Want of capacity to contract, 14, 642****In general, 14, 640****Relying upon representations, 14, 640****Silence, 14, 643****Claim of right by party not her husband, 14, 643****Contract as feme sole, 14, 643****Effect, 14, 643****Examples, 14, 643****Husband asserting rights inconsistent with wife's, 14, 643****In general, 14, 643****Torts, 14, 644****Connected with contract, 14, 644****Examples, 14, 644****In general, 14, 644****Liability, 14, 644****Unconnected with contract, 14, 644****Judgment, 14, 637, 638, 662****Antenuptial contract, 14, 639****Default, 14, 638****Examples, 14, 638****Fairly obtained, 14, 638****Void, 14, 638****Warrant of attorney, 14, 638****When not estopped, 14, 638****Receipt, 14, 624****Recitals, 20, 464****Records, see *infra*, JUDGMENT.**

- Release, 14, 624
- Subsequent acquired title of married women, 7, 9
- Torts, 14, 638
- Execution, 14, 662**
 - Against husband and wife, 14, 662
 - Against property, 14, 662
 - Against property of both husband and wife, 14, 662
- Executors and Administrators, 7, 172; 14, 681; 21, 386**
 - Administering as feme sole, 7, 175
 - As to estate or principal, 14, 684
 - As to personal rights and obligations of wife, 14, 683
 - As to third parties, 14, 684
 - As to wife's coverture, 14, 683
 - Compensation, 14, 684
 - Consent of husband, 7, 172, 174; 14, 682, 683
 - Death of feme covert executrix or administratrix, 7, 175
 - Effect of coverture, 14, 683
 - Effect of marriage of feme sole executrix, 7, 175
 - Estopped to deny that she was executrix if she acts, 7, 172, 173
 - Examples, 14, 682
- Husband's Consent, 7, 172, 174; 14, 682, 683**
 - At common law, 14, 683
 - Examples, 14, 683
 - Necessity, 14, 683
- Husband's liability, 14, 684
- Husband's rights and obligations, 14, 684
- Joint liability of husband and wife, 14, 682
- Married woman as administratrix, 14, 682
- Married woman as executrix, 14, 681
- Personal liability, 14, 684
- Whether married women may be, 7, 172
- Whether she may be, 7, 174
- Exemptions**
 - Whether repealed by married women laws, 23, 489
- False pretenses, 7, 756
- False Representations, 14, 647-649**
 - Estoppel by*, see *infra*, ESTOPPEL.
- Family Expenses, 14, 625**
 - Express promise of wife, 14, 625
 - Implied promise of husband, 14, 635
 - Joint liability with husband, 14, 626
 - Liability of separate estate, 14, 625
- Feme Sole**
 - Living as, 1, 170
- Foreclosure of Mortgages**
 - When married women may foreclose, 8, 211
 - Where subsequent incumbrancer is a married woman, 8, 219
- Forgery, 14, 633
- Forma pauperis, 8, 546
- Fraud, 14, 647**
 - Avoidance of Deed, 14, 633
 - Bona fide purchaser, 14, 633
 - Party to the fraud, 14, 633
 - Party with notice, 14, 633
- Gifts, 8, 1310
- Gifts Causa Mortis, 14, 600**
 - Equitable separate estate, 14, 601
 - General principles, 14, 600
 - Gift to husband, 14, 601
 - Personalty, 14, 601
- Guardian, 14, 681, 682**
 - As to estate or principal, 14, 684
 - As to personal rights and obligations of wife, 14, 683
 - As to third parties, 14, 684
 - As to wife's coverture, 14, 683
 - Compensation, 14, 684
 - Effect of coverture, 14, 683
- Husband's Consent, 14, 683**
 - At common law, 14, 683
 - Examples, 14, 683
 - Necessity, 14, 683
- Husband's liability, 14, 684
- Husband's rights and obligations, 14, 684
- Personal liability, 14, 684
- Husband and Wife, 15, 59**
 - Husband acting as married woman's agent, 15, 59
 - Separate property, 15, 59
 - Uniting in making bill or note, 2, 348
- Identity of husband and wife, 14, 591
- Infancy and Coverture, 14, 593**
 - Deed of infant married women, 14, 593
 - Effect of removal of one disability, 14, 593
 - Estoppel, 14, 639
 - Marital rights of infants, 14, 593
- Ratification and Avoidance, 10, 658**
 - Disability of coverture, 10, 658
- Restoration of consideration, 14, 594
- Separate property, 14, 594
- Suits, 10, 681
- Injunctions, 10, 983**
 - Against judgment, 14, 662
 - Alienating property, 10, 985
 - Apprehension of abandonment by husband who is alienating property, 10, 985
 - Conveyance of husband's property pending divorce, 10, 985
 - Entireties, 10, 984
 - Equitable separate estate, 10, 983
 - Examples, 10, 983, 984
 - Interfering with custody of children, 10, 985
 - Restraining creditor or husband, 10, 983
 - Restraining husband from interfering with wife's business, 10, 984
- Insolvent laws, 14, 676
- Joinder of Husband**
 - At common law, 14, 654
 - Separate property, 14, 654
 - Suits against married women, 14, 657
 - Under statutes, 14, 654
- Joinder of Parties, 14, 650**
 - Equitable separate estate, 14, 651

MARRIED WOMEN—Cont'd**Joinder of Parties—Cont'd**

General rule as to joinder, 14, 650

In equity, 14, 651

Necessity of joinder, 14, 650

Pending suits, 14, 650

Statutes, 14, 651

Suit by next friend, 14, 651

Trustees, 14, 651

Judgment, 12, 89*See infra*, ESTOPPEL.Action commenced before marriage,
12, 90

Against husband and wife, 12, 90

Against separate estate of married
women, 12, 89

By confession, 12, 149s

By default against, 5, 470

Collateral attack, 12, 147u

Effect of, 14, 661

Defective records, 14, 661

Enjoined in equity, 14, 662

Estoppel, 14, 662

Examples, 14, 662

Improperly sued, 14, 661

In general, 14, 661

Personal judgment, 14, 662

Record not disclosing fact of cover-
ture, 14, 661

Suit not properly brought, 14, 661

Validity, 14, 661

Of default against, 5, 496s

Personal judgment in absence of statu-
te, 12, 89

Relief in equity, 12, 90

Warrant of attorney, 14, 667

Where married women are authorized
to sue and be sued, 12, 89Whether personal judgments are void,
12, 89Whether personal judgments are void-
able, 12, 89**Laches, 12, 553**

Antenuptial contract, 12, 554

At common law, 12, 553

Bill by husband and wife, 12, 553

By husband, 12, 554

Cumulative disability, 12, 554

Dissolution of marriage by death, 12,
553

Husband and wife, 12, 553

Presumption of payment of debt, 12,
554**Larceny, 14, 649****Lease, 12, 994; 14, 625**Acceptance of rent by wife after hus-
band's death, 12, 994

Assent of husband to, 12, 994

At common law, 12, 994

By husband, 12, 994

Confirmation by wife of husband's
lease, 12, 994Effect of death upon husband's lease,
12, 994

Under statute, 12, 994

Whether it is necessary husband should
join in lease, 12, 994**Legacies and Devises, 7, 323**

Bequest to separate use, 7, 324

Compelling husband to make settle-
ment, 7, 324

Payment to husband, 7, 323

Payment to husband of adulteress, 7,
324

Payment to wife, 7, 324

Legal Existence at Common Law, 14, 591

Husband not sui juris, 14, 592

Infant husband, 14, 592

Insane husband, 14, 592

Wife in representative position, 14, 592

Wife's abandonment, 14, 591

Legal existence in equity, 14, 592**Legal Status at Common Law**

Husband civilly dead, 14, 591

Wife divorced a mensa et thoro, 14, 591

Libel and slander, 14, 647**Lien of judgment, 14, 662****Limitation of Actions, 13, 732, 733, 739**

Before married women's act, 13, 739

Effect of married women's act, 13, 739

Exceptions must be express, 13, 735

Infancy plus coverture, 13, 732, 733

In New York, 13, 740

"Persons under legal disabilities," 13,
739**Limitations, see infra, PLEA OF LIMITATIONS.****Lis pendens, 13, 872****Malicious prosecution, 14, 37****Mandate, 14, 242****Married Women's Acts, see SEPARATE PROPERTY OF MARRIED WOMEN.****Construction, 23, 417, 489**Whether exemptions granted to mar-
ried women are repealed by act,
23, 489**Contracts Between Husband and Wife, 9,
794**Where statute gives wife right to
contract generally, 9, 794Where statutes require husband to
join wife, 9, 794**Contracts with Husband**

Equitable rule, 9, 794

Curtesy, 4, 965, 967**Torts of husband, 9, 796****Married Woman's Sureties**

Bond of married woman, 2, 449

Master and Servant, 14, 759

At common law, 14, 759

By statute, 14, 759

Right to enter into contract, 14, 759

Mechanic's Lien, 15, 12, 59, 65, 117

Agency implied, 15, 65

Agent of wife, 15, 65

Claims, 15, 17

Consent to charge with lien, 15, 15

Contract of husband, 15, 12

Contract of married woman, 15, 12

Enforcement, 15, 117

Holding out that husband owns prop-
erty, 15, 14Husband acting as married woman's
agent, 15, 59

- Husband acting as wife's agent, 15, 65
 Husband and wife as joint tenants, 15, 16
 Husband's request with wife's knowledge, 15, 13
 In general, 15, 12-15
 Intention of married woman, 15, 12
 Joint contracts, 15, 16
 Lease for years, 15, 16
 Liability to subcontractors, 15, 17
 Parties to actions, 15, 167
 Pleading, 15, 117
 Recovery against husband, 15, 14
 Rents and profits, 15, 17
 Requisites appearing upon its face, 15, 17
 Separate property, 15, 59
 Setting forth coverture, 15, 17
 Showing coverture, 15, 117
 When improvements must appear necessary, 15, 16
- Modes of Suits**
 Whether common law superseded by statutes, 14, 654
- Mortgages**, 14, 623; 15, 741
See infra, FORECLOSURE OF MORTGAGES.
 Assignments, 15, 849
 At common law, 15, 751
 In United States, 15, 741
 Mortgagees, 15, 744
 Mortgage on wife's land for husband's debt, 15, 743
 Mortgages binding though note void, 15, 743
 Personal liability for the debt, 15, 742
 Surety, 15, 743
- National Banks**
 Liability of shareholder, 16, 195
- Naturalization, 16, 225
- Next Friends**, *see infra*, SUITS.
 Suit by, 14, 651
- Nolle prosequi, 14, 660
- Nonsuit, 14, 656
- Own sole use, 17, 298
- Own use, 17, 298
- Partition**, 17, 703, 726
 By agreement of parties, 17, 662, 663
 Mistake by married woman, 17, 726
 Protection afforded married women, 17, 726
- Partnership**, 17, 923
 At common law, 14, 678; 17, 923
 Consent of husband, 17, 925
 Contracting with husband's firm, 17, 926
 Creditors, 17, 924
 Dissolution by marriage, 17, 1106
 Dissolution of partnership by marriage, 14, 679
 Equitable separate property, 14, 678
 Examples, 14, 678, 679
 Liability for debts, 17, 924
 Liability where in partnership with husband, 17, 925
 Secret partner, 14, 679
- Separate property, 17, 924
 Share of profits where in partnership with husband, 17, 926
 Statutes, 14, 678; 17, 923
 Traders, 14, 675
 Void or voidable, 17, 923
 Where wife has power to sell and carry on business, 17, 923
 Whether she may form, 17, 923
 Wife of partner who has loaned money to firm, 17, 926
 With husband, 17, 925
- Patent Law**
 Assignment, 18, 133
- Personal Property of**
 By what law governed, 3, 575
- Pin money, 22, 3
- Plea of Coverture**, 14, 655; 18, 554
 Arrest of judgment, 14, 656
 Defendant disputing relationship of husband and wife, 18, 554
 Demurrer, 14, 655
 Examples, 18, 554
 General issue in assumpsit, 18, 540
 Hilary Rules, 18, 554
 In general, 18, 554
 Necessity of plea, 14, 655
 Nonsuit, 14, 656
 Plea in abatement, 18, 554
 Waiver of objection, 14, 655
 When declaration is demurrable, 14, 655
 Whether verdict cures, 14, 655
- Plea of Limitations**, 14, 656, 661
 Courtesy, 14, 657
 Effect of double disability, 14, 657
 Examples, 14, 656
 Exception of persons "under disabilities," 14, 657
 Implied disability of infancy, 14, 657
 Infancy and coverture, 14, 657
 Presumption of payment, 14, 656
 Saving clauses in favor of married women, 14, 656
 Statutes, 14, 656
 When statute begins to run, 14, 656
 Where married women's statute repeals saving clause, 14, 656
 Where statute has begun to run, 14, 657
 Who may set up statutes, 14, 657
- Poor and Poor Laws**
Removal, 18, 805
 Confinement of husband in jail, 18, 806
 Examples, 18, 805, 806
 Husband's place of residence, 18, 805
 In general, 18, 806
 Liability of married women to be removed, 18, 805
 Where husband has abandoned his wife, 18, 806
 Widow, 18, 806
- Settlement**, 18, 794
 After divorce, 18, 796
 Desertion of wife, 18, 796

MARRIED WOMEN—Cont'd**Poor and Poor Laws—Cont'd****Settlement—Cont'd**

- Divorce a mensa et thoro, 18, 796
- Generally, 18, 794
- Husband's settlement, 18, 795
- Legality of marriage, 18, 795
- Marriage in order to change settlement, 18, 795
- Separate settlement, 18, 796
- Statutes, 18, 795
- Void marriage, 18, 795
- Where husband has no settlement, 18, 796

Powers, 14, 595

- As appointee, 18, 973
- Execution in favor of husband, 14, 596

Execution of, 18, 928, 951

- Acknowledgment, 18, 952
- Appointment of husband, 18, 951
- Beneficial power, 18, 951
- Concurrence of husband, 18, 951
- During her marriage, 18, 952
- Estate in fee, 18, 952
- Examples, 18, 951, 952
- Grant or devise, 18, 952
- Infant wife, 18, 951
- In general, 18, 950, 951
- New York statute, 18, 951

Power to sell, 14, 596**Right of execution, 14, 595****Where Wife Is Living Separately from Husband**

- Effect of separation deed, 22, 73, 74
- Will of realty, 14, 595
- Wills under, 14, 595

Powers of Attorney, 14, 634

- Executing private powers, 14, 634
- Formalities, 14, 635
- Joinder of husband, 14, 635
- Necessity of privy examination, 14, 635
- Power by implication, 14, 634
- Property held as at common law, 14, 634
- Release of dower, 14, 634
- Revocation by marriage, 14, 635
- Statutory regulations, 14, 634
- Unconnected with conveyance of land, 14, 635
- When she has powers of feme sole, 14, 634

Prescription against, 19, 16**Privilege from arrest, 1, 727****Promise to pay bill or note after death of husband, 2, 349****Prosecutor, 10, 500****Real Covenants****Estoppel, 19, 1026****Receipt, 14, 624****Receiving stolen goods, 14, 649****Receiving stolen property, 20, 443, 446****Record, see *infra*, ESTOPPEL.****Redemption of mortgage, 20, 628****Reformation of instrument, 14, 632; 15, 662****Release, 14, 624****Distinguished from receipt, 14, 624****Of error, 14, 663****Rent, 14, 625****Repairs, 14, 625****At common law, 14, 625****Beneficial contract, 14, 625****Equitable separate estate, 14, 625****Implied promise, 14, 625****Representative Capacity, 14, 680****As to estate or principal, 14, 684****As to personal rights and obligations of wife, 14, 683****As to third parties, 14, 684****As to wife's coverture, 14, 683****Compensation, 14, 684****Effect of coverture, 14, 683****Husband's Consent, 14, 683****At common law, 14, 683****Examples, 14, 683****Necessity, 14, 683****Husband's liability, 14, 684****Husband's rights and obligations, 14, 684****Personal liability, 14, 684****Republication of Will After Dissolution****Valid will, 14, 603****Whether revived by death, 14, 603****Restitution of property obtained under void contract, 2, 349****Restoration of Consideration****Estoppel, 14, 639****Restoration of purchase-money, 14, 622****Separate Property of Married Women****Equitable Separate Property****Power of Disposition, 22, 8****As to personal property, 22, 9****As to Real Property, 22, 9****Deed, 22, 10****Examples, 22, 10****"Exempt from her husband's debts," 22, 11****"For her sole and separate use," 22, 11****Formalities, 22, 10****"Inalienable," 22, 11****In general, 22, 9****Provision as to disposition in instrument creating trust, 22, 10****Restraint of alienation, 22, 11****Restraint on anticipation, 22, 11****Second or subsequent coverture, 22, 11****Summary of the doctrine, 22, 12****"Unassignable," 22, 11****What provision is held to be a restraint upon alienation, 22, 11****Whether designated mode of disposition precludes any other, 22, 11****Wills, 22, 10****English rule, 22, 8****In general, 22, 8****Power not given by instrument creating separate estate, 22, 8**

- Real Property**
Power of Disposition, 22, 9
 Deed, 22, 10
 Examples, 22, 10
 "Exempt from her husband's debts," 22, 11
 "For her sole and separate use," 22, 11
 Formalities, 22, 10
 "Inalienable," 22, 11
 In general, 22, 9
 Provision as to disposition in instrument creating trust, 22, 10
 Restraint of alienation, 22, 11
 Restraint on anticipation, 22, 11
 Second or subsequent coverture, 22, 11
 Summary of the doctrine, 22, 12
 "Unassignable," 22, 11
 What provision is held to be a restraint upon alienation, 22, 11
 Whether designated mode of disposition precludes any other, 22, 11
 Wills, 22, 10
- Service of Process**, 14, 658; 22, 157
 At common law, 14, 658
 Husband and wife, 14, 658
 Personal service, 14, 658
 Proceedings affecting separate property, 14, 658
 Upon whom service may be made, 14, 658, 659
- Settlement**, see *infra*, **POOR AND POOR LAWS**.
- Single woman**, 22, 785
- Specific Performance**, 22, 922
 Agreement of feme covert to convey, 22, 923
 Conveyance of real estate, 22, 922
 Defective acknowledgment, 22, 923
 Husband's assent, 22, 923
 In general, 22, 922
 Unrecorded deed, 22, 924
- Status of**
 By what law determined, 3, 518
 Generally, 14, 591
- Statute of Frauds**
 Promise to answer for debt of a married woman, 8, 676
- Statutes**, see *infra*, **CONSTRUCTION; CONTRACTS; WILLS**.
- Stockholders**, 14, 626, 680
 Liability, 14, 680
 Liability of separate estate, 14, 680
 Note given for subscription, 14, 680
 Subscriptions, 14, 680
 Whether married women may be, 14, 680
- Streets and Sidewalks**
 Dedication, 24, 8
 Prescription, 24, 16
 Whether married woman necessary party to proceedings to establish street, 24, 21
- Strict Construction of Married Women's Acts**, 23, 389
 Contract between husband and wife, 23, 390
 Contracts, 23, 390
 Effecting purpose of legislature, 23, 389
 Husband and wife, 23, 390
 Incidents of marriage, 23, 391
 Liberally construed, 23, 390
 Suits, 23, 391
 Tenancy by entirety, 23, 391
- Subrogation**, 24, 228
- Suits**, 14, 650
 See *infra*, **ATTORNEY; COSTS**.
 Abatement, 14, 650
Against Each Other
 In equity, 6, 741
 As traders, 14, 676
At Common Law
 Wife's abandonment, 14, 591
 Between husband and wife, 9, 799
By next Friend, 14, 653
 Examples, 14, 653
 Husband as next friend, 14, 653
 In equity, 14, 653
 Statutes, 14, 653
 Suing husband, 14, 653
 Who may be next friend, 14, 653
 By or against, 5, 767
 By trustees, 14, 653
 By what law governed, 3, 575
By Wife Alone, 14, 654
 At common law, 14, 654
 Under statutes, 14, 654
 Causes of action, 14, 655
Causes of Action on Which Married Women May Be Sued, 14, 659
 At common law, 14, 659
 Equitable separate property, 14, 659
 In equity, 14, 659
 Under statutes, 14, 659
Control of Husband, 14, 662
At Common Law, 14, 662
Appointment of attorney, see *infra*, **ATTORNEY**.
Costs, see *infra*, **COSTS**.
Plea of coverture, see *infra*, **ATTORNEY**.
Service of process, see *infra*, **SERVICE OF PROCESS**.
 Confession of judgment, 14, 663
 Dismissing suit, 14, 663
 Examples, 14, 663
 In general, 14, 662
 Release of errors, 14, 663
 Separate property, 14, 663
 Defenses, 14, 663
 Equitable separate property, 14, 664
 Examples, 14, 664
 In equity, 14, 663
 Under statutes, 14, 664
 Wife's separate suit, 14, 664
 Defenses of married women, 14, 659
Effect of Dissolution of Marriage, 14, 651
 Abatement, 14, 651
 At common law, 14, 651

MARRIED WOMEN—Cont'd**Suits—Cont'd****Effect of Dissolution of Marriage—Cont'd**

Divorce, 14, 651

Husband's death, 14, 651

When joinder of husband is merely formal, 14, 651

Wife's death, 14, 651

In equity, 14, 651

In general, 14, 650

Joinder of Parties, 14, 650

Equitable separate estate, 14, 651

General rule as to joinder, 14, 650

In equity, 14, 651

Necessity of joinder, 14, 650

Pending suits, 14, 650

Statutes, 14, 651

Suit by next friend, 14, 651

Trustees, 14, 651

Mode in Which Married Women May Be

Sued, 14, 657

Alone, 14, 658

Jointly with husband, 14, 657

Jointly with trustee, 14, 658

Pending, 14, 650

Plea of Coverture by Married Women,

14, 660

Demurrer, 14, 660

Husband and wife jointly sued for tort, 14, 660

Judgment of mere nullity, 14, 660

Motion to set aside judgment, 14, 660

Necessity of plea in abatement, 14, 660

Nolle prosequi, 14, 660

Plea in bar, 14, 660

Proof under general issue, 14, 660

Waiver of objections, 14, 660

Writ of error, 14, 660

Traders

Creditors, 14, 676

Under statutes, 14, 651

Upon bill or note of, 2, 350

Suretyship, 14, 623, 626

Liability of stockholder, 14, 626

Separate property, 14, 626

Under statutes, 14, 626

Validity of the contract, 14, 626

When surety bound, although contract not binding on principal, 24, 773

Whether Married Woman May Become

Surety, 24, 730

In general, 24, 730

Separate estate, 24, 731

Statute giving unlimited right to contract, 24, 730

Statute prohibiting, 24, 730

Where unauthorized by statute, 24, 730

Whether surety liable, 24, 773, 847

Taxation

Redemption, time for, 25, 420

Tax titles, 25, 718

Termination of trusts for married women, 27, 120

Torts, 14, 647*Estoppel*, see *infra*, **ESTOPPEL**.**Antenuptial, 14, 647**

Against man she marries, 14, 647

In general, 14, 647

Liability, 14, 647

Connected with Contract, 14, 649

Examples, 14, 649

Liability for, 14, 649

Liability, 14, 645**Postnuptial, 14, 647**

Act of agent, 14, 647

Assault and battery, 14, 647

Coercion of husband, 14, 647

Committed in presence of husband, 14, 647

Conversion, 14, 647

Examples, 14, 647

False and fraudulent representations, 14, 647

Fraud, 14, 647

Liability in general, 14, 647

Slander, 14, 647

Trespass, 14, 647

Recent Cases Under Statutes in Various States on Married Women's Torts, 14, 648

In Connecticut, 14, 648

In Florida, 14, 648

In Indiana, 14, 648

In Massachusetts, 14, 648

In Michigan, 14, 648

In New Jersey, 14, 648

In New York, 14, 648

In Pennsylvania, 14, 648

In Vermont, 14, 649

In Virginia, 14, 649

Traders, 14, 667See *infra*, **PARTNERSHIP**.*Earnings*, see **HUSBAND AND WIFE**.

At common law generally, 14, 667

Capacity to Trade at Common Law, 14, 670

Civil death of husband, 14, 670

Custom of London, 14, 671

Capacity to Trade in Equity, 14, 671**Consent of Husband, 14, 671**

Agreement as to earnings, 14, 671

As husband's agent, 14, 671

Effect of, 14, 671

Examples, 14, 672

Husband's liability for debts, 14, 672

Oral assent, 14, 672

Proof of agency, 14, 672

Revocation of consent, 14, 672

Where married woman is regarded as feme sole, 14, 671

Capacity Under Statutes, 14, 672

Effect of statutes, 14, 672

Examples, 14, 672, 673

Formalities, 14, 673, 674

In general, 14, 672-674

Scope of statutes, 14, 672, 673

Statutory limitations, 14, 673

Under express statutes, 14, 673

Credit, 14, 675, 676

Definition, 14, 668

Husband's Rights and Liabilities, 14, 678

At common law, 14, 678

Examples, 14, 678

Under statutes, 14, 678

Incidents of capacity to trade, 14, 674**Increase of her separate property, 14, 668****Liability, 14, 676****Powers, 14, 675**

As feme sole, 14, 675

Credit, 14, 675

Creditors, 14, 676

Examples, 14, 675, 676

Express powers, 14, 675

Husband as agent, 14, 675

Implied, 14, 675

In general, 14, 675

Insolvency, 14, 676

Liability, 14, 676

Partner, 14, 675

Suits, 14, 676

Wife's title, 14, 676

Resulting capacities, 14, 668**Rights of Creditors, 14, 676**

As husband's agent, 14, 677

Examples, 14, 677

Husband's rights, 14, 677

Property in use in husband's business, 14, 677

Separate trade, 14, 670**Trespass, 14, 647****Trusts and Trustees, 14, 653, 681**

As cestui que trust, 27, 23

As to estate or principal, 14, 684

As to personal rights and obligations of wife, 14, 683

As to third parties, 14, 684

As to wife's coverture, 14, 683

Compensation, 14, 684**Creation of Trust by, 27, 13**

In general, 27, 13

Testamentary capacity, 27, 14

Under married women's statute in England, 27, 14

Under married women's statute in United States, 27, 14

Effect of coverture, 14, 683**Examples, 14, 681****Husband's Consent, 14, 683**

At common law, 14, 683

Examples, 14, 683

Necessity, 14, 683

Husband's liability, 14, 684**Husband's rights and obligations, 14, 684****Married Women as Trustees, 27, 20**

At common law, 27, 20

Examples, 27, 20, 21

For her husband, 27, 20

In general, 27, 20

In New Jersey, 27, 21

In New York, 27, 21

Whether they may be trustees, 27, 20

Personal liability, 14, 684**Where woman is not already married, 27, 122****Trusts for married women, see SEPARATE ESTATES FOR MARRIED WOMEN.****Vendor and purchaser, 28, 83****Vendor's lien, 28, 167, 173****Void or Voidable**

Bills and notes, 2, 348

Warrant of attorney to confess judgment, 28, 696**Who may make defense of coverture, 2, 349****Wife's separate estate, see SEPARATE PROPERTY OF MARRIED WOMEN.****Wills, 14, 594****At Common Law****Capacity, 14, 594**

What incapacity depends upon, 14, 594

Exceptions, 14, 595*See, infra*, LEGAL EXISTENCE AT COMMON LAW.

Acting in representative capacity, 14, 595

Consent of husband, 14, 595

Desertion of husband, 14, 595

Effect of married women's law upon power, 14, 596

Execution of power, 14, 595

Power to sell, 14, 596

Revocation, 14, 596

Under power, 14, 595

Wills of realty under a power, 14, 595

Wife's abandonment, 14, 591

Capacity in Equity, 14, 596**Equitable Separate Estate, 14, 596**

Husband's curtesy, 14, 596

Realty, 14, 596

Three views of married women's powers, 14, 596

Will to husband, 14, 596

In general, 14, 596

Capacity Under Statutes, 14, 597

Examples, 14, 597

In general, 14, 597

Separate property act which says nothing as to wills, 14, 597

Statute authorizing conveyance, 14, 597

Statutory separate estate, 14, 598

Will to husband, 14, 597

Conflict of law, 14, 603**Effect of Husband's Consent, 14, 598, 599**

As agent of husband, 14, 599

Assent for valuable consideration, 14, 600

Assent under seal, 14, 600

Consent to probate, 14, 600

Death, 14, 600

Examples, 14, 599, 600

Form of assent, 14, 599

General consent, 14, 599

Husband's handwriting, 14, 600

Husband's knowledge of contents of will, 14, 599

Husband's property, 14, 599

Oral assent, 14, 599

MARRIED WOMEN—Cont'd

Wills—Cont'd

Effect of Husband's Consent—Cont'd

- Personal capacity of wife, 14, 599
- Probate, 14, 600
- Proof of assent, 14, 599
- Real property, 14, 599
- Revocation of assent, 14, 600
- Revocation upon wife's death, 14, 600
- Special authority, 14, 599
- Statutes, 14, 600
- When assent irrevocable, 14, 600

Gifts Causa Mortis, 14, 600

- Equitable separate estate, 14, 601
- General principles, 14, 600
- Gift to husband, 14, 601
- Personalty, 14, 601

Of Married Women Made Before Marriage, 14, 601

- Conflict of authorities as to effect of married women's laws, 14, 602
- Grounds upon which the rule rests, 14, 601
- In general, 14, 601
- Marriage and birth of issue, 14, 602
- Under modern statutes, 14, 602
- Wife surviving husband, 14, 603
- Wills by virtue of a power, 14, 603

Republication of Will After Dissolution, 14, 603

- By codicil, 14, 603
- Formalities required, 14, 603
- Necessity, 14, 603
- What constitutes, 14, 603

Revocation, 14, 601

- By marriage, 14, 601
- Capacity, 14, 601
- In general, 14, 601

Separate estate, 14, 598

Validity and Operation Distinguished, 14, 598

- Incapacity removed by statute, 14, 598
- Inoperative valid wills, 14, 598
- Marital rights of women, 14, 598
- Want of capacity, 14, 598

Writ of women, 6, 818

MARSHAL, 14, 684; 22, 564

See generally, SHERIFFS.

Deputy, 22, 565

- Acting on death, 22, 565
- Liability for money received, 5, 633

Deputy-Marshal

- Power to appoint special deputy, 5, 627

Duties, 22, 564

Escape, 22, 565

Provisions of United States statutes, 22, 565

Removal of causes, 22, 1002

Return, 22, 565

Return of process, 22, 176

Tenure of office, 22, 564

MARSHALLING ASSETS, 14, 695

Admiralty, 14, 707

Aliens, 14, 734

As between creditors of different persons, 14, 699

Building and loan associations, 2, 641

Case stated, 14, 696

Charities, 14, 734-738

Debts of Decedents, 14, 726

- Contract for purchase of realty, 14, 726

Judgment creditor, 14, 727

- Personalty exhausted by payment of debts, 14, 726

Decedents' estate, 14, 725

Default of paramount creditor after notice, 14, 698

Definition, 1, 826; 6, 719; 14, 685

Dower, 14, 691

Equity against the junior not paramount creditor, 14, 686

Examples, 14, 686

Exemption, 14, 690

Foreclosure, 14, 696

Funds in different jurisdiction, 14, 691

Funds to Which the Doctrine Is Applied

Dower, 14, 691

Exemption in Pennsylvania, 14, 690

Funds in different jurisdiction, 14, 691

Funds must be in existence before question of marshalling is raised, 14, 692

Homestead lands, 14, 688

In general, 14, 688

Nature immaterial, 14, 688

Partnership and separate property, 14, 691

Grounds for equitable interference, 14, 685

Homestead lands, 14, 688

How Equity of Marshalling Is Enforced

Decree of distribution, 14, 695

Decree of subrogation, 14, 692

Foreclosure, 14, 696

Injunction, 14, 691

Injunction, 14, 691

Inverse Order of Alienation, 14, 707

Debt charged on lands of decedents, 14, 711

Examples, 14, 707-710

General principle, 14, 707

How equity of grantee is enforced, 14, 713

Judgment, 14, 711

Lands contemporaneously sold, 14, 710

Nature of encumbrance immaterial, 14, 711

Notice, 14, 712

Successive sales under execution, 14, 709

Warranty, 14, 709

Where land is in different states, 14, 708

Where lands conveyed are charged with debt, 14, 709

Joint Creditors

Release made in good faith, 14, 699

Jurisdiction of probate courts, 14, 739

Legacies and Devises, see **LEGACIES AND DEVISES**.

In Aid of Legatee, 14, 727

Against the heir, 14, 738

Charities

Effect of direction to pay legacies to charities out of pure personality, 14, 735

Examples, 14, 734-736

States in which statutes of mortmain are not in force, 14, 737

Two kinds of funds, 14, 735

Devise subject to a mortgage, 14, 728

Examples, 14, 738

Land in foreign jurisdiction, 14, 730

Lands not chargeable with payment of debts, 14, 738

Lands sold before exhaustion of personality, 14, 738

Personal assets exhausted by mortgage, 14, 727

Personal assets exhausted by vendor holding a lien, 14, 727

Simple Contract Creditor, 14, 731

Aliens, 14, 734

Charities, 14, 734

Death of legatee before time of payment, 14, 733

Effect of doctrine upon order of application, 14, 733

General legacies, 14, 733

Land descended, 14, 731

Land devised, 14, 732

Legacies charged upon the land, 14, 732

Pecuniary legacies, 14, 735

Residuary legatee, 14, 734

Specialty creditor, 14, 729

Widow taking devise in lieu of dower, 14, 738

Mechanics' liens, 15, 100

Nature of equity, 14, 686

Nature of funds to which doctrine is applied, 14, 688

Notice, 14, 695

Paramount Creditor, see *infra*, **RIGHTS OF PARAMOUNT CREDITOR**.

Default after notice, 14, 698

Liability, 14, 698

Partnership Assets, 14, 713

Appropriation of Firm Assets to Separate Debts, 14, 713

Abandonment of equity, 14, 715

Conveyance without fraud, 14, 717

Firm must be solvent, 14, 716

Effect of Sale of One Partner's Interest to Another Partner, 14, 718

Examples, 14, 718-720

Where the firm is insolvent, 14, 718

Effect of Sale of Partner's Interest by Legal Process, 14, 720

Purchaser's rights, 14, 722

Firm's debts paid out of firm's assets, 14, 713

General rule, 14, 713

Insolvent partnership, 14, 713

Practice, 14, 725

Reason of the rule, 14, 714

Rights of Separate Creditors, 14, 722

Examples, 14, 722-725

In estate of deceased partner, 14, 724

When firm is insolvent, 14, 722

Where firm is solvent, 14, 722

Separate debts out of separate estates, 14, 713

Pledge and collateral security, 18, 667, 668

Rights of Paramount Creditor, 14, 696

Any part of paramount debt unsettled, 14, 696

Burden of proof, 14, 697

Delaying or hindering creditor, 14, 696

Dividend on total amount of debt, 14, 698

When marshalling will be enforced, 14, 696

Subrogation, 14, 693, 696; 24, 275

Sureties, 14, 701

Bona fide purchaser, 14, 704

Case in which subrogation was not allowed, 14, 704

Creditors must be paid in full, 14, 705

Examples, 14, 702

Funds set apart, 14, 703

General rule, 14, 701

In favor of surety, 14, 701

Judgment, 14, 706

Person primarily liable, 14, 701

Where the equities are equal law will prevail, 14, 688

Widow's Paraphernalia, 14, 739

Against real estate devises, 14, 739

Examples, 14, 739

General legacies, 14, 739

General rule, 14, 739

Real estate subject to general charge of debts, 14, 739

MARTIAL LAW, 28, 634

Declaration of, 28, 635

Definition, 28, 634

Distinguished from military law, 28, 635

Insurrection, 11, 359

Power of executive, 28, 635

Power of legislature, 28, 635

Right to declare, 28, 635

Taxation

Exemptions, 25, 169

MASTER AND SERVANT, 14, 740

See **AGENCY**; **APPRENTICES**; **CONTRIBUTORY NEGLIGENCE**; **COUPLING CARS**; **INJURIES BY**; **EMBEZZLEMENT**; **FELLOW SERVANTS**; **GUARANTEE INSURANCE**; **LATENT DEFECTS**.

See *generally*, **NEGLECTANCE**.

See **PARENT AND CHILD**; **SEDUCTION**; **SLAVES AND SLAVERY**; **STORE ORDER ACTS**; **STRIKES**; **TRUCK ACTS**; **WAGES**.

As to assignment of future wages, see **ASSIGNMENTS**.

Combinations and coercion of servants, see **BOYCOTT**; **CRIMINAL CONSPIRACY**; **STRIKES**.

MASTER AND SERVANT—Cont'd

Sale of intoxicating liquors by servant,
see INTOXICATING LIQUORS.

Selection and retention of competent servants, see FELLOW SERVANTS.

Wages, see STORE ORDER ACTS; WAGES.

Abandonment by Servant, 14, 776

Accident, 14, 780

Agreement to work for a definite time,
14, 777

Breach of contract by master, 14, 777

Condonation, 14, 778

Desire of master that servant should
quit, 14, 777

Disablement through accident, 14, 780

Employee's remedy, 14, 776

Ill usage, 14, 778.

Imprisonment of employee, 14, 778

In general, 14, 776

Justification, 14, 778

Quantum meruit, 14, 776

Questions of law and fact, 14, 778

Return of servant, 14, 778

Sickness, 14, 777

Absence of servant, 14, 775

Action by master, 16, 468

Action for Damages by Servant Against Master

Petition, 14, 912

Damages, see *infra*, DAMAGES FOR
PERSONAL INJURIES.

Evidence, see *infra*, EVIDENCE.

Allegations, 14, 912

Master's knowledge of defect, 14, 912

Admissions of servant, 9, 348

Agents, 14, 761

Animals, Trespassing

Liability of master for servant's care-
lessness, 1, 580

Arising of unexpected conditions, 14, 799

Arrest, 14, 820, 825, 826

Articles broken, 14, 785

Assault

Liability of Master, 14, 816, 820

By command of master, 14, 824

By conductor, 14, 816, 820

Carriers of passengers, 14, 820

Criminal acts of servant, 14, 824

Employee not in charge of car, 14,
819

Wanton assault, 14, 820

Of master upon servant, 1, 780

Burden of Proof

Contributory negligence, 14, 871

Discharge, 14, 797

Knowledge of defect, 14, 844

Liability of master to servant, 14, 904

Carriers of Passengers

Liability of Master for Torts of Servant,
14, 819

See CARRIERS OF PASSENGERS.

Actionable language, 14, 820

Arrest of passenger, 14, 820

Assault by conductor upon demand
of ticket, 14, 820

Examples, 14, 820, 821

Expulsion from Train, 14, 821

Authority of conductor or brake-
man, 14, 821

Careless or negligent manner, 14,
822

Examples, 14, 821-823

Jumping through fear of being
thrown, 14, 823

Kicking from platform, 14, 823

Liability of company, 14, 822

Persons attempting to board train,
14, 823

Generally, 14, 819

Kissing female passenger, 14, 820

Offensive conduct towards passen-
ger by servant, 14, 819

Passengers on vessel, 14, 821

Removal of trespasser from train,
14, 821

Undertaking of carrier, 14, 819

Wanton assault, 14, 820

Character, 14, 799

Forged testimonials, 14, 800

Knowingly giving false, 14, 800

Libel, 14, 799

Obligation to give, 14, 799

Privileged communications, 14, 799

Chastisement of servant, 1, 796

Civil Damage Acts

See generally, INTOXICATING LIQ-
UORS.

Liability of master for sale by servant,
3, 258

Commencement of contract, 14, 766

Compensation, see WAGES.

Where relationship is terminated, 1,
399

Competing with master in business, 14,
789

Condonation by master, 14, 778, 791

Conflict of laws, 14, 786

Consent of servant to injury, 14, 911

Consideration, 14, 761

Contract

Absolving master from liability, 14,
910

Depending on satisfaction or discre-
tion, 14, 775

Contract of Service, 14, 752

Form, see *infra*, STATUTE OF FRAUDS.

Public officers, see PUBLIC OFFICERS.

How relation is created, 14, 752

Inception, 14, 752

Question of law and fact, 14, 752

Specific Performance, 22, 1002

Base-ball contract, 22, 1004

Continuous services, 22, 1002

Contracts involving the exercise of
taste, skill, or discretion, 22, 1002

Contracts to be performed in the
future, 22, 1002, 1003

Contract to run for uncertain period,
22, 1003

Contract to sing, 22, 1004

Examples, 22, 1002-1005

Incapable of supervision or control,
22, 1002

In general, 22, 1002
 Skill, judgment, care, etc., 22, 1004
 Theatrical contracts, 22, 1004
 Where there is no practicable means of executing decree, 22, 1002
 When relation exists, 14, 752
Contractor, see MECHANICS' LIENS.
Liability for acts of, see *infra*, LIABILITY OF MASTER.
Subcontractor, see MECHANICS' LIENS.
 As servant, 14, 749
 Definition, 14, 829
Contributory Negligence, 14, 861
See CONTRIBUTORY NEGLIGENCE.
 Assumption of risks as, 4, 59
 Attempt to board moving train, 14, 867
 Brakeman killed by overhead bridge, 14, 868
 Burden of proof, 14, 869, 871
 Care required in the use of appliances, 14, 870
 Day laborer riding on engine pilot, 14, 865
 Due care must be shown, 14, 871
 Duty of master to provide suitable and safe machinery, 4, 60
 Duty to instruct an immature and inexperienced servant, 4, 59, 61
 Employee under charge of master mechanic, 14, 862
 Engineer running at high speed, 14, 863
 Equal knowledge of master and servant, 14, 862
 Examples, 14, 862-866
 Extraneous risks, 4, 59
Failure
 To ask for assistance, 14, 864
 To avoid elevator well-hole, 14, 866
 To leave hand-car with promptness, 14, 865
 To look for hidden danger, 14, 870
 To step off track to avoid injury, 14, 865
 To warn servant of unusual dangers, 4, 59
 Flying switch contrary to order, 14, 864
 General rule, 14, 861
 Handling machine in careless manner, 14, 864
 Ignoring warning of danger, 14, 866
 Imminent peril of employee, 14, 868
 Infants, 14, 861
 Jumping from moving train, 14, 865
 Knowledge of danger, 14, 870
 Laborer in woolen factory, 14, 870
Machinery, 14, 909
 Failure to notify master, 14, 909
 Implied notice, 14, 910
 In plaintiff's own care, 14, 909
 Inspection, 14, 909
 Notice of defects, 14, 909
 Notice to vice principal, 14, 910
 Use of appliances, 14, 909
 What is notice to company, 14, 910

Master cannot delegate his duty and avoid liability, 4, 66
 Master exposing servant to unusual dangers, 4, 66
Master's Duty
 To employ and retain competent servants, 4, 65
 To guard against danger of which servant has not been notified, 4, 64
 To inspect and repair machinery, etc., 4, 63
 To make and promulgate rules, 4, 64
 To provide for safety of servant, 4, 58
 To provide safe place for servant to work, 4, 63
 To provide suitable appliances, 4, 62
 Mounting moving engine with patent defects, 14, 865
 Negligence of plaintiff, 14, 869
 Negligence through terror, 14, 868
 Presumption where servant is killed while on duty, 14, 871
 Projecting person beyond side of car, 14, 864
 Proof necessary to establish, 14, 869
 Proximate and remote cause, 14, 869
Questions of Law and Fact, 14, 868
 Brakeman killed by overhead bridge, 14, 868
 Examples, 14, 868, 869
 Walking over train, 14, 869
 Where the evidence is conflicting, 14, 868
 Where the facts are undisputed, 14, 868
 Reasonable diligence of employee as to tools and machinery, 14, 867
 Recovery notwithstanding servant's negligence, 14, 867
 Remaining in dangerous place, 14, 866
 Risks assumed by servant, 4, 58
 Running contrary to rules, 14, 862
 Servant must have been in fault, 14, 862
 Servant's control over work, 14, 862
 Slight want of care, 14, 870
 Speed in running over switches, 14, 862
 Switchman between two tracks, 14, 864
 Unnecessarily mounting boiler, 14, 865
 Volunteer signaling train, 14, 865
 When assumption of risks does not bar servant, 4, 59
Corporations, 14, 760
 Liability of, 14, 805
 Criminal offense of servant, 14, 782, 783
Damages for Personal Injuries, 14, 915
 Character of plaintiff, 14, 915, 916
 Employment of physician, 14, 916
 Excessive damages, 14, 917
 Exemplary damages, 14, 917
 Funeral expenses, 14, 916
 Life table, 14, 917

MASTER AND SERVANT—Cont'd**Damages for Personal Injuries—Cont'd**

- Line of promotion, 14, 916
- Measure generally, 14, 915
- New trial, 14, 917
- Number of children left, 14, 916
- Question for jury, 14, 917
- Recovery by parent for killing of son, 14, 916
- Reversal of judgment, 14, 917
- Death, 5, 138; 10, 181; 14, 777, 787, 788, 799
- Defect in condition of ways, etc., 5, 514

Definitions

- Classification of servants, 14, 746
- Examples of Servants, 14, 746-750**
 - Agricultural laborer, 14, 748
 - Change in grade of employment, 14, 749
 - Civil engineer, 14, 747
 - Coal shovelers, 14, 747
 - Conductor, 14, 749
 - Contractor agreeing to furnish certain work, 14, 749
 - Convicts, 14, 746
 - Crew of vessel, 14, 748
 - Detectives, 14, 747
 - Driver of teams, 14, 747-750
 - Drover, 14, 750
 - Employee of mine contractor, 14, 750
 - Ferryman, 14, 728
 - Free transportation, 14, 749
 - Gateman, 14, 746
 - Licensed carman, 14, 750
 - Overseer of roads as to county, 14, 750
 - Passenger assisting, 14, 749
 - Pilot, 14, 748
 - Police officer, 14, 749
 - Porter, 14, 747
 - Postal clerk, 14, 749
 - Railroad engineer, 14, 747
 - Secretary of corporation, 14, 749
 - Servant of one merchant as to another, 14, 750
 - Stage drivers, 14, 748
 - Stevedore, 14, 748
 - Superintendent, 14, 749
 - Surveyor's assistant, 14, 747
 - Teamster, 14, 749
 - Wharf contractor, 14, 748
 - Working overseer, 14, 747

Laborers, 14, 746**Master, 14, 745****Menial servants, 14, 745, 750****Of employ, 6, 635****Servant, 14, 745, 750**

- Independent contractors, 14, 751
- Persons engaging in work upon false pretenses, 14, 751
- Presumption from appearances, 14, 751
- Signification of term in wills, 14, 750
- Under common law, 14, 745
- Volunteers, 14, 751

Station agent, 14, 746**Directing verdict, 14, 874****Discharge**

- Assignment of cause, 14, 792
- Burden of proof, 14, 797
- Evidence, 14, 797
- Giving character to servant, see *infra*, CHARACTER.
- Malicious procurement of, 14, 800
- New contract after breach, 14, 797

Obligation of Discharged Servant to Seek

- Employment, 14, 795
- Another neighborhood, 14, 796
- Diligence, 14, 796
- In general, 14, 795
- Reasonable effort, 14, 796
- Service of a different kind, 14, 796
- Services must be of equal grade, 14, 796
- Single specific piece of work, 14, 796

Of domestic servant without notice, 14, 799**Offer of continuance at lower rate, 14, 796****Partnership, 14, 793****Recalling discharged servant, 14, 797****Remedies of Servant for Wrongful, 14, 797**

- Suit at once for breach of contract, 14, 797
- Suit for salary as due, 14, 798
- Suit of quantum meruit, 14, 799
- Treat contract as existing, 14, 798
- Waiting until expiration of term, 14, 798

Rightful, 14, 788*See* WAGES.**Challenging master, 14, 790****Competing with master in business, 14, 789****Continued illness of servant, 14, 790****Dealing with certain persons, 14, 790****Disclosure of secrets, 14, 790****Drunkenness, 14, 788****Embezzlement from master, 14, 790****Fraudulent conduct, 14, 790****Habitual negligence, 14, 790****Impertinence, 14, 788, 789****Incompetency, 14, 790****Insubordination, 14, 789****Obscene and improper language, 14, 789****Renting certain premises, 14, 790****Sufficient acts, 14, 788****Trading with merchant named, 14, 790****Unnecessarily suing master, 14, 789****Unprofitable business, 14, 790****Servant receiving share of profits, 14, 796****Wages, 14, 783****What amounts to, 14, 792****Disclosure of secrets, 14, 790****Domestic, 5, 856****Driving upon highway, see *infra*, LIABILITY OF MASTER.****Drunkenness, 14, 788**

Duty of Master, see *infra*, **LIABILITY OF MASTER**.

Incompetency of fellow servants, 7, 831

Selection and retention of sufficient and competent servants, 7, 831

Effects, 6, 192

Eight hour law, 14, 772

Ejectment against servant, 6, 245e

Election

Servants improperly discharged, 6, 249

Emancipation of Infant

Parent and child, 14, 756

Embezzlement, 14, 790

Employer's liability acts, 29, 31, 32

Enforcement of contract for services, 14, 787

Enjoining servant, 22, 1002, 1005

Enticing Servant Away, 14, 800

Action at law for, 14, 801

Continuing to employ servant after notice, 14, 801

Evidence of enticement, 14, 802

Examples, 14, 801

General rule, 14, 800

Harboring servant, 14, 801

Hiring out to another, 14, 801

Injunction, 14, 803

Malice, 14, 802

Measure of damages, 14, 802

Notice to defendant, 14, 802

Remedy, 14, 800

Service at will, 14, 801

Sufficiency of contract, 14, 802

Where relationship has not been entered into, 14, 801

Entire time, 14, 763

Evidence, 14, 813, 913

As to sufficiency of machinery, 14, 894

Damages, 14, 915, 916

Declaration, 14, 913

Res gestæ, 14, 913

Discharge, 14, 797

Liability of master for negligence of servant, 14, 814

Reputation of servant for negligence, 14, 814

Submission of person to inspection, 14, 915

Exemplary Damages, 14, 827, 917

Examples, 14, 828

Master's liability for acts of servant, 14, 827

New York rule, 14, 828

Existence of relation between parent and child, 14, 755

False imprisonment, 7, 665; 14, 820, 825

False Pretenses

Defrauding intending employees, 7, 745

Representation of servant as to certain moneys due, 7, 700

Fencing machinery, 14, 889

Finder of lost property, 7, 990

Fire escape, 14, 888

Food, 14, 918

Forfeiture of wages, 8, 451

Giving character to servant, see *infra*, **CHARACTER**.

Harboring servant, 14, 801

Illegal Contracts, 14, 785See *infra*, **SUNDAY LAWS**.

Immoral contracts, 14, 787

Immoral character, 14, 787

Implied Contracts, 14, 767

Acceptance of services, 14, 770

Compulsory service, 14, 770

Generally, 14, 767

Gratuitous services, 14, 768

Members of a Family, 14, 768

Brother and sister, 14, 769

Grandparents and grandchildren, 14, 768

In general, 14, 768

Stepchildren, 14, 768

Stepfather, 14, 769

Presumption, 14, 768

Services with a view to a legacy, 14, 770

Stepmother, 14, 768

Termination of contract and continuance in service, 14, 770

Unsolicited services, 14, 770

Incompetency, 14, 790, 906

Indemnification of servant for loss or damage, 14, 919

Independent Contractors, 2, 755; 14, 829**Liability of Carrier**

Carrier's duty to take precautions against possibility of negligence, 2, 756

Where contractor is paid by the day, 2, 756

Where contractor neglects to perform his duty, 2, 756

Where the act itself is wrong, 2, 756

Infants, 14, 753, 758, 899*Emancipation*, see **PARENT AND CHILD**.*Existence of the relationship between parent and child*, see **PARENT AND CHILD**.

American rule, 14, 754

As a master, 14, 759

Common-law rule, 14, 753

Contract for Service**Ratification and Avoidance**, 10, 656; 14, 755

Claim for services rendered, 10, 657

Counterclaim for board and necessities, 10, 657

Counterclaim for breach of contract, 10, 657

Damage from breach, 10, 657

Infant's right to avoid contract, 10, 656

Ratification by continuance in service, 10, 657

Ratification by parents, 10, 658

Contract of parents, 14, 755**Duty and liability of hirer of infant**, 14, 758

MASTER AND SERVANT—Cont'd**Infants—Cont'd**

- Duty towards, as distinguished from adults, 14, 900
- Employment of minors, 14, 900
- Examples, 14, 899
- Failure to instruct, 14, 902
- Generally, 14, 753
- Incompetency of instructor, 14, 902
- In equitable contracts, 14, 754
- Mere fact of minority of injured person, 14, 901
- Minor employed contrary to wish of parents, 14, 900
- Negligence of co-employee, 14, 902
- Notice of special peril, 14, 902
- Notice to quit, 14, 780
- Permanent injury, 14, 902
- Presumption as to understanding, 14, 902
- Railroad's knowledge of minority, 14, 900
- Ratification after majority, 10, 656; 14, 755
- Recovery by parent, 14, 900
- Risks of employment, 14, 843
- Statute of frauds, 14, 765
- Voiding contract, 14, 755
- Void or voidable at common law, 14, 753
- Void or voidable in United States, 14, 754
- What must be shown by parent in order to recover, 14, 901
- Where minor is instructed, 14, 901
- Whether contract void or voidable, 14, 753
- Whether employment of minor is negligence, 14, 901
- Whether regarded as for benefit of infants, 14, 753
- Work more dangerous than agreed upon, 14, 899
- Work outside scope of employment, 14, 861
- Infringement of patent, 10, 750
- Injunctions**, 10, 948
 - Actors, etc., 10, 948
 - Breach of restrictive covenant, 10, 948
 - General rule, 10, 948
- Insanity**, 14, 813
 - Liability of master for insane person, 14, 813
- Insolvency**, 14, 775
- Inspection of person**, 14, 915
- Instruction to inexperienced and minor servant**, see *infra*, **LIABILITY OF MASTER TO SERVANT**.
- Insubordination**, 14, 789
- Insurable interests**, 11, 319
- Joint liability of masters**, 14, 919
- Labor during unreasonable hours**, 14, 799
- Landlord and Tenant**, 12, 664
 - Examples, 12, 664
 - Possession of tenant or servant, question of fact, 12, 664
 - Relation of landlord and tenant does not ordinarily exist, 12, 664

Latent Defects, 14, 891, 923See *infra*, **RISKS OF EMPLOYMENT**.

Defective rope, 14, 891

Employee's right to expect freedom from, 12, 923

Fall of pulley, 14, 891

Internal defect in timber, 14, 891

Liability of master, 12, 924; 14, 891

Want of reasonable care, 12, 924

Liability of Master, see *infra*, **MACHINERY**.*Servant's contracts*, see **AGENCY**.**Acts of Independent Contractor**, 2, 755; 14, 829

Abandonment of work, 14, 836

Altering old buildings, 14, 835

Application of rules on railroads, see *infra*, **RAILROADS**.

Barriers at crossings, 14, 835

Clearing land, 14, 832

Contractor and overseer combined, 14, 836

Contractor and subcontractor, 14, 831

Damage by fire, 14, 832

Defective appliances furnished by employer, 14, 836

Defective fence, 14, 835

Defective plans, 14, 835

Definition of contractor, 14, 829

Deputing performance of legal obligation, 14, 834

Direction and control of work, 14, 831

Directions of architect, 14, 836

Drains required by statute, 14, 834

Employer furnishing machinery for servant, 14, 837

Examples, 14, 831

Exceptions, 14, 832

Incompetent contractor, 14, 836

Injury directly from authorized act, 14, 834

Injury natural result, 14, 836

Liability of Municipality, 14, 841

Examples, 14, 841

Grading, 14, 841

In general, 14, 841

Notice of dangers not apparent, 14, 837

Nuisance, 14, 832

Personal interference, 14, 834

Reservation of right to protect employee, 14, 833

Test of liability, 14, 831

The general rule of liability, 14, 830

Unskillful arrangement of work, 14, 835

Where employer prescribes means, 14, 833

Who Are Contractors, 14, 829, 830

Questions of law and fact, 14, 830

Work completed and turned over, 14, 837

Work improperly prosecuted, 14, 832

Work necessarily attended by a nuisance, 14, 832

- Work wrongfully undertaken, 14, 832
- Corporation's liability for the acts of servants, 4, 251
- Corporation's liability for willful act of servant done in the course of his employment, 4, 253
- Corporation's liability where servant acts willfully, 4, 253
- Corporation's liability where the tort was committed in the course of an ultra vires transaction, 4, 251, 252
- Criminal Acts of Servant**, 4, 704; 14, 814, 824
- Assault*, see *infra*, ASSAULT.
- Assent of master, 14, 826
- Command of master, 14, 826
- Criminal trespass, 14, 824
- Examples, 14, 826
- Innocent servant, 14, 826
- Unauthorized acts, 14, 826
- Joint Liability of Master and Servant**, 14, 814
- Malicious acts, 14, 824
- Knowledge of master, 14, 905
- Latent defects, 14, 891
- Malicious and Willful Acts of Servant**, 14, 815
- Acts outside of scope of employment, 14, 818
- Acts within scope of servant's employment, 14, 815
- Arrest, 14, 826
- Assault, 14, 816, 824
- As to passengers*, see *infra*, CARRIERS OF PASSENGERS.
- Carelessness, 14, 817
- Criminal Acts**, 4, 704; 14, 814, 824, 826
- Consent of master, 14, 826
- Demand of master, 14, 826
- General rule, 14, 826
- Innocent servant, 14, 826
- Criminal trespass, 14, 824
- Disobedient acts, 14, 816
- Examples of trespass, 14, 824, 825
- Fall of rubbish, 14, 825
- False imprisonment, 14, 825
- Fraudulent acts, 14, 825
- General rule, 14, 815
- Honest trespass, 14, 825
- Implied, 14, 826
- Joint liability, 14, 824
- Lawless acts adverse to employer's interest, 14, 818
- Malicious prosecution, 14, 826
- Master's control over servant's acts, 14, 815
- Pollution of stream, 14, 826
- Punitive Damages**, 14, 827
- Conflict of authority, 14, 827
- Examples, 14, 827, 828
- Expulsion from train, 14, 827, 828
- Whether punitive damages may be recovered against master, 14, 827
- Recklessness, 14, 817
- Repudiation, 14, 826
- Discharge of servant, 14, 827
- Revocation**, 14, 826, 827
- Permission, 14, 827
- Punitive damages, 14, 827, 828
- Servant failing to act within reasonable bounds, 14, 817
- Servants of municipality, 14, 825
- Test of liability, 14, 815
- Timber cutting, 14, 825
- Torts involving a wrongful intention, 14, 825
- Trespasses of servant, 14, 824
- Unauthorized acts, 14, 815
- Unnecessary acts, 14, 816
- Willful driving, 14, 818
- Neglect of statutory duty, 14, 911
- Rock blasting, 14, 839
- Trespasser, 14, 907
- Liability of Master to Servant**, 14, 889
- See *infra*, MASTER'S DUTY TOWARDS SERVANT.
- Negligence of vice-principal*, see *FELLOW SERVANTS*.
- Accidental injuries, 14, 890
- Burden of proof, 14, 904
- Care required of child employee, 4, 44
- Contracts absolving master, 14, 910
- Duty to fence machinery, 14, 889
- Duty to Instruct an Inexperienced and Minor Servant**, 14, 897
- See *infra*, INFANTS.
- Danger from exposed gearings, 14, 899
- Danger from extraneous causes, 14, 899
- Due warning, 14, 897
- Duty to compel obedience, 14, 898
- Examples, 14, 897, 898
- General rule, 14, 897
- Ordinary processes, 14, 898
- Patent dangers, 14, 899
- Repairs, 14, 897
- What discharges duty, 14, 897
- Duty to protect servant, 14, 887
- Evidence of notoriety, 14, 906
- Examples of neglect of duty, 14, 887, 889
- Explosions, 7, 519
- Exposure to hidden danger, 14, 892
- Failure to provide fire escape, 14, 888
- Hole in floor, 14, 888
- Improbable injuries, 14, 890
- Injury to which servant consents, 14, 911
- Introduction of unusual machinery, 14, 892
- Necessity of actual knowledge of defect, 14, 905
- Petition in action of damages, 14, 912
- Proximate and remote cause, 14, 904
- Questions of Law and Fact**, 14, 904
- Examples, 14, 904, 905
- In general, 14, 904
- Negligence, 14, 904
- Repairs and Inspections**, 14, 894
- Brakeman, 14, 896

MASTER AND SERVANT—Cont'd**Liability of Master to Servant—Cont'd****Repairs and Inspections—Cont'd**

- Delay, 14, 896
- Deputies, 14, 895
- Examples, 14, 894, 896, 897
- Inspection, 14, 895
- Negligence, 14, 896
- Railroad conductor, 14, 896
- Reasonable care, 14, 894
- Renewal, 14, 897

Safe Place to Work, 14, 902

- Care to be exercised by master, 14, 903
- Construction of building in use, 14, 903
- Duty of master, 14, 902
- Examples, 14, 903
- Extent of obligation, 14, 903
- Falling brick, 14, 903
- Ordinary care, 14, 903
- Unsafe building, 14, 903

Scope of Servant's Employment**Work Outside, 14, 859**

- Admissibility of servant's protest, 14, 859
- Employee's knowledge of danger, 14, 861
- Employee told to do work or lay off, 14, 859
- Examples, 14, 859, 860
- Fear of dismissal, 14, 859
- General rule, 14, 859
- Ignorance or inexperience of servant, 14, 859
- Infant, 14, 861
- Notice, 14, 861
- Temporary engagement, 14, 861

Selection of machinery, 14, 892**Servant's assumption of risks of the employment, 4, 39****Usages and customs, 14, 903****Use of machinery for improper purposes, 14, 891****Where employer is a municipality, 14, 906****Where master might have known of defect, 14, 905****Where minor employee fully realizes the risks he is taking, 4, 47****Liability of Master to Servant for Negligence, 14, 873****See *infra*, MACHINERY, as to master's duty to furnish machinery.****As to liability of railroad company, see *infra*, RAILROAD'S LIABILITY.****Convicts, 14, 875****Corporations, 14, 875****Generally, 14, 873****Manufacturers, 14, 875****Receiver, 14, 875****Relation of Master and Servant Must Be****Shown to Exist, 14, 875****Basis of liability, 14, 875****Implied authority, 14, 876****Injury from master's direct personal act, 14, 877****Mere volunteer, 14, 876****Performance of personal service for superior officer, 14, 877****Services by request of man in charge, 14, 876****Test, 14, 877****Voluntarily assisting servant, 14, 875****Where there is no evidence of negligence adduced, 14, 874****Liability of railroads, see *infra*, RAILROAD'S LIABILITY.****Liability of servant to co-servant, 14, 873****Liability of Servant to Master, 14, 872****Double employment, 14, 873****In case of contracts, 14, 872****In case of wrongful acts, 14, 872****General Liability****Malicious acts, 14, 824****Servant known to be incompetent, 14, 873****Suit against servant, 14, 872****Torts, 14, 872****Liability of Servant to Third Person, 14, 873****Acts within scope of another, 14, 814****In general, 14, 873****Joint liability of master and servant, 14, 814****Personal liability, 14, 814****Torts, 14, 873****Libel and Slander, 13, 451****Blacklisting employee, 13, 414****Character of servant, 13, 412****Contribution from employer, 13, 452****Ignorance of servant, 13, 452****Instructions of master, 13, 452****Knowledge of master, 13, 453****Liability of servant, 13, 452****Master's liability, 13, 452****Privileged communications, 13, 416****Ratification, 13, 452****Knowledge of master, 13, 453****Liability of master, 13, 452****Suit by servant, 13, 451****When master may maintain an action, 13, 451****Limitation of Actions****Services, 13, 726****Livery Stable Keepers, 14, 811****Incompetency of master and servant, 14, 811, 812****Responsibility of livery stable keepers, 14, 811****Lodging, 14, 918****Loss of Time****Additional services, 14, 784****Lunatics, 14, 759****In general, 14, 759****Validity of contract, 14, 760****Machinery, 7, 828; 14, 892****Chains, 14, 889****Contributory Negligence, 14, 909****Failure to notify master, 14, 909****Implied notice, 14, 910****Inspection, 14, 909**

- Machinery in plaintiff's own care, 14, 909
 Notice of defects, 14, 909
 Notice to vice-principal, 14, 910
 Use of appliances, 14, 909
 What is notice to company, 14, 910
Defective, 7, 828; 14, 889, 890
 Defective span rope, 14, 853
Master's Liability for, 14, 843
 Appliance of which servant has optional use, 14, 858
 Assumption that machinery is suitable, 14, 855
 Defective boiler, 14, 845, 847
 Defective frog, 14, 853
 Defective track, 14, 845, 847
 Inappropriate and defective tool, 14, 858
 Latent defects, 14, 843, 844
 Obvious defects, 14, 854
 Question for jury, 14, 844
Using Defective Machinery After
 Promise of Repair, 14, 856
 Examples, 14, 857
 For a long length of time, 14, 856
 For reasonable time, 14, 856
 Reasonable time question for jury, 14, 856
 When master liable, 14, 857
 Duty to fence, 24, 889
 Evidence as to sufficiency, 14, 894
 Inspection, 14, 894-897
 Introduction of unusual, 14, 892
Liability of Master to Servant, 14, 905
 Evidence of notoriety, 14, 906
 Knowledge of master, 14, 905
 Necessity of actual knowledge of defect, 14, 905
 Where employer is a municipality, 14, 906
 Where master might have known of defect, 14, 905
Master's Duty to Furnish Suitable, 14, 877
 See infra, RAILROAD'S LIABILITY.
 Business system, 14, 878
 Examples, 14, 878
 General rule, 14, 877
 Ignorance of master, 14, 878
 Sufficient number of employees, 14, 878
 Where master manufactures machinery, 14, 878
Mining, 14, 889
Notice of Defects, 14, 909
 Duty to report to master, 14, 909
 Failure to notify master, 14, 909
 Implied notice, 14, 910
 Knowledge by servants, 14, 910
 Notice to vice-principal, 14, 910
Renewal, 14, 897
Repairs, 14, 894, 897
Ropes, 14, 889
Selection of, 14, 892
 Degree of care, 14, 893
 Due care in selecting mechanics, 14, 893
 New inventions, 14, 892, 893
 Question for court, 14, 894
 Question for jury, 14, 893, 894
 Reasonably suitable machinery, 14, 892
 Whether best machinery must be selected, 14, 892
 Use of machinery for improper purposes, 14, 891
 Whether sufficiency is warranted, 14, 894
Malicious acts of servant, *see infra*, LIABILITY OF MASTER.
Malicious procurement of discharge, 14, 800
Malicious prosecution, 14, 826
Married Women, 14, 759
 At common law, 14, 759
 By statute, 14, 759
 Right to enter into a contract, 14, 759
 Master ordering servant to commit crime, 6, 90
Master's Duty Towards Servant, 4, 58
 See infra, LIABILITY OF MASTER TO SERVANT.
 Duty as to establishment of proper rules and regulations, 7, 832
 Duty as to youthful and inexperienced servants, 7, 832
 Duty of warning where the dangers of employment are obvious, 4, 62
Duty to Furnish Suitable Machinery and Appliances, 14, 843
 Defective scaffold, 7, 829
 Injury partly by defective machinery and partly by negligence, 7, 828
 Promoting cause negligence of fellow servant, 7, 828
 Safe place to work, 7, 828
 Duty to inspect and repair machinery, etc., 4, 63
 Duty to keep machinery and appliances in repair, 7, 830
 Duty to make proper inspection and examinations of machinery, 7, 830
 Duty to provide for his safety, 4, 58
 Duty to provide safe place to work, 4, 63
 Duty to provide suitable appliances, 4, 62
 Duty to warn servant of dangers of the employment, 4, 59
 Master's duty to employ and retain competent servants, 4, 65
 Master's duty to make and promulgate rules, 4, 64
 Master's duty to obviate dangers of which he had notice, 4, 64
 Master's duty towards immature and inexperienced servant, 4, 61
 Master's exposing servant to unusual dangers, 4, 66
 Master's power to delegate his duties and thus escape liability, 4, 66
Master's liability, *see infra*, LIABILITY OF MASTER.

MASTER AND SERVANT—Cont'd

Master's remedy against servant, 14, 815

Master's Right of Action for Injuries to Servant, 14, 788

See SEDUCTION.

Death of servant, 14, 788

Foundation, 14, 788

In general, 14, 788

Loss of services, 14, 788

Relationship of master and servant, 14, 788

Servant's right of action, 14, 788

Measure of Damages for Breach of Contract

Amount of compensation agreed upon, 5, 35

Discharge, 14, 793

Quantum meruit, 5, 35

Value of services generally, 5, 35

Where employee quits work before the expiration of his contract, 5, 35

Medical attendance, 14, 918

"Menial," 15, 279

Menial servants, 14, 750

Municipal Corporations

Liability

Independent contractor, 14, 841

Liability of Municipality for Acts of Servants, 14, 825

In general, 14, 813

Malicious acts, 14, 825

Necessity of demand in action for enticing away servant, 5, 528

Neglect of statutory duty, 14, 911

Negligence, *see infra*, **LIABILITY OF MASTER; RAILROAD'S LIABILITY.**

Liability of Master

Negligence or Unskillfulness of Servant, 14, 804, 813

Corporations, 14, 805

Criminal liability of master, 14, 814

Driving Upon Highway, 14, 810

Incompetency of driver, 14, 811, 812

Injury by frightened horse, 14, 811

Injury to horses, 14, 810

Negligent driving, 14, 810

Servant driving his master's team for his own purposes, 14, 812

Team entrusted to servant, 14, 812

Employees who are not servants, 14, 804, 805

Employment of assistant by servant, 14, 810

Evidence, 14, 814

Existence of relation, 14, 804

General rule, 14, 804

Joint liability of master and servant, 14, 814

Law compelling employment or servant, 14, 804, 809

Lessor of railroad, 14, 806

Master's remedy against servant, 14, 815

Person in temporary charge of team, 14, 805

Person leaving his duties to be performed by another, 14, 805

Porter of sleeping car, 14, 818

Protection of master's interest, 14, 810

Reputation of servant, 14, 814

Right of selection, 14, 804

Scope of Employment, 14, 807

Act committed must be within scope of employment, 14, 807

Acts beyond scope of employment, 14, 809

Boatman, 14, 808

Examples, 14, 807, 808

Farm servant, 14, 807

Improper execution of lawful act, 14, 808

Innkeeper's servant, 14, 807

Ordering servant to be cautious, 14, 807

Servant acting in his own affairs, 14, 809

Servant guilty of abuse of authority, 14, 808

Servant of ferry, 14, 807

Servant of railroad company, 14, 807

Servant of railroad company arresting robber, 14, 807

Servant of upper tenant allowing water to overflow, 14, 808

Servant deviating from instructions, 14, 810

Servant employed by compulsion, 14, 804, 809

Servant of unsound mind, 14, 813

Servants of charitable institutions, 14, 813

Servants of municipality, 14, 813

Servants of school districts, 14, 813

Sleeping car porters, 14, 806

New contract after breach, 14, 797

New trial, 14, 917

Notice, 14, 779

Domestic servants, 14, 799

Leaving Without, 14, 779

Minor servant, 14, 780

Printed notice hung up in shop, 14, 779

Regulation printed and put in envelope, 14, 779

Temporary absence, 14, 780

Usages and customs, 14, 779

Minor servant, 14, 780

Printed notice hung up in shop, 14, 779

Regulation printed and put in envelope, 14, 779

Temporary absence, 14, 780

Usages and customs, 14, 779

Nuisance, 14, 832

Obedience to Orders, 14, 907

See infra, **RULES AND REGULATIONS.**

Obligation to furnish work, 14, 771

Vol. I.

Parent and Child

Emancipation, see PARENT AND CHILD.

Claim of Child for Services, 17, 336

Adult children, 17, 337, 338

Board, 17, 341

Brother and sister, 17, 342

Burden of proof, 17, 337

Examples, 17, 336-342

Express promise, 17, 337

General rule, 17, 336

Implied promise, 17, 340

Intention of the parties, 17, 337

Legacy, 17, 341

Parties related by marriage, 17, 341

Presumption as to the nature of services, 17, 336

Quantum meruit, 17, 339

Question of law or fact, 17, 340

Request from father, 17, 340

Son-in-law, 17, 341

Subsequent promise, 17, 341

Parent's Right to Services, 17, 379

Assignment of child's services, 17, 382

At common law, 17, 380

Creditor claiming child's earnings, 17, 383

Discharge of child, 17, 382

Employment of child against will of parent, 17, 382

Enlistment in the army, 17, 382

Father's right, 17, 379

Implied authority of child to contract, 17, 382

Military bounties, 17, 382

Minor seaman, 17, 382

Mother's right, 17, 379

Mother's right after death of father, 17, 379

Parent authorizing son to contract, 17, 381

Parent's right in general, 17, 379

Payment to child, 17, 381

Quantum meruit, 17, 380

Ratification of contract by father, 17, 382

Relinquishment of right to child's earnings, 17, 383

Remarriage of mother, 17, 380

Repudiation of contract by father, 17, 382

Right of action for child's services, 17, 380

Right to enlist, 17, 383

Parol evidence, 14, 763

Parties, 14, 753

See *infra*, AGENTS; CORPORATIONS; INFANTS; LUNATICS; MARRIED WOMEN; PARTNERSHIP.

Generally, 14, 753

Partnership, 14, 760, 774

Contract for a specific term, 14, 774

Contract is a personal one, 14, 774

Discharge, 14, 793

Dissolution, 14, 774

Death of single partner, 14, 774

Effect of, 14, 774

Whether it releases partnership, 14, 774

Employer entering into a, 14, 774

Sharing Profits as Compensation for Services, 17, 845

As to third parties, 17, 846, 848

Commercial contracts, 17, 848

Device to avoid liability, 17, 849

Farming contract, 17, 847

Manufacturing contracts, 17, 848

Whether it constitutes a partnership, 17, 845

Surviving partner, 14, 774

Passage money, 14, 784

Patent law, 18, 135

Personal character of the contract, 14, 787

Physician's expenses, 14, 917, 918

Preference given to servant's claim against master's estate for wages, 5, 247

Privileged communications, 19, 155

Proximate and Remote Cause, 14, 869

Liability of master and servant, 14, 904

Public Officers

Liability for Default of Servant, 19, 496

Acting under color of office, 19, 497

Burden of proof, 19, 497

In general, 19, 496

Postmasters, 19, 497

Who is a private servant, 19, 497

Qualifications of servant, 14, 906

Questions of Law and Fact, 14, 904

Damages, 14, 917

Examples, 14, 904, 905

Ill usage, 14, 778

Incompetency of servant, 14, 907

In general, 14, 904

Negligence, 14, 904

Relationship, 14, 752

Selection of machinery, 14, 893, 894

Servant or contractor, 14, 830

Railroads

As to the assumption of risks of employment, see *infra*, RISKS OF EMPLOYMENT.

Liability of, 14, 806, 879

Cars, see COUPLING CARS.

Adjacent structures, 14, 881

Allowing disobedience of orders, 14, 886

Arresting robber, 14, 807

Awning, 14, 881

Ballasting track, 14, 879

Boilers, 14, 883

Brakes, 14, 884

Bridge, 14, 896

Buffers, 14, 884

Cars, 14, 883

Brakemen, 14, 883

Cars of another company, 14, 883, 884

Contractor of another company, 14, 883

Examples, 14, 883, 884

Inspection of foreign cars, 14, 884

MASTER AND SERVANT—Cont'd**Railroads—Cont'd****Liability of—Cont'd****Cars—Cont'd**

- Latent defects, 14, 884
- Management of train, 14, 884
- Repairs, 14, 883
- Unsuitable cars, 14, 883
- Defective roadbed, 14, 879
- Duty to protect servant, 14, 887
- Embankments, 14, 881
- Engines, 14, 882
- Evidence to prove negligence, 14, 880
- Examples, 14, 883
- Expert evidence, 14, 880
- Extraordinary storm, 14, 889
- Failure to ballast track, 14, 879
- Failure to block switches, 14, 882
- Failure to spike rails, 14, 879
- Flagging, 14, 882
- Footboards, 14, 885
- Frogs, 14, 882
- General rule as to liability, 14, 879
- Independent Contractor, 14, 837**
 - Acts with reference to real estate, 14, 839
 - Assignment to president, 14, 838
 - Construction of railroad, 14, 838
 - Construction trains, 14, 838
 - Contractor exercising right of eminent domain, 14, 840
 - Cutting trees, 14, 840
 - Dangerous employment, 14, 840
 - Direct superintendence of company, 14, 840
 - Employer furnishing motive power, 14, 839
 - Engineer in control, 14, 838
 - Examples, 14, 837, 838
 - Generally, 14, 837, 839
 - Injuries arising from rock blasting, 14, 839
 - Kindling fires, 14, 840
 - Retention of power to discharge, 14, 838
 - Test, 14, 838
 - Unlawful entry upon land, 14, 840
 - Waste, 14, 840
 - Work according to specifications, 14, 839
 - Work itself a nuisance, 14, 839
- In general, 14, 879
- Injury while repairing roadbed, 14, 880
- Inspection, 14, 894, 896
- Ladders, 14, 884
- Lessor of railroad, 14, 806
- Servant ejecting trespasser, 14, 807
- Management of train, 14, 884, 886
- Medical attendance, 14, 918
- New device for blocking, 14, 882
- Obstructions on tracks, 14, 881
- Omission to provide warm car, 14, 887
- Operation of engine by fireman, 14, 886

- Passengers and employees, 14, 879
- Platforms, 14, 885
- Poles, 14, 884
- Renewal of machinery, 14, 897
- Repairs, 14, 894, 897
- Roadbed, 14, 879
- Running trains, 14, 886
- Speed, 14, 886
- Sudden starting, 14, 886
- Suitable track, 14, 879
- Switches, 14, 882
- Testing boilers, 14, 883
- Use of Track by Several Companies, 14, 880**
 - Engineer hauling for another company, 14, 881
 - In general, 14, 880
 - Tracks, 14, 881
 - Voluntary use of defective road, 14, 881
- Risks of Employment, 14, 842**
 - General rule, 14, 842, 843
 - Latent defects, 14, 844
- Recaption of servant, 19, 1094
- Recoupment, 22, 354, 362
- Recovery by master of money lost by servant who plays, 8, 1022
- Relation, 14, 752**
 - Public officer*, see PUBLIC OFFICERS.
 - How relation is created, 14, 752
 - Inception, 14, 752
 - Question of law and fact, 14, 752
 - When relation exists, 14, 752
- Remedies of servant*, see *infra*, DISCHARGE.
- Reputation of servant, 14, 814
- Res Gestæ, 14, 913; 21, 106**
 - Contemporaneous, 14, 914
 - Declarations made upon the spot, 14, 914
- Declarations of Agents and Employees, 21, 108**
 - Agent acting within scope of his agency, 21, 108
 - Declarations made at a different place, 21, 109
 - Examples, 21, 108-110
 - Lapse of time, 21, 110
 - Transactions not pending, 21, 109
 - When declaration admissible, 21, 108
 - Where agent's right to act has ceased, 21, 110
- Examples, 14, 913-915; 21, 106-108
- Exclamations of pain, 14, 914
- Spontaneous, 14, 913
- Thirty minutes after accident, 14, 914
- Voluntary, 14, 913
- What declarations are a part of *res gestæ*, 14, 913
- Within what time, 14, 914
- Res Judicata**
 - Privity between master and servant, 21, 146, 158
- Respondent Superior, 21, 161**
 - Contribution, 21, 170

- Distinction between responsibility for acts and for legal consequences, 21, 167
- Executors and administrators, 21, 165
- Express notice, 21, 169
- Guardians, 21, 167
- Implied notice, 21, 169
- In general, 21, 161
- Judgments in favor of principal, 21, 171
- Municipal Corporations and Individuals**, 21, 162
- Examples, 21, 163
- In general, 21, 162
- Notice of previous suit, 21, 164
- Nuisances caused by individuals, 21, 162
- Sheriffs and constables, 21, 166
- Sheriffs and deputies, 21, 162
- Sheriff sued upon his official bond, 21, 162
- Sureties**, 21, 164
- Contribution, 21, 170
- Distinction between responsibility for acts and for legal consequences, 21, 167
- Executors and administrators, 21, 165
- Express notice, 21, 169
- Guardians, 21, 167
- Implied notice, 21, 169
- Judgments in favor of principal, 21, 171
- Sheriffs and constables, 21, 166
- Sureties in legal proceedings, 21, 170
- Where sureties have notice of the suing out of a writ, 21, 169
- Whether notice is necessary for laying foundation of action, 21, 169
- Sureties in legal proceedings, 21, 170
- Where notice has been given to person responsible over, 21, 161
- Where sureties have notice of suing out of a writ, 21, 169
- Whether notice is necessary for laying foundation of action, 21, 169
- Whether party finally answerable is bound by judgment, 21, 161
- Respondent Superior**, see *infra*, **LIABILITY OF MASTER; RES JUDICATA**.
- Disobedience of orders by the servant, 2, 754
- General rule, 2, 753
- Independent contractors, 2, 755
- Liability of master for mistake in judgment of servant, 2, 754
- Test of existence of relation of master and servant, 2, 753
- When master did not know of nor order the act complained of, 2, 754
- Where act complained of is a trespass, 2, 754
- Willful act of servant beyond scope of his authority, 2, 754
- Risks of Employment**, 4, 58; 14, 842
- Accidental injury from unexpected cause, 14, 859
- Action authorized by statute, 14, 859
- Action before completion of repairs, 14, 858
- Appliance of which servant has optional use, 14, 858
- Assumption that machinery is suitable, 14, 855
- Banks of snow by side of track, 14, 848
- "Bucking" snow, 14, 848
- Burden of proving servant's knowledge, 14, 844
- Car repairer, 14, 847
- Cattle upon track, 14, 848
- Cause of injury, 14, 854
- Construction train, 14, 853
- Dangers subsequently arising, 14, 856
- Defective appliances, 14, 843
- Defective boiler, 14, 845, 847
- Defective methods, 14, 843
- Defective steam cock, 14, 847
- Defective track, 14, 845-847
- Derricks, 14, 854
- Employee voluntarily assuming dangerous place, 14, 857
- Examples, 14, 854-856
- Excavating earth, 14, 849
- Familiar machine near point of labor, 14, 852
- General rule, 14, 842
- Hazardous duties, 14, 842
- Inappropriate and defective tools, 14, 858
- Infant servants, 14, 843
- Inspection, 14, 854
- Knowledge of servant, 14, 842, 844, 845
- Labor undertaken through fear of dismissal, 14, 858
- Latent Defects**, 14, 844
- Defects obvious, 14, 844
- Liability for, 14, 844
- Negligence of master, 14, 844
- Questions of law and fact, 14, 844
- Master's business methods, 14, 845
- Master's duty to protect servant, 14, 855
- Obvious defects, 14, 853
- Open hatchway, 14, 851
- Open waterway and switches, 14, 848
- Order to hurry, 14, 859
- Overhead bridges, 14, 850
- Questions of law and fact, 14, 854
- Removal of cars for inspection, 14, 849
- Removal of damaged cars to shop, 14, 849
- Risks attendant on shipmaster's orders, 14, 858
- Running engine backwards, 14, 849
- Safety of appliances, 14, 845
- Servant ordered into place of danger, 14, 857
- Servant remaining at work without complaint, 14, 845
- Sleeping in round house, 14, 847

MASTER AND SERVANT—Cont'd**Risks of Employment—Cont'd**

Structure dangerously near track, 14, 850

Test of liability, 14, 845

Transportation of explosives, 14, 850

Unlocked frogs, 14, 848

Using Defective Machinery After Promise of Repair, 14, 856

Complaint, 14, 857

Palpably dangerous, 14, 857

Reasonable time question for jury, 14, 856

Remaining a reasonable time after promise of repair, 14, 856

When master liable, 14, 857

Work outside of scope of employment, 14, 856

Rules and Regulations**Obedience, 14, 907**

Agreement to obey rules, 14, 909

Command accompanied by threat, 14, 907

Duty to know rules, 14, 909

Duty to promulgate, 14, 908

Effect of disobedience, 14, 908

Evidence of rules, 14, 908, 909

Examples, 14, 907-909

In general, 14, 907

Instructions as to rules, 14, 908

Knowledge of rules, 14, 908

Likely to result in injury, 14, 907

Recovery after disobedience, 14, 908

Satisfaction, 14, 776

Scope of employment, see *infra*, **LIABILITY OF MASTER**.

Servants, 17, 1007, 1008

As to who have been held servants, see *infra*, **DEFINITIONS**.

Services rendered in obstruction of justice, 14, 783

Services rendered to third person, 14, 775

Services under void contract, 14, 781

Services with a view to legacy, 14, 770

Sickness, 14, 777, 790

Sickness justifies termination of contract, 10, 181

Sleeping Car Porters

Liability of master, 14, 806

Soliciting a servant to steal his master's goods, 4, 670

Specific performance, 14, 787

Statute of Frauds, 14, 763, 766

At common law, 14, 763

Contract for More than a Year, 14, 764

Contract as evidence of new contract, 14, 765

Contract to employ infant, 14, 765

Contract to run one year after date, 14, 765

Contract which may be completed within a year, 14, 765

Labor to be begun as soon as convenient, 14, 764

Necessity of writing, 14, 764

Services for a year to commence at a future date, 14, 764

To be terminated after eleven months by three months' notice, 14, 764

What contracts within statute, 14, 764, 765

Where whole work may be performed within a year, 14, 765

Deeds, 14, 763

Employment for more than a year, 8, 686

Hiring from year to year, 8, 687

Memorandum, 14, 766

Necessity of writing, 14, 764

Presumption as to commencement of contract, 14, 766

Telegram as memorandum, 14, 766

Term of service in memorandum, 14, 767

When no time is fixed for commencement, 14, 766

Written and parol contracts generally, 14, 763

Storm, 14, 889

Street Railways

Driver's duty, 23, 1021

Duty of company to employ competent servants, 23, 1020

Expulsion of passengers, 28, 1018

Substitution of third parties, 14, 787

Sunday Laws, 14, 785

In general, 14, 785

Liability of master for acts of servant, 24, 550

Matters of necessity, charity, or mercy, 14, 785

Recovery for work done on the Sabbath, 14, 785

Surface waters, 14, 808

Termination of contract and continuance in service, 14, 770

Termination of Relationship

Contract of domestic servants, 3, 894

Notice, 3, 895

Where hiring is for no certain time, 3, 895

Termination of the Relationship by Will of Master, 14, 790, 791

See *infra*, **DISCHARGE**.

Recovery for work done, see **SERVICES**.

Assignment of cause of discharge, 14, 792

Breach by anticipation, 14, 791

Condonation by master, 14, 778, 791

Executory contracts, 14, 791

Partnership, 14, 792

Term of Service, 14, 762, 790

Hiring for a year, 14, 762

Presumption, 14, 762

The Contract of Service, 14, 761

Consideration, 14, 761

Fixed compensation, 14, 763

Generally, 14, 761

Necessity of mutual obligations, 14, 761

Parol evidence, 14, 763

Presumption as to term of service, 14, 762

- Term of service, 14, 762
- Written contracts, 14, 763
- Torts*, see *infra*, LIABILITY OF MASTER.
- Trespasser, 14, 907
- Trespass on the case, 26, 706
- Unskillful employee, 14, 781
- Usages and Customs**
 - Knowledge of usages, 27, 748
 - Liability of master and servant, 14, 903
- Reasonableness**, 27, 771
 - Examples, 27, 771, 772
 - Exclusive service of employee, 27, 771
 - Extra profits of employee, 27, 772
 - In general, 27, 771
 - Unreasonable usages against employee, 27, 772
- Usages to Explain Contracts**, 27, 817
 - Day's work, 27, 819
 - Duties of employee's position, 27, 820
 - Examples, 27, 817-820
 - Gifts, 27, 819
 - Gratuities given employee, 27, 819
 - Holidays and intervals of rest, 27, 818
 - In general, 27, 817
 - Yearly salary, 27, 818
- Usage to Vary Contracts**, 27, 846
 - Examples, 27, 846-849
 - In contracts for work and labor, 27, 846
 - In contracts of hiring, 27, 846
- Warehouse and warehouseman, 28, 645
- Weekly Payment Laws**, 29, 45
 - See STORE ORDER ACTS; WAGES.
 - Constitutionality, 29, 45
 - In general, 29, 45
 - Statutes of several states, 29, 45
- When declaration of employee admissible, 21, 106
- Whether acting under order of master as servant, defense to crime, 4, 693
- Whether criminal negligence of servant may be imputed to master, 4, 679
- Who May Enter Into the Relationship**, 14, 753
 - See *infra*, AGENTS; CORPORATIONS; INFANTS; LUNATICS; MARRIED WOMEN; PARTNERSHIP.
 - Generally, 14, 753
- Witnesses**, 29, 587
 - Damage done to property, 29, 590
 - Examples, 29, 587-589
 - In general, 29, 587
 - Misconduct of servant, 29, 589
 - When liable to one of the parties, 29, 589
- Wrongful Discharge**
 - Servant's duty to seek employment, 15, 688
- MASTER IN CHANCERY**, 14, 919
 - See AUDITORS.
 - See REFEREES.
 - Accounts, 14, 932
 - Case depending upon local rules, 14, 935
 - Collateral matters, 14, 934
 - Conflicting testimony, 14, 934
 - Details, 14, 934
 - Examples, 14, 933-936
 - In California, 14, 935
 - In Delaware, 14, 935
 - In Kentucky, 14, 935
 - In Maryland, 14, 935
 - In New York, 14, 934
 - In Virginia, 14, 935
 - Miscellaneous, 14, 935, 936
 - Order for reference, 14, 932
 - Power of master under rule of court, 14, 935
 - Scope of master's authority, 14, 932
 - Showing proper equity, 14, 934
 - Additional testimony, 14, 953
 - Amendment, 14, 949
 - Appointment, 14, 921
 - Clerks, 14, 957
 - Clerks, commissioners, and referees, 14, 928
 - Compensation, 14, 956
 - Confirmation**, 14, 944
 - In general, 14, 944
 - When necessary, 14, 944
 - Costs**, 14, 955
 - Decree for, 14, 956
 - Discretion of court, 14, 955
 - Dismissal without, 14, 955
 - Examples, 14, 955
 - General rule, 14, 955
 - Partial relief, 14, 956
 - Prevailing parties, 14, 955
 - United States courts, 14, 956
 - When not granted, 14, 955
 - Court**
 - Report, 14, 938
 - Death, 14, 922
 - Definition, 14, 919
 - Divorce cases, 5, 765
 - Estimates, 14, 957
 - Evidence**, 14, 927
 - Master's**
 - Review, 14, 952
 - Objections, 14, 943
 - Reporting, 14, 940
 - Examination**, 14, 925
 - Examples, 14, 925
 - Interrogatories, 14, 926
 - Of parties, 14, 925
 - Oral examination, 14, 926
 - Receiving testimony, 14, 927
 - Sufficiency of, 14, 926
 - Exceptions**, 14, 944
 - See *infra*, REPORT.
 - Acquiescence, 14, 949
 - Amendment, 14, 949
 - Appellate court, 14, 945
 - Application to refer report back to master, 14, 945
 - Application to set aside report, 14, 945
 - Assignment of errors, 14, 947
 - Exception for want of notice, 14, 950
 - Expenses, 14, 946
 - Founded upon facts, 14, 947
 - Fraud upon face, 14, 947

MASTER IN CHANCERY—Cont'd**Exceptions—Cont'd**

- Fullness required, 14, 947
- General exception to whole report, 14, 947
- Hearing of, 14, 949
- In general, 14, 944-948
- In nature of special demurrer, 14, 947
- Irregular proceedings, 14, 945
- Nature of, 14, 947
- Necessity of objection before master, 14, 944
- Overruling, 14, 950
- Particularity, 14, 947
- Review of question of fact, 14, 949
- Specification, 14, 947
- Specific errors, 14, 947
- Time of hearing, 14, 949
- To master's report, 7, 114
- When exceptions may be taken, 14, 948
- Who may take, 14, 948
- Finding like a special verdict, 14, 938
- Foreclosure of Mortgages**, 8, 232
 - Reference to determine amount of debt, 8, 232
 - Reference to determine whether land should be sold in parcels, 8, 232

General Report

- Effect of circumstances, 14, 939
- Inability, 14, 922
- Interest, 14, 957
- Interrogatories, 14, 926
- Master's sale, 14, 954
- Master's warrant, 14, 923
- Notice to parties, 14, 923
- Objections, 14, 942
- Origin and history, 14, 920

Powers and Duties, 14, 922

- Admissibility of evidence, 14, 927
- Credibility of witness, 14, 927
- Duties of master, 14, 922
- Evidence, 14, 927
- Examination of parties, 14, 925
- In general, 14, 922
- In Indiana, 14, 922
- In Ohio, 14, 922
- In South Carolina, 14, 922
- In Tennessee, 14, 922
- In United States courts, 14, 922
- Master must follow decretal orders, 14, 937
- Master's warrant, 14, 923
- Ministerial acts, 14, 928
- Notice to parties, 14, 923
- Oral examination, 14, 926
- Production of documents, 14, 924
- Receiving testimony, 14, 927
- Sufficiency or insufficiency of examination, 14, 926
- Summons, 14, 927
- Written interrogatories, 14, 926
- Production of documents, 14, 924
- Receivers**, 20, 71
 - Accounts, 20, 196
 - Exception to master's report, 20, 196

Reference to, 20, 89

- Distinction based on terms of reference, 20, 89
- In general, 20, 89
- Place where reference made, 20, 89

Reference, 14, 928*See infra*, ACCOUNTS.

- Complicated accounts, 14, 930
- Definition, 14, 928
- Discretion of court, 14, 929
- Divorce, 14, 932
- Infringement of copyright, 14, 930
- In what cases a reference should be ordered, 14, 929
- Scope of, 14, 931
- Title, 14, 932
- To exceptions to answer, 1, 604
- When ordered, 14, 929
- When reference should not be ordered, 14, 930
- Where evidence is not rendered, 14, 929, 930

Removal, 14, 957**Re-Opening**, 14, 953

- Additional testimony, 14, 953
- Motion for, 14, 954

Report, 14, 937*See infra*, EXCEPTIONS; REVIEW.**Conclusiveness of**, 14, 940

- As a verdict of a jury, 14, 941
- Conflicting testimony, 14, 941
- Examples, 14, 940, 941
- General rule, 14, 940
- Rules of court, 14, 940

Conflicting testimony, 14, 939**Definition**, 14, 937**Form of**, 14, 937**General Report**, 14, 937

- Accounts, 14, 938
- Conflicting testimony, 14, 939
- Going beyond scope of reference, 14, 938
- Inference of law, 14, 939
- In general, 14, 938
- Particulars, 14, 939
- Submitting question of law to court, 14, 939
- What it should embrace, 14, 938

Master must follow decretal order, 14, 937**Miscellaneous**, 14, 942**Objections**, 14, 942*See infra*, EXCEPTIONS.

- Admission of evidence, 14, 943
- Before confirmation, 14, 942
- Competency of witnesses, 14, 943
- Draft of report, 14, 943
- Matters of account, 14, 943
- Necessity, 14, 942, 943
- Setting day, 14, 942
- Reporting testimony, 14, 939, 940
- Separate, 14, 937
- Setting aside, 14, 945
- Time of, 14, 942

Review, 14, 951*See infra*, EXCEPTIONS.

- Abuse of authority by master, 14, 953

- Burden of proof, 14, 953
- Conditions, 14, 952
- Conflicting evidence, 14, 952
- Errors corrected by court, 14, 952
- Errors or omissions, 14, 951
- Incidental ruling, 14, 953
- Irregularities of proceedings, 14, 953
- Practice in, 14, 951
- When no exceptions have been taken, 14, 951
- When review will be ordered, 14, 952
- Where evidence is vague and uncertain, 14, 952
- Should complete proceedings, 14, 921
- Stenographers, 23, 560
- Stenographer's fees, 23, 560
- Summons, 14, 924
- Testimony, 14, 936
- Time of reference, 14, 936
- Time to prepare for a hearing, 14, 924
- United States courts, 14, 921, 922
- United States court warrant, 14, 923
- Whether consent will authorize him to act as referee, 14, 921
- Whether reference to master is final decree, 7, 968
- Who may be master, 14, 921
- MASTER OF A VESSEL**, 14, 958
 - See **BOTTOMRY**.
 - See generally, **MARINE INSURANCE**; **SEAMEN**; **SHIPS AND SHIPPING**.
 - See **SALVAGE**.
 - Master of tugs, see **TOWAGE, TUGS, AND TOWS**.
 - Punishment of seamen, see **SEAMEN**.
 - Admissions of master, 6, 348
 - Agency**, 14, 961
 - See *infra*, **SUPERCARGO**.
 - As general agent by parol, 14, 964
 - Authority to bind owners, 14, 961
 - Bills and notes, 14, 963
 - Binding owner beyond value of ship, 14, 964
 - Case of necessity, 14, 961
 - Duty of person trading with, to inquire into authority, 14, 964
 - Examples, 14, 961
 - Hiring seamen, 14, 962
 - Master's authority, 14, 960, 961
 - Purchase of cargo, 14, 963
 - Ratification, 14, 962
 - Receiving cargo, 14, 962
 - Repair, 14, 963
 - Repairs in home port, 14, 963
 - Scope of his authority, 14, 961
 - Settlement of invalid claims, 14, 963
 - Settlement of prior claims, 14, 963
 - Whether special or general agent, 14, 961
 - Alien as master of American vessel, 1, 464
 - Appointment**, 13, 958
 - As temporary master, 14, 959
 - By counsel, 14, 959
 - By whom appointed, 14, 958
 - Formalities, 14, 958
 - In United States, 14, 959
 - Authority**, 14, 960
 - See *infra*, **BOTTOMRY**.
 - As agent, see *infra*, **AGENCY**.
 - As *supercargo*, see *infra*, **SUPERCARGO**.
 - As between owner and underwriter, 14, 960
 - As to passengers, 14, 971
 - Borrowing money, 14, 960, 961
 - Implied, 14, 960
 - In general, 14, 960
 - Necessity, 14, 960
 - Salvage, 21, 681
 - Abandoned by crew, 21, 681, 682
 - Master leaving vessel to procure assistance, 21, 681
 - Persons employed to save vessel, 21, 682
 - To contract for supplies and repairs, 22, 727
 - To Enforce Discipline**
 - As to Crew, 14, 969
 - As to punishment of seamen, see **SEAMEN**.
 - Confinement of sailor in irons, 14, 970
 - Discretion, 14, 970
 - Examples, 14, 969, 970
 - Flogging, 14, 970
 - In general, 14, 969
 - Suppression of mutiny, 14, 971
 - To Sell Cargo**, 14, 968
 - Burden of proof, 969
 - For benefit of creditor, 14, 968
 - For repairs, 14, 960
 - Necessity, 14, 968
 - When cargo may be re-shipped, 14, 969
 - When master may sell, 14, 968
 - When ship is in danger, 14, 968
 - Where cargo is in danger of perishing, 14, 968
 - To Sell Ship**
 - At home port, 14, 967
 - Burden of proof as to necessity, 14, 968
 - Case of necessity, 14, 966
 - Conclusiveness of surveyor's report, 14, 968
 - Examination by surveyors, 14, 968
 - Report of surveyors, 14, 968
 - When master has authority, 14, 966
 - To sell vessel, 14, 966
 - Bill of Lading**
 - Executed by, 2, 231
 - Bills and notes, 14, 963
 - Borrowing money, 14, 960, 961
 - Bottomry**
 - Debt which detains ship, 2, 489
 - Duty to communicate with owner of cargo, 2, 487
 - Duty to communicate with owner of vessel, 2, 487
 - Duty to obtain funds on personal credit, 2, 487
 - Express power to execute, 2, 487
 - Necessity that justifies contract, 2, 488

MASTER OF A VESSEL—Cont'd**Bottomry—Cont'd**

Power of one acting for master to execute contract, 2, 488

Power to execute, 2, 486

Sacrifice of cargo to ship, 2, 487

Sacrifice of ship to cargo, 2, 487

What Justifies Master in Executing

Duty to communicate with owner of vessel, 2, 487

When justified in executing bond, 2, 487

Where agent of owner is present, 2, 488

Where he has funds of his own, 2, 488

Burden of Proof

Sale of cargo, 14, 969

Sale of vessel from necessity, 14, 969

Cargo, see *infra*, **AUTHORITY**.

Charter Party

Power to make, 3, 143

Contracts

By what law governed, 3, 574

Crew, see *infra*, **AUTHORITY**; **DUTY**.

Discipline, see *infra*, **AUTHORITY**.

See **SEAMEN**.

As to passengers, 14, 971

Duty of Master, 14, 971

As to *Crew*, 14, 972

In case of injury, 14, 972

Medicine, 14, 972

Provisions, 14, 972

Quarreling, 14, 973

Surgical aid, 14, 973

As to *Owner*

Duty to abide by the ship, 14, 971

In general, 14, 971

As to *Passengers*, 14, 972

Passenger falling overboard, 14, 972

Protection from injury, 14, 972

Protection from insult, 14, 972

False imprisonment, 7, 666

Interests conflicting with principals, 14, 973

Jettison, 11, 975

Consultation, 11, 976

Liability

Credit given to master alone, 14, 974

For Misconduct, 14, 974

See *infra*, **STATUTORY PENALTIES**.

Malicious and vindictive punishment, 14, 975

Negligence, 14, 974

Negligence of crew, 14, 975

Negligence of officer, 14, 975

Statutory penalty, 14, 975

Unskillfulness, 14, 974

For Repairs and Supplies, 22, 728

Special promise, 22, 728

Vessel chartered by the master, 22, 728

Whether personally liable, 22, 728

For seamen's wages, 21, 934

On contract for ship's benefit, 14, 974

Personal, 14, 974

Libel and slander, 13, 361

Licenses to officers of steam vessels, 13, 519

Liens, 14, 974

For salary, 14, 430

Liability for ship, 14, 974

Payment of seamen, 14, 974

Wages, 14, 974

Man overboard, 14, 972

Manslaughter, 14, 975

Marine insurance, 14, 963

Mate

As temporary master, 14, 970

Master's authority over, 14, 969

Misconduct, see *infra*, **LIABILITY**.

Negligence, 14, 974, 975

Negligence amounting to manslaughter, 9, 589

Passengers

Duty of Master as to, 14, 972

Passenger falling overboard, 14, 972

Protection from injury, 14, 972

Protection from insult, 14, 972

Falling overboard, 14, 972

Master's authority over, 14, 971

Penalties, see *infra*, **STATUTORY PENALTIES**.

Pledging personal credit of owner with bottomry bond, 2, 484

Power to make towage contract, 26, 82

Registry

Effect, 14, 958

Master part owner, 14, 960

Registered in United States, 14, 959

Validity of master's authority, 14, 958

Removal, 14, 959

Necessity of overt act, 14, 959

Repairs and Supplies, 14, 963

Master also part owner, 22, 729

Respondentia

Pledging cargo, 21, 290

Revenue Laws

Duty, 21, 325

Rights, 17, 973

See *infra*, **WAGES**.

As owner, 14, 973

Carrying wife and children, 14, 973

Dependent upon terms of contract, 14, 973

Extra services, 14, 973

In general, 14, 973

Interest conflicting with principals, 14, 973

Trading on own account, 14, 973

Sale of cargo, see *infra*, **AUTHORITY**.

Sale of vessel, see *infra*, **AUTHORITY**.

Shipwreck, 14, 974

Statutory Penalties

Forcing seaman on shore at foreign port, 14, 975

Keeping list of ship's company, 14, 975

Passage to destitute seamen, 14, 975

Unskillfulness, 14, 975

Supercargo, 14, 965

As agent of consignor, 14, 965

Double capacity, 14, 965

In case of necessity, 14, 965

When master has authority of, 14, 965

Suppression of mutiny, 14, 971

Vol. I.

- Trading on own account, 14, 973
 Usages and customs, 27, 775
Wages, 14, 974
 Capture, 14, 974
 Discharge in foreign port, 14, 974
 Lien, 14, 974
 Lien on freight, 14, 974
 Marine insurance, 14, 323
MASTER'S SALE, see JUDICIAL SALE.
MATERIAL, 14, 976; 18, 302
 Building, 2, 603
 Material allegations, 14, 976
 Material defendant, 5, 517; 14, 976
 Material fact, 14, 976
 Material for a building, 14, 976
 Material issue, 14, 976
MATERIALITY, see PLEADING.
MATTER, 14, 976
 All matters, 1, 660
 Matter in controversy, 14, 977
 Matter in deed, 14, 977
 Matter in demand, 14, 977
 Matter in dispute, 5, 704; 14, 977
 Matter of fact, 14, 977
 Matter of form, 14, 978
 Matter of law, 14, 977
 Matter of record, 14, 977
 New matter, 14, 977
MATURE, 14, 978
"MATURE" EQUIVALENT TO "TO BE SUABLE," 14, 978
MATURITY, 14, 978
 After maturity, 14, 978
 Of note or bill, 2, 316
MAXIMS, 22, 921
Actio personalis moritur cum persona, see ABATEMENT.
Caveat venditor, see IMPLIED WARRANTY.
Comitas inter communitates, see CONFLICT OF LAWS.
Falsus in uno, falsus in omnibus, see WITNESSES.
Ignorantia juris non excusat, see MISTAKE.
 Between equal equities the law prevails, 22, 931
Causa Proxima et Non Remota Spectatur, see PROXIMATE AND REMOTE CAUSE.
 Contributory Negligence
 Defendant's willful act, 16, 434
Caveat Emptor, see IMPLIED WARRANTY.
 Chattel mortgage, 3, 207
 Horses, 9, 766
Contemporanea expositio est optima et fortissima in lege, 2, 496
Cujus est solum, ejus est usque ad cælum, 24, 917
De Minimis Non Curat Lex, 5, 112; 13, 285
 Building and loan associations, 2, 634
 Equity acts in personam, not in rem, 22, 931
 Equity acts specifically, 22, 931
Equity Follows the Law, 6, 705; 22, 921
 Statute of frauds, see FRAUDS, STATUTE OF.
 Contract upon which action at law would not lie, 22, 921
 Married woman's contract, 22, 922
 Statutes of limitation, 22, 922
Equity Looks to Intent Rather than to the Form, 6, 706; 22, 923
 Defective deed, 22, 924
 Examples, 22, 923-925
 Exceptions, 22, 924, 925
 Unrecorded deed, 22, 924
 Unsealed instrument, 22, 924
Equity Regards that as Done Which Ought to Have Been Done, 6, 705; 22, 925
 Effect of destruction or deterioration before consummation of the sale of realty, 22, 925
 Examples, 22, 925-927
 Executory contract of sale, 22, 925
 In general, 22, 925
 Interest chargeable to vendee, 22, 926
 Rents and profits, 22, 926
Expressio Unius Est Exclusio Alterius, 23, 446
 Cases mentioned by way of example, 23, 447
 Criminal statutes, 23, 447
 Examples, 23, 446, 447
 Exclusion of one subject or thing, 23, 447
 Exoneration of personality, 13, 122
 Intention of legislature, 23, 447
 Limitations, 23, 446
 Married women's statutes, 14, 616
Ex turpi causa, non oritur actio, 9, 884
Falsa demonstratio non nocet, 2, 497
 He who comes into equity must come with clean hands, 6, 708; 22, 930
Id certum est quod certum reddi potest, 28, 300
In jure causa proxima non remota spectatur, 16, 428
In Pari Delicto
 Contribution, 4, 13
 Fraudulent sales, 8, 857
In pari delicto potior est conditio defendentis, 3, 85
Ita lex scripta est, 13, 285
Maxims in Equity, 6, 704
 Between Equal Equities Law Must Prevail
 Illustrations, 6, 710
 Purchaser obtaining equitable right in legal title, 6, 710
 Between Equal Equities Time Shall Prevail, 6, 709, 710
 Equities embraced in the maxim, 6, 709
 Equality in Equity, 6, 707
 Doctrines derived from, 6, 707
 Illustrations, 6, 707
 Scope of maxim, 6, 707
 Equity Acts in Personam, Not in Rem, 6, 712
 Land outside the jurisdiction of court, 6, 713
 Operation of equity upon the conscience, 6, 713
 Equity acts specifically, 6, 713

MAXIMS—Cont'd**Maxims in Equity—Cont'd**

Equity Aids the Vigilant, Not Those Who Sleep on Their Rights, 6, 710

Equity acts by analogy to statute of limitations, 6, 711

Laches, 6, 711

Statute of limitations, 6, 711

When courts refuse to follow the statute, 6, 11

Where there is no statute of limitations, 6, 711

Equity imputes an intention to fulfil an obligation, 6, 712

Equity will not suffer a right to be without a remedy, 6, 712

He Who Seeks Equity Must Do Equity, 6, 707

Applications, 6, 707

Illustrations, 6, 708

Must arise from the same matter, 6, 707

Vigilantibus non dormientibus æquitas subvenit, 6, 711

Nemo est hæres viventis, 24, 361

Nemo potest patriam exuere, 7, 487

Noscitur a Sociis, 23, 439

Equity of redemption, 23, 440

General rule, 23, 439

Illustrations, 23, 439-443

Improvements, 23, 441

Legislative intent, 23, 442

Limitations of the rule, 23, 442

Right, 23, 441

Specific and generic terms of same nature, 23, 441

Specific words signifying subjects greatly different from each other, 23, 442

Voluntary, 23, 441

When particular words exhaust a whole class, 23, 443

Or qui prior est tempore, potior est jure, 7, 145

Of vigilantibus et non dormientibus jura subserviunt, 7, 145

Omnia esse rite acta, 3, 800

Omnia præsumuntur contra spoliatorem, 24, 710

Qui semel est malus, semper præsumitur esse malus in eodem genere, 24, 712

Reddenda Singula Singulis, 23, 444

Illustrations, 23, 444-446

Meaning of the maxim, 23, 444

Words or clauses taken distributively, 23, 444

Res Ipsa Loquitur, 16, 449

Fires from railroad trains, see **FIRES BY RAILWAYS**.

Illustrations, 16, 449

Meaning, 16, 449

Respondeat superior, 2, 753

Seisina facit stipitem, 24, 356, 357

Unumquodque dissolvitur eodem ligamine quo ligatur, 3, 892

Utile per inutile non vitiatur, 28, 361

"Volenti non fit injuria", 3, 663

Who Seeks Equity Must Do Equity, 22, 927

Complainant's duty to fulfill his part of contract, 22, 928

Complainant showing that he is ready and willing to perform his part of contract, 22, 929

Examples, 22, 927-930

Excuse for non-performance, 22, 929

In general, 22, 927

Literal compliance, 22, 929

Offer to perform, 22, 930

Performance entitles to decree, 22, 928

MAY, 14, 979; 16, 1

See **SHALL**.

As near as may be, 16, 366

"Cannot" as "may not," 2, 717

Construed as shall, 11, 366

Directory, 14, 981

Discretionary or Mandatory

Municipal corporations, 15, 1048

Examples of mandatory use, 14, 979-981

May advance, 14, 984

May be, 14, 984

May be made, 14, 984

May exempt, 14, 983

May leave same to her children, 14, 983

May receive, 14, 984

May saw, 14, 984

May summon, 14, 984

Whether mandatory, 14, 979

You may if you please, 14, 984

MAYHEM, 14, 985

American statutes, 14, 989

At Common Law, 14, 985

Accessories, 14, 987

Definition at common law, 14, 985

What acts are mayhem, 14, 986

Whether felony, 14, 986

Biting off finger, 14, 994

Biting off ear, 14, 994

Consent of parties, 14, 994

Conspirators

Responsibility for act of co-conspirators, 14, 997

Conviction of lesser offense, 14, 996

Definition of, 1, 812; 3, 666; 14, 985

Disable, 5, 671

Disfigure, 5, 683

Ear, 6, 137

English Statutes, 14, 987

Intent, 14, 988

Maiming or disfiguring within the act, 14, 988

Felony by statute, 14, 992

Felony or misdemeanor, 14, 991

Indictment, 14, 995

Allegations necessary, 14, 995

At common law, 14, 995

Charging the facts, 14, 995

For maiming, conviction of assault, 15, 366

Intent, 14, 996

Miscellaneous, 14, 996

Under statutes, 14, 995

Unlawfully, 14, 996

Willfully, 14, 996

Intent, 14, 986, 988

- Intent, 14, 993
- Joinder of offenses, 14, 996
- "Life or member," 15, 262
- Maim**, 14, 985
 - Legal meaning, 14, 985
 - What implied by, 14, 985
 - When synonym for mayhem, 14, 985
- Maliciously, 14, 995
- Merger, 4, 649
- Misdemeanor, 14, 991
- New York Statutes**, 14, 989
 - Intent, 14, 995
 - Right to consent to, 3, 667
 - United States statutes, 14, 989
 - Willful, 14, 995
- MAYOR**, 23, 105
 - Prohibition, 19, 278
- MEANDER**, 14, 997
- MEANS**
 - And effects, 6, 186
 - Of support, 3, 262
 - Visible means, 28, 472
- MEASURE OF DAMAGES**, 1, 1000; 5, 27
 - In covenant*, see COVENANT, ACTION OF.
 - See DAMAGES; LIQUIDATED DAMAGES; MITIGATION OF DAMAGES; TROVER AND CONVERSION.
 - Breach of contract for services*, see MASTER AND SERVANT.
 - Contracts for the sale of real estate*, see VENDOR AND PURCHASER.
 - For breach of real covenants*, see REAL COVENANTS.
 - In action against express companies*, see EXPRESS COMPANIES.
 - Action for Personal Injuries**
 - Medical expenses, 5, 68
 - Agreements to leave property by will, 5, 315
 - Asportation of personal property, 5, 39
 - Auction sale, 1, 1000
 - Bailee's action against third person for injury to goods, 2, 61
 - Bank's negligence in collecting, 2, 111
 - Breach of Promise of Marriage**, 2, 526
 - Wounded feelings, 2, 527
 - Checks**
 - Wrongful dishonor of, 3, 226
 - Contracts, 5, 27
 - Contracts for payment of money, 5, 27
 - Cutting timber, 5, 36
 - Death by Wrongful Act**, 5, 42, 45; 19, 942
 - See DEATH.
 - Examples, 19, 942-945
 - Exemplary damages, 19, 943
 - In general, 19, 942
 - Insurance as affecting damages, 19, 944
 - Loss of society, 19, 943
 - Pecuniary damages, 5, 45; 19, 942
 - "Pecuniary" liberally construed, 19, 944
 - Plaintiff's inheritance as affecting damages, 19, 944
 - Willful neglect, 19, 944
 - Destroying growing crops, 5, 37
 - Destruction of personal property, 5, 38
 - Executor's and administrator's bonds, 7, 230
 - Factor's disobedience to principal's orders, 3, 329
 - For refusal to return deposit, 5, 578
 - Fraudulent Sales**, 8, 820
 - Consequential damages, 8, 820
 - Difference between actual and represented value, 8, 820
 - Recoupment, 8, 820
 - In action against carriers of live stock, 3, 16½
 - In action for causing death, 5, 130
 - In action for deceit, 5, 345
 - In action for delay in delivery by common carrier, 2, 850
 - In action upon attachment bonds, 2, 466r
 - In detinue, 5, 656
 - Injury to Person**, 5, 40
 - Amount of money which plaintiff could earn working regularly, 5, 41
 - Exclusion of persons on account of color, 5, 43
 - Exercise of reasonable care in employment of physician, 5, 44
 - Expenses, 5, 42
 - Future pain where injury is permanent, 5, 42
 - Injury aggravated by disease, 5, 43
 - Injury aggravated by treatment, 5, 43
 - Insult, 5, 42
 - Joint actions by husband and wife for personal injury to wife, 5, 44
 - Loss of capacity for labor, 5, 41
 - Loss of time, 5, 40
 - Medical services, 5, 42
 - Mental pain, 5, 42
 - Physical pain, 5, 42
 - Proof of special employment at time of injury, 5, 41
 - Statutory Actions for Injuries Causing Death**, 5, 42, 45; 19, 942
 - Age of deceased, and the amount of his earnings, 5, 45
 - Compensation for pecuniary loss, 5, 45
 - Death of minor child, 5, 46
 - Fact that widow has insurance on husband's life, 5, 46
 - Loss of intellectual and moral training, 5, 45
 - Necessity of evidence of pecuniary loss, 5, 45; 19, 942
 - Necessity that survivors have legal claim on deceased, 5, 46
 - Pain and suffering of deceased, 5, 45
 - Solatum for injuries to feelings of survivors, 5, 45
 - Subsequent marriage of widow, 5, 46
 - What should be considered in estimating damages, 5, 45; 19, 944
 - Where plaintiffs are not dependent on deceased, 5, 46
 - When death does not ensue, 5, 40
 - Instruction, examples of, 11, 268-274

MEASURE OF DAMAGES—Cont'd

Interest, 5, 27

Libel and slander, see **LIBEL AND SLANDER**.

Loss of goods by warehouseman, 2, 884

Malicious prosecution, 5, 48

Master and Servant

Enticing away servant, 14, 802

Minerals, Wrongful Taking, 15, 601

Absence of fraud, 15, 602

American decisions, 15, 603

Bona fide claim of title, 15, 604

Conflict in America, 15, 603

Damage to land, 15, 602

Detinue, 15, 605

English law, 15, 601

Inadvertent taking, 15, 601

Taking by mistake, 15, 601

Taking under bona fide belief in title, 15, 601

Trover, 15, 605

Value at mouth of mine, 15, 601

Value less expense, 15, 602

Willful trespass, 15, 601, 603, 604

Mortuary tables, 15, 882**Nuisances, 5, 38; 16, 984**

Actual damages sustained, 16, 984

Crops, 16, 985

Depreciation in rental value, 16, 985

Examples, 16, 984-987

Health and personal comfort, 16, 986

Injuries permanently affecting realty, 16, 984

Injuries resulting subsequent to commencement of action, 16, 986

Injury to realty, 16, 985

Necessary and natural consequences of nuisance, 16, 986

Nuisance causing loss of tenant, 5, 38

Nuisance of a permanent character, 16, 986

Rents and profits, 16, 985

Trouble and expense in prosecution of action, 16, 986

Pretium affectionis, 5, 39**Real Covenants, Breach of, 19, 1014**

Amount of injury sustained, 19, 1015

Breach as to part of land only, 19, 1015

Conclusiveness of recital of consideration, 19, 1016

Costs incurred in defending suit, 19, 1017

Counsel fees, 19, 1018

Covenant for further assurance, 19, 1019

Covenant for quiet enjoyment, 19, 1014, 1017, 1019

Covenant for right to convey, 19, 1014

Covenant for seisin, 19, 1014

Covenants in a lease, 19, 1015

Evidence of the value of land, 19, 1017

Examples, 19, 1014-1020

Expenses in defense of suit, 19, 1017, 1018

How value is estimated, 19, 1014

Improvements, 19, 1015

In Connecticut, 19, 1017

In Maine, 19, 1017

In Massachusetts, 19, 1017

In Vermont, 19, 1017

In general, 19, 1014

Interest, 19, 1015, 1017

Mesne profits, 19, 1017

Nominal damages, 19, 1019

Parol evidence, 19, 1016

Partial breach only, 19, 1019

Pecuniary loss sustained, 19, 1020

Statutory rule, 19, 1015

Tax titles, 19, 1019

Value of the land, 19, 1014

Where covenants are held to be broken as soon as made, 19, 1019

Where no amount is named, 19, 1016

Removing fixtures, 5, 36

Torts, 5, 36

Towage, 26, 96

For detention, 26, 96

For injuries, 26, 96

For violation of contract, 26, 96

Trespass, see **TRESPASS**.

Trespass to realty, 5, 36

Trespass upon personal property, 5, 38

Value of personal property destroyed, at nearest market, 5, 39

Where defendant has been guilty of no intentional wrong, 5, 37

Where money was to be paid for a special object, such as maintenance of credit, etc., 5, 27

Where property is sold by trespasser, 5, 39

Where the negligence of one causes the disease of another, 4, 31

Whether damages should be confined to value of property before trespass, 5, 37

MECHANIC'S LIEN, 15, 1, 37, 44; 29, 851*As to mechanic's lien upon personal property*, see **LIENS**.**Abandonment of Contract, 15, 76, 78**

Abandonment occasioned by default of owner, 15, 79

Completion of building by owner, 15, 79, 80

Effect of abandonment, 15, 78

Material furnished to contractor who has abandoned, 15, 78

Measure of damages, 15, 79

Accounts, 15, 39

Furnishing material upon open, 15, 79

Addition, 15, 33**Addition to a Building**

What is, within the statutes, 2, 603

Admissions

Of agents, 15, 190

Of contractor, 15, 190

Affidavit, 15, 173**Agency, 15, 64, 65, 69**

Admissions of agents, 15, 190

Agent of wife, 15, 65

Contractor for erection of building, 15, 64

Corporation, 15, 45

- For wife implied, 15, 65
- Husband acting as wife's agent, 15, 15, 65
- Parties to actions, 15, 167
- Special agent, 15, 64
- Whether agents may subject property to lien, 15, 64
- Agreement of parties, 15, 40**
- Alterations, 15, 33, 35**
 - Adding basement, 15, 33, 34
 - Appurtenances, 15, 35
 - Examples, 15, 33, 34
 - Extension, 15, 33
 - In general, 15, 33
 - Kitchen, 15, 34
 - Questions of law or fact, 15, 34
 - Rebuilding, 15, 33, 34
 - Scaffolding, 15, 34
 - To change its form, 15, 33
- Amendments, 15, 177**
 - After statutory period has elapsed, 15, 178
 - Bill of exceptions, 15, 179
 - Complaint, 15, 178
 - Dismissal of parties, 15, 179
 - Enforcement by court, 15, 178
 - Examples, 15, 177-179
 - Failure to comply with statute, 15, 178
 - Insufficient notice, 15, 178
 - Notice, 15, 136, 137, 178
 - Of process, 15, 124
 - Parties, 15, 178
 - Recorded claim, 15, 154
 - Time to be made, 15, 179
 - What amendment allowed, 15, 178
 - When allowable, 15, 177
 - When privilege denied, 15, 178
- Amount Due**
 - Averment in complaint, 15, 161
 - From Owner, 15, 51**
 - See infra*, PAYMENT IN FULL.
- Amount of judgment, 15, 195
- Amount of Recovery, 15, 119**
 - Examples, 15, 119
 - Money not due, 15, 119
 - Prior payments, 15, 119
 - Terms of contract, 15, 119
- Amount Secured by Lien, 15, 84**
 - Contractors, 15, 84
 - Extent of land covered by lien, 15, 85
 - Lien upon separate parcels, 15, 86
 - Subcontractors, 15, 84
- Answer, 15, 173**
 - In general, 15, 173
 - Time of filing, 15, 174
 - When received as evidence 15, 174
- Appeals, 15, 203**
- Apportionment, 15, 101**
 - Joint liens, 15, 101
 - Rule of, 15, 101
 - Separate buildings, 15, 101
- Approval of architect, 15, 77**
- Aqueducts, 15, 32**
- Architect, 12, 532; 15, 44; 29, 888**
 - Approval of, 15, 77
 - In New Jersey, 15, 45
 - Lien refused to architect, 29, 888-890
 - Power to subject property to lien, 15, 70
 - Where architect only furnishes plans and specifications, 29, 888
 - Where architect superintends the building, 29, 888
 - Whether architect is entitled to, 29, 888
- Assignability, 13, 625**
- Assignment, 15, 102**
 - Assignor as party to action, 15, 169
 - Examples, 15, 102, 104
 - General rule, 15, 102
 - How assignments made, 15, 103
 - Of interest, 15, 6
 - Of property, 15, 83
 - On lien before action, 15, 116
 - Particular words, 15, 103
 - Whether assignment, 15, 102
- Assignment for Benefit of Creditors**
 - By contractor, 15, 116
 - Effect on subcontractor, 15, 116
- At common law, 15, 5**
- Attachment, 15, 124**
- Bill of exceptions, 15, 179**
- Bill of particulars, 15, 163**
- Bona fides, 15, 41**
- Bond with surety, 15, 26**
- Bridges, 15, 23, 24, 26, 28, 31**
 - Railroad bridges, 15, 23, 24, 26
- Buildings, 15, 27, 31, 33**
 - See infra*, PUBLIC BUILDINGS.
- Alterations, 15, 33**
 - Adding basement, 15, 33, 34
 - Appurtenances, 15, 35
 - Examples, 15, 33, 34
 - Extension, 15, 33
 - In general, 15, 33
 - Kitchen, 15, 34
 - Questions of law or fact, 14, 34
 - Rebuilding, 15, 33, 34
 - Scaffolding, 15, 34
 - To change its form, 15, 33
- Appurtenances, 15, 34, 35**
- Aqueducts, 15, 32**
- Bridges, 15, 28, 31**
- Canals, 15, 32**
- Cisterns, 15, 32**
- Dancing hall, 15, 28**
- Depot, 15, 28**
- Ditch, 15, 28, 32**
- Dykes, 15, 32**
- Examples, 15, 27, 29**
- Factories, 15, 31**
- Fences, 15, 31**
- Fixtures, 15, 31**
- Flumes, 15, 32**
- Improvements, 15, 29**
- Machines, 15, 32**
- Mills, 15, 31**
- Mines and mining claims, 15, 32**
- Money loaned for building, 15, 35**
- Movable property, 15, 28**
- Railings, 15, 32**
- Railroad bridges, 15, 31**
- Railroads, 15, 31**
- Reservoirs, 15, 32**

MECHANIC'S LIEN—Cont'd**Buildings—Cont'd**

- Scope of word, 15, 27
- Ships and shipping, 15, 53
- Stable, 15, 28
- Stage and scenery, 15, 28
- Statutory provisions, 15, 27
- Steamboats, 15, 29
- Toll-roads, 15, 32
- Tramways, 15, 32
- Trestles, 15, 31
- Tunnels, 15, 32
- Vessels, 15, 33
- Viaducts, 15, 32
- Waterworks, 15, 32
- Wharves, 15, 31
- What is within the statutes, 2, 602

Burden of Proof, 15, 51, 187

- Money due from owner, 15, 51

Canals, 15, 32**Churches, 15, 30****Cisterns, 15, 32****Civil engineer, 15, 45****Claims, see *infra*, FILING STATEMENT OF CLAIM.****Collateral attack upon judgment, 15, 195****Collateral security, 15, 115****Commencement of building, 15, 82****Compared with lien of judgment, 15, 9****Compared with mortgage, 15, 9****Complaint, 15, 155****Amendment, 15, 178****Averments as to amount due, 15, 162****Averments as to building, 15, 161****Averments as to Contract, 15, 158****Demurrer, 15, 159****Property of married women, 15, 158****Quantum meruit, 15, 159****Showing what contract was, 15, 158****Statement of contract, 15, 158****Subcontractor's complaint, 15, 159****Time within which money must be paid, 15, 159****Averments as to notice in filing lien, 15, 161****Averments as to ownership, 15, 158****Averments as to place, 15, 162****Averments as to time, 15, 157, 162****Bill of particulars, 15, 162****Description of Land, 15, 159****Certainty, 15, 159****Examples, 15, 159, 160****Identification, 15, 160****Land not included in petition, 15, 160****Description of property, 15, 155****Execution, 15, 157****Generally, 15, 155****In California, 15, 155****In Georgia, 15, 155****In Illinois, 15, 155****In Massachusetts, 15, 155****In New Jersey, 15, 155****In New York, 15, 155****In South Carolina, 15, 155****Joint petition, 15, 164****Mistake, 15, 165****Oath, 15, 157****Object of, 15, 157****Owner's interest, 15, 156****Prayers, 15, 155****Requisites, 15, 155****Signature, 15, 157****Statements necessary, 15, 156****Statutory right to lien, 15, 156****Subcontractor, 15, 157****Compliance with statutes, 15, 6, 113****Consent of Owner, 15, 58****Statutes, 15, 67****Construction of Statutes, 15, 179; 23, 392****Acts repealed by implication, 15, 182****In general, 15, 179; 23, 392****Liberal construed, 15, 179; 23, 392****New remedy provided by legislature, 15, 181****Prospective laws, 15, 180****Railroads, 15, 23, 24, 26****Repeal before completion of building, 15, 181****Repeal by implication, 15, 182****Repeal of lien laws, 15, 181****Repugnant acts of legislature, 15, 181****Retrospective laws, 15, 180****Statutes enacted subsequent to existing contract, 15, 181****Strict construction, 23, 392****Successive statutes, 15, 182****Undue advantage given to mechanic, 23, 392****Continuance of lien, 15, 123****Continuous account, 15, 40****Continuous contracts, 15, 74****Contractor****For erection of building, 15, 64****Power to subject property to lien, 15, 70****Several contractors, 15, 71****Contracts, 15, 37, 38, 65****Abandonment of, 15, 78****Abandonment occasioned by default of owner, 15, 79****Completion of building by owner, 15, 79, 80****Effect of abandonment, 15, 78****Material furnished to contractor who has abandoned, 15, 78****Measure of damages, 15, 79****By whom made, see *infra*, PERSONS ENTITLED TO SUBJECT PROPERTY TO LIENS.****Compensation not to be rendered in money, 15, 75****Continuous, 15, 74****Entire contract, 15, 73****Expressly implied, 15, 66****Extra work, 15, 78****Filing of, 15, 74****Examples, 15, 74, 75****Necessity, 15, 74****To preserve lien against third person, 15, 75****Implied, 15, 72, 73****Joint, 15, 74****Made after suit to foreclose, 15, 75****Made out of the state, 15, 75**

- Modification of, 15, 76
 - Necessity of contract with owner, 15, 46, 52
 - Necessity of stipulating for lien, 15, 75
 - Necessity of writing, 15, 72
 - No contract that material shall be put to particular use, 15, 66
 - Performance, 15, 76**
 - See infra*, ABANDONMENT OF CONTRACT.
 - Approval of architect, 15, 77
 - Building destroyed before completion, 15, 77
 - Extension of time of, 15, 76
 - In general, 15, 76, 77
 - Necessity of substantial, 15, 77
 - Part performance, 15, 77
 - Violation, 15, 78
 - Waiver on default, 15, 80
 - Permission by owner to build, 15, 73
 - Presumed, 15, 66
 - Rescission of, 15, 78
 - Special contract, 15, 73
 - Statutes, 15, 67
 - Sufficiency of, 15, 68**
 - Buildings on two or more lots, 15, 71
 - Entire contract, 15, 70
 - Furnishing material upon open account, 15, 70
 - Items charged from time to time, 15, 71
 - Necessity of writing, 15, 72
 - Several contractors, 15, 71
 - Specifications not annexed, 15, 72
 - Specifications of lot or building, 15, 70
 - Time within which work is to be completed, 15, 71
 - Termination of, 15, 78
 - Third person, 15, 74
 - Violation, 15, 78
 - When lien depended upon, 15, 65, 66
 - Where contract was not made with owner, 15, 68
 - Whether lien depended upon, 15, 65
 - With owner, 15, 46
- Cook, 15, 45**
- Corporations, 15, 22**
- Agent, 15, 45
 - Municipal corporations, 15, 23
 - Whether corporation is subject to lien, 15, 22
 - Whether corporation may acquire lien, 15, 22
- Costs, 15, 204**
- Against whom awarded, 15, 204
 - As specific lien, 15, 204
 - Consolidation of claims, 15, 204
 - Discretion of court, 15, 204
 - Examples, 15, 204
 - Statutory provisions, 15, 204
- Counties, 15, 23**
- Court houses, 15, 30**
- Credit of building, 15, 40**
- Cumulative remedy, 15, 6**
- Curtsey, 15, 168**
- Dancing hall, 15, 28**
- Debt due from owner to contractor, 15, 37**
- Decedent's estate, 15, 118**
- Declarations, 15, 190**
- Default, 15, 176, 195**
- Definition, 15, 5**
- Definition of the word "materials," 15, 46**
- Delivery, 15, 43**
- At different times, 15, 39, 40
 - Materials not delivered, 15, 43
- Demurrer, 15, 176**
- Demurrer to evidence, 15, 191**
- Description of land, 15, 159**
- Destruction by fire, 15, 7, 77**
- Destruction of Building, 15, 111**
- By fire, 15, 7, 77
- Dikes, 15, 32**
- Discharge, see infra, LOSS AND DISCHARGE.**
- Accepting security, 13, 623
- Ditch, 15, 28, 32**
- Enforcement, 15, 117**
- Action prematurely brought, 15, 124
 - Amendment of process, 15, 124
- Amount of Recovery, 15, 119**
- Examples, 15, 119
 - Money not due, 15, 119
 - Prior payments, 15, 119
 - Terms of contract, 15, 119
- Appointment of receiver, 15, 124**
- Attachment, 15, 124**
- By whom lien will be enforced, 15, 118**
- Claims of subcontractors, 15, 120**
- Continuance of lien, 15, 123**
- Decedent's estate, 15, 118**
- Employees of subcontractor, 15, 120**
- Estate of insane person, 15, 118**
- Executors, 15, 118**
- Failure to establish lien, 15, 121**
- In general, 15, 117**
- Joint claims, 15, 120**
- Mortgagee, 15, 118**
- Release, 15, 125**
- Separate premises, 15, 120**
- Several houses, 15, 120**
- Time Within Which Lien Must Be Enforced, 15, 121**
- Examples, 15, 121
 - Generally, 15, 121
 - In Arkansas, 15, 122
 - In Colorado, 15, 121
 - In Georgia, 15, 122
 - In Illinois, 15, 122
 - In Iowa, 15, 122
 - In Kansas, 15, 122
 - In Kentucky, 15, 122
 - In Maine, 15, 122
 - In Maryland, 15, 122
 - In Massachusetts, 15, 122
 - In Minnesota, 15, 121
 - In Mississippi, 15, 122
 - In Missouri, 15, 122
 - In New Jersey, 15, 122
 - In New York, 15, 123

MECHANIC'S LIEN—Cont'd**Enforcement—Cont'd****Time Within Which Lien Must Be Enforced****—Cont'd**

In Oregon, 15, 121

In Pennsylvania, 15, 122

In Rhode Island, 15, 123

In Tennessee, 15, 123

In Virginia, 15, 123

In West Virginia, 15, 123

In Wisconsin, 15, 123

Period prescribed by statute, 15, 121

Transfer of contract, 15, 118

Wife's estate, 15, 117

Equitable estates, 15, 11, 12

Equity practice, 15, 172

Error, 15, 184

Estate in the property, 15, 6

Estoppel, 15, 189

Owners by, 15, 65

Waiver of lien, 15, 108

Evidence, 15, 184

Admissibility, 15, 184

Admissions of agents, 15, 190

Admissions of contractor, 15, 190

Allegations of time, 15, 187

As to priority of claim, 15, 191

Burden of proof, 15, 187

Chancery rules, 15, 186

Compliance with statutory requisitions, 15, 185

Conflicting lien, 15, 190

Declarations of owner, 15, 190

Distribution of proceeds, 15, 190

Extra work, 15, 186

General charge on, 15, 191

General rules of evidence, 15, 184

In general, 15, 184

Material not actually used, 15, 187

Maturity of debt, 15, 186

Objections, 15, 185

Original Entries, 15, 189

Examples, 15, 189

In general, 15, 189

Omissions, 15, 189

Owner's defenses, 15, 185

Parol, 15, 186, 188

When admissible, 15, 188

When inadmissible, 15, 188, 189

Whether material furnished on credit of building, 15, 188

Promissory Notes, 15, 188

Price agreed upon, 15, 188

Satisfaction of claim, 15, 188

Settlement of accounts, 15, 188

To prove indebtedness, 15, 188

Proof that money is due, 15, 186

Record of Notice, 15, 189

Certified copy, 15, 189

Competency as evidence, 15, 189

Estoppel, 15, 189

Unskillful work, 15, 185

Variance, 15, 184

What owner may show, 15, 185

Examples, 15, 41-43

Examples of work, 15, 37-39

Execution, 15, 199

Executors and Administrators, 15, 60

Enforcement, 15, 118

Exemption from Execution

Of tools of mechanic, 7, 135

Extension, 15, 33

Extent of land covered by lien, 15, 85

Extra Work, 15, 78, 142, 153

Evidence, 15, 186

Factories, 15, 31

Fences, 15, 31

Filing

Averment in complaint, 15, 161

Filing of Contract, 15, 74

Examples, 15, 74, 75

Necessity, 15, 74

To preserve lien against third person, 15, 75

Notice

Effect of failure, 15, 113

When lien attaches, 15, 83

Filing Statement of Claim, 15, 137

Against leasehold estate, 15, 152

Against railroads, 15, 152

Alteration of recorded claim, 15, 155

Amendment, 15, 155

Amount Due, 15, 139, 146

Averments as to, 15, 146

Credits and offsets, 15, 147

Examples, 15, 146

In California, 15, 147

In New Jersey, 15, 147

In Pennsylvania, 15, 148

Averments as to amount due, 15, 146

Averments as to Time, 15, 147

Entire contracts, 15, 148

In Maryland, 15, 148

In New Jersey, 15, 148

In Pennsylvania, 15, 148

Necessity, 15, 147

Various items, 15, 147

Certainty required, 15, 139

Defective statement, 15, 142, 143

Description, 15, 144

Certainty to a common intent, 15, 144

Definiteness, 15, 144

Examples, 15, 144, 146

Imperfect description of land, 15, 145

Of premises, 15, 144

Distinct alterations, 15, 142

Distinct claim, 15, 142

Entire contract, 15, 142

Extra Work, 15, 142, 153

Items, 15, 153

Time of filing, 15, 153

Generally, 15, 137, 138

How construed, 15, 146

In Arkansas, 15, 137

In Indiana, 15, 137

In Kansas, 15, 137

In Maine, 15, 137

In New York, 15, 138

In Virginia, 15, 138

Interest in premises, 15, 142, 143.

Items, 15, 140.

Items of account, 15, 139

- Joint Lien**, 15, 153
 Adjoining houses owned by different persons, 15, 153
 Apportioned claim, 15, 153
 Building owned by same person, 15, 153
 Enforcement in a single proceeding, 15, 153
 Materials furnished under entire contract, 15, 153
 Kind and amount of materials furnished, 15, 141
 Kind of work, 15, 142
 Land in excess of statutory quantity, 15, 140, 143
 Mingling items, 15, 142
Mistake in Statement, 15, 143
 Effect of mistake in general, 15, 143
 Embracing more property than lien covers, 15, 140, 143
 Error in account filed, 15, 143
 Examples, 15, 143, 144
 Mistake in use of word, 15, 143
 Name of owner, 15, 138
 Naming wrong person as contractor, 15, 139
 Nature or kind of work done, 15, 140
 Place of filing, 15, 137
 Reputed owner, 15, 138
 Specifications, 15, 137-139
 Statutes, 15, 137
 Terms of contract, 15, 142
Time of Filing Lien, 15, 148
 Compliance with terms of statute, 15, 148, 150
 Examples, 15, 150
Expiration of Time, 15, 151
 Excuse, 15, 152
 In general, 15, 151
 Extra work, 15, 151
 In Alabama, 15, 148
 In Arkansas, 15, 148
 In California, 15, 148
 In Connecticut, 15, 148
 In Kansas, 15, 149
 In Massachusetts, 15, 149
 In Missouri, 15, 149
 In Montana, 15, 149
 In New York, 15, 149
 In Pennsylvania, 15, 149
 In Texas, 15, 149
 Materials furnished under an entire contract, 15, 151
 Necessity, 15, 150
 Performance of contract, 15, 151
 Statutory regulations, 15, 148
 When materials are furnished, 15, 150
 When time of filing lien begins to run, 15, 150
 When work is finished, 15, 150
 Time when materials were furnished, 15, 141
 Time when work was done, 15, 141
 Variance, 15, 146
 Verbal contract, 15, 153
Verification of Claim, 15, 154
 Apportioned claim, 15, 153
 Defective affidavit, 15, 154
 Examples, 15, 154, 155
 Form of verification, 15, 155
 Necessity, 15, 154
 No form prescribed by statute, 15, 155
 Performance, 15, 155
 Sufficiency of verification, 15, 154
 What sufficient registry, 15, 138
 When not required, 15, 152
 Words of statutes, 15, 139
Fire insurance, 15, 6
Fixtures, 15, 10, 18, 21, 28, 32, 35
 Erected by lessee, 15, 18, 21
 Examples, 15, 36, 37
 Furnaces, 15, 36, 37
 Gas fixtures, 15, 36
 Heating apparatus, 15, 36
 In general, 15, 35
 Whether lien covers entire building, 15, 37
 Flagging of sidewalks, 15, 38
 Flumes, 15, 32
 Foreclosure of mortgages, 8, 219
 Foreman, 15, 45
Fraud
 Priority, 15, 89
 Furnaces, 15, 36, 37
 Gas fitter, 15, 45
 Gas fixtures, 15, 36
Guardian and Ward, 9, 116; 15, 60
 Ratification, 15, 60
 Whether guardian can create lien, 15, 60
 Hauling ore from mines, 15, 38
Homestead, 15, 22, 61
 Parties to actions, 15, 168
 House painter, 15, 45
Husband and Wife, 15, 12, 65, 117
 Agency implied, 15, 65
 Agent of wife, 15, 65
 Claims, 15, 17
 Consent to charge with lien, 15, 15
 Contract of husband, 15, 12
 Contract of married women, 15, 12
 Enforcement, 15, 117
 Holding out that husband owns property, 15, 14
 Husband acting as wife's agent, 15, 15, 65
 Husband and wife as joint tenants, 15, 16
 Husband's request with wife's knowledge, 15, 15
 In general, 15, 12, 15
 Intention of married women, 15, 12
 Joint contracts, 15, 16
 Lease for years, 15, 16
 Liability to subcontractors, 15, 17
 Parties to actions, 15, 167
 Pleading, 15, 17
 Power to subject property to lien, 15, 70
 Recovery against husband, 15, 14
 Rents and profits, 15, 17
 Requisites appearing upon its face, 15, 17
 Setting forth coverture, 15, 17

MECHANIC'S LIEN—Cont'd**Husband and Wife—Cont'd**

Showing coverture, 15, 117

When improvements must appear necessary, 15, 16

Improvements, 15, 29, 86

Independent of contract, 15, 5

Infants, 15, 60

Validity of contract, 15, 60

When owner includes, 15, 60

Whether lien exists against, 15, 60

In general, 15, 37

Insanity

Enforcement of lien against insane person, 15, 118

Insolvency, 15, 48

Instructions, 15, 191

Insurance, 15, 6

Jails, 15, 30

Joinder, 11, 1011

Joinder of parties, 11, 1015; 15, 169, 170

Joint petition, 15, 164

Judgment, 15, 191

Collateral attack, 15, 195

Complaint, 15, 194

Compliance with statutes, 15, 193

Corresponding with claim, 15, 194

Default, 15, 195

Erroneous Decree, 15, 195

Amount of judgment, 15, 195

Examples, 15, 196

Verdict, 15, 195

Generally, 15, 191

In Alabama, 15, 192

In Illinois, 15, 192

In New York, 15, 192

In Wisconsin, 15, 192

In Personam, 15, 191, 192

In general, 15, 192, 193

Scire facias, 15, 197

Subcontractor, 15, 193

What plaintiff must show, 15, 192

In rem, 15, 191, 193

Modifications of decree, 15, 193

Operation of, 15, 191

Owner's interest, 15, 194

Redemption, 15, 194

Reforming judgment, 15, 195

Scire Facias

When plaintiff entitled to, 15, 199

Separate buildings, 15, 195

Statutes, 15, 191

Waiver of, 15, 196

When personal judgment may be rendered, 15, 192

Jurisdiction, 15, 182

Error, 15, 184

In Arkansas, 15, 183

In California, 15, 183

In Colorado, 15, 183

In Illinois, 15, 183

In Indiana, 15, 183

In Maryland, 15, 183

In Michigan, 15, 183

In Missouri, 15, 183

In New York, 15, 183

In Pennsylvania, 15, 184

Justice of the peace, 15, 184

Residence of the parties, 15, 182

Statutes regulating, 15, 183

Jury, 15, 176

Jury trial, 15, 195

Justice of the peace, 12, 499; 15, 184

Labor and Materials, 15, 37

Agreement of parties, 15, 40

Bona fides, 15, 41

Continuous account, 15, 40

Contract, 15, 37, 38

Credit of building, 15, 40

Debt due from owner to contractor, 15, 37

Delivery, 15, 43

Delivery at different times, 15, 39

Employment, 15, 52

Contract with owner, 15, 52

In Alabama, 15, 53

In California, 15, 53

In Colorado, 15, 53

In Georgia, 15, 54

In Illinois, 15, 54

In Indiana, 15, 54

In Iowa, 15, 54

In Kansas, 15, 54

In Louisiana, 15, 54

In Minnesota, 15, 54

In Mississippi, 15, 54

In Nevada, 15, 54

In New York, 15, 53, 54

In Ohio, 15, 55

In Pennsylvania, 15, 55

In Rhode Island, 15, 55

In South Carolina, 15, 55

In Virginia, 15, 55

In Wisconsin, 15, 55

When entitled to lien, 15, 52

When not entitled to lien, 15, 52

Examples, 15, 41-43

Examples of work, 15, 37-39

Flagging of sidewalks, 15, 38

Ground for lien, 15, 37

Hauling ore from mines, 15, 38

In general, 15, 37

Material-Man

Relation of Material-Man with Contractor, 15, 55

Examples, 15, 56

In general, 15, 55

Materials furnished for purpose named in statute, 15, 56

Materials supplied under an ordinary sale, 15, 56

To what materials liens extend, 15, 55

Materials must be furnished on credit of building, 15, 40

Materials not delivered, 15, 43

Materials Not Used, 15, 41

Bona fides, 15, 41

Delivery, 15, 43

Examples, 15, 41-43

Material not delivered, 15, 43

No price stipulated, 15, 43

Preference between labor and material, 15, 44

- Properly furnished, 15, 41
- Mining, 15, 38
- No price stipulated, 15, 43
- Preference between labor and material
 - 15, 44
 - Properly furnished, 15, 41
- Running Accounts**, 15, 39
 - Agreement of parties, 15, 40
 - Continuous account, 15, 40
 - Delivery at different times, 15, 39
 - Time limitation, 15, 39
- Sidewalks, 15, 38
- Time limitation, 15, 39
- Laborer**, 12, 532; 15, 45, 47, 48
 - Architect, 12, 532
 - Contractors and subcontractors, 12, 532
 - Joinder of miner's liens, 12, 532
- Laches, 15, 121
- Leasehold Estates**, 15, 17, 59
 - See infra*, **FIXTURES**.
 - Building, 15, 19
 - Estate of lessee, 15, 17
 - Examples, 15, 17, 18
 - Extent of lien, 15, 18
 - Filing lien against, 15, 152
 - Husband and wife, 15, 16
 - Improvements, 15, 19
 - Interests of Lessor**, 15, 19
 - Consent of lessor, 15, 20
 - Improvements by under tenant, 15, 19
 - Lessor agreeing to pay a gross sum towards erection of a house, 15, 19
 - When lessor bound, 15, 19, 20
 - Whether lessee can bind, 15, 19
 - Written consent, 15, 20
 - Merger, 15, 17
 - "Owner," 15, 18
 - Unexpired term, 15, 19
- Voluntary Surrender of Leased Premises**, 15, 21
 - Buildings erected by subtenant, 15, 22
 - Creditors of lessee, 15, 22
 - Effect, 15, 21
 - Examples, 15, 21
 - Sale of leased premises, 15, 22
- Legal and Equitable Estates**, 15, 11
 - Whether equitable estate subject to lien, 15, 11
 - Whether legal estate subject to liens, 15, 11
- Lessee**, 15, 59
 - See infra*, **LEASEHOLD ESTATES**.
 - Power to subject property to lien, 15, 69
 - Priority, 15, 97
- Lien Upon Separate Parcels**, 15, 86
 - Building on two or more contiguous lots, 15, 71
 - Joint contracts, 15, 74
 - Several buildings owned by same person, 15, 73
- Life estates, 15, 12
- Lightning rod erectors, 15, 45
- Loss and Discharge**, 15, 109
 - See infra*, **FILING**; **NOTICE**; **WAIVER**.
 - Acceptance of promissory note, 15, 109
 - Agreement between contractor and owner, 15, 117
 - Agreement of owner, 15, 116
 - Agreement to look to another person for settlement, 15, 114
 - Appointment of receiver, 15, 112
 - Apportionment of job among co-contractors, 15, 117
 - Assignment, 15, 116
 - Assignment of lien before action, 15, 116
 - Bona fide purchaser, 15, 112
 - Bond conditioned to pay just claims, 15, 110
 - Building over line, 15, 111
 - Change of ownership, 15, 111
 - Collateral Security**, 13, 623; 15, 115
 - Effect of giving, 15, 115
 - Examples, 15, 115
 - Surrender of security, 15, 115
 - What is not collateral security, 15, 115
 - Compliance with statute, 15, 113
 - Conveyance to innocent purchaser, 15, 112
 - Death of the owner, 15, 112
 - Destruction of building, 15, 7, 77, 111
 - Examples, 15, 116, 117
 - Failure of performance by original contractor, 15, 116
 - Joint claims, 15, 111
 - Pending suit, 15, 113
 - Proceeds of sale of property, 15, 112
 - Release, 15, 116
 - Restating accounts, 15, 111
 - Settlement of claims, 15, 114
 - Statute of limitations, 15, 115
 - Subcontractors**, 15, 116
 - Agreement between contractor and owner, 15, 117
 - Agreement of owner, 15, 116
 - Apportionment of the job among co-contractors, 15, 117
 - Examples, 15, 116, 117
 - Failure of performance by original contractor, 15, 116
 - Subcontractors' lien, 15, 116
 - Subsequent conveyance, 15, 112
 - Taking note payable at future date, 15, 109, 110
 - Whether destroyed by judgment, 15, 110
- Machinery**, 15, 35
- Machines**, 15, 32
- Married Women**, 15, 59, 65, 117
 - Agency implied, 15, 65
 - Agent of wife, 15, 65
 - Enforcement, 15, 117
 - Husband acting as married woman's agent, 15, 59
 - Husband acting as wife's agent, 15, 65
 - Pleading, 15, 117
 - Separate property, 15, 59
 - Showing coverture, 15, 117

MECHANIC'S LIEN—Cont'd

Marshalling, 15, 100

Material, see *infra*, LABOR AND MATERIALS.

Material-man furnishing material to contractor who has abandoned, 15, 78, 79

Material-men, see *infra*, LABOR AND MATERIALS.

Material must be furnished on credit of building, 15, 40

Material not delivered, 15, 43

Material Not Used, 15, 41

Bona fides, 15, 41

Delivery, 15, 43

Examples, 15, 41-43

Material not delivered, 15, 43

No price stipulated, 15, 43

Preference between labor and material, 15, 44

Properly furnished, 15, 41

Mechanics, 15, 47

Merger, 15, 17

Mines and Mining Claims, 15, 32, 608, 609

Construction, 15, 609

Examples, 15, 608, 609

Foreman, 15, 609

Hauling ore from mines, 15, 38

Superintendent, 15, 609

Mining, 15, 38

Mistake, 15, 165

Money Loaned for Building, 15, 35

Removal of buildings, 15, 35

Mortgage**Priority**, 15, 88

Additions to building, 15, 90

After commencement, but before completion, 15, 91

Examples, 15, 88-91

Extra work, 15, 90

Fraud, 15, 89

Improvements by mortgagee, 15, 91

Insurance money payable, 15, 89

Knowledge of mortgagor, 15, 90

Mortgagee having privileges of vendor, 15, 93

Purchase-money mortgage, 15, 89, 92

Railroads, 15, 90

Subsequent mortgages, 15, 88

Which lien paramount, 15, 88

Mortgagee, 15, 61

Enforcement, 15, 118

In general, 15, 118

Notice, 15, 128

Mortgagor, 15, 61

Municipal corporations, 15, 23, 202

Nature of the lien, 15, 5

New buildings, 2, 603

New trial, 15, 176

Nonsuit, 15, 176

Scire facias, 15, 198

No price stipulated, 15, 43

Notes as evidence, 15, 188

Notice, 15, 50, 125

Abandonment after payment in full, 15, 126

Alteration of notice, 15, 136

Ambiguities, 15, 134

Amendment, 15, 136, 178

Averment in complaint, 15, 161

By owners of corporation, 15, 134

By servant, 15, 134

Character in which work was performed, 15, 134

Date from which lien is claimed, 15, 133

Defective, 15, 136

Delay in giving, 15, 132

Description of property, 15, 133

Effect of failure, 15, 125

Examples, 15, 134

Failure to file, 15, 113

Failure to serve until after expiration of time prescribed by statute, 15, 126

Implied, 15, 129

Intention to claim benefit of lien, 15, 132

Joint, 15, 135

Labor or material furnished, 15, 133

Necessary statements, 15, 133, 134

Necessity of, 15, 125

Necessity of written, 15, 135

Object of, 15, 127

Of Claim to Owner, 15, 50, 125

Effect of failure to give, 15, 50

Effect of notice, 15, 51

Necessity, 15, 50

Of liens, 15, 97

Payment after, 15, 99

Payment before, 15, 99

Payment to contractor after, 15, 126

Payment to contractor before service, 15, 126

Priority as presented to owner, 15, 95

Proof of, 15, 137

Record of, 15, 189

Certified copy, 15, 189

Competency as evidence, 15, 189

Estoppel, 15, 189

Requisites of, 15, 132

Sale directly to owner, 15, 129

Service, 15, 134

Method of serving notice, 15, 134

Of notice on agent of owner, 15, 136

Personal notice, 15, 134

What service sufficient, 15, 134

Signature, 15, 133

Stating name of contractor, 15, 132

Stating name of owner, 15, 132

Statutes, 15, 125, 135

Subcontractor, 15, 128

Subcontractor's notice of contract, 15, 132

Subordinate liens, 15, 68

Time of Giving, 15, 129, 132

Examples, 15, 130

Extent of period fixed by statute, 15, 132

In Arkansas, 15, 130

In California, 15, 130

In District of Columbia, 15, 130

In Indiana, 15, 131

In Maryland, 15, 131

In Massachusetts, 15, 130

In Minnesota, 15, 130

- In Missouri, 15, 130
- In Nevada, 15, 130
- In New York, 15, 130
- In Rhode Island, 15, 131
- In Utah, 15, 131
- In Virginia, 15, 131
- Statutory provisions, 15, 129
- Successive contracts, 15, 131
- Thirty days after completion of work, 15, 130
- Upon commencement of work, 15, 130
- Verification, 15, 134
- Voluntary payment in good faith, 15, 127
- When not required, 15, 129
- Who Entitled to**, 15, 128
 - Cestui que trust, 15, 128
 - Claimants, 15, 128
 - Debtor and creditor, 15, 128
 - Generally, 15, 128
 - Mortgagee, 15, 128
 - Owner, 15, 128
 - Owner's agent, 15, 128
 - Railroad companies, 15, 129
 - Subcontractors, 15, 128
- Origin, 15, 7
- Original contractor, 17, 274
- Owner**, 15, 18, 57
 - See infra*, NOTICE; PARTIES; PAYMENT; STATEMENT OF CLAIM.
 - Any interest in land, 15, 57
 - By estoppel, 15, 65
 - Consent of**, 15, 58
 - Statutes, 15, 67
 - Declarations of, 15, 190
 - Defined, 15, 57
 - Estates less than fee, 15, 58
 - Examples, 15, 57, 58
 - Infants, 15, 60
 - Legal, 15, 57
 - Liability to subcontractor*, *see infra*, SUBCONTRACTOR.
 - Necessity of contracts with owner, 15, 52
 - Notice*, *see infra*, NOTICE.
 - Payment in full by owner to contractor, 15, 50
 - Payment in full to contractor, 15, 48
 - Permission by owner to build, 15, 73
 - Statutes, 15, 67
 - Tenant, 15, 18
 - Trespassers, 15, 58
 - Who entitled to subject property to lien, 15, 57
- Parol Evidence**, 15, 186, 188
 - When admissible, 15, 188
 - When inadmissible, 15, 188, 189
 - Whether material furnished on credit of building, 15, 188
- Parties**, 15, 165, 179
 - Agent, 15, 167
 - Amendments, 15, 178
 - Assignor, 15, 169
 - Builder, 15, 166
 - Cestui que trust, 15, 167
 - Contractor, 15, 166
 - Corporation, 15, 166
 - Estate by curtesy, 15, 168
 - Examples, 15, 165, 172
 - Homestead, 15, 168
 - Husband and wife, 15, 167
 - Joint and Several Actions**, 15, 169
 - Defendants, 15, 169
 - Examples, 15, 169, 170
 - Firm name, 15, 169
 - Parties having distinct liens, 15, 169
 - Partners, 15, 169
 - Plaintiff, 15, 169
 - Waiver of non-joinder, 15, 170
 - Lessee and contractor, 15, 166
 - Material-man, 15, 166
 - Necessity of legal owner, 15, 165
 - Objections to irregularities, 15, 166
 - Other claimants, 15, 168
 - Owner, 15, 166
 - Partners**, 15, 169
 - Survivorship, 15, 170
 - Persons interested, 15, 165
 - Persons made parties after suit brought, 15, 171
 - Principal, 15, 167
 - Prior and subsequent lienors, 15, 171
 - Purchasers, 15, 168
 - Purchasers after suit brought, 15, 168
 - Question for jury, 15, 172
 - Remedy for impleading wrong parties, 15, 172
 - Rights of persons not parties, 15, 171
 - Suits in the nature of chancery proceedings, 15, 172
 - Survivorship, 15, 170
 - Tenants in common, 15, 169
 - Trustee, 15, 167
 - Vendor, 15, 169
 - Who must be made, 15, 165
- Partnership**
 - Parties to actions, 15, 169
 - Survivorship, 15, 170
- Payment**, 15, 97
 - After notice, 15, 99
 - Application of, 15, 97
 - Before notice, 15, 99
 - Collusive, 15, 98
 - Compliance with contract, 15, 97
 - Credit to owner, 15, 99
 - In advance, 15, 99
 - In Full by Owner**
 - Completion of contract after contractor has abandoned, 15, 79, 80
 - In full by owner to contractor, 15, 50
 - In full to contractor, 15, 48
 - Made to original contractor before notice, 15, 68
 - Money not due, 15, 119
 - Of specific property, 15, 98
 - On open accounts, 15, 99
 - Order of, 15, 98
 - Out of funds deposited, 15, 100
 - Owner's liability, 15, 119
 - Plea of, 15, 175
 - Presumption as to time, 15, 98
 - Set-off, 15, 100

MECHANIC'S LIEN—Cont'd**Payment—Cont'd****To Contractor, 15, 126**

Abandonment by contractor, 15, 126

Before service of notice, 15, 126

Voluntary payment in good faith, 15, 127

Upon completion of work, 15, 98

Upon delivery, 15, 98

Permission by owner to build, 15, 73

"Personal services," 18, 407

Persons Entitled to Liens, 15, 44*See infra*, SUBCONTRACTOR.

Agent of corporation, 15, 45

Architect, *see infra*, ARCHITECT.

Civil engineer, 15, 45

Compliance with statute, 15, 6

Contract with owner, 15, 46

Cook, 15, 45

Definition of the word "materials," 15, 46

Foreman, 15, 45

Gas fitter, 15, 45

House painter, 15, 45

Laborers, 15, 45

Lightning rod erectors, 15, 45

Necessity of contract with owner, 15, 46

Persons furnishing material, 15, 44

Persons performing labor on building, 15, 44

Plaster, 15, 45

President of manufacturing corporations, 15, 46

Several contractors, 15, 55

Superintendent, 15, 44

Superintendent of mine, 15, 46

Supervising architect, 15, 45

Teamster, 15, 46

Timekeeper, 15, 46

Workmen employed by contractors, 15, 46

Persons Entitled to Subject Property to Liens, *see infra*, EXECUTORS AND ADMINISTRATORS; GUARDIAN AND WARD; HUSBAND AND WIFE; INFANTS; LABOR AND MATERIALS; LESSEE; MARRIED WOMEN; MORTGAGEE; MORTGAGOR; OWNER; SUBCONTRACTOR; TENANTS IN COMMON; TRUSTS AND TRUSTEES; VENDOR AND PURCHASER.*Agent of owner, *see infra*, AGENCY.*

Architect, 15, 70

Builder, 15, 70

*Contractor of owner, *see infra*, CONTRACTOR.*

Equitable owner, 15, 11

*Husband or wife, *see infra*, HUSBAND OR WIFE.*

Legal owner, 15, 11

*Lessee, *see infra*, LESSEE.*

Persons in possession, 15, 68

Statutes, 15, 69

Third person, 15, 74

*Trustee of owner, *see infra*, TRUSTS AND TRUSTEES.*

Persons furnishing material, 15, 44

Persons performing labor on building, 15, 44

Persons residing out of the state, 15, 57

*Petition, *see infra*, COMPLAINT.***Pleading, 15, 172***See infra*, COMPLAINT.

Affidavit, 15, 173

Answer, 15, 173

Bad pleas, 15, 174

Changing form of action, 15, 176

Consolidation of suits, 15, 176

Default, 15, 176

Defects in proceedings, 15, 175

Defenses, 15, 174

Description, 15, 175

Effect of nonsuit, 15, 176

Equity practice, 15, 172

In Illinois, 15, 173

In Iowa, 15, 173

In New York, 15, 173

New trial, 15, 176

Nul tiel record, 15, 174

Payment, 15, 175

Plea, 15, 173

Requisites of good plea, 15, 174

Scire facias, 15, 173, 199

Stay of proceedings, 15, 175

Time of filing answer, 15, 174

Trial by jury, 15, 176

When answer received as evidence, 15, 174

Preference between labor and material, 15, 44, 95

President of manufacturing corporations, 15, 46

Priority, 15, 86, 95*See infra*, MORTGAGE; PRIOR LIENS; VENDOR AND PURCHASER.

Agreement to give a mortgage, 10, 385

Attachment, 15, 92

Contractors and subcontractors, 15, 95

Deceased debtor, 15, 96

Dower, 15, 97

Evidence, 15, 191

Examples, 15, 86, 87

Garnishment, 15, 92

In general, 15, 86

Lessee, 15, 97

Lien acquired after making of contract, 15, 87

Lien Holders Inter Se, 15, 95

Labor and material, 15, 44, 95

Mechanics having first contract, 15, 96

Order in which notice was presented to owner, 14, 95, 96

Whether priority exists, 15, 95

Work begun before mortgage was recorded, 15, 96

Notice, 15, 97

Ordinary creditors, 15, 92

Person holding under trust deed, 15, 93

Prior liens, 15, 51, 86, 94

Pro rata distribution, 15, 95, 96

Subsequent to commencement of building, 15, 86

- Prior liens, 15, 51, 86, 94
 Promissory notes as evidence, 15, 188
 Properly furnished, 15, 41
Public Buildings, 15, 29
 Churches, 15, 30
 Court houses, 15, 30
 Examples, 15, 29, 30
 In general, 15, 29
 Jails, 15, 30
 School houses, 15, 30
 Waterworks, 15, 31
Purchase-Money Mortgages, 19, 579
 Priority, 15, 89, 92
 Priority in general, 19, 579
 Statutes, 19, 589
 Where mortgagee has consented to the erection of the building, 19, 580
Questions of Law and Fact, 15, 172
 Additions, 15, 34
 Railings, 15, 32
Railroads, 15, 23, 31, 90; 19, 879
 Bridges, 15, 23, 24, 26, 31
 Construction, 15, 23, 24, 27
 Construction of laws, 15, 23
 Detached portions, 15, 27
 Engine house and turntable, 15, 23
 Filing statement of claim, 15, 152
 In general, 19, 879
 Materials, 15, 26
 Notice, 15, 129
 Ordinary mechanics' lien laws, 15, 23
 Partially within state, 15, 27
 Priority as to mortgages, 15, 90
 Rolling stock, 15, 26
 Services and material, 19, 879, 880
 Side-tracks, 15, 24
 Station buildings, 15, 23
 Statute requiring bond with surety, 15, 26
 Street railroads, 15, 24
 Temporary structure, 15, 27
 Tunnels, 15, 32
 Upon what lien exists, 19, 879, 880
Waiver of Lien, 15, 108
 Acceptance of promissory note, 15, 108
 In general, 15, 108
 Subcontractor, 15, 108
 When not subject to, 15, 23, 27
 When subject to, 15, 23, 27
 Whether statutes retroactive, 15, 27
Rebuilding, 15, 33
Receiver, 15, 124
 Effect of appointment, 15, 112
Recording, see *infra*, FILING.
 Redemption, 15, 202
 Relation, 20, 736
Relation of Material-Man and Contractor, 15, 55
 Examples, 15, 56
 In general, 15, 55
 Materials furnished for purpose named in statute, 15, 55
 Material supplied under an ordinary sale, 15, 56
 To what materials liens extend, 15, 55
 Relation to other liens, 15, 8
 Release, 15, 116, 125
 Removal of building, 15, 35
 Repairs, 15, 35
 Rescission, 15, 78
 Reservoirs, 15, 32
 Res gestæ, 15, 190
 Return, 15, 199
 Reversionary estates, 15, 22
 Right to land, 15, 7
 Rolling stock, 15, 26
Running Accounts, 15, 39
 Agreement of parties, 15, 40
 Continuous account, 15, 40
 Delivery at different times, 15, 39
 Time limitation, 15, 39
Sale, 15, 199
 Distribution of proceeds, 15, 199, 200
 Examples, 15, 199-203
 In general, 15, 199, 200
 Lien upon separate buildings, 15, 203
 Nature of interest to be sold, 15, 200
 Property of municipal corporation, 15, 202
 Redemption, 15, 202
 Sale of property subject to prior incumbrance, 15, 201
 Separate appraisalment, 15, 203
 Stay of execution, 15, 203
 What interest may be sold, 15, 200
 When sale should be authorized, 15, 201
 Who bound by sale, 15, 201
Scaffolding, 15, 34
School houses, 15, 30
Scire Facias, 15, 173, 197
 See SCIRE FACIAS.
 Decease of owner, 15, 198
 Examples, 15, 197
 In general, 15, 197
 Judgment, 15, 197
 Nature of proceedings, 15, 197
 Necessary allegation, 15, 197
 Nonsuit, 15, 198
 Proceedings in rem, 15, 197
 Proper pleas, 15, 199
 Return, 15, 199
 Service of writ, 15, 198
 Set-off, 15, 198
 Statutes, 15, 197
 What plaintiff must show, 15, 197
 When issued to preserve lien, 15, 198
 When maintained, 15, 198
 When plaintiff entitled to judgment, 15, 199
 Service of notice, 15, 134
Service of Process
 Scire facias, 15, 198
Set-Off, 15, 100, 198
 Filing statement of claim, 15, 146
 Fraud or collusion, 15, 100
 Pro tanto discharge, 15, 100
 What may be, 15, 100
 Settlement of claims, 15, 114
Several Buildings
 Judgment, 15, 195
 Sale, 15, 203
 Several contractors, 15, 55

MECHANIC'S LIEN—Cont'd**Several Houses**

Considered as one building, 15, 120

Sheriff's sales, 22, 625

Ships and shipping, 15, 32

Sidewalks, 15, 38

Signature

Notice, 15, 129

Stage and scenery, 15, 28

Statement of Claim, see *infra*, **FILING**

STATEMENT OF CLAIM.

Time for filing, 15, 154

Stations, 15, 23, 28

Statute of limitations, 15, 115, 121

Statutes, 15, 52

Constitutional provisions requiring that subject shall be expressed in the title, 23, 242

Constitutional provisions that statute shall contain no more than one subject, 23, 273

Contract with owner, 15, 52

In Alabama, 15, 53

In California, 15, 53

In Colorado, 15, 53

In Georgia, 15, 54

In Illinois, 15, 54

In Indiana, 15, 54

In Iowa, 15, 54

In Kansas, 15, 54

In Louisiana, 15, 54

In Minnesota, 15, 54

In Mississippi, 15, 54

In Nevada, 15, 54

In New York, 15, 53, 54

In Ohio, 15, 55

In Pennsylvania, 15, 55

In Rhode Island, 15, 55

In South Carolina, 15, 55

In Virginia, 15, 55

In Wisconsin, 15, 55

When entitled to lien, 15, 52

When not entitled to lien, 15, 52

Statutory creation, 15, 5

Statutory origin, 15, 9

Stay of proceedings, 15, 175, 203

Steamboats, 15, 29

Street railroads, 15, 24; 23, 943

Subcontractor, 15, 47

Amount due from owner to contractor, 15, 51

Amount secured by lien, 15, 86

Assignment for the Benefit of Creditors

• By contractor, 15, 116

Bound by terms of original contract, 15, 51

Burden of proof, 15, 51

Claims and rights of subcontractors, 15, 49

Compliance with terms of statute, 15, 49

Contract with owner, 15, 52

Defenses, 15, 51

Employee's claims, 15, 120

Enforcement of claim, 15, 120

Expenses incurred through idleness, 15, 52

Failure of performance by contractor, 15, 52

Failure to plead contract, 15, 52

Husband and wife, 15, 17

In Alabama, 15, 53

In California, 15, 53

In Colorado, 15, 53

In Georgia, 15, 54

In Illinois, 15, 54

In Indiana, 15, 54

In Iowa, 15, 54

In Kansas, 15, 54

In Louisiana, 15, 54

In Minnesota, 15, 54

In Mississippi, 15, 54

In Nevada, 15, 54

In New York, 15, 53, 54

In Ohio, 15, 55

In Pennsylvania, 15, 55

In Rhode Island, 15, 55

In South Carolina, 15, 55

In Virginia, 15, 55

In Wisconsin, 15, 55

Insolvency, 15, 48

Journeymen laborers, 15, 47

Judgment in personam, 15, 193

Loss or Discharge, 15, 116

Agreement between contractor and owner, 15, 117

Agreement of owner, 15, 116

Apportionment of the job among co-contractors, 15, 117

Examples, 15, 116, 117

Failure of performance by original contractor, 15, 116

Mechanics, 15, 47

Notice, see *infra*, **NOTICE.**

Payment in full by owner, 15, 48, 50

Performance, 15, 52

Performance by contractor, 15, 48

Persons residing out of the state, 15, 57

Power to subject property to lien, 15, 69

Relation of Material-Man with Contractor, 15, 55

Examples, 15, 56

In general, 15, 55

Material furnished for purpose

named in statute, 15, 55

Material supplied under an ordinary sale, 15, 56

To what materials liens extend, 15, 55

Retaining money due contractor, 15, 52

Waiver of lien, 15, 104

When entitled to liens, 15, 47-52

When lien attaches, 15, 83

When not entitled to lien, 15, 52

Whether entitled to liens, 15, 46, 47

Who considered subcontractors, 15, 47

Subordination, see *infra*, **PRIORITY.**

Superintendent, 15, 44

Supervising architect, 15, 45

Sureties, 15, 60

Surplus on foreclosure of mortgage, 24, 958

Teamster, 15, 46

Tenancy at will, 15, 21

Tenant at sufferance, 15, 58

Tenants in common, 15, 63

Termination of contract, 15, 78

Theaters, 15, 28

Time

Allegations of, 15, 187

Averments as to, in stating claim, 15, 147

Time keeper, 15, 46

Time limitation, 15, 39

Time of Filing Lien, 15, 148

Compliance with terms of statute, 15, 148-150

Examples, 15, 150

Expiration of Time, 15, 151

Excuse, 15, 152

Extra work, 15, 151, 154

In general, 15, 151

In Alabama, 15, 148

In Arkansas, 15, 148

In California, 15, 148

In Connecticut, 15, 148

In Kansas, 15, 149

In Massachusetts, 15, 149

In Missouri, 15, 149

In Montana, 15, 149

In New York, 15, 149

In Pennsylvania, 15, 149

In Texas, 15, 149

Materials furnished under an entire contract, 15, 151

Necessity, 15, 150

Performance of contract, 15, 151

Statutory regulations, 15, 148

When materials are furnished, 15, 150

When time of filing lien begins to run, 15, 150

When work is finished, 15, 150

Time Within Which Lien Must Be Enforced, 15, 115, 121

Examples, 15, 121

Generally, 15, 121

In Arkansas, 15, 122

In Colorado, 15, 121

In Georgia, 15, 122

In Illinois, 15, 122

In Iowa, 15, 122

In Kansas, 15, 122

In Kentucky, 15, 122

In Maine, 15, 122

In Maryland, 15, 122

In Massachusetts, 15, 122

In Minnesota, 15, 121

In Mississippi, 15, 122

In Missouri, 15, 122

In New Jersey, 15, 122

In New York, 15, 123

In Oregon, 15, 121

In Pennsylvania, 15, 122

In Rhode Island, 15, 123

In Tennessee, 15, 123

In Virginia, 15, 123

In West Virginia, 15, 123

In Wisconsin, 15, 123

Period prescribed by statute, 15, 121

Tramways, 15, 32

Trespassers, 15, 58

Trestles, 15, 31

Trusts and Trustees, 15, 64, 69; 27, 130

Examples, 27, 130

Power of trustee to make repairs and improvements, 27, 130

Power to subject property to lien, 15, 70

Validity of lien, 27, 130

Whether property subject to, 27, 130

Tunnels, 15, 32

Turnpikes, 15, 32

Upon boats, 2, 439

Variance, 15, 184, 185, 194

Statement of claim, 15, 146

Vendor and Purchaser, 15, 61

Bona fide purchaser, 15, 62

Parties to actions, 15, 168, 169

Priority, 15, 93

Mortgagee having privilege of vendor, 15, 93

Vendee, 15, 94

Vendee's equitable estate, 15, 94

Vendee's judicial sales, 15, 94

Vendor's lien, 15, 92

Vendee of purchaser, 15, 62

Vendor, 15, 62

Examples, 15, 62, 63

Reading of statutes, 15, 62, 63

When liable, 15, 62, 63

Whether vendee can create the lien, 15, 61

Verdict, 15, 195

Verification, 15, 154

Defective affidavit, 15, 154

Examples, 15, 154, 155

Of claim, 15, 154

Of notice, 15, 134

Sufficiency, 15, 154

Waiver, 15, 104

See *infra*, LOSS AND DISCHARGE.

Acceptance of promissory note, 15, 108, 109

Accepting mortgage security, 15, 107

Accepting security, 13, 623

Agreement for credit, 15, 107

Agreement to give credit, 15, 108

Estoppel, 15, 108

Estoppel of subcontractor, 15, 109

Expressed, 15, 104

Extending credit beyond statutory period for enforcing lien, 15, 107

Failure to return promissory note, 15, 106

Implied, 15, 104

Lien on railroad, 15, 108

Negotiating promissory note, 15, 106

Of judgment, 15, 196

On default of performance, 15, 80

Proceeding by personal action, 15, 108

Special agreement, 15, 104

Subcontractors, 15, 104, 108

Surrender of possession, 15, 108

Taking promissory note, 15, 105

MECHANIC'S LIEN—Cont'd**Waiver—Cont'd**

Validity of special agreement, 15, 104, 105

Where note is dishonored, 15, 107

Waterworks and water companies, 15, 31, 32; 29, 23

Wharves, 15, 31

What Subject to Lien, see *infra*, BUILDINGS; CORPORATIONS; FIXTURES; HOMESTEAD; HUSBAND AND WIFE; LABOR AND MATERIALS; LEASEHOLD ESTATES; LEGAL AND EQUITABLE ESTATES; LIFE ESTATES; MACHINERY; RAILROADS; TENANCY AT WILL.

Different interests, 15, 10

Examples, 15, 9, 10

Inchoate title, 15, 10

Interest of person contracting as owner, 15, 9

Land, 15, 9

Money due from insurance company, 15, 11

Person owning superstructure and not land, 15, 10

Proceeds of land sold, 15, 11

Proceeds of sale of property, 15, 112

Statutory provisions, 15, 10

When Lien Acquired, 15, 80

Assignment of property, 15, 83

Commencement of building, 15, 82

Examples, 15, 80, 81

Filing notice, 15, 83

In Arkansas, 15, 81

In California, 15, 81

In District of Columbia, 15, 81

In Texas, 15, 81

In Wisconsin, 15, 81

Lien of subcontractor, 15, 83

When contract is made, 15, 82

When work is finished, 15, 82

When work of furnishing materials begins, 15, 80

Whether a remedy, 20, 973

Work, 29, 851

Writing, 15, 72

MEDICAL

Medical attendant, 18, 428

Medical attendant, see LIFE INSURANCE.

MEDICAL ASSOCIATION

Expulsion, causes for, 1, 560

MEDICAL JURISPRUDENCE, 15, 205, 234

See generally, ASSAULT; BASTARDY; CHASTITY; CRIMINAL LAW.

See EXPERT AND OPINION EVIDENCE.

See generally, HOMICIDE; IDENTITY; INSANITY; MALPRACTICE.

See PHYSICIANS AND SURGEONS; POISON AND POISONING; POISONS; RAPE; SURVIVORSHIP.

Abortion, see ABORTION.

Medical books, see BOOKS AS EVIDENCE.

Blindness, 15, 235

Blood Stains, 15, 236

Chemical test, 15, 238

Color, 15, 237

Corpuscles, 15, 240

Diameter of corpuscles, 15, 241

Examples, 15, 236-248

Human blood distinguished from that of lower animals, 15, 238, 239

In general, 15, 236

Microscopic tests, 15, 239

Solubility, 15, 237

Spectroscopic test, 15, 247

The guaiacum test, 15, 238

Cadaveric lividity, 15, 260

Cadaveric rigidity, 15, 259

Cæsarean operation, 15, 217

Consumption, 15, 235

Deafness, 15, 235

Death

Signs of, 15, 258

Cadaveric lividity, 15, 260

Cadaveric rigidity, 15, 259

Cessation of circulation, 15, 258

Cessation of respiration, 15, 258

Filmy aspect of the eyes, 15, 258

Loss of animal heat, 15, 258

Mummification, 15, 261

Pallor of body, 15, 258

Putrefaction, 15, 260

Saponification, 15, 260

Definitions, 15, 205

Delivery, 15, 214

Doubtful sex, 15, 217

Epilepsy, 15, 234

Evidence

Infanticide, 15, 228

Expert and Opinion Evidence, 15, 206

Medical books, see BOOKS AS EVIDENCE.

Anatomical evidence, 15, 210

Compensation of medical experts, 15, 210

Examples, 15, 206

In general, 15, 206

Qualifications, 15, 206

Skull and surgical instruments, 15, 210

Feigned Diseases, 15, 234

Blindness, 15, 235

Consumption, 15, 235

Deafness, 15, 235

Epilepsy, 15, 234

In general, 15, 234

Mutilations, 15, 235

Paralysis, 15, 235

Trance, 15, 235

Wounds, 15, 235

Fœticide, 15, 220

Impotency, 15, 218

Infanticide, 15, 221

A dead-born child, 15, 222

Burden of proof, 15, 225

Child must be wholly delivered, 15, 221

Compression of the umbilical cord, 15, 225

Debility, 15, 226

Definition, 15, 221

Evidence, 15, 228

Examples, 15, 226

Fractures, 15, 226

Hemorrhage, 15, 226

- Hydrostatic tests, 15, 223
- Independent circulation, 15, 222
- Live child, 15, 222
- Medical evidence, 15, 222
- Neglect causing death, 15, 226
- Protracted delivery, 15, 226
- Respiratory organs, 15, 223
- The umbilical cord, 15, 222
- In general, 15, 234
- Monsters, 15, 217
- Mummification, 15, 261
- Mutilations, 15, 235
- Paralysis, 15, 235
- Paternity, 15, 215
- Poison, 15, 251
- Pregnancy**, 15, 211
 - Delivery, 15, 214
 - Duration of, 15, 211
 - Early viability, 15, 211
 - Examples, 15, 211-214
 - Period of gestation, 15, 211
 - Signs of, 15, 211
- Putrefaction, 15, 260
- Resemblance to putative father, 15, 215
- Saponification, 15, 260
- Sexual disability, 15, 218
- Sexual relations, 15, 211
- Signs of Death**, 15, 258
 - Cadaveric lividity, 15, 260
 - Cadaveric rigidity, 15, 259
 - Cessation of circulation, 15, 258
 - Cessation of respiration, 15, 258
 - Filmy aspect of eyes, 15, 258
 - Loss of animal heat, 15, 258
 - Mummification, 15, 261
 - Pallor of the body, 15, 258
 - Putrefaction, 15, 260
 - Saponification, 15, 260
- Sterility, 15, 218
- Superfoetation, 15, 220
- Tenancy by curtesy, 15, 216
- Trance, 15, 235
- Wounds, 15, 235
- MEDICINE**
- Graduate in medicine, 18, 428
- MEETINGS**, 15, 261
 - See **DISTURBING MEETINGS; TOWNS AND TOWNSHIPS.**
 - Quorum*, see **QUORUM.**
 - Schools*, see **SCHOOLS.**
 - Acts of county commissioners at irregular, 4, 397
 - Contracts of county commissioners at irregular, 4, 397
 - Corporations**
 - Directors' meetings*, see **DIRECTORS.**
 - Annual meeting for election of officers, 17, 44
 - Place of Meeting**, 17, 43
 - Directors meeting in foreign state, 17, 86
 - Inferior and judicial or quasi judicial board, 15, 1031
 - Joint bodies, 15, 1031
 - Municipal Corporations**, 15, 1028
 - Ayes and Nays**, 15, 1036
 - Individual responsibility, 15, 1037

- Journal, 15, 1037
- Necessity for calling, 15, 1036
- Nunc pro tunc, 15, 1037
- Object of requirements, 15, 1037
- Whether statutory provision directory, 15, 1036
- Committee**, 15, 1038
 - Contract of, 15, 1038
 - Examples, 15, 1038, 1039
 - Quorum of members of committee, 15, 1039
- Individual member, 15, 1029
- Inferior and judicial or quasi judicial board, 15, 1031
- Joint bodies, 15, 1031
- Majority of members, 15, 1030
- Notice**
 - Regular meetings, 15, 1034
 - Special or adjourned meeting, 15, 1035
- Power only exercised at corporate meetings, 15, 1028
- Quorum*, see **QUORUM.**
- Regular Meetings**, 15, 1034
 - Notice of, 15, 1034
 - Presumption in favor of, 15, 1034
- Special and Adjourned Meetings**, 15, 1034
 - Adjourned meeting as a continuation, 15, 1035
 - Contempt, 15, 1036
 - Notice, 15, 1035
 - Presumption of regularity, 15, 1035
 - Provision for, 15, 1034
 - What business may be transacted at adjourned meeting, 15, 1035
 - What business may be transacted at special meeting, 15, 1036
- Suspension of Rules**, 15, 1038
 - Ratification, 15, 1038
 - Rescission, 15, 1038
- Time for holding meetings, 15, 1029
- What affairs must be transacted at corporate meetings, 15, 1028
- Who must be present to constitute a valid meeting, 15, 1030
- Of county commissioners, 4, 376
- Special**
 - County commissioners, 4, 376
- Stockholders**, 23, 627
 - Formal vote, 23, 627
 - Increase of stock, 23, 627
 - Meeting outside of state, 23, 628
 - Notice of meeting, 23, 627
 - Passage of resolution, 23, 628
- Sunday, 24, 579
- Taxation**
 - Boards of equalization and review, 25, 255, 256
- MELANCHOLIA**
 - Excuse for crime, 4, 720
- MEMBERS**, 15, 261
 - Criminal law, 15, 262
 - Life or member, 15, 262
 - Member of corporation, 15, 261
 - Member of political party, 15, 262
 - Members elected, 15, 262
 - Members of the legislature, 15, 261

MEMORANDUM, 15, 262*See* **FRAUDS, STATUTE OF; WITNESSES.**

Age, 15, 276

Checks, 3, 219

Corroboration, 15, 269

Deceased Persons

Bank clerks, 15, 272

When Made by, 15, 270

Absconding clerks, 15, 272

Age, 15, 276

Dying declarations, 15, 277

Explain a will, 15, 274

Family Bible, 15, 276

In regard to age, 15, 276

Insane clerks, 15, 272

In the usual course of business, 15, 270

Letters, 15, 270

Lost books and papers, 15, 276

Made against their interest, 15, 273

Memorandum not a record, 15, 277

Memorandum of former executor, 15, 277

Messengers, 15, 272

Private memoranda of deceased persons, 15, 274

Professional persons, 15, 271

Public officers, 15, 271

Rules in regard to entries made by deceased notaries, 15, 272

Surveyor's field notes, 15, 272

When made in pursuance of duty, 15, 272

Definition, 15, 263

Dying declarations, 15, 277

Evidence, 15, 263As part of *res gestæ*, 15, 270

Corroboration, 15, 269, 270

Examples, 15, 269

Memoranda of agreement, 15, 269

Not signed by other party, 15, 269

Parol evidence, 15, 269

Purpose for which memorandums are admitted, 15, 263

When admissible, 15, 263

Executors and administrators, 15, 277

Goods sold on, 15, 278

Insanity

Insane clerks, 15, 272

Lost books and papers, 15, 276

Made In Usual Course of Business, 15, 267*See* **BOOKS AS EVIDENCE.**

Calling person who made them, 15, 267

Certificate of third person, 15, 267

Conflict of opinion, 15, 267

Corroborating testimony, 15, 267, 268

Deceased persons, 15, 270

Examples, 15, 267

Person residing out of state, 15, 267-269

When admissible, 15, 267

When question of time material, 15, 268

Notaries, 15, 272

Of sale, 15, 278

Other memoranda, 17, 284

Parol Evidence, 17, 432

Admissibility of parol evidence, 17, 432

Not intended to have effect as a contract, 17, 432

Terms of sale, 17, 432

Pawnbrokers, 15, 278

Professional persons, 15, 271

Res gestæ, 15, 270**Statute of Frauds***See* **FRAUDS, STATUTE OF.**

Receipt as, 19, 1129

Surveyor's field notes, 15, 272

To explain will, 15, 274

MEMORY, 15, 279, 499**MEN, 15, 280**

Good and lawful men, 8, 1360

MENIAL, 15, 279**MENIAL SERVANT, see SERVANTS.****MENTAL AND PHYSICAL CAPACITY OF DECEDENT, 5, 129****MENTAL CAPACITY, see INSANITY; TESTAMENTARY CAPACITY.****MERCANTILE, 13, 818**

Mercantile business, 2, 701

MERCANTILE AGENCIES, 15, 280*See* **GENERAL AGENCY.**

Collections, 15, 301

Contracts limiting liability for negligence, 15, 294

Definition of, 1, 348; 15, 280

False Representations of One's Own Solvency to Agency, 15, 297

Action for deceit, 15, 297

False representations of third person's solvency, 15, 300

Intent, 15, 298

Intent that representations be relied upon, 15, 299

Plaintiff's knowledge of representations, 15, 299, 300

Showing intent, 15, 298

Injunction, 15, 301

Liability as affected by Lord Tenterden's act, 15, 295

Liability of agency's informant, 15, 297

Libel and slander, 13, 414

Partnership

Evidence of partnership, 17, 1322

Reports as Privileged Communications, 15, 280

Canadian decisions, 15, 291

Cipher, 15, 288

Decisions in Georgia, 15, 290

Decisions in Maryland, 15, 289

Employees of agency, 15, 290

Entering information in books to which clerks have access, 15, 290

Incorrect statements of rule, 15, 293

Indictment for criminal libel, 15, 286

In general, 15, 280

Interest of subscribers, 15, 281

Libel and slander, 15, 286

New York rule, 15, 283

Relation of agency's employees to question of privilege, 15, 290

United States decisions, 15, 282

Vol. I.

- Whether distinguished from individuals, 15, 286
 Statute of frauds, 15, 295
MERCANTILE LAW, 15, 302; 16, 761
MERCANTILE PARTNERSHIP, 15, 302
MERCHANTISE, 14, 333; 15, 302
Goods, wares, and merchandise within the statute of frauds, see FRAUDS, STATUTE OF.
 Baggage, 15, 303
 Bank bills, 15, 302
 Bills and notes, 15, 302
 Cattle, 15, 303
 Fruit, 15, 304
 Gold coin, 15, 302
 Horses, 15, 303
 Insurance policy, 15, 303
 Meat, 15, 304
 "Other lawful merchandise," 3, 147
 Stocks, 15, 302
MERCHANTABLE, 15, 306
 Good and merchantable, 8, 1360
MERCHANTS, 13, 527; 15, 305; 25, 487
See COMMISSION MERCHANTS; FORWARDING MERCHANTS.
 Banker, 15, 305
 Bankrupt acts, 15, 306
 Commercial travelers or drummers, 15, 306
 Druggist, 15, 306
 Hotel keeper, 15, 305
 Ice dealer, 15, 305
 Insolvency laws, 15, 306
 Merchant, artificer, 1, 777
 Merchant exporter, 7, 525
 Merchant's risk, 15, 311
MERCHANTS' ACCOUNTS, 15, 311
MERCHANTS' APPRAISER, 15, 310
MERCHANTS' LAW
 Judicial notice, 12, 164
MERE
 Mere account, 15, 311
 Possession in co-tenant, 1, 235
MERELY, 15, 312
MERETRICIOUS, 15, 312
MERGER, 15, 312
Contracts, see infra, SECURITIES.
 Abortion, 15, 367
 Accomplice, 15, 362
 Actions on accounts, 15, 341
 Agency, 15, 342
 Arson, 15, 368
 Assault, 4, 648; 15, 364, 365
 Manslaughter, 15, 366
 Rape, 15, 366
Assumpsit
 Where simple contract is merged, 1, 888
 Attempt, 15, 362
Bankruptcy Proceedings, 15, 350
 Claim not barred by discharge, 15, 350
 Discharge in foreign countries, 15, 350
 In general, 15, 350
 Judgment after filing a debtor's petition, 15, 350
Bills and Notes, 15, 336, 342
 Higher security, 15, 352, 353; 18, 185
Renewal, 15, 353, 354
 Benefit of a mortgage, 15, 355
 Intention of parties, 15, 355
 Suspension of remedy on old note, 15, 353
 Whether a merger, 15, 354
 Whether a new debt is created, 15, 355
 Whether a payment, 15, 354
Burglary, 15, 367
 Carrying concealed weapons, 15, 366
 Collateral security, 15, 351
Conspiracy, 15, 360
Criminal Conspiracy, 4, 591; 15, 360, 369
 Burglary, 15, 368
 Crime with same degree as the conspiracy, 15, 369
 Whether conspiracy is merged in the commission of the crime, 15, 369
Criminal Law, 15, 359
See infra, ASSAULT; HOMICIDE; TREASON.
Conviction of lower crime as bar to higher, see JEOPARDY.
 Conviction of a lower crime, 15, 361
 Examples, 15, 369
 Felony proved on indictment for misdemeanor, 15, 361
 Higher crime includes the lesser, 4, 648
 Indictment as principal, conviction as accomplice, 15, 361, 362
 Indictment containing several counts, 15, 362
 Indictment for murder and conviction of a lower degree of homicide, 4, 649
 Indictment for offense, conviction for attempt, 15, 362
Indictment for Riot
 Conviction for assault, 4, 649
 Manslaughter by negligence, 4, 649
 Mayhem, 4, 649
 Misdemeanors and felonies, 4, 648
 Modern changes, 15, 360
 Obstructing justice, 4, 649
 Offense of the same character, 15, 359
 Offense proved includes the offense charged, 15, 361
 Offenses belonging to same class, 15, 362
 Piracy, 4, 649
 What is, 15, 359
 Where different degrees of offense are charged, 15, 363
 Definition, 15, 313
 Demands ex contractu, 15, 341
 Demands ex delicto, 15, 346
 Easements, 6, 146
 Executors and administrators, 7, 234, 235; 15, 351
 Executory interests, 20, 964
 Garnishment, 15, 342
Giving Higher Security, 15, 352, 353; 18, 185
 Examples, 18, 185

MERGER—Cont'd

Giving Higher Security—Cont'd

- Note under seal, 18, 185
- Obligation of equal dignity, 18, 185
- Whether it constitutes payment, 18, 185

Homicide, 4, 649; 15, 363, 366

Incest, 15, 367

In Estates, 15, 313, 315

Contract to convey land, 15, 318

Covenants, 15, 318

Different Estates Vesting in Same Person, 15, 315

Estates for Years, 15, 316

Attachment, 15, 317

Estates held in different rights, 15, 317

Liens, 15, 317

Life estate the greater estate, 15, 316

New lease, 15, 317

Union of estates, 15, 316

When there is no merger, 15, 317

Estates tail, 15, 316

Merger of life estates, 6, 879; 15, 315

Estates for Years, 12, 758; 15, 316

Attachment, 15, 317

Estates held in different rights, 15, 317

Liens, 15, 317

Life estate the greater estate, 15, 316

New lease, 15, 317

Union of estates, 15, 316

When there is no merger, 15, 317

Estates tail, 15, 316

Ground rents, 15, 318

Husband and wife, 15, 330

In Equity, 15, 314

Fraud, 15, 315

Intent existing at time two estates come together, 15, 315

Intention of the parties, 15, 314

Presumption of intent, 15, 315

When equity will prevent merger, 15, 314, 315

In general, 15, 313

In law and in equity, 15, 314

Intention of the parties, 15, 314

Judgments, 15, 319

Legal and Equitable Estate, 15, 314, 319

Equitable estate merges in legal, 15, 319

Intention of the parties, 15, 319

Legal estate must be larger than equitable estate, 15, 319

Presumption, 15, 320

Trustee's breach of duty, 15, 319

Where it is to interest of the parties to keep estate separate, 15, 319

Whether legal title will merge in equitable, 15, 319

Merger of life estates, 15, 315

Mortgage and Life Estates, 15, 320

Lien, 15, 320

Presumption, 15, 320

Whether the mortgage merges, 15, 320

Mortgage with Fee, 15, 321

Acquisition by a previous creditor, 15, 331

Both estates owned in same right, 15, 330

Covenants, 15, 330

Decree of foreclosure and sale, 15, 322

Deed absolute with defeasance, 15, 321

Equitable principles, 15, 322

Evidence, 15, 326

Evidence of intention, 15, 325

Husband and wife, 15, 330

Intent, 15, 324

Intent controls, 15, 325

Intention of owner, 15, 323

Interest of parties, 15, 326, 329

Intervention of another estate, 15, 331

Legal rule, 15, 321

Legal title defeasible, 15, 330

Merger contrary to interests of assignee, 15, 329

Mortgagee taking conveyance of land from mortgagor, 15, 327

Mortgage to secure note, 15, 321

Mortgagor as a debtor, 15, 322

Payment by one not primarily liable, 15, 327

Presumption as to intention, 15, 326

Protecting holder against intervening title, 15, 327

Relation between the parties, 15, 322

Right of redemption, 15, 331

Rights of innocent third persons, 15, 324

Security afforded by mortgage title, 15, 330

When intention formed, 15, 325

When merger does not take place, 15, 326

When merger will not take place, 15, 322

Where junior incumbrance exists, 15, 328

Purchase of incumbrance by tenant in common, 15, 319

Right of way, 15, 318

Security pledged upon land, 15, 318

Taking higher security, 15, 331

Tenants in common, 15, 319

Ways, 15, 318

What affects merger, 15, 314

Whether favored by the courts, 15, 314

Insolvency, 15, 350

Claim not barred by discharge, 15, 350

Discharge in foreign countries, 15, 356

In general, 15, 350

Judgment after filing a debtor's petition, 15, 350

Judgments, 15, 351

Collateral security, 15, 351

Ex contractu, 15, 341

In bankruptcy proceedings, 15, 351

Merger and Extinguishment

Bills and notes, 15, 342

Garnishees, 15, 342

Indivisible Demands, 15, 343

Distinct cause of action, 15, 343

General rule, 15, 343

Recovery of part of demand, 15, 343

Set-off, 15, 344

Single contract, 15, 344

What constitutes indivisible contracts, 15, 344

Joint and Joint and Several Obligations, 15, 344

Co-partnership obligations, 15, 344

Joint and several obligations, 15, 345

Judgments against one jointly liable, 15, 344

Statutory modifications, 15, 344, 345

Judgments against one joint maker of bills and notes, 15, 342

Judgments of Other States and Countries, 1, 887; 15, 340

Full faith and credit provision, 15, 341

In England, 15, 341

United States courts, 15, 341

When judgment is given no extra-territorial effect, 15, 340

Where it is enforced by a final adjudication, 15, 340

Merger of one judgment in another, 15, 339

Principal and agent, 15, 342

Reasons for the doctrine of merger in judgments, 15, 339

Statutory judgments, 15, 340

Stock companies, 15, 343

Sureties, 15, 342

Warrantors, 15, 342

Recovery in a different capacity, 15, 351

Landlord and Tenant, 12, 758; 15, 316

General rule, 12, 758

Reversion acquired by life tenant, 12, 758

Reversion conveyed to tenant, 12, 758

Where life tenant conveys to the reversioner, 12, 758a

Larceny, 15, 367

Maiming, 15, 366

Mechanics' liens, 15, 17

Mortgages, 15, 332*See infra*, IN ESTATES.

Invalid judgment, 15, 333

Judgment of foreclosure, 15, 333

Judgment set aside, 15, 333

New mortgage taken as collateral, 15, 333

Payment of collateral security, 15, 334

Sale, 15, 333

Taking new, 15, 332

Murder, 15, 363

Nuisance, 15, 347

Public nuisances, 15, 359

Of adultery and unlawful cohabitation, 1, 211

Parol agreement in writing, 17, 431, 432

Partnership, 15, 344

Partnership Indebtedness, 17, 1088

Bills and notes, 17, 1090

In general, 17, 1088

Judgment Obtained Against a Less Number than All the Partners, 17, 1088

Deceased partner, 17, 1089

Dormant partners, 17, 1089

Joint and several liability, 17, 1089

Partner outside of jurisdiction of court, 17, 1089

Partners not made parties, 17, 1088

Statutes, 17, 1089

Sealed instrument executed by one partner, 17, 1005

Powers, 18, 1001

Private Ways

Dominant and servient estates, 19, 116

Rape, 15, 366

Incest, 15, 367

Indictment for conviction of assault, 15, 366

Indictment for conviction of incest, 15, 367

Robbery, 15, 367**Securities, 15, 352**

Assignment of bond and mortgage, 15, 353

Bill, note, or bond, 15, 352

Broken contract, 15, 356

Collateral, 15, 357

Contracts with same grade, 15, 354

Express agreement to prevent merger, 15, 355

Higher and lower securities, 15, 352, 353, 355

Illegal contracts, 15, 356

Modification of specialty, 15, 355

Non-negotiable note, 15, 353

Prior and subsequent contracts, 15, 353

Priority in point of time, 15, 353

Renewal of old note, 15, 354

Simple contracts and specialties, 15, 352

Simple contracts of a bond and mortgage, 15, 353

Specialty must be co-extensive with simple contract funds, 15, 356

Simple Contract

And other indebtedness, 15, 336

In foreign judgments, 1, 887; 15, 340

Subrogation, 24, 261

Substitution of securities, 15, 332

Suretyship, 15, 342

Taking higher security, 15, 204; 15, 331

Tort in crime, 15, 358; 26, 73

Torts, 15, 358; 26, 73

Homicide, 15, 358

Indivisible Demands, 15, 348

Damages arising after action has been brought, 15, 348

Examples, 15, 349

MERGER—*Cont'd***Torts**—*Cont'd***Indivisible Demands**—*Cont'd*

Only one claim for damages, 15, 348

Recovery of portion of demand, 15, 348

Several torts, 15, 349

Single tort, 15, 348

Injury amounting to a felony, 15, 358

Private wrong and a public offense, 15, 358

Public nuisances, 15, 359

Recovery in a different capacity, 15, 351

Statutes, 15, 359

Treason, 15, 363

Trespass, 15, 346

Execution against one discharges all, 15, 346

Joint offenders, 15, 346

Judgment against joint tort feors, 15, 347

One satisfaction, 15, 346

Pursuing trespassers severally, 15, 347

Recovery of judgment for value of property, 15, 347

Trusts and Trustees

Where equitable estate fails the trustee, 27, 126

Warranty, 15, 342

Where one of the estates is held in a representative capacity, 7, 234, 235; 15, 351

MERITS (AFFIDAVITS OF), 15, 371Advice of counsel, 5, 496²¹⁵; 15, 378, 379

Agents, 15, 372

Attorney, 15, 372

Attorney and ClientAdvice of counsel, 5, 496²¹⁵; 15, 378

Contents when made by attorney, 15, 382

Change of Venue

Contents, 15, 383

Conclusiveness, 15, 385

Conditional amendments, 15, 381

Constitutionality, 15, 371

Contents

Effect of error in title of cause, 15, 384

Interlineations, 15, 385

When Made by Agent or Attorney, 15, 382

Attorney's managing clerk, 15, 382

Examples, 15, 382, 383

Knowledge from statement of defendant, 15, 383

Knowledge of defense, 15, 382

Swearing to the merits, 15, 382

When made by co-defendant, 15, 382**When Made by Defendant**, 15, 376

Admission of advice of counsel, 15, 378

Advice of counsel distinguished from advice of attorney, 15, 378

As advised by counsel, 15, 377

Belief that he has a good defense, 15, 379

Compliance with statute, 15, 376

Court granting amendment conditionally, 15, 381

Defective affidavits, 15, 376

Examples, 15, 376-382

Examples of statutory provisions, 15, 376-381

Following language of statute, 15, 380

In chancery, 15, 376

In general, 15, 376

Power of court, 15, 381

Setting up defense in detail, 15, 381

Statement of facts, 15, 381

Statutory forms, 15, 376, 377

When made to obtain a change of venue, 15, 383

Counsel distinguished from attorney, 15, 378

Definition, 15, 371

Definition of merits, 15, 371

Excuse for defendant not making, 15, 372

Facts of his case, 3, 29

Full distinguished from good, 15, 378

In general, 15, 371

Interlineations, 15, 385

Merit or Defense

Right of trial by jury, 3, 724

New Trial, 16, 648, 652

Absence of witnesses, 16, 654

Affidavit by mover, 16, 653

Affidavit of accused, 16, 653

Affidavit of jurors, 16, 653

Affidavit of merits, 16, 648

Amendment, 16, 661

Asserting that party has good defense, 16, 652

Continuance by court, 16, 658

Counter affidavit, 16, 658

Discretion of court, 16, 653

Facts which witness would prove, 16, 654

Failure to file within prescribed time, 16, 658

Form, 16, 652

Misconduct of jury, 16, 654

Misconduct or mistake of officers of court, 16, 654

Mistake or surprise, 16, 654

Newly Discovered Evidence, 16, 655

Affidavit of moving party alone, 16, 656

Affidavit of some one who has heard witness, 16, 658

Affidavit of witnesses, 16, 657

Reasonable diligence, 16, 654

Setting forth particular efforts to discover evidence, 16, 656

Whether "due diligence" sufficient, 16, 656

Whether "reasonable diligence" sufficient, 16, 656

Showing irregularities complained of, 16, 652

Stating facts, 16, 652

Object, 15, 374

Demurrer, 15, 375

- Examples or cases in which they are allowed, 15, 374, 375
- Judgments by default, 15, 374
- Plea in abatement, 15, 375
- Suits brought upon contract, 15, 375
- To allow defendant to come in and plead, 15, 374
- To change venire, 15, 374
- To extend time of answer, 15, 374
- To obtain a commission to take testimony, 15, 374
- To set aside all inquests, 15, 374
- Where plea to merits is not filed, 15, 375
- Record, 20, 486
- Second affidavit, 15, 373
- Service, 15, 385
- Setting aside decree by default in equity, 5, 508
- Setting Aside Judgment by Default**, 5, 496²¹⁵, 496²³⁶, 496²⁵¹
- Accompanied with an answer, 5, 496²¹⁷
- Affidavit of attorney, 5, 496²⁵¹
- Due diligence, 5, 496²¹⁶
- Effect of lack of affidavit of merits, 5, 496²¹⁷
- Setting up a conclusion of law, 5, 496²¹⁷
- What affidavit must contain, 5, 496²¹⁶
- What it should contain, 5, 496²³⁶, 496²⁵¹
- Where there has been withdrawal of appearance, 5, 496²¹⁷
- Title, 15, 384
- To prevent an inquest, 15, 373
- Vacation of Judgments**, 12, 138
- Made by some other person than defendant, 12, 139
- Showing judgment unjust, 12, 138
- Showing meritorious defense, 12, 138
- Technical defense, 12, 139
- Warranty, 28, 851
- When made, 15, 373
- When special affidavit should be required to open judgment of default, 5, 496²¹⁶
- Whether sworn answer is equivalent to, 5, 496²¹⁵
- Who May Make**, 15, 372
- Agent, 15, 372
- Attorney, 15, 372
- Defendant not a party to the record, 15, 372
- Defendant having the same defense, 15, 372
- Excuse for not making personally, 15, 372
- In general, 15, 372
- Joint defendants, 15, 372
- MESH**, 15, 386
- MESNE**, 15, 386
- MESNE PROFITS**, 15, 386
- Ejectment, 6, 217
- In Alabama, 6, 217
- In Arkansas, 6, 217
- In Colorado, 6, 217
- In Georgia, 6, 217
- In Illinois, 6, 217
- In Indiana, 6, 217
- In Iowa, 6, 217
- In Kentucky, 6, 217
- In Maine, 6, 217
- In Maryland, 6, 217
- In Massachusetts, 6, 217
- In Michigan, 6, 217
- In Minnesota, 6, 218
- In Mississippi, 6, 218
- In Missouri, 6, 218
- In Nebraska, 6, 218
- In New Jersey, 6, 218
- In New York, 6, 218
- In Oregon, 6, 218
- In Pennsylvania, 6, 218
- In South Carolina, 6, 218
- In Tennessee, 6, 218
- In Texas, 6, 218
- In Vermont, 6, 218
- In Virginia, 6, 218
- In West Virginia, 6, 218
- Entry, writ of, 6, 654
- Trespass for, 6, 245y
- What are, 5, 933
- Widow's right to share in mesne profits, 5, 932
- MESSENGER**, 15, 386
- MESSAGE**, 15, 386
- As compared with house, 9, 782
- METALS**, 15, 387
- Manufacture of metals, 14, 261, 314
- METEOR**, 15, 388
- METES AND BOUNDS**
- Monument, 15, 713
- METHOD**, 14, 251, 388
- METRIC SYSTEM**, 15, 388
- MEXICAN GRANTS**, see **SPANISH LAND GRANTS**.
- MICHAELMAS**, 15, 388
- MICHAELMAS TERM**, 15, 388
- MIDDLE**
- Middle of main channel, 14, 1
- MIGHT**, 15, 389
- MIGRATE**, 15, 389
- MILE**, 15, 389
- English mile, 15, 389
- Knots, 15, 389
- Sea mile, 15, 389
- Statute mile, 15, 389
- MILEAGE**, 15, 390
- MILITARY LAW**, 15, 390
- See **BOUNTIES**.
- See generally, **INTERNATIONAL LAW**; **MILITIA**; **WAR**.
- See **MARTIAL LAW**.
- As to preference to veterans, see **PUBLIC OFFICERS**.
- Aliens**, 1, 463
- Enlistment, 15, 400
- Army Regulations**, 15, 394
- Consistent with legislative enactments, 15, 394
- Contravening existing law, 15, 395
- Definition, 15, 394
- How far they have the force of law, 15, 394
- Subordinate to statute law, 15, 394

MILITARY LAW—Cont'd

- Arrest, 15, 470
- Burden of proof, 15, 436
- Cadets**
 - Whether public officers, 19, 384
- Capture of Enemy's Property**, 15, 417
 - See INTERNATIONAL LAW.
 - Constitutional power to confiscate, 15, 420
 - Cotton, 15, 419
 - Government's title to captured property, 15, 419
 - Liability of officer or soldier, 15, 421, 422
 - Private property, 15, 417
 - What property may be seized, 15, 417
 - When property is "captured on land," 15, 420
- Cashiering, 15, 411
- Civil relations of the military, 15, 428
- Civil Liability of Soldier**, see *infra*, OBE-
DIENCE TO ORDERS.
 - Civil liability for crimes, 15, 443
 - Order executed in an illegal manner, 15, 428
 - Superior for inferior's negligence, 15, 427
 - Where superior ratifies illegal act of inferior, 15, 427
- Conscription, see *infra*, DRAFTS.
- Court Martial**, 15, 455
 - Actions against members, 15, 432
 - As a judicial body, 15, 456
 - By whom constituted, 15, 459
 - Composition, 15, 460
 - Conclusiveness of judgment, 15, 457
 - Constitutional provision regarding, 15, 456
- Jurisdiction**, 15, 455, 458, 461
 - Civilians subjected to military discipline by statute, 15, 469
 - Extent as to offenses, 15, 469
- Extent as to Persons**, 15, 462
 - Army of the United States, 15, 462
 - Commencement of jurisdiction over soldiers, 15, 464
 - Drafted men, 15, 464
 - In general, 15, 462
 - Marines detached for service in the army, 15, 467
 - Marines in general, 15, 467
 - Militia-men refusing to obey, 15, 467
 - Militia when called into service of United States, 15, 467
 - Volunteers, 15, 464
 - What constitutes enlistment, 15, 464
 - Extent as to place, 15, 461
 - Extent as to time, 15, 469
- Foreign nation with which the country is at peace, 15, 461, 462
- Limitation, 15, 469
- Limited and special, 15, 456
- Procedure**, 15, 470
 - Arrest, 15, 470
 - Arrest of officers, 15, 470
 - Challenge, 15, 471
 - Charge and specifications, 15, 471
 - Confirming power of president, 15, 473
 - Description of course of proceedings, 15, 470
 - Disapproval, 15, 472
 - Evidence, 15, 472
 - In general, 15, 470
 - Pleading, 15, 472
 - Statute of marines, 15, 467, 468
 - Larceny, 12, 799
 - Militia, 15, 478, 479
 - Mittimus, 9, 233
 - Origin, 15, 455
 - Prohibition, 19, 277
 - Whether a court of record, 15, 456
 - Whether a criminal court, 15, 459
- Courts of Inquiry**, 15, 453
 - By whom ordered, 15, 453
 - Composition, 15, 453
 - Definition, 15, 453
 - Examination of witnesses, 15, 453
 - Jurisdiction, 15, 453
 - Proceedings as evidence, 15, 454
- Criminal liability, 15, 441
- Criminal prosecutions, 15, 441
 - Definition, 15, 692
- Desertion**, 15, 415
 - Bounties, 15, 452
 - Definition, 5, 642; 15, 415
 - Statute of limitations, 15, 415
- Disapproval, 15, 472
- Discharge of Enlisted Men**, 15, 406
 - See *infra*, DISMISSAL OF OFFICERS.
 - Authority of courts to discharge on habeas corpus, 15, 407
 - Bounty, 15, 406
 - Certificates of discharge as evidence, 15, 406
 - Distinction between discharge and dismissal, 15, 407
 - Habeas corpus, 15, 407
 - Honorable and dishonorable discharge, 15, 406
 - Jurisdiction of state courts to discharge on habeas corpus, 15, 407
 - Provisions of fourth article of war, 15, 406
- Dismissal, 15, 407
- Dismissal of Officers**, 15, 408
 - By Order of the President, 15, 408
 - Act of congress, 15, 408
 - Authority of president, 15, 408
 - Effect of order, 15, 410
 - Order revoking order of dismissal, 15, 410
 - By sentence of court martial, 15, 411
 - In general, 15, 408
 - Reinstatement, 15, 411
 - Revocation, 15, 411
- Disorders not amounting to mutiny, 15, 414
- Drafts**, 15, 403
 - Conscription, 15, 405
 - Constitutionality of draft laws, 15, 404
 - Fine in lieu of services, 15, 405

- Insurance against drafts, 15, 406
- Liability to, 15, 403
- Substitutes, 15, 405
- When drafted man becomes subject to military authority, 15, 405
- Enlist, 6, 648
- Enlistment**, 15, 398; 17, 383
 - See infra*, DISCHARGE OF ENLISTED MEN.
- Aliens, 15, 400
- As a Contract**, 15, 399
 - How far binding upon government, 15, 399
 - Whether a contract, 15, 399
 - Authority of congress, 15, 398
- Bounties**
 - Enlistment conforming with offer, 15, 450
 - Notice of enlistment, 15, 451
- Colored persons, 15, 402
- Constitutional provision, 15, 398
- Evidence of, 15, 403
- Indians, 15, 401
- Infants, 10, 667
- Minors**, 15, 402
 - Consent of parent, 15, 402; 17, 383
 - Habeas corpus, 15, 402
 - Power of congress, 15, 402
 - Whether minor can avoid the contract, 15, 403
- Parent and Child**, 17, 383
 - Emancipation, 17, 398
 - Sunday, 24, 580
 - What constitutes, 15, 464
- Exemption from arrest, 15, 428
- False imprisonment, 7, 685
- Habeas Corpus**
 - Discharge, 15, 407
 - Discharge of enlisted men, 15, 441
- Illegal Commands**, 4, 693
 - Actions against persons executing, 15, 433
- Civil Liability of Inferior for Executing an Illegal Order**, 15, 426
 - Evidence of superior's authority, 15, 428
 - Examples, 15, 426, 427
 - General rule, 15, 426
 - Legal order executed in an illegal manner, 15, 428
 - Necessity that order be written, 15, 428
 - Order regular and proper on its face, 15, 426
 - Duty to obey, 15, 424
 - Resistance, 15, 415
- Illegal punishment, 15, 435
- Incompatible offices, 19, 562*u*, 562*w*
- Infants**
 - Enlistment of**, 15, 402
 - Consent of parent, 15, 402
 - Habeas corpus, 15, 402
 - Power of congress, 15, 402
 - Whether minor can avoid the contract, 15, 403
 - Insurance against drafts, 15, 406
 - Intention and overt act, 15, 413
 - Jurisdiction of civil courts, 15, 430
 - Liability of Military Persons to Civilians**, 15, 437
 - Abuse of authority, 15, 437
 - Criminal prosecutions, 15, 441
 - Destruction of property, 15, 437, 438
 - Injuries in time of war, 15, 437
 - Liability for crimes, 15, 443
 - Of officer as garnishee, 15, 441
 - On public contracts, 15, 440
 - On writ of habeas corpus, 15, 441
 - Liability of Military Persons to Each Other**, 15, 430
 - Abuse of officer's authority, 15, 436
 - Actions against members of a court martial, 15, 432
 - Actions against persons executing illegal orders, 15, 433
 - Arrests, 15, 430
 - Burden of proof, 15, 436
 - Complaint against officer, 15, 435
 - Illegal punishments, 15, 430, 435
 - In general, 15, 430
 - Jurisdiction of civil courts, 15, 430
 - Liability for statements in official reports, 15, 434
 - Libel and privileged communications, 15, 434
 - Violence, 15, 435
 - Liability of Officers**
 - Militia, 15, 480
 - Libel, 15, 434
 - Limitations, 15, 469
 - Martial and military law defined, 12, 955
 - Military commissions, 15, 473
 - Military power subordinate to the civil, 15, 428
 - Military Services**, 15, 398
 - See infra*, DRAFTS; ENLISTMENT.
 - Actual military service, 1, 186
 - Duty, 15, 398
 - Mutiny**, 15, 412
 - Definition, 15, 412
 - Disorders not amounting to mutiny, 15, 414
 - Intention, 15, 413
 - Overt act, 15, 413
 - Resistance to illegal orders, 15, 415
 - Naval officers, 19, 392
 - Nuncupative Wills**, 16, 1011
 - Actual service, 16, 1012
 - Barracks, 16, 1012
 - Character of service, 16, 1012
 - Formalities, 16, 1011
 - Furloughs, 16, 1012
 - Last sickness, 16, 1011
 - Marines, 16, 1012
 - Militia, 16, 1012
 - Number of witnesses, 16, 1011
 - Seaman en route to his ship, 16, 1012
 - Seamen not at sea, 16, 1012
 - Ship in harbor, 16, 1012
 - Soldier in camp, 16, 1011
 - Who embraced in the term "soldier," 16, 1011

MILITARY LAW—Cont'd**Nuncupative Wills—Cont'd**

Who is included in statute, 16, 1011

Witnesses, 16, 1011

Obedience to Orders, 4, 693; 15, 422**Civil Liability of Inferior for Executing an Illegal Order, 15, 426**

Examples, 15, 426, 427

Evidence of superior's authority, 15, 428

General rule, 15, 426

Legal order executed in an illegal manner, 15, 428

Necessity that order be written, 15, 428

Order regular and proper on its face 15, 426

Duty of obedience, 15, 422, 423

Illegal commands, 4, 693; 15, 424

Resistance to illegal commands, 15, 415

Officers, 19, 392

Exemption from service of process, 22, 163

Orders*See infra*, **ILLEGAL COMMANDS.**

Conflicting with existing law, 15, 396

Form and contents, 15, 396

Of president, 15, 396

Of superior officers, 15, 396

Parent and Child, 15, 402**Enlistment, 17, 383**

Emancipation, 17, 398

Poor and Poor Law**Settlement****By Service in Army or Navy, 18, 786**

Discharged for inability, 18, 786

False name, 18, 786

In Massachusetts, 18, 786

"Quota in any city or town," 18, 786

Statutes, 18, 786

President's Power as Commander-in-Chief,

19, 33

Court martial, 19, 34

Dismissing officer from service, 19, 34

Examples, 19, 33-35

In general, 19, 33-35

Prize court, 19, 35

Provisional court, 19, 34

Regulations for governing an army, 19, 34

Resignation, 19, 34

Revoking order of dismissal, 19, 34

State militia, 19, 34

Under the constitution, 19, 33

Privileged communications, 15, 434**Quota in any city or town, 18, 786****Quo Warranto, 19, 669**

To military offices, 6, 387

Resistance to illegal orders, 15, 415**Soldiers**

False personation of a soldier, 7, 697

Homestead, 19, 324

Residence for purposes of voting, 6, 276

Voting places, 6, 284

Sources of military law, 15, 392

Spies, 15, 422

Statutory enactments, 15, 393

Substitutes, 15, 405

Sunday, 24, 580

Surveys, 24, 1025

Taxation of Soldiers, 15, 428

Liability for, 15, 428

Pay and allowances, 15, 428

Personal property, 15, 429

Real estate, 15, 429

The articles of war, 15, 392

Usages or Customs of Service, 15, 397

Examples, 15, 397, 398

Reasonableness, 15, 398

Recognition by courts, 15, 397

Uniformity, 15, 398

Violence, 15, 435

Voting, 15, 430

Limitation of right to vote, 15, 429

Statutory regulations of right of absent soldiers, 15, 430

MILITIA, 15, 474*See generally*, **MILITARY LAW.**

Authority of state and national governments, 15, 475

Control, 15, 475

Court martial, 15, 467, 478, 479

Definition, 15, 474

Discipline, 15, 478

Authority of court martial, 15, 478

Civil courts, 15, 478

Examples, 15, 478

Fines, 15, 479

Militia officers, 15, 478

Exemption from arrest, 15, 481

Exemption from jury services, 15, 481

Exemption from Militia Duty, 15, 479

An alien, 15, 479

A warrant officer of the navy, 15, 479

Conscientious scruples against bearing arms, 15, 480

Examples, 15, 479, 480

Fishermen, 15, 480

Justice of the peace, 15, 479

Mail contractors, 15, 480

Permanent bodily disability, 15, 480

Quakers, 15, 480

Exemption from taxation, 15, 481

Fines, 15, 479

Funds, 15, 481

Liability of Officers, 15, 480

Examples, 15, 480, 481

Execution of illegal order, 15, 480

For injuries to citizens caused by firing of soldiers, 7, 524

In general, 15, 480

Organization, 15, 475

Power of congress, 15, 475

Power of state government, 15, 475

Power of state to repress military organizations, 15, 476

Privileges of members of the militia, 15, 481

Stores, 15, 481

Unauthorized military companies, 15, 476

MILK, 15, 482*See* ADULTERATION.**MILL DAMS**, *see generally*, MILLS.**MILLS**, 15, 482, 484*See* DAMS.

Abandonment of mill site, 1, 6

Appurtenances, 15, 494

Authority of court, 15, 485

Construction of grants of mill privileges, 15, 492

Conveyance of mill property, 15, 492

Conveyances, *see infra*, GRANTS.**Co-Owners**, 15, 486

At common law, 15, 486

Examples, 15, 487

Statutes, 15, 486, 487

Use assigned alternately, 15, 487

Whether allowable, 15, 486

Damages sustained by erection, 15, 484

Definition, 15, 483

Division of waters, 12, 629

Eminent Domain, 15, 484, 485*For the exercise of eminent domain generally*, *see* EMINENT DOMAIN.

A public use, 6, 526

Mill dams, 6, 539

Erection, 15, 484

In general, 15, 484

Land for mill, 15, 484

Presumption of legal establishment, 15, 484

Statutory Regulations, 15, 484

Applicant holding both sides of stream, 15, 485

Application, 15, 485

Authority of court, 15, 485

Damages sustained by erection, 15, 484

Formal requisites of inquisition, 15, 486

Finding of jury, 15, 486

Generally, 15, 484

Injury to health of neighborhood, 15, 485

Inquisition, 15, 486

Leave to erect, 15, 484

Loss of spring, 15, 485

Notice, 15, 485

Overflow of lands, 15, 485

Petition, 15, 485

Preference among applicants, 15, 485

Proceedings to obtain authority, 15, 485

Record, 15, 486

Strict compliance with statute, 15, 485

Substantial conformity, 15, 486

Unforeseen injuries, 15, 485

Writs, 15, 486

Fixtures, 15, 483

Examples, 15, 483, 484

Machinery, 15, 483

Tenant's right of removal, 15, 484

Wind mills, 15, 484

Generally, 15, 484

Grants, 15, 492

Appurtenances, 15, 494

Construction, 15, 492

Construction of mill privileges, 15, 493

Conveyance of portions, 15, 494

Covenants, 15, 494

Effect of conveyance, 15, 493

For propulsion of machinery, 15, 493

Grant of mill, 15, 495

Grant of mill site, 15, 495

Grant of sawmill, 15, 494

Implied reservations, 15, 495

Incidents, 15, 494

Limitation of actions, 15, 493

Location and physical condition of property, 15, 493

Presumption of grant, 15, 492

Race way, 15, 495

Reservations, 15, 494

Restrictions, 15, 495

Rights under conveyance, 15, 493

Water power as a necessary appurtenance, 15, 494

Grist mill, 15, 483

Incidents, 15, 494

Injunctions, 10, 852

Acquiescence for long period, 10, 855

Diversion, 10, 856

Large sums invested in improvements, 10, 855

Mills erected on both banks of stream, 10, 854

Railroad enjoining mill owner from flooding track, 10, 977

Reasonableness of detention of water, 10, 853

Several mills on same stream, 10, 852

Unknown stream, 10, 856

Use of mill for a long period, 10, 855

What to be considered in deciding between conflicting rights, 10, 854

When law will limit right, 10, 852

Injuries by and against mill owners, 15, 498

Injury to health of neighborhood, 15, 485

Inquisition, 15, 486

Leave to erect, 15, 484

Loss of spring, 15, 485

Mill Acts, *see* DAMS.

Damages recoverable, 15, 492

Right to use running water, 15, 487

Mill Dams*See* DAMS.

Definition, 15, 483

Nuisance, 10, 843

Mill owner's duties as to use of water, *see* DAMS.*Mill owner's right to use of water*, *see* DAMS.**Mill Owners**

Remedy for injuries sustained by dams, 4, 988

Mill privilege, 15, 483, 493

Mill Site, 15, 483, 495

Mines and mining claims, 15, 521

Notice of application, 15, 485

Obstruction to mill power by booms, 2, 470

MILLS—*Cont'd*

- Overflow of lands, 15, 485
- Paper mill, 17, 311
- Partition, 17, 769
- Presumption of grant, 15, 492
- Race way, 15, 495
- Record, 15, 486
- Reservations, 15, 494
- Rights of Mill Owners**, 15, 495
 - Right to erect*, see DAMS.
- Statute of limitations, 15, 492
- Statutory Regulations**, 15, 487
 - See infra*, ERECTION.
 - As to mill acts*, see DAMS.
 - Creation of trust, 15, 487
 - Distinguished from mill acts, 15, 487
 - Examples, 15, 487
 - Grinding of grain, 15, 487
 - In general, 15, 487
 - Obstructions, 15, 487
 - Rights of public, 15, 487
 - Unforeseen injuries, 15, 485
 - Whether the transaction where grain is sent to a mill is a bailment or a sale, 21, 514

MINAS

- Per minas*, see DURESS; THREATS AND THREATENING LETTERS.

Per minas, 18, 297

MIND, 15, 499

- See generally*, INSANITY.

MINER, 15, 499**MINERAL PROPERTY**, 15, 505**MINERALS**, 15, 500

- Compared with mines, 15, 502

MINES AND MINING CLAIMS, 15, 499

- See* STATUTE OF LIMITATIONS.

Abandonment, 1, 6; 15, 546

- See infra*, FORFEITURE.

Definition of forfeiture, 15, 546

Estoppel, 15, 546

Failure to do work, 15, 546

Mere lapse of time, 15, 546

Mining partnerships, 15, 611

Of water rights, 15, 582

Question of intention, 15, 546

Questions of law and fact, 15, 546

Transaction amounting to a gift or sale, 15, 546

Tunnel location, 15, 544

What constitutes, 15, 546

"Advantageously," 15, 599

Adverse possession, acquiring mine by, 1, 296

Adverse possession of surface when severed from mineral rights, 1, 296

Aliens, 15, 517

- See infra*, CITIZENS.

Forbidding to work in mines unconstitutional, 1, 463

Right to hold mining claims, 1, 460

Along the vein, 15, 506

Amendments, see *infra*, DESCRIPTION.

Certificate, 15, 545

Location, 15, 545

In Colorado, 15, 545

Annual work, see *infra*, WORK REQUIRED.

Apex, 15, 505

Definition of, 1, 613; 15, 563

Apex Rule, 15, 563

Construction, 15, 563-567

Definition of apex, 1, 613; 15, 563

Examples, 15, 563-567

Limits to right of following the vein, 566

Location made on dip of vein, 15, 567

Side and end lines, 15, 565

Statement of rule, 15, 563

Statutory provisions, 15, 563

Veins in place, 15, 566

Asphaltum, 15, 501**Assignability**, 15, 578

Formalities, 15, 579

Implied warranty, 15, 579

Location having different names, 15, 578

Number of claims which may be obtained by one party, 15, 578

Reservations, 15, 580

Sale of ore, 15, 580

Seal, 15, 579

Time the essence of the contract, 15, 580

Whether transferable, 15, 578

Whether transfer must be in writing, 15, 578

Bills and Notes

Power to issue, 4, 224

Boat, 15, 501

Boundaries, see *infra*, DESCRIPTION.

Brick clay, 15, 501

Brick earth, 15, 501

Brine, 15, 501

Certificate, 15, 539

- See infra*, PATENT.

Accuracy required, 15, 539

Amendment of, 15, 545

Character, 15, 539

Distinguished from ordinary muniment of title, 15, 539

Parol evidence, 15, 540

Presumptive evidence of discovery, 15, 531

Requisites, 15, 539, 540

China clay, 15, 501

Citizens, 15, 516

- See infra*, ALIENS.

Affidavit of citizenship, 15, 517

Examples, 15, 516, 517

Necessity, 15, 516

Proof of citizenship, 15, 517

Who are, 15, 516

Clay, 15, 501

Clay subsoil, 15, 501

Coal, 15, 501

Coal lands, 15, 521

Coal mines, 3, 288

Coal raised, 15, 506

Concealment by buyer of fact that a mine exists on land, 8, 830

Conveyance, 15, 578

- See infra*, GRANTS; SALES.

- Formalities, 15, 579
- Implied warranty, 15, 579
- Location having different names, 15, 578
- Number of claims which may be obtained by one party, 15, 578
- Reservations, 15, 580
- Sale of ore, 15, 580
- Seal, 15, 579
- Time essence of the contract, 15, 580
- Whether transferable, 15, 578
- Whether transfer must be in writing, 15, 578
- Corporations**
 - Deed of mining corporation, 15, 616
- Custom, 15, 512**
 - See infra*, LOCAL CUSTOMS AND REGULATIONS.
- Damages for Abstracting Minerals, 15, 601**
 - Absence of fraud, 15, 602
 - American decisions, 15, 603
 - Bona fide claim of title, 15, 604
 - Conflict in America, 15, 603
 - Damage to land, 15, 602
 - Detinue, 15, 605
 - English law, 15, 601
 - Evidence, 15, 601
 - Inadvertent taking, 15, 601
 - Measure of damages, 15, 601
 - Taking by mistake, 15, 601
 - Taking under bona fide belief in title, 15, 601
 - Trover, 15, 605
 - Value at mouth of mine, 15, 601
 - Value less expenses, 15, 602
 - Willful trespass, 15, 601, 603, 604
 - Wrongful removal, 15, 601
- Débris, see infra, TAILINGS AND DÉBRIS.**
- Deed, 15, 511
- Definition, 15, 500, 533**
 - "Mining claim," 14, 608
 - Of colliery, 3, 313
- Description, 15, 533**
 - Deviation, 15, 533
 - Distinctly marked on ground, 15, 533
 - End lines, 15, 534
 - Erroneous addition, 15, 534
 - Examples, 15, 533-538, 541
 - Extent of ground located, 15, 536, 537
 - In California, 15, 538
 - In Colorado, 15, 538
 - In Dakota, 15, 538
 - In Nevada, 15, 535, 538
 - Merely posting a notice, 15, 535
 - Mineral district, 15, 585
 - Necessity of fixing boundaries, 15, 534
 - Placer, 15, 536
 - Questions of law and fact, 15, 534
 - Record, 15, 541
 - Recording, 15, 540, 541
- Reference to Natural Objects, 15, 534, 536, 541**
 - Examples, 15, 536, 537
 - Necessity, 15, 536
 - Parallel lines, 15, 538
 - Parol evidence, 15, 538
 - Regulations of miners, 15, 538
 - What sufficient, 15, 536
 - Whether they must be on the ground located, 15, 537
- Reference to Permanent Monuments, 15, 536, 541**
 - Examples, 15, 536, 537
 - Necessity, 15, 536
 - Parallel lines, 15, 538
 - Parol evidence, 15, 538
 - Regulations of miners, 15, 538
 - What sufficient, 15, 536
 - Whether they must be on ground located, 15, 537
- Statutory requirements, 15, 533
- What marking sufficient, 15, 534
- When it should be filed, 15, 540
- When location must be marked, 15, 536
- Who may take advantage of defect, 15, 533
- Detinue, 15, 605
- Development, 15, 529
- Dip, 15, 506
- Discovery, 15, 528**
 - See infra*, PATENT.
 - As foundation for title, 15, 528
 - Certificate presumptive evidence of, 15, 531
 - Development after discovery, 15, 528, 529
 - Evidence to establish, 15, 529
 - Location before, 15, 529
 - Made after title has passed, 15, 522
 - Patent as evidence of, 15, 577
 - Rock in place, 15, 531
- Distinction between mines and minerals, 6, 532
- Ditches and Canals, 15, 582-584**
 - Conveyance, 15, 583
- Dower in mines, 5, 891
- Drainage, 15, 585
- Easements, 15, 585
- Ejectment**
 - Plaintiff relying on strength of his own title, 15, 558
- Eminent Domain, 6, 532; 15, 585**
 - For the exercise of the right of eminent domain generally, see EMINENT DOMAIN.*
 - A public use, 6, 528
 - In California, 15, 586
- Measure of Damages, 6, 568**
 - Inconvenience in working minerals, 6, 577
- Minerals, and right to work the same, 6, 599
- Estate of freehold, 15, 515
- Estoppel, 15, 546
- Extent of Ground Open to Location**
 - In Colorado, 15, 527
 - In Dakota, 15, 527
 - In Idaho, 15, 526
 - In Montana, 15, 527
 - Three hundred feet, 15, 527
- Face of tunnel, 15, 505, 544
- Fixtures, 15, 512

MINES AND MINING CLAIMS—Cont'd

Flooding, 15, 585
 Liability, 15, 586
 Liability for trespass, 15, 587
 Rights of joint mine owners, 15, 587
 Water flowing from one mine to another, 15, 586
Forfeiture, 15, 546
See infra, ABANDONMENT.
 Annual work required, 15, 547
 Definition, 15, 546
 Non-observance of statutory requirements, 15, 547
 Of stock, 15, 615
 Relocation, 15, 549
 Resuming work, 15, 548
Freestone quarry, 15, 501
Granite, 15, 501
Grants, 15, 510, 511
See infra, CONVEYANCE.
 Conveyance of public lands by state, 15, 510
 Conveyance of public lands by United States, 15, 510
 Disposition by government, 15, 511
 Distinguished from license, 15, 596
 Government officer's power to grant, 15, 511
 Hereditaments, 15, 509
 Necessity of express words, 15, 512
 Patent in United States, 15, 511
 Reservation, 15, 509
 Right to work, 15, 512
 Tools and implements, 15, 512
 What passes by, 15, 512
 Whether right to mine ore is exclusive, 15, 510
Highways, 15, 585
Homestead acts, 15, 521
Horizontal, 15, 506
Implied warranty, 15, 579, 600
Incidental rights pertaining to mines, *see infra*, DRAINAGE; EASEMENTS; RIGHT OF WAY; RIGHT TO TIMBER; TAILINGS AND DEBRIS; WATER.
Indictment, 15, 593
Ingress and egress, 15, 594
Injunction, 10, 881; 15, 605
 Examples, 10, 882; 15, 606
 Flooding mine, 10, 881
 In behalf of United States, 15, 514, 606
 Laches, 15, 606
 Legal title in controversy, 15, 606
 Mines protected by, 10, 881
 Persons restrained from digging, 10, 881
 Proof required to stop work, 10, 883
 Quarries, 10, 884
 Restraining trespassers, 15, 605
 Tailings and debris, 15, 587
 Title of plaintiff, 10, 882, 883
 Trespass, 15, 606
 Undisturbed possession, 10, 883
 Urgent necessity, 15, 607
 When removal of ore is irredeemable injury, 15, 605

Where title is in dispute, 10, 882
 Injury to mining claim by dam, 4, 979
Inspection, 15, 608
 Adjoining mine owners, 15, 608
 Royalties, 15, 608
Instroke, 15, 499
Ironstone, 15, 501
Islands, minerals under, 11, 867
Known mines, 12, 528
Known to exist, 15, 544
Laches, 12, 546, 547; 15, 606
Lateral and Subjacent Support, 12, 934; 15, 589
 Buildings, 15, 591
 Examples, 15, 590
 Increasing pressure, 15, 591
 In general, 15, 589
 Miner working with utmost care and skill, 15, 590
 Surface in its natural state, 15, 591
 Waiver of right to support, 15, 590
 Where right is excepted, 15, 590
 Whether right to support absolute, 15, 590
 Whether rule is same as in case of ordinary lands, 15, 591
Lease, 15, 593
 General lease of lands, 15, 593
 Power to lease, 18, 910, 911; 15, 596
Leases and Licenses of Miners, 15, 594
 Agreement to lease, 15, 599
 Distinction between, 15, 594
 Examples, 15, 595
 Forfeiture, 15, 600
 Form of instrument, 15, 595
General Lease of Lands, 15, 596
 Lease of lands and mines, 15, 596
 Obligation of lessee, 15, 596
 Whether it carries opened mines, 15, 596
License by one of several co-tenants, 15, 595
License distinguished from grant, 15, 596
Obligation of Lessee, 15, 596
Amount of Ore to Be Taken Out, 15, 598
 Examples, 15, 598, 599
 In general, 15, 598
 Instroke or outstroke, 15, 599
 Language of the covenant, 15, 598
 Mine not paying, 15, 598
 Reasonable effort, 15, 598
 Winning, 15, 599
 Examples, 15, 596, 597
 To commence work forthwith, 15, 596
 Workmanlike manner, 15, 596
Parol license, 15, 595
Revocation, 15, 600
Rights of grantor of license, 15, 595
Rights of licensee, 15, 600
Royalty distinguished from rent, 15, 595
Specific performance, 15, 600
Warranties, 15, 600
 Whether license exclusive, 15, 595

- Level, 15, 506
- Liability for issuance of stock as full paid at less than its par value, 4, 266
- Liability of mining partnership as general stock company, 11, 1038
- License, see *infra*, LEASES AND LICENSES OF MINERS.
- Lens, 13, 597; 15, 608
 - Construction, 15, 609
 - Examples, 15, 608, 609
 - Foreman, 15, 609
 - In California, 13, 597
 - In Colorado, 13, 598
 - In Dakota, 13, 599
 - In Idaho, 13, 599
 - In Indiana, 13, 599
 - In Michigan, 13, 599
 - In Montana, 13, 599
 - In Nevada, 13, 599
 - In New Mexico, 13, 599
 - In Oregon, 13, 599
 - In Utah, 13, 599
 - In Virginia, 13, 599
 - Revised statutes of the United States, 13, 597
 - Superintendent, 15, 609
- Life tenant and reversioner, 15, 592
- Limestone, 15, 501
- Limestone quarry, 15, 501
- Local Customs and Regulations, 15, 559; 27, 833
 - Act of 1866, 15, 562
 - Compliance with, 15, 559
 - Custom adopted at miner's meeting, 15, 561
 - Force and validity, 15, 559
 - Forfeiture, 15, 561
 - Foundation of, 15, 562
 - In California, 15, 560
 - In Nevada, 15, 560
 - Mining districts, 15, 562
 - Necessity of compliance with rules, 15, 559
 - Partnership, 15, 612
 - Proof of the custom, 15, 561
 - Regulations adopted after rights have attached, 15, 561
 - Regulations must be reasonable, 15, 561
 - Repugnant to law, 15, 559
 - Rule falling into disuse, 15, 561
 - Rule must be actually in force, 15, 560
 - Statutory provisions, 15, 559, 562
 - "Valuable mineral deposit," 15, 520
 - Whether they have the effect of laws, 15, 559
 - Written mining law falling into disuse, 15, 561
- Location, 15, 505
 - See *infra*, PATENT.
 - Patent as evidence of, 15, 577
- Location Under United States Laws, 15, 512
 - See *infra*, ABANDONMENT; CERTIFICATE; DESCRIPTION; DISCOVERY; NOTICE OF LOCATION; PLACER AND QUARTZ LANDS; PRIORITY; PUBLIC LANDS; RECORDING CLAIMS; RELOCATION; TUNNEL LOCATION; WORK REQUIRED.
 - Amendment of location, 15, 545
 - Classes of titles, 15, 515
 - Condition of mineral lands before the act of congress of 1866, 15, 512
 - Date of location, 15, 538
 - Extent of Ground Open to Location, 15, 526, 527
 - Association of persons, 15, 526
 - Construction of the act, 15, 527, 528
 - Effect of locating too much, 15, 536
 - Location made by mistake, 15, 527
 - More than one vein or lode, 15, 526
 - Purpose of statute, 15, 528
 - Right to surface, 15, 527
 - Statute of 1866, 15, 526
 - Statute of 1872, 15, 527
 - Twenty-five feet on each side of vein, 15, 527
 - Grants to railroad companies, 15, 512
 - In California, 15, 513
 - Necessity, 15, 521
 - Occupancy, 15, 513
 - Placer claims, 15, 514
 - Presumption in favor of, 15, 532
 - Relinquishment to states, 15, 515
 - Requisites of a Valid Location, 15, 528
 - See *infra*, DESCRIPTION; NOTICE; RECORDING CLAIMS; TUNNEL LOCATION; WORK REQUIRED.
 - Certificate of location, 15, 531
 - Development, 15, 528, 529
 - Discovery and appropriation, 15, 528
 - Effect of invalid location, 15, 529
 - Evidence of discovery, 15, 531
 - Evidence to establish, 15, 529
 - Examples, 15, 529-531
 - Land, 15, 528
 - Location before actual discovery, 15, 529
 - Location by agent, 15, 532
 - Miners' regulations, 15, 533
 - Presence of locator, 15, 532
 - Presumption in favor of location, 15, 532
 - Rock in places, 15, 531
 - Shafts, 15, 529
 - Sinking shaft, 15, 529
 - State laws, 15, 533
 - Statutes, 15, 531
 - What is discovery, 15, 528
- Reservation from the sale, 15, 512
- Right to appropriate mineral lands conferred by the acts of congress, 15, 514
- School lands, 15, 516
- State statute repugnant to act of congress, 15, 516
- Statutes, 15, 514
- Trespass, 15, 513
- What Lands May Be Located, 15, 518
 - Coal lands, 15, 521
 - Discoveries made after title is passed, 15, 522

MINES AND MINING CLAIMS—Cont'd**Location Under United States Laws—Cont'd****What Lands May Be Located—Cont'd**

Distinction between possession of agricultural and possession of mining lands, 15, 518

Homestead acts, 15, 521

Land within Indian Territory, 15, 523

Mill sites, 15, 521

Occupied lands, 15, 518

Possession by occupancy alone, 15, 518

Private lands, 15, 518

Reserved lands, 15, 523

School lands, 15, 523

Statutes, 15, 520

Town sites, 15, 522

"Valuable mineral deposits," 15, 520

Who May Locate, 15, 516

Affidavit of citizenship, 15, 517

Age, 15, 518

Citizens, 15, 516

Coal lands, 15, 517

Foreign corporations, 15, 517

Persons intending to become citizens, 15, 516

Presumption as to citizenship, 15, 517

Proof by agent, 15, 517

Proof of citizenship, 15, 517

Rights of aliens, 15, 517

Sex, 15, 518

Who are citizens, 15, 516

Lode, 15, 501

See *infra*, **PLACER AND QUARTZ LANDS; VEINS.**

Lode compared with vein, 15, 504

Marking, see *infra*, **DESCRIPTION.**

Measure of Damages, 15, 601

Absence of fraud, 15, 602

American decisions, 15, 603

Bona fide claim of title, 15, 604

Conflict in America, 15, 603

Damage to land, 15, 602

Detinue, 15, 605

English law, 15, 601

Inadvertent taking, 15, 601

Taking by mistake, 15, 601

Taking under bona fide belief in title, 15, 601

Trover, 15, 605

Value at mouth of mine, 15, 601

Value less expense, 15, 602

Willful trespass, 15, 601, 603, 604

Mechanics' Liens, 15, 32, 608, 609

Construction, 15, 609

Examples, 15, 608, 609

Foreman, 15, 609

Hauling ore from mines, 15, 38

Superintendent, 15, 609

Mill Site, 15, 521, 567, 570

Patent, 15, 569

Mine machinery, 14, 889**Mineral, 15, 500**

Mineral compared with mines, 15, 502

"Mineral district," 15, 585

Mineral property, 15, 505

Miners' regulations, 15, 533

Mines, 15, 504

Mining claim, 15, 505, 608

Mining Companies

See *infra*, **MINING CORPORATIONS; PARTNERSHIP.**

Liability as partnerships, 11, 1046, 1058

Liability of members, 11, 1041

Mining Contracts, 15, 616

Accepting the work, 15, 616

Timbering, 15, 616

To test minerals, 15, 616

Mining Corporations, 15, 613

See *infra*, **MINING COMPANIES.**

Acts authorizing the incorporation, 15, 613

Contracts, 15, 615

Directors and Officers, 15, 613, 614

Director's meetings, 15, 613

Easements, 15, 614

Forfeiture of stock, 15, 615

Generally, 15, 613

Liability of stockholders, 15, 615

Powers, 15, 615

Subscriptions, 15, 614

Whether a manufacturing corporation, 15, 613

Mining districts, 15, 562

Mining ground, 15, 505

Mortgagor and Mortgagee, 15, 592

Accounting to mortgagee, 15, 593

Whether mortgagor may work, 15, 592

Municipal aid, 15, 1245

Notice

Application for a Patent, 15, 569

Posting in register's office, 15, 569

Posting on land, 15, 569

Publication, 15, 569

Description, 15, 535

Notice of Location, 15, 539

Date of location, 15, 539

Statutory regulations, 15, 539

Oath, 15, 574

Occupancy, 15, 513

Ore, 15, 500

Outstroke, 15, 599

Parol Evidence

Certificate, 15, 540

Description, 15, 538

Partition, 15, 607; 17, 687

Examples, 15, 607

Jurisdiction of United States courts, 15, 607, 608

Manner, 15, 607

Partition of ore, 15, 608

Partnership property, 15, 613

Sale and division of proceeds, 17, 688

Under state statutes, 15, 607

Water ditch, 15, 607

What required, 15, 607

Where an interest is carved out of fee, 17, 689

Where interest is a mere privilege, 17, 689

- Whether mine can be divided, 17, 687
- Whether mine can be partitioned, 15, 607
- Who may compel, 15, 607
- Partnership**, 11, 1046, 1058; 15, 609
 - Abandonment of partnership works, 15, 611
 - Accounting after dissolution, 15, 612
 - By what rules governed, 17, 869
 - Construction of contracts, 15, 611
 - Contracts of**, 15, 612
 - Implied power of partners, 15, 613
 - Liability, 15, 613
 - Death of partner, 15, 611; 17, 869
 - Dissolution, 15, 611; 17, 1098
 - Examples, 15, 609-612
 - Lien upon profits, 15, 611
 - Mining usages, 17, 869
 - Outfitting contracts, 15, 611
 - Partition, 15, 613
 - Peculiarities, 15, 611
 - Prospecting contracts, 15, 611
 - Purchaser of interest, 15, 611
 - Recovery by law of partnership property, 15, 612
 - Recovery for services, 15, 612
 - Relation of trust and confidence, 15, 612
 - Rights inter se, 15, 612
 - Right to abandon, 15, 611
 - Street business, 15, 612
 - Survival, 15, 611
 - Tenants in common, 15, 609, 611
 - Usage, 15, 612
 - Void partnership, 15, 611
- What Constitutes**, 15, 609; 17, 869
 - Distinguished from an ordinary partnership, 17, 869
 - In general, 17, 869
- When ordinary partnership is constituted, 17, 869
- Whether dissolved by death, 15, 611; 17, 896, 1098
- Winding up, 15, 612
- Patent**, 15, 510, 511, 568
- Adverse Claims**, 15, 573
 - Abandonment of surface ground, 15, 575
 - Claim must be under oath, 15, 574
 - Failure of the mails, 15, 575
 - Laches, 15, 577
 - Methods of procedure, 15, 574, 575
 - Oath, 15, 574
 - Party having fulfilled all requisites to obtain patent, 15, 575
 - Reasonable diligence a question for the jury, 15, 576
 - Removal to federal court, 15, 576
 - Stay of proceedings, 15, 574
 - Successful party's right to patent, 15, 575
 - Suit must be commenced within the required time, 15, 575
 - Tunnel location, 15, 574
 - Waiver of adverse claim, 15, 575
 - What are the proper proceedings, 15, 576
 - What constitutes commencement of an action, 15, 575
 - When claim must be filed, 15, 571, 573
 - When proceedings must be commenced, 15, 574
 - Who are proper parties to the action, 15, 576
- Application for**, 15, 569
 - Affidavits, 15, 569
 - Application under oath, 15, 569
 - Certificate of entry, 15, 570
 - Certificate of labor and improvement, 15, 570
 - Ex parte affidavits, 15, 569
 - Joint tenants, 15, 570
 - Patent field notes, 15, 569
 - Payments, 15, 570
 - Placer, 15, 524
 - Posting notice in register's office, 15, 569
 - Posting notice of application, 15, 569
 - Publication, 15, 569
 - Survey, 15, 569
 - When purchaser becomes equitable owner, 15, 570
- Assignee**, 15, 578
- Conclusiveness**, 15, 571, 577
- Discovery**, 15, 577
- Limitation**, 15, 578
- Location**, 15, 577
- Obligation of party locating to take out**, 15, 577
- Right to**, 15, 568
 - Mill site, 15, 569
 - Where title rests until patent is obtained, 15, 568
 - Who has a right to, 15, 568
- Title necessary**, 15, 578
- Trustee**, 15, 578
- What patent should contain**, 15, 577
- When objections will be heard**, 15, 571
- Words of exclusion**, 15, 577
- Personal or Real Property**, 15, 508, 512, 515
 - Ore, 15, 508, 509
- Placer and Quartz Lands**, 15, 523
 - See infra*, **LODE**.
 - Annual work, 15, 551
 - Application for patent, 15, 524
 - Completion of surveys, 15, 524-526
 - Confirming the survey, 15, 524-526
 - Definition of placer, 15, 523
 - Examples, 15, 524, 525
 - Extent of ground open to location, 15, 526
 - "Known to exist," 15, 525
 - Location of placer, 15, 523, 524
 - Settlements as to lodes or veins, 15, 524
 - Size and location, 15, 524
 - Statutes, 15, 519
 - Statutory provisions, 15, 523-526
 - What land may be located by one person, 15, 524
- Pollution of stream by water from coal mine**, 5, 70
- Pollution of waters**, 28, 977

MINES AND MINING CLAIMS—Cont'd

Possession, 15, 513, 557
 Actual possessio pedis, 15, 557
 By occupancy alone, 15, 518
 Distinction between occupancy of agricultural lands and occupancy of mining lands, 15, 518
 Examples, 15, 512, 513, 518-520
 Failure to comply with law, 15, 518
 Inclosures, 15, 519
 Injury to, 15, 558
 Joint tenants, 15, 557
 Later locator, 15, 519
 Location not complying with law, 15, 529
 Lowest grade of title, 15, 515
 Mere possession, 15, 519
 Possessory action, 15, 558
 Priority, 15, 557
 Rule in ejectment, 15, 558
 Statute of limitations, 15, 558
 Title conferred by, 15, 513
 Under mining laws, 15, 557
 When land is unoccupied, 15, 518
Prescription, 15, 512; 19, 30
Priority, 15, 555
 All necessary steps not performed at time of location, 15, 556
 Between locators, 15, 555
 Between parties relying upon possession alone, 15, 557
 Examples, 15, 555, 556
 Location, 15, 555
 Location and possession, 15, 555, 557
 Senior discovery, 15, 556
 Veins crossing each other, 15, 557
 Veins uniting, 15, 557
Profits à prendre, 19, 260
Property in Minerals and Mines, 15, 506, 512
See infra, CONVEYANCE; GRANTS; LOCATION UNDER UNITED STATES LAWS; TITLE.
 At common law, 15, 506
 Gold and silver, 15, 507
 Government, 15, 568
 Government's title to gold and silver, 15, 507
 Grant of right to mine, 15, 509
 Grant of right to mine with ingress and egress, 15, 509
 Hereditaments, 15, 509
 In California, 15, 508
 In New York, 15, 508
 Minerals in general, 15, 506
 Nature of property in minerals, 15, 508
 Owner of the soil, 15, 506
 Personal and real property, 15, 508, 512, 515
 Reservation of minerals construed, 15, 509
 Right of way, 15, 507
 Severance of title to mine from that to the surface, 15, 506
 Streets and highways, 15, 506
 Trespass, 15, 507
 When grant exclusive, 15, 510

When minerals personal property, 15, 508
 Whether deed passes corporeal hereditaments, 15, 509
 Whether minerals a part of freehold, 15, 508
Public Lands, 15, 510
See infra, LOCATION UNDER UNITED STATES LAWS.
Mineral Lands, 19, 335
 In general, 19, 335
 Provision of revised statutes, 19, 335
 Preemption, 19, 315
 Town site, 19, 364
Quarry, 15, 504; 19, 595
 Quarry distinguished from mine, 15, 504
Quartz lands, *see infra*, PLACER AND QUARTZ LANDS.
Questions of Law and Fact, 15, 536
 Abandonment, 15, 546
 Amendments, 15, 538
 Boundaries, 15, 534
Receivers, 15, 605; 20, 38, 53, 80, 327
 Generally, 20, 53
 In England, 20, 54
 In United States, 20, 54
 Partition suits, 20, 45
 Peculiar footing of mines, 20, 54
 When appointment will be made, 20, 54
Recording Claims, 15, 540
 Description, 15, 534, 541
 Land office regulations, 15, 540
 Miner's regulations, 15, 541
 Recitals, 15, 541
 State provisions, 15, 541
 Statutory provisions, 15, 540
 Whether necessary, 15, 540
Regulations of Miners, 15, 538
See infra, LOCAL CUSTOMS AND REGULATIONS.
 Recording, 15, 541
 Work required, 15, 542
Relocation, 15, 548
Annual work, *see infra*, WORK REQUIRED.
 Before forfeiture attaches, 15, 550
 By different name, 15, 551
 Examples, 15, 549-551
 Failure to comply with statutory requirements, 15, 549
 How made, 15, 551
 Non-observance of local rule or custom, 15, 549
 Party relocating his own claim, 15, 551
 Persons sustaining fiduciary relations, 15, 551
 Right of entry, 15, 549
 Rights of relocater, 15, 551
 Remainders, 13, 218
Remedies, *see infra*, DAMAGES FOR ABSTRACTING MINERALS; INJUNCTION; PARTITION.
As to suits between adverse claimants, *see infra*, PATENT.
 Inspection, 15, 608
 Taking ore from adjacent mine, 15, 591
 Reservation, 15, 509, 580

- Right of Way**, 15, 584
 Ditches and canals, 15, 582
 In California, 15, 586
 In Colorado, 15, 586
 In Dakota, 15, 586
 In Nevada, 15, 586
 In Wyoming, 15, 586
 Incident to the right to work mine, 15, 584
 Location embracing a portion of public highway, 15, 585
 Railroads, 15, 584
 Right of way from one mine to another, 15, 584
 Veins intersecting or crossing each other, 15, 585
Right to timber, 15, 585
Right to Work, 15, 588
 Adjacent mine owners, 15, 588
 Implied in grant, 15, 588
Royalties
 Inspection, 15, 608
Sales, 15, 578
 See infra, CONVEYANCE.
 Formalities, 15, 579
 Location having different names, 15, 578
 Number of claims which may be obtained by one party, 15, 578
 Of ore, 15, 580
 Reservations, 15, 580
 Seal, 15, 579
 Time essence of contract, 15, 580
 Whether transferable, 15, 578
 Whether transfer must be in writing, 15, 578
 Sand, 15, 501
 School lands, 15, 516, 523
 Screened coal, 15, 506, 595
 "Settlers," 15, 584
 Specific performance, 15, 600, 602
 Staking, *see infra*, DESCRIPTION.
 State regulations, 15, 533
 Statute of frauds, 8, 696
 Statute of limitations, 15, 518
Statutory Regulations as to Working, 15, 593
 Construction, 15, 593
 Examples, 15, 593, 594
 Ingress and egress, 15, 594
 Inspection, 15, 593
 Power of legislature, 15, 593
 Safety and health of miners, 15, 593
 Ventilation, 15, 593
 Violation of statutory provisions, 15, 593
Stockholders, 15, 616
 Assessments, 15, 614
 Deed of mining corporation, 15, 615
 Forfeiture of stock, 15, 615
 Liabilities, 15, 615
Stone, 15, 501
Surface Rights, 15, 588
 Draining of spring, 15, 589
 Ground for machinery, 15, 588
 Ground for storing ore, 15, 589
 Ground for working mine, 15, 588
 Incidental damage to surface, 15, 589
 Injury to adjacent property owners, 15, 589
 Injury to surface by mine owner, 15, 588
 Right of locator, 15, 588
 Right of mine owner, 15, 588
 Right of support, 15, 589
 Rights of surface owner, 15, 589
 Where soil belongs to one person and mine to another, 15, 588
Tailings and Débris, 15, 587
 Deposited on lands of others, 15, 587
 Disposition of, 15, 587
 Injunction, 15, 587
 Taking ore from adjacent mines, 15, 591
Taxation, 15, 509; 25, 106
 Exemptions, 25, 175, 180
Tenancy for life, 12, 680
Timber, 15, 585
Title, 15, 511, 515
 See infra, PATENT.
 By possession, 15, 515
 Equitable title, 15, 515
 Freehold, 15, 515
 Government, 15, 568
 How acquired, 15, 511, 513
 Location not complying with law, 15, 528, 529
 Whether claims are titles, 15, 515
Town Sites, 15, 522; 19, 364
 Acts of congress, 15, 522
 Examples, 15, 522
 Whether exempt from sale for mining purposes, 15, 522
Trespass, *see infra*, DAMAGES FOR ABSTRACTING MINERALS.
 Injunction, 15, 606
Trover, 15, 605
 Minerals carried away, 26, 777
Tunnel Location, 15, 543
 Abandonment, 15, 544
 As adverse claim, 15, 574
 Face of the tunnel, 15, 544
 Failure to work six months, 15, 544
 Length of the tunnel, 15, 544
 Line of the tunnel, 15, 543
 Location by other parties, 15, 544
 Lode already located, 15, 544
 Right of owner to lodes, 15, 543
 United States provisions, 15, 543
 Underground waters, 15, 589
United States Courts
 Partition, 15, 607, 608
 "Unoccupied," 15, 518
Usages and Customs, 15, 559; 27, 833
 Usage, *see infra*, LOCAL CUSTOMS AND REGULATIONS.
 Partnerships, 15, 612
 "Valuable mineral deposits," 15, 520
 Vein or lode, 13, 999
Veins, 15, 501
 See infra, PLACER AND QUARTZ LANDS.
 Compared with lode, 15, 504
 Crossing each other, 15, 557
 Uniting, 15, 557

MINES AND MINING CLAIMS—Cont'd

- Ventilation, 15, 593
- Vugg of ore, 15, 506
- Warranties, 15, 600
- Waste**, 28, 881
 - Abandoned mines, 28, 883
 - Examples, 28, 881-884
 - In general, 28, 881
 - Judgment debtors, 28, 901
 - Mines already opened, 28, 881
 - Opening new mines, 28, 881
 - Sinking new shafts, 28, 882
 - Tenants in common, 28, 895
- Water**, 15, 580
 - Abandonment of, 15, 582
 - Appurtenance, 15, 582
 - California law, 15, 580
 - Conveyance of mining ditch, 15, 583
 - Damage to settlers, 15, 584
 - Filling watercourse with débris, 15, 582
 - Law as applied in England, 15, 582
 - Original nature of right, 15, 580
 - Prior appropriation, 15, 580, 581
 - Priority of possession to use, 15, 580
 - Right of way for the construction of ditches and canals, 15, 582
 - Right to divert water, 15, 581
 - Riparian owner, 15, 581
 - Statutory regulations, 15, 580
 - Subterranean, 15, 582
 - Unlimited use of, 15, 581
- Whether lessee is released where mine becomes exhausted, 3, 902
- Whether mining company is manufacturing corporation, 14, 269
- Whether right to mine ore is exclusive, 15, 510
- "Winning," 15, 599
- Won, 15, 506
- Working beyond boundaries, 15, 591
- Work Required**, 15, 542
 - Annual Work**, 15, 551
 - See *infra*, RELOCATION.
 - Amount, 15, 553
 - By whom performed, 15, 553
 - Claims held in common, 15, 554
 - Erection of buildings, 15, 553
 - Excuse for non-performance, 15, 553
 - "Labor and improvements," 15, 552
 - Labor performed prior to the first day of January, 15, 555
 - Nature of the work required, 15, 552
 - Placer claim, 15, 551
 - Proof of, 15, 553
 - Purpose of the law, 15, 552
 - Statutory provisions, 15, 551
 - Time, 15, 553
 - Tunnel, 15, 554
 - When period commences, 15, 554
 - Whether retroactive, 15, 555
 - Work done outside the claim, 15, 552
 - Examples, 15, 542, 543
 - Federal provisions, 15, 542
 - Locator deterred by threats, 15, 543
 - Regulations of miners, 15, 542

State provisions, 15, 542

Where it must be done, 15, 543

Wrongful removal of minerals, see *infra*, DAMAGES FOR ABSTRACTING MINERALS.

MINING GROUND, 15, 505**MINISTER**, 15, 617; 20, 776

See CONSULS AND AMBASSADORS.

Minister plenipotentiary, see CONSULS.*Privileged communications*, see PRIVILEGED COMMUNICATIONS.**MINOR**, 15, 617

See INFANTS.

MINORITY, 15, 618**MINT**, 15, 618**MINUTES**, 15, 618

See MEMORANDUM; RECORD.

Docket, see DOCKET, and see *infra*, COURT MINUTES.

As a record, 15, 618

Clerk's minutes, 15, 618

Court Minutes, 20, 491

Amending record, 20, 492

Appearance docket, 20, 494

As evidence, 20, 502

By clerk, 20, 491

By judge, 20, 491

Execution dockets, 20, 494

Incumbrance books, 20, 494

In general, 20, 491

Judgment books, 20, 493

Judgment dockets, 20, 493

Justice of the peace, 20, 492

Trial lists, 20, 494

Where formal record is not required

by law, 20, 493

Whether entries will constitute a judgment, 20, 491

Whether evidence of rendition of judgment, 20, 491

Whether they constitute part of the record of the case, 20, 491

Definition, 15, 618

MIS, 15, 619**MISADVENTURE**, 15, 619**MISAPPLICATION**, 15, 619**MISAPPROPRIATE**, 15, 619**MISBEHAVIOR**, 15, 619

Distinguished from misconduct, 15, 620

MISCARRIAGE, see ABORTION.*As to the debt, default, or miscarriage in the statute of frauds*, see FRAUDS,

STATUTE OF.

MISCEGENATION, 8, 558**Bigamy**

As a defense to, 2, 193

Constitutionality of statutes against, 3, 729; 8, 559, 563

Definition, 8, 558

Indictment, 8, 561

Marriage, 14, 498

Construction of statute, 14, 498

Fourteenth amendment, 14, 498

Indians, 14, 498

Mulattoes, 14, 498

Negroes, 14, 498

Statute forbidding, 14, 498

Void or voidable, 14, 497
 Who a negro within statute, 14, 498
 Parties guilty of fornication, 8, 558
 Punishment, 8, 563
 Where marriage occurred in another state, 8, 559
MISCONDUCT, 15, 619
 Misconduct distinguished from incompetency, 15, 620
 Misconduct distinguished from misbehavior, 15, 620
MISDATE, 15, 620
MISDELIVERY, 15, 620
MISDEMEANOR, 15, 620
As to violation of ordinances, see ORDINANCES.
Compounding a misdemeanor, see COMPOUNDING OFFENSES.
Solicitation, see SOLICITATION.
 Acknowledgment of satisfaction for injury, 3, 401
 All participants in an attempt to commit a misdemeanor are principals, 4, 662
 Attempt to commit a, 4, 662
 Attempt to commit felony, 4, 660
 Bonds to keep the peace, 4, 727
 City ordinances, 4, 655
Compromise
 By injured party, 3, 401
 Crime of commission or omission, 4, 653
 Definition, 4, 653
 Gross misdemeanor, 15, 621
 "High crimes and misdemeanors," 9, 361
Indictment, 4, 751
 Negations of defense, 10, 581
 Principal and accessory, 10, 599½
 Unlawfully, 10, 597
 Intention to commit a, 4, 662
 Jeopardy, 11, 927, 942
Justice of the Peace, 12, 406
 Absence of defendant, 12, 410
 Amendment of complaint, 12, 408
Appeal, 12, 413
 Amendment of complaint, 12, 414
 At what time taken, 12, 413
 Before judgment is rendered, 12, 414
 Compliance with statute, 12, 413
 Courts to which appeal may be taken, 12, 413
 Generally, 12, 413
 Manner of taking, 12, 413
 Scope of appellate court's jurisdiction, 12, 414
 Statutory provisions, 12, 413
 Transfer of papers, 12, 414
 Trial de novo, 12, 414
 Burden of proof, 12, 409
 Capacity to entertain complaint, 12, 406
 Change of venue, 12, 408
Complaint
 Amendment, 12, 408
 In appellate court, 12, 408
 Election, 12, 406, 407
 Joinder of misdemeanors, 12, 406
 Process without complaint, 12, 407
 Setting forth offense in words of statute, 12, 406

Sufficiency of, 12, 406
 Swearing to complaint, 12, 407
 Violation of liquor law, 12, 406
 Wording of statutes, 12, 406
 Continuance, 12, 408
 Depositions, 12, 409
 Disagreement of jury, 12, 409
 Discharge of jury, 12, 410
 Entering plea of guilty, 12, 408
 Essentials of process, 12, 407
Execution, 12, 412
 Against goods and chattels of defendant, 12, 412
 Commitment to county jail, 12, 412
 Expiration of time without imprisonment, 12, 412
 Habeas corpus, 12, 412
Judgment, 12, 411
 Aggregate fine or imprisonment, 12, 412
 Commitment before sentence is rendered, 12, 412
 Commitment to county jail, 12, 411
 Costs, 12, 412
 Fine and imprisonment, 12, 411
 General provisions, 12, 411
 Joinder of misdemeanors, 12, 412
 "Or" not read as "and," 12, 411
 Order of proceedings, 12, 408, 409
 Presumption as to truthfulness of docket, 12, 403
 Record, 12, 408
 Requisite to jurisdiction, 12, 406
 Right to poll jury, 12, 410
 Right to trial by jury, 12, 408, 409
 Suspension of judgment, 12, 413
 Title to land being involved, 12, 410
 Trial and its incidents, 12, 408
 Verdict of not guilty, 12, 410
 When trial must cease, 12, 410
 Where punishment is indefinite, 12, 411
 Libel, 13, 499
 Malpractice, 14, 85
 Malum in se and malum prohibitum, 4, 654
Misprison of Felony, 4, 655
 What is, 4, 655
 Necessity of indictment, 10, 459
 Petit larceny, 12, 794
 Publishing false news, 13, 500
Solicitation, see SOLICITATION.
 Solicitation, 13, 500
 Solicitation to commit a misdemeanor, 4, 671
 Statutory, 4, 654
MISFEASANCE, 15, 621
MISFORTUNE, 15, 621
MISJOINDER, see JOINDER OF ACTIONS; JOINDER OF OFFENSES; JOINDER OF PARTIES; PARTIES TO ACTIONS.
MISLAID, 15, 622
MISMANAGEMENT, 15, 622
MISNOMER, 16, 128; 17, 605
 See NAME.
 Abatement of indictment, 16, 134
 Advantage can be taken of, 17, 605

MISNOMER—Cont'd

- Alias Dictus, 16, 131
- Christian names, 16, 131
- In general, 16, 131
- Money made payable to one under wrong name, 16, 132
- Names of third party, 16, 131
- Omission of word "dictus," 16, 131
- Person executing instrument under wrong name, 16, 131
- Sufficiency of proof, 16, 131
- Amendment**, 16, 134, 135
 - Plaintiff claiming mistake in own name, 16, 135
 - What time may be made, 16, 134
- Change of name pending action, 16, 130
- Christian name, 16, 128; 17, 605
- Corporations*, see CORPORATIONS.
- Defendant, 17, 606
- Demurrer, 16, 128; 17, 606
- Disclosing defendant's true name, 16, 129
- Effect of pleading to the indictment, 16, 129
- Effect of Sustaining Plea**, 16, 134
 - In civil cases, 16, 134
 - In criminal cases, 16, 134
- Entire omission of Christian name, 16, 128
- Error in Christian name, 16, 128; 17, 605
- Error in middle name, 17, 606
- Examples, 16, 128, 129
- How taken advantage of, 16, 129
- In indictment, 4, 769
- Initials, 16, 128
- Initials customarily used, 16, 129
- Initials of Third Persons**, 16, 130
 - Christian name, 16, 130
 - Initials, 16, 130
- Judgment**, 16, 132
 - Against partnership, 16, 132
 - Against "the defendants," 16, 132
 - Christian name, 16, 133
 - Docket entry of judgment, 16, 133
 - Docketing under wrong letter, 16, 133
 - Middle initials, 16, 133
 - Omitting Christian name, 16, 133
 - Partnership names, 16, 132
 - Variances, 16, 132
 - Where party is not ascertainable, 16, 132
 - Whether names of parties must be specified, 16, 132
- Motions, 15, 890
- Municipal corporations, 15, 969
- Name Unknown**, 16, 131
 - Criminal cases, 16, 131
 - Entire omission of name, 16, 131
 - Fictitious name, 16, 131
 - Necessity of fictitious name, 16, 131
 - Replication, 16, 130
- Necessity of full name, 16, 128
- Notice by publication, 16, 815
- Parties to Actions**, 17, 488
 - Error in name of party to contract, 17, 489

- Ignorance of Party's Name**, 17, 490
 - At common law, 17, 492
 - Construction of statutes, 17, 493
 - Statutes, 17, 492
- Misnomer, 17, 491
- Necessity of real parties, 17, 488
- Party ceasing to exist, 17, 489
- Statutes, 17, 490
- Statutes authorizing unincorporated associations, 17, 488
- Suits on contracts, defendants, 17, 489
- Suits on contracts, plaintiffs, 17, 489
- Unincorporated society, 17, 488
- Usually known by name used in pleading, 16, 130
- Where name of party is changed, 17, 489
- Partnership name, 16, 130
- Plea in abatement, 16, 128, 129; 17, 605
- Plea of misnomer, 17, 606
- Reasonable doubt, 16, 131
- Service of Process**, 22, 115
 - Effect, 22, 115
 - Examples, 22, 115, 116
- Statute of additions, 16, 133
- Statutes construed, 17, 606
- Summons, 24, 511
- Surplusage, 16, 130
- Waiver of misnomer, 17, 606
- Whether one defendant can object to misnomer of co-defendant, 16, 129

MISPLEADING, 15, 623

See PLEADING.

MISPRISION OF FELONY, 15, 623

What is, 4, 655

MISREADING, 15, 623

MISREPRESENTATION, 15, 623

See DECEIT; FRAUDULENT SALES; REPRESENTATIONS.

Suretyship, as to discharge of surety, see SURETYSHIP.

Vendor and purchaser, see VENDOR AND PURCHASER.

Assumpsit

To recover money paid under, 1, 887

Bonds

Obtaining signature to by, 2, 457

By Vendor

Implied warranty, 10, 112

Constructive trusts, 10, 69

Promise of marriage obtained by, 2, 523

MISSIONARY, 15, 623

MISSIONARY SOCIETIES

Taxation

Exemptions, 25, 169

MISSPELLING, 15, 623

See NAME; SPELLING.

Indictment, 10, 548

Caption, 10, 549

"Cash" for "case," 10, 549

Description of offense, 10, 549

"Eigh" for "eight," 10, 548

"Fourman" for "foreman," 10, 549

Generally, 10, 548

"Incestuous" for "incestuous," 10, 550

"Inhabitation" for "inhabitants," 10,

549

- "Mair" for "mare," 10, 550
- Omission or addition of letters, 10, 549
- "Raysor" for "razor," 10, 550
- "Rill" for "kill," 10, 550
- "Stael" for "steal," 10, 550
- "February" instead of "February," 10, 549
- Where meaning of word can be determined from context, 10, 549
- Where significance is not changed, 10, 548

MISTAKE, 15, 625

See ALTERATION OF INSTRUMENTS; AMENDMENT; IGNORANCE, MISNOMER; NAME; NEW TRIAL; REFORMATION OF INSTRUMENTS; RESCISSION.

Money paid under mistake, see PAYMENT.

Account, 15, 626

Account Stated, 1, 126

Opening for, 1, 125

Surcharge and falsifying power, 1, 128

Acknowledgment

Correction of, 1, 150

As a Crime

Receiving money honestly supposing it to be due, 4, 688

Assumpsit

To recover money paid under a mistake of fact, 1, 887

Attorney and client, 15, 644

Award, 1, 709; 17, 667

Mistake caused by negligence of losing party, 1, 710

To set aside must be apparent, 1, 710

Bill in Equity, 15, 627

Allegation of, 6, 756

Bona fide, 15, 647

"By mistake," 15, 633

Compulsion, 15, 642

Confessions made under a, 3, 442

Consideration, 15, 678

Constructive trust, 10, 80

Continuance

Grounds for, 3, 917

Correction of, in memorandum of auction sale, 1, 1002

Creditors, 15, 678

Crime, 4, 687; 9, 875; 19, 505

Definition, 6, 717; 15, 625; 20, 714

Description

Of land in deed or mortgage, 15, 646

Mistake in, 15, 646

Directors, 17, 119

Draughtsman, 15, 673

As agent of either party, 15, 674

Examples, 15, 673

Failure to read, 15, 675

Fraud or deceit, 15, 675

Negligence of parties, 15, 674

Whether it will be corrected in equity, 15, 673

Entering judgment, 15, 675

Equal means of acquiring knowledge, 15, 644, 647

I-D-73

Equitable Jurisdiction, 15, 626

See REFORMATION OF INSTRUMENTS; RESCISSION.

Accounts, 15, 627

Altering parties' contract, 15, 628

Assisting a party to gain an advantage, 15, 626

Bill or answer, 15, 627

Bona fide, 15, 647

Breach of covenant, 15, 627

By mistake, 15, 633

Caution, 15, 628

Examples, 15, 626, 627

Examples of negligence, 15, 632

Failing to allege mistake, 15, 632

Free from negligence, 15, 632

General principles, 15, 628

In general, 15, 626

In statu quo, 15, 628

Laches, 15, 634

Legal rights changed by mistake, 15, 628

Making new contract for party, 15, 628

Materiality, 15, 628

Mistaken intention of one party, 15, 630

Mutuality, 15, 629

Questions of law and fact, 15, 630

Ratification, 15, 634

Ratifying mistake, 15, 634

Representations, 15, 633

Request to correct mistake, 15, 633

Showing fact of mistake, 15, 632

Showing original intent, 15, 632

Signing deed without reading it, 15, 632

Statute of limitations, 15, 634

Unfair advantage obtained by mistake, 15, 628

Unilateral mistake, 15, 630

Unintentional, 15, 631

Use of the word "mutual," 15, 629

When equity will grant relief, 15, 626, 628

Where equities are equal, 15, 628

Error in amount of land conveyed, 15, 646

Estoppel, 7, 8, 14

Evidence, see *infra*, PAROL EVIDENCE.

Written evidence, 15, 651

Excuse for Crime, 4, 687; 19, 505

Capturing a vessel honestly supposed to be piratical, 4, 688

Honest misapprehension of ownership of property, 4, 687

Ignorance of fact to negative a particular intent, 4, 688

Ignorance of fact where it could have been known by reasonable diligence, 4, 687

Obstructing highway, ignorant that it is a highway, 4, 687

Resisting an officer supposing him to be a private person, 4, 688

Where statute makes offense indictable irrespective of guilty knowledge, 4, 687

MISTAKE—Cont'd

Executors and administrators, 15, 676
 Failure to allege, 15, 632
Foreclosure of Mortgages
 Setting aside sale, 8, 262
 Forgotten fact, 15, 646
 Fraud on creditors, 15, 678
Fraudulent Sales
 Honest misrepresentation, 8, 800
 Guardians, 15, 642
 Husband's name inserted as grantee by
 9, 42
 Illegitimate child, 15, 679
Injunctions
 Enjoining judgment obtained through
 mistake by defendant, 10, 901
 Ignorance of law of another state, 10,
 904
 Ignorance of material facts constitut-
 ing defense, 10, 905
 Judgment, 10, 896
 Mistake of law, when joined to other
 considerations, 10, 904
 Relief against judgment, 10, 904
 Without fault of the party, 10, 904
 Insurance policy, 11, 346
 Joint bonds considered joint and several,
 2, 466
 Journals of legislature, 23, 193
 Judicial sales, 12, 235
Judgment
 See infra, VACATION OF JUDGMENT.
 Mistake of judge, 12, 144
 Laches, 15, 634
Landlord and Tenant
 Estoppel to deny title, 12, 705
Legal effect, see infra, OF FACT; OF
 LAW.
 Lessees, 15, 678
 Libel and slander, 13, 400
 Limitation of actions, 13, 730
 Marriage, 14, 508
 Materiality, 15, 628
 Mechanics' liens, 15, 165
 More or less, 15, 721, 723
Mortgages
 Mortgagee as bona fide purchaser, 15,
 680
 "Mutual," 15, 629; 16, 108
Mutuality, 15, 629
 Mistake of law, 15, 642
 Natural love and affection, 15, 678
 Necessity of request to correct mistake,
 15, 633
 Negligence, 15, 631
New Trial
 Ignorance of law, 16, 533
 Ignorance of statutes, 16, 533
Surprise Arising from Mistake
 Mistake of Counsel, 16, 550
 Competency of witness, 16, 551
 In general, 16, 550
 Relevancy or materiality of evi-
 dence, 16, 551
 When new trial granted, 16, 551
Mistake of Parties, 16, 549
 Failure to make defense, 16, 549

Misleading remarks of court, 16,
 549
 Ruling of court, 16, 549
Mistake of Witnesses, 16, 551
 Affidavit, 16, 552
 In general, 16, 551, 552
 When new trial granted, 16, 551
Of Fact
 Agreements made under a misconcep-
 tion of party's right, 15, 649
 As ground for setting aside award, 1,
 709
 Cancel a contract, 15, 647
 Definition, 15, 645
 Description of land in deed or mort-
 gage, 15, 646
 Distinction between reformation and
 rescission, 15, 647
 Equal information or means of knowl-
 edge, 15, 647
 Error in amount of land conveyed, 15,
 646
 Examples, 15, 645-649
 Fact doubtful from its nature, 15, 647
 Forgotten fact, 15, 646
 Good faith of parties, 15, 647
 In equity, 9, 873
 Materiality, 15, 647
 Parties to contract under impression
 that a certain state of things existed,
 15, 645
 Payment, 15, 676
 Representations, 15, 648
 When equity will not interpose, 15,
 647
Of Law, 9, 873; 15, 634
 A plain and palpable rule of law mis-
 taken, 15, 639
 Attorney's mistake, 9, 873; 15, 644
 Civil jurisdiction, 9, 875
 Claim that mistake of law is within
 jurisdiction of equity, 15, 644
 Compulsion, 15, 642
 Construction of a particular clause, 15,
 637
 Construction of instrument, 15, 637
 Contract in ignorance of right, 15, 640,
 641
 Contract to convey land, 15, 641
 Criminal jurisdiction, 9, 875
 Defective attempt to put an agreement
 into writing, 15, 639
 Defendant taking advantage of plain-
 tiff's ignorance, 15, 638
 Definition, 15, 634
 Equal means of acquiring knowledge,
 15, 644, 647
 Examples, 15, 634-645
 Failure of title, 15, 641
 Foundation of rule, 9, 875
 General rule, 15, 644
 General rule as to when relief will be
 granted, 15, 643
 Ignorance of law and mistake of law,
 15, 644
 Ignorance of law by an attorney, 9,
 873; 15, 644

- Ignorance of overruled decisions, 15, 638
- Ignorance of statutory law, 15, 637
- In general, 9, 873
- Instrument not expressing true intent of parties, 15, 643
- Instrument turning out to be illegal, 15, 636
- Laws of foreign countries, 9, 874
- Legal Effect**, 15, 648
 - Construction, 15, 648
 - Of instrument, 15, 637
- Legal rights of a doubtful character, 15, 641
- Misrepresentations of defendant, 15, 638
- Mistake as to existence of a law, 15, 637
- Mistake as to married women's capacity, 15, 643
- Mistake both of law and fact, 15, 643
- Mistake of guardians, 15, 642
- Modifications, 15, 638
- Mortgage paid under mistake, 15, 641
- Mutual mistake attributed to party's agent, 15, 643
- Mutual mistake of law, 15, 642
- Other grounds for relief aside from grounds of mistake, 15, 639
- Part performance, 15, 636
- Party ignorant of his private rights, 15, 640, 650
- Party standing in unequal relationship, 15, 640
- Payment, 15, 676
- Penal statutes, 9, 875
- Private rights, 9, 874
- Quasi criminal liability, 9, 875
- Relief against, in equity, 15, 634, 635
- Relief in Equity**, 9, 876
 - Exceptions to the principle, 9, 876
 - Full knowledge of facts, 9, 877
 - General rule, 9, 876
 - Where payment was equitable, 9, 878
- Rescission, 21, 39
- Review of decision, 15, 644, 645
- Statute of limitations, 15, 636
- Technical language, 15, 638
- The Roman law, 9, 874
- When equity will grant relief, 15, 638-644
- Where parties have equal means of acquiring knowledge, 15, 644
- Overwhelming proof, 17, 297
- Parol Evidence**, 15, 649; 17, 430
 - Admissibility, 15, 649
- Degree of Proof Required**, 15, 649, 650
 - "Admitted or directly proved," 15, 651
 - "Clear," 15, 650
 - "Clear and overwhelming," 15, 650
 - "Clear and satisfactory," 15, 650
 - "Clear, precise, and indubitable," 15, 650
 - Contradictory evidence, 15, 651
 - Mistake must clearly appear, 15, 649
 - Reasonable doubt, 15, 650
 - "Satisfactory," 15, 650
 - "Strongest and most convincing evidence," 15, 650
 - Where mistake is denied in answer 15, 650
- General rule, 15, 649
- Parties**, 15, 681
 - Grantees of original, 15, 682
 - Whether original parties must appear before court, 15, 681
 - Who must be made, 15, 681, 682
- Partition**
 - Mistake of arbitrators, 17, 667
 - Sale, 17, 696
 - Validity of decree, 17, 811
- Patent Law**
 - Jurisdiction, 18, 143-145
 - Jurisdiction of equity, 18, 143
- Payment equitable though not enforceable at law, 9, 878
- Powers, 18, 984
- Public Officers**, 15, 675
 - As a defense to criminal charge, 19, 505
- County Clerk**, 15, 675
 - Entering judgments, 15, 675
 - Examples, 15, 675
 - Fixing penalty in a guardian's bond, 15, 675
- Liability, 19, 495
- Sheriffs**, 15, 676
 - Conduct of public sales, 15, 676
 - Misdescription in deed, 15, 676
- Questions of law and fact, 15, 630
- Ratification, 15, 634
- Receipts, 19, 1121
- Release**, 20, 748
 - Claims for personal injury, 20, 763
- Representations**, 15, 633
 - Material misrepresentations, 15, 648
 - Misrepresentations of defendant, 15, 638
- Rescission**
 - Deed, 21, 63
 - Sale, 21, 63
 - Article not in existence, 21, 53
 - Examples, 21, 53-55
 - Identity of party dealt with, 21, 54
 - In general, 21, 53
 - Mistake of one party, 21, 53, 54
 - Mutuality, 21, 53
 - Price or terms, 21, 54
 - Purchaser's ability to pay, 21, 54
 - Quantity, 21, 54
 - Where purchaser had referred to one article and seller to another, 21, 53
- Rescission of Contract**, 21, 37
 - Carelessness of draftsman, 21, 37
 - Erroneous recital of the interest in the premises, 21, 37
 - Examples, 21, 37-41
 - Foreign laws, 21, 40
 - Inducing the contract, 21, 38
 - In general, 21, 37
 - Intention of parties, 21, 37
 - Material mistake, 21, 38

MISTAKE—Cont'd**Rescission of Contract—Cont'd**

- Matter of fact, 21, 39
- Misapprehension of parties, 21, 37
- Mistake of law, 21, 39
- Mistake of mixed law and fact, 21, 40
- Mistake of one party, 21, 38, 39
- Mistake on one side and fraud on the other, 21, 39
- Mutuality of mistake, 21, 38
- Reformation of instrument, 21, 37
- Want of authority on part of agent or officer, 21, 41
- When grounds for rescission, 21, 37

Res Judicata, 21, 237

- What might have been litigated, 21, 223

Rights of third parties, 15, 679**Sales, 21, 459**

- As to identity of party, 21, 460
- Effect, 21, 459
- Examples, 21, 459, 460
- In general, 21, 459
- Mistake as to terms, 21, 459
- Mistake in subject-matter of sale, 21, 459

Set-Off

- Counterclaim, 22, 393
- Showing fact of mistake, 15, 632
- Showing original intent, 15, 632

Specific Performance

- Of Defective Instrument, 15, 677
 - Defenses of mistake, 15, 677
 - Party seeking specific performance, 15, 677
- Parol evidence to show, 22, 1076
- Statute of limitations, 15, 634, 648

Subrogation, 24, 284

- Mistake of fact, 24, 284
- Mistake of law, 24, 284
- Whether payment under makes one a volunteer, 24, 284

Subsequent Purchasers, 15, 679

- Bona fide purchaser, 15, 680
- Judgment lien, 15, 680
- Mortgagee as purchaser for value, 15, 681
- Notice of mistake, 15, 680
- Subsequent purchasers without value, 15, 680
- Where purchasers would not be harmed by a correction, 15, 680

Taxation**Officer**

- Redemption, 25, 423
- Payment under, 25, 467

Technical language, 15, 638**Trespass, 26, 577****Trust deeds and power of sale mortgages, 26, 940****Trusts and trustees, 27, 150; 28, 315, 317****Unilateral mistake, 15, 631****Unintentional, 15, 631****Usury, 27, 929, 970**

- Clerical mistakes, 27, 970
- Error in computation of interest, 27, 971

Examples, 27, 970, 971**No agreement for usury, 27, 970****Question of law or fact, 27, 971****Vacation of Judgment, 12, 133****Absence from state, 12, 134****Affidavit of merits, 12, 138****Attorney failing to file pleading, 12, 135****Attorney forgetting day of trial, 12, 135****Defendant failed to make himself acquainted with nature of process, 12, 135****Defendant not represented at trial, 12, 134****Discretion of court, 12, 133, 137****Discretion to be exercised in conformance with law, 12, 137, 144****Error of law, 12, 137****Excusable neglect, 12, 134****Illustrations, 12, 133-136****Illustrations of excusable neglect, 12, 135****Inability to attend, 12, 134****Inexcusable neglect, 12, 135, 136****Judgment entered contradictory to principles of court, 12, 138****Judgment entered contrary to statutes, 12, 138****Judgment not barred by statute of limitation, 12, 138****Laches, 12, 138****Mere irregularity, 12, 137****Merits in the case, 12, 137****Misfortune, 12, 133****Mistake or neglect of attorney, 12, 135****Order subject to review, 12, 137****Sickness, 12, 134****Time within which relief must be asked, 12, 137****Unavoidable casualty, 12, 133****Unwritten stipulation, 12, 134****When court's order will be set aside, 12, 137****Wording of statute, 12, 133****Voluntary conveyance, 15, 678****Voluntary Payment****Mistake of Fact, 18, 225****Agent of government, 18, 227****Computation of interest, 18, 229****Examples, 18, 225-230****Failure to use means of knowledge, 18, 226, 229****Forgetfulness of facts, 18, 229****Intention of waiving inquiry, 18, 230****Limitation of actions, 18, 226****Means of knowledge, 18, 226-229****Mistake of material facts, 18, 226****Money paid equitably due, 18, 229****Payment of claim after investigation, 18, 227****Payment of taxes on another's land, 18, 226****Whether money can be recovered back, 18, 226****Mistake of Law, 18, 223****Examples, 18, 224, 225****Foreign law, 18, 225**

- Judgment afterwards reversed, 18, 223
 Whether money can be recovered back, 18, 223
- MISTREAT**, 15, 682
- MISTRIAL**, 15, 682
See NEW TRIAL.
- MISUSE**, 1, 49
- MITIGATION OF DAMAGES**, 15, 682
See CHARACTER AS EVIDENCE.
- Assault and Battery**, 15, 684
 Acts or declarations at a different time, 15, 685
 Antecedent facts, 15, 685
 Bad character, 15, 685
 Cooling time, 15, 685
 Examples, 15, 685
 Extent to which damages may be mitigated, 15, 686
 Fine, 15, 690
 Indecent assault, 15, 686
 Opprobrious language, 15, 685
 Provocation, 15, 685
 Truth, 15, 685
- Breach of Promise**, 15, 688
 Disapproval of family, 15, 690
Breach of promise of marriage, *see* BREACH OF PROMISE.
- Definition**, 15, 683
 Escape, 15, 690
 False imprisonment, 15, 686
 Forcible entry and detainer, 15, 686
 General rule, 15, 684
 Injury enhanced or reduced by acts of third person, 15, 689
 Malice of plaintiff, 15, 687
Negligence of Plaintiff, 15, 687
See CONTRIBUTORY NEGLIGENCE.
Wrongful discharge of employee, *see* MASTER AND SERVANT.
- Breach of promise**, 15, 688
 Examples, 15, 687, 688
 Injury enhanced, 15, 687
 Violation of contract, 15, 687
- Pleading**, 15, 683
 Admissibility as part of *res gestæ*, 15, 683
Code Practice, 15, 684
 Examples, 15, 684
 Justification, 15, 684
 Necessity of setting up, 15, 684
 Matter available as a plea in bar, 15, 683
 Necessity of, 15, 683
 Property applied to owner's benefit without his consent, 5, 39
 Reduction of loss or injury by acts of either party, 15, 688
 Reports existing, 5, 47
- Res Gestæ**, 15, 690
 Assault, 15, 691
 Breach of promise of marriage, 15, 690
 Debt lost through the negligence of an agent, 15, 690
 Examples, 15, 691
 Failure of consideration, 15, 691
 Fine for assault, 15, 690
 Generally, 15, 691
 Justification, 15, 690
 Negligent escape, 15, 690
 Seduction, 15, 691
 When admissible, 15, 690
- Seduction, 15, 691
 Trespass, 15, 684
Trover, 15, 688
 Proceeds applied to payment of plaintiff's debt, 15, 688
 Where property is restored, 15, 688
- Truth, 15, 685
 What may be proved, 15, 684
 Wrongful arrest, 15, 684
- MITTIMUS**, 15, 692
 Amendment, 15, 696
 Clerk of court, 15, 692
Contents, 15, 693
 Bailable offense, 15, 695
 Crime, 15, 693
 Examples, 15, 693, 694
 Name of defendant, 15, 693
 Oath, 15, 694
 Place of commitment, 15, 694
 Punishment, 15, 694
 Time of imprisonment, 15, 694
 Definition, 15, 692
 Form, 15, 693
 Habeas corpus, 9, 186, 233; 15, 696
 Imperfection of mittimus, 10, 204
- Irregularities**, 15, 696
 Amendment of writ, 15, 696
 Effect of, 15, 696
 Habeas corpus, 15, 696
 Remand, 15, 696
 Waiver of irregularities, 15, 696
 Judges of election, 15, 692
 Order of commitment read in open court, 15, 693
 Preliminary examination, 12, 418
 Recitals, 9, 223
 Recitals in judgment, 9, 233
 Remand, 15, 696
 Seal, 15, 695
Signature, 15, 695
 J. P., 15, 695
 Necessity, 15, 695
 Showing officer's authority, 15, 695
 Tests of magistrate, 15, 696
 To whom addressed, 15, 693
 When requisite, 15, 693
 Writing, 15, 695
- MIXED**
 Incorporeal hereditaments, 10, 360
 Mixed actions, 15, 697
 Mixed jury, 15, 697
 Mixed larceny, 15, 697
 Mixed liquor, 15, 697
Mixed Property, 15, 697
See CONFUSION OF GOODS.
 Mixed question, 15, 698
 Mixed war, 15, 698
- MOBILIA**, 15, 698
- MOBS**, 15, 698
See RIOT; RIOT; UNLAWFUL ASSEMBLY.
 Confessions obtained by, 3, 470

MOBS—Cont'd

County's liability for property destroyed by, 4, 368

Excusing carriers of goods for delay in delivery, 2, 847

Property Destroyed by
Liability of Municipality

Constitutionality of act, 15, 1158

Examples, 15, 1158, 1159

Judgments, 15, 1161

Liability at common law, 15, 1158

Measure of damages, 15, 1161

Notice to municipal authority, 15, 1160

Size and character of mobs, 15, 1159

Statutory liability, 15, 1158

Whether founded upon contract, 15, 1158

MOBS AND RIOTS

Fire insurance, 7, 1043

MOCKING, 15, 698
MODE, 14, 251; 15, 699

Mode of process, 15, 699

MODEL, 15, 699
MODERATE

Moderate speed, 16, 291

Moderate terms, 15, 699

MODIFY, 15, 699
MOIETY, 15, 699
MOLEST, 15, 700
MOLESTATION, 15, 700
MONARCHY

Distinguished from republic, 21, 20

MONEY, 15, 701; 29, 347

See COIN; EMBEZZLEMENT.

See generally, PAYMENT.

See SURPLUS MONEY; TENDER.

Earnest money, see FRAUD, STATUTE OF; SALES.

Obtaining money under false pretenses, see FALSE PRETENSES.

As including deposit at bankers, 2, 94

Assignability of money to become due, 1, 831

Bank Bills, 7, 775; 15, 701; 18, 164

Current notes, 18, 165

Insolvent bank, 18, 164

Whether bank bills pass as money, 7, 775; 18, 164

Whether they constitute payment, 18, 164

Bills of Credit, 15, 709

Borrowing money, 15, 709

Certificates, 15, 709

Confederate treasury notes, 15, 709

Constitutional provisions, 15, 709

Corporations, 15, 709

Individuals, 15, 709

Notes used by a bank by authority of a state, 15, 709

Receivable in payment of taxes, 15, 709

What is meant, 15, 709

What is meant by emitting bills of credit, 15, 709

Bonds, 15, 702

Canada currency, 2, 718

Cash, 3, 31

Circulating medium, 3, 240

Confederate Money

Payment to co-executor, 15, 706

Treasury notes, 15, 709

Confederate Notes, 15, 706; 18, 165

Burden of proof that bank notes were issued to aid in rebellion, 15, 707

Considered as foreign currency, 15, 706

Contract payable in dollars, 15, 706

Duress, 15, 707

Examples, 18, 165, 166

Fraud, 15, 707

Right of agent, 15, 706

Sale of lands, 15, 707

Transactions generally sustained, 15, 707

Unwillingness to receive currency, 15, 707

Valid as payment, 18, 165

Validity of the contract, 15, 706

Where voluntarily received, 18, 165

Whether federal question is necessarily involved, 15, 707

Whether regarded as currency, 18, 165

Conflict of laws, 15, 708

Construction of the word money within the United States statute against embezzlement, 6, 485

Contracts payable in foreign money, 15, 708

Contracts to Pay in Coined Dollars, 15, 705

Constitutionality of state statutes providing that judgment shall be entered for the specie stipulated in the contract, 15, 705

Whether fulfilled by payment of debts in legal tender, 15, 705

Whether payment in gold may be implied, 15, 705

Whether payment must be in specie, 15, 705

"Currency," 2, 326; 4, 957; 15, 702

Current bank notes, 15, 702

Current funds, 5, 528²⁰⁶

Current money, 4, 957

Current notes, 18, 165

Definition, 15, 701

Depreciated paper currency, 21, 318

Detinue, 5, 652

Dollar, 5, 854

Executions, 7, 129

Foreign Attachment, 8, 313

Bonds payable in another state, 8, 313

General rule, 8, 313

In hands of a third person, 8, 313

Money collected under execution, 8, 313

Money due on insurance policy, 8, 313

Funds, 8, 984

"Good current money," 8, 1358

Government bonds, 16, 484

"Greenback," 9, 61

- Illegal Currency**, 18, 167
 Counterfeit money, 18, 167
 Validity, 18, 167
In Custody of Law
 See COURTS; TENDER.
 Lis pendens, 13, 876
Inns and innkeepers, 11, 66
In wills, 15, 702
Larceny, 12, 784
 Bank notes, 12, 784
 Coin, 12, 784
 Evidence, 12, 836
 Evidence of value, 12, 841
 Forged bank notes, 12, 785
 Indictment, 12, 808-810, 819
 Money, 12, 784
 Variance, 12, 867
Lawful Money, 15, 703
 Legal tender, 15, 703
 What is, 15, 703
Legacies, 13, 15
Legacies and Devises, 13, 183
 Currency of place where legatees reside, 13, 183
 Money of country of testator's domicile, 13, 183
Legal Tender, 15, 703
 Coin of small denominations, 15, 703
 Contract to Pay in Coined Dollars, 15, 705
 Constitutionality of state statutes providing that judgment shall be entered for the specie stipulated in the contract, 15, 705
 Whether fulfilled by payment of debts in legal tender, 15, 705
 Whether payment in gold may be implied, 15, 705
 Whether payment must be in specie, 15, 705
 Definition, 15, 703
 Demand treasury notes, 15, 703
 Duties, 15, 703
 Express contract to pay in coined money, 5, 148
 Imports, 15, 703
 Lawful money, 15, 703
 National bank notes, 15, 704
 Payment of note expressed to be payable in gold, 2, 326
 Power of congress to make treasury notes legal tender, 3, 705
 Ruling of state court, 15, 704
 Statutory provisions, 15, 703
 Taxes, 15, 704
 Taxes imposed by legislative authority, 5, 148
 Treasury notes, 15, 704
Loan of money, 13, 977, 979
Meaning of term "debt" in legal tender acts, 5, 147
Money, bills, 15, 710
 "Money, costs, charges, and expenses," 15, 710
Moneyed capital, 2, 726
 "Money expended," 15, 710
 "Money, goods, and chattels," 15, 710
 "Money in fund," 15, 710
 "Money in hand," 15, 710
Money Lent for Gaming, 15, 710
 See GAMING.
Money made and paid, 13, 1197
Money on deposit, 15, 711
 "Money's worth," 15, 711
Money value, 15, 711
Mortgages, 15, 702
Municipal Script Intended to Circulate as Money, 15, 1213
 Liability under, 15, 1213
 New promise, 15, 1214
 Validity, 15, 1213
 Whether city is released, 15, 1213
 Whether warrants can be enforced, 15, 1213
National bank notes, 15, 704
Negotiable Notes
 Payable in money only, 2, 325
Notes, 15, 702
Payment, 18, 163
 Bank bills, 18, 164
 Examples, 18, 163, 164
 What is money, 18, 163, 164
 Whether payment in money is implied, 18, 163
 Payment of money into courts, *see* TENDER.
 Public money, 19, 304
 Ready money, 3, 31; 19, 971
 Replevin, 20, 1063
 Savings bank deposits, 15, 702
 Security, 15, 702
 Specific performance, 22, 997
Stock
 Whether stock passes under bequest of money, 23, 590
 Subject to attachment, 1, 913
 Taxation, 25, 138
Treasury Notes, 3, 34; 15, 703, 70 27, 527
 Negotiable, 16, 484
Trover, 26, 766
 Bank bills deposited in pledge, 26, 767
 Duty to return specific coin, 26, 766
 Examples, 26, 766, 767
 Money paid by mistake, 26, 767
 Money received and not paid over, 26, 766
 Special deposit, 26, 766
 When trover lies for conversion, 26, 766
Trusts and Trustees
 Depreciated currency, 27, 147
 Validity of contracts payable in confederate, 3, 877
 Valuation of foreign coins, 21, 318
 Whether confined to coin, 15, 701
 Whether property, 19, 288
MONEYED CORPORATIONS, 15, 710
MONITION, 15, 711
MONOMANIA, 15, 257
 Definition, 4, 720
 Excuse for crime, 4, 720

MONOMANIACS, 15, 711**MONOPOLY**, 15, 712

See CRIMINAL CONSPIRACY; FORESTALLING THE MARKET; TRADE COMBINATIONS AND CORPORATE TRUSTS.

As franchises, 8, 598

Charters of corporations construed against, 4, 214

Definition, 15, 711

Municipal corporations, 15, 1055, 1056

Restraint of Trade

Telegraph and railroad companies, 9, 892

Strict construction, 23, 398

MONSTERS, 15, 217

Succession, 24, 362

MONTH, 15, 712; 23, 325

Calendar month, 15, 712

Means calendar months, 2, 396

Name, 16, 117

One calendar month's notice, 2, 714

MONTHLY, 15, 713**MONUMENTS**, 15, 713

See BOUNDARIES; CEMETERIES.

Artificial monuments in United States surveys, 2, 501

Boundaries, 24, 1015

Charitable gift to maintain, 3, 132

Surveys, 24, 1013, 1015

MOORAGE, 15, 714**MOORINGS**, 15, 714

Change of moorings, 3, 89

MOOT, 15, 715**MOOTED**, 15, 715**MORA**, 15, 715**MORAL**, 15, 715, 716

Moral character, 15, 715

Moral insanity, 15, 715

Moral obligations, 15, 716

Moral or benevolent objects, 15, 716

Moral or Emotional Insanity

Excuse for crime, 4, 727

MORAL CERTAINTY, 3, 58; 15, 715

See REASONABLE DOUBT.

MORALITY, 15, 716**MORE**, 15, 716

More than one subject, 15, 724

MORE OR LESS, 2, 508; 12, 984; 15, 717; 21, 543

See ABOUT.

Boundaries, 24, 1019

Contracts, 15, 723

Contracts for Sale of Lands, 15, 720

Deficiency or surplus, 15, 720

Effect of the words, 15, 720

Gross mistake, 15, 720

Misrepresentation, 15, 721

Mutual mistake, 15, 721

Presumption of fraud, 15, 720

When purchaser may recover for deficiency, 15, 721

Deeds, 15, 721

Deeding excess, 15, 720

Deviation of ten or fifteen per cent., 15, 718

Effect of the words, 15, 717

Effect of warranty, 15, 721

Equivalent to sale of land in gross, 15, 718

Examples in which the excess was held to exceed limit covered by the words, 15, 719

Examples in which the quantity was held not to exceed limit covered by the words, 15, 718, 719

Materiality of words expressing quantity, 15, 720

Metes and bounds, 15, 720

Misrepresentations, 15, 721

Mutual risk of vendor and vendee, 15, 717

Reasonableness of the deficiency, 15, 718

Reasonableness of the excess, 15, 718

Small portion more than quantity, or if there be a small quantity less, 15, 717

Waiver of warranty, 15, 717

Fraud, 15, 723

In a bill of lading, 2, 225

In description of property sold at auction, 1, 988

Lumber, 13, 1029

Mistake, 15, 723

Patents of lands, 15, 721

Quantity not the essence of the contract, 24, 1019

Reformation of instruments, 15, 659

Sales of personality, 15, 722

Surveys, 24, 1019

Wills, 15, 720

MOREOVER, 15, 723**MORGANATIC MARRIAGE**, 15, 724**MORMONISM**, *see* BIGAMY.**MORTALITY**, 15, 724**MORTGAGES**, 15, 725, 731

See CHATTEL MORTGAGES; EQUITABLE MORTGAGES; FORECLOSURE OF MORTGAGE; INDEMNITY MORTGAGES; PLEDGE AND COLLATERAL SECURITY; PURCHASE-MONEY MORTGAGES; RAILROAD SECURITIES; REDEMPTION; TRUST DEEDS AND POWER OF SALE MORTGAGES.

Absolute conveyances intended as mortgages, *see* EQUITABLE MORTGAGES.

As to breach of covenant, *see* REAL COVENANT.

As to enjoining mortgage sale or foreclosure, *see* INJUNCTIONS.

By building and loan associations, *see* BUILDING AND LOAN ASSOCIATIONS.

By deposit of title deeds, *see* EQUITABLE MORTGAGES.

By foreign corporations, *see* FOREIGN CORPORATIONS.

By railroads, *see* RAILROAD SECURITIES.

Equity of redemption, *see* REDEMPTION OF MORTGAGES.

Informal mortgages, *see* EQUITABLE MORTGAGES.

Mortgages as security for coupons, *see* COUPONS.

- Power of sale mortgages*, see TRUST DEEDS AND POWER OF SALE MORTGAGES.
- Title deeds*, see EQUITABLE MORTGAGES.
- Acceptance of, 15, 760
- Accession, 15, 752
- Advances*, see *infra*, FUTURE ADVANCES.
- Adverse possession between mortgagor and mortgagee, 1, 245
- Adverse possession, tacking, 24, 1037
- After-Acquired Property**, 15, 749
- Freight*, see *infra*, FREIGHT.
- Future crops*, see *infra*, CROPS.
- Domestic animals, 15, 752
- Earnings of a vessel, 15, 752
- Estoppel, 7, 10; 15, 749
- Examples, 15, 750-753
- Furniture of a hotel, 15, 752
- How operative, 15, 749
- In England, 15, 749
- In United States, 15, 749
- Miscellaneous, 15, 753
- Mortgage subject to whatever liens rest upon the property, 15, 752
- New and old sales, 15, 752
- Present contract, 15, 749
- Property having a potential existence, 15, 750
- Substituted property, 15, 752
- The doctrine at common law, 15, 750
- Whether it may be mortgaged, 15, 749
- Aliens, 1, 465; 15, 744
- Animals, 15, 752
- Application of Payments**, 15, 876; 18, 243
- As to rents and profits*, see *infra*, MORTGAGEE.
- Assignments**, 15, 842; 20, 532
- Absolute in form as a loan, 15, 862
- Assignee accounting for rents and profits, 15, 824
- Assignee's right to foreclose in his own name, 15, 843
- By what law governed, 15, 851
- Consideration, 15, 843
- Construction, 15, 849
- Conveyance of land with warranty, 15, 843
- Debt as incident of mortgage, 15, 844
- Deed, 15, 842, 846
- Delivery**
- Necessity, 15, 843
- Delivery of bond or note secured by the mortgage, 15, 843
- Delivery of mortgage itself, 15, 843
- Equitable**, 15, 844
- Assignee may maintain an action in his own name, 15, 847
- Assignment not under seal, 15, 846
- Assignment of debt as between the parties, 15, 846
- Conveyance of part of mortgage estate, 15, 848
- Delivery of note without indorsement, 15, 846
- Ineffectual sale under a power, 15, 848
- Mortgagee holding mortgage as trustee for assignee, 15, 845, 847
- Mortgagee retaining mortgage in his own hands, 15, 845
- Mortgage following debt, 15, 844
- Mortgage is the incident of the debt, 15, 844
- Sale under irregular foreclosure, 15, 848
- Third persons without notice of assignment, 15, 846
- Warranty deed, 15, 846
- What constitutes, 15, 844-848
- Who may enforce mortgage, 15, 846, 847
- Executors and administrators, 7, 257, 289; 15, 849
- False representations, 15, 863
- Indorsement upon mortgage, 15, 842
- Miscellaneous, 15, 861
- Mortgage fraudulent on its inception, 15, 862
- Necessity of transfer of debt, 15, 849
- Notes Protected by Mortgage**, 15, 855
- Bond secured by mortgage, 15, 859
- Conflict of opinion, 15, 855-861
- Doctrine in general, 15, 855-861
- Effect of, 15, 855
- Equities arising between mortgagor and mortgagee, 15, 855
- In Illinois, 15, 857
- In Louisiana, 15, 858
- In Minnesota, 15, 858
- In Ohio, 15, 857
- Notice to mortgagor, 15, 844
- Of debt, 15, 625, 844
- Parties to**, 15, 848
- Attorney, 15, 849
- Executors and administrators, 15, 849
- Heirs, 15, 849
- Indemnity, 15, 849
- In general, 15, 848
- Joint tenants, 15, 849
- Legatee, 15, 849
- Married women, 15, 849
- Mortgage by mortgagee, 15, 849
- Mortgagee disseised, 15, 849
- Mortgage for support, 15, 850
- Officers of corporations, 15, 849
- Partnership, 15, 849
- Trustees of unincorporated association, 15, 849
- Quitclaim deed, 15, 843
- Recording*, see *infra*, RECORDING ACTS.
- Requisites to Legal Assignments**, 15, 842
- Assignee's right to foreclose in his own name, 15, 843
- Consideration, 15, 843
- Conveyance of land with warranty, 15, 843
- Deeds, 15, 842
- Delivery, necessity of, 15, 843

MORTGAGES—Cont'd**Assignments—Cont'd****Requisites to Legal Assignments—Cont'd**

Delivery of bond or note secured by the mortgage, 15, 843

Delivery of mortgage itself, 15, 843

Indorsement upon mortgages, 15, 842

Notice to mortgagor, 15, 844

Quitclaim deed, 15, 843

Recording, 15, 844

Separate instrument, 15, 842

Rights and Liabilities of Assignee, 15, 843, 844, 847, 854**Assignments of Negotiable Notes Protected by Mortgage, 15, 855**

Bond secured by mortgage, 15, 859

Conflict of opinion, 15, 855-861

Doctrine in general, 15, 855-861

Effect of, 15, 855

Equities arising between mortgagor and mortgagee, 15, 855

In Illinois, 15, 857

In Louisiana, 15, 858

In Minnesota, 15, 858

In Ohio, 15, 857

Assignor fixing priorities, 15, 855

Diligence of assignee, 15, 860

Equities arising between mortgagor and mortgagee, 15, 855

Equities between the original parties, 15, 855, 860, 861

Miscellaneous, 15, 861

Mortgage bonds and notes, 15, 855

Negotiable notes, 15, 855

Non-negotiable securities, 15, 860

Priority between several assignees, 15, 854

Right to foreclose in his own name, 15, 843

Several notes assigned to different persons, 15, 854

To maintain action in his own name, 15, 843, 847

Rights and Liabilities of Assignor, 15, 853

Examples, 15, 852-854

In general, 15, 852

Warranty, 15, 853

Separate instrument, 15, 842

Statutory provisions, 20, 532

Subsequent assignment, 20, 533

Subsequent transfer or discharge by mortgagee, 20, 533

Transfer of Mortgage Without Assignment of Debt, 15, 849

Action by assignee of mortgage without debt, 15, 851

Adequate consideration, 15, 850

Assignee as trustee for mortgagee, 15, 849, 850

Assignment of mortgage given without bond, 15, 850

Conveyance of premises by mortgagee, 15, 851

Deed of a mortgagee in possession, 15, 851

In general, 15, 850

Mere delivery of mortgage, 14, 850

Presumption that assignment of debt was meant, 15, 850

Trustees, 15, 849

Unauthorized discharge, 20, 533

Usury, 15, 863

What constitutes an, 15, 844

What embraced by the term conveyances, 20, 532

What need not be recorded, 20, 532

When mortgage is not recorded, 20, 532

Where mortgagee has other interest in premises, 15, 852

Whether assignment passes securities, 15, 853

Whether mortgage has been merged, 20, 532

Whether mortgage has been released, 20, 532

Whether record is notice to mortgagor, 20, 533

Assumption of mortgage debts by grantee, see infra, CONVEYANCE OF MORTGAGED LANDS.

Attorney and Client

Assignments, 15, 849

Attorney's fees, 15, 769

Bonds, 15, 855, 859

Cemeteries, 3, 55

Champerty and maintenance, 3, 82

Common-law mortgages, 15, 788

Compared with mechanic's lien, 15, 9

Competing Liens

Title acquired at tax sale, 10, 395

Compound interest, 15, 770

Conflict of Law

Assignment, 15, 851

By what law of validity mortgage is determined, 3, 567

Consideration, 15, 740, 753

As against bona fide assignee for value, 15, 762

Debt Secured by Mortgage, 15, 755

Antecedent debts, 15, 757

Ascertained or ascertainable, 15, 755

Contingent debts, 15, 757

Debt must come fairly within the terms used, 15, 756

Description of debt, 15, 755

Evidence of the debt, 15, 758

Examples of description, 15, 756, 757

Existence of debt sufficient, 15, 758

Future advances, 15, 758

Identity of debt, 15, 756

Mistaken description, 15, 758

Parol evidence as to identity, 15, 757

Sum ascertained by award, 15, 757

Unliquidated debts, 15, 757

What sufficient description, 15, 756

Effect of want of, 15, 761

Entry by owner upon lands illegally sold and conveyed, 15, 755

Examples, 15, 753, 754

Failure of, 15, 761

- Illegality**, 15, 762
 - Effect, 15, 762
 - Examples, 15, 762
 - Executor to evade payment of taxes, 15, 762
 - Void as against public policy, 15, 762
- Mortgages for support, 15, 758
- Mortgages not securing payment of money, 15, 758
- Mortgages on wife's land for husband's debts, 15, 743
- Necessity, 15, 753, 761
- Parol evidence as to, 15, 754
- Sale as presumptive evidence, 15, 761
- To secure contingent liability for another's benefit, 15, 754
- What sufficient, 15, 753
- Whether it must be an existing one, 15, 754
- Construction**, 15, 777
 - Examples, 15, 778
 - Intention of parties, 15, 777
 - Most strongly against mortgagor, 15, 777
- Contribution**
 - In Case of Redemption**, 15, 830
 - Contribution in inverse order, 15, 831
 - Conveyance of part and retention of part, 15, 831
 - Conveyance of whole of lands, 15, 831
 - Conveyances without covenant of warranty, 15, 831
 - Equity for contribution, 15, 831
 - Examples, 15, 831
 - Grantee of mortgagor, 15, 831
 - Inverse order of alienation, 15, 831
 - Ratable contribution, 15, 831
 - Several parcels with incumbrances upon all, 15, 831
 - When right exists, 15, 830
 - Where equities are unequal, 15, 831
 - Purchaser of land subject to a mortgage, 15, 839
- Conveyance of Mortgaged Lands**, 15, 832
 - Assumption of mortgage by purchaser, 3, 866; 15, 832; 16, 891
- Conveyance as Contract Between Purchaser and Mortgagor for Benefit of Mortgagee**, 15, 839
 - Equitable doctrine, 15, 840
 - In general, 15, 839
 - Mortgagee's right to recover against purchaser, 15, 840, 841
 - Promise must be made to persons personally liable for mortgage debt, 15, 841
 - Promise of benefit to third person, 15, 839
 - Upon what grantee's liability rests, 15, 840
- Liability of Purchaser Who Assumes Mortgage**, 14, 834; 15, 836; 16, 891
 - Acceptance of deed, 16, 893
 - Agreement outside of conveyance, 16, 893
 - Chattel mortgage, 16, 894
 - Consideration for the mortgage, 15, 836
 - Disputing validity of mortgage, 15, 836
 - Escaping liability, 15, 836, 837
 - Mortgage in form a deed, 16, 892
 - Parties to actions, 17, 529
 - Personal liability of grantee, 16, 891
 - Promise of grantee must be clear, 16, 891
 - Remedy in equity, 16, 893
 - Usury, 15, 837
 - Verbal promise, 15, 835; 16, 893
 - When liability becomes fixed, 16, 893
 - Whether particular form of words necessary, 16, 892
- Purchaser and Mortgagor as Principal and Surety**, 15, 837
 - Changing a varying contract, 15, 838
 - Contribution as between parts of mortgaged lands, 15, 839
 - Examples, 15, 837, 838
 - Execution for deficiency, 15, 838
 - Extending time of payment, 15, 839
 - Grantee assuming mortgage indebtedness, 15, 837
 - Mortgagee's right to hold grantee, 15, 838
 - Mortgagee's right to hold mortgagor as principal, 15, 837
 - Rescission of contract between mortgagor and grantee, 15, 838
 - "Subject to a certain mortgage," 15, 833
 - Subrogation, 15, 867
- When Purchaser Is Bound by Conditions of Conveyance**, 14, 834; 15, 836; 16, 891
 - Amount of mortgage part of purchase price, 15, 835
 - Deed containing express clause, 15, 834
 - Equity of redemption sold on execution, 15, 834
 - Estoppel to deny validity of mortgage, 15, 835
 - Mortgage as a part of consideration, 15, 835
 - Verbal promise to pay debt, 15, 835; 16, 893
 - Whether grantee must sign deed, 15, 834
 - Whether assumption clause may be stricken out, 15, 834
- Whether Mortgagor Can Release Grantee's Assumed Liability**, 15, 841
 - Enforcing agreement before payment by grantor, 15, 842
- Whether Purchaser Is Personally Bound**, 15, 832; 16, 891
 - Conveyance subject to payment of mortgage, 15, 832
 - Examples, 15, 832, 833

MORTGAGES—Cont'd**Conveyance of Mortgaged Lands—Cont'd****Whether Purchaser is Personally Bound—Cont'd**

Purchase of equity of redemption,
15, 832, 833

"Subject to a certain mortgage,"
15, 833

Words necessary to render purchaser liable, 15, 832

Corporations

Decree of foreclosure where part of property is situated in another state,
4, 273

Director's Power, 17, 103

Foreclosure, 17, 104

In absence of charter or statute prohibition, 17, 103

In general, 17, 103

Mortgage to themselves, 17, 104

Provision in by-laws, 17, 104

Quorum, 17, 104

Regular meeting of directors, 17,
104

When directors may mortgage, 17,
103, 104

Mortgagees, 15, 744

Courts of law, 15, 730

Creditors, see *infra*, **FRAUDULENT CONVEYANCES.**

Crops, 15, 813, 890

Future crops, 4, 903; 15, 752, 753

Growing crops, 4, 902; 15, 813

Mortgage on unplanted crops, 4, 903;
15, 752, 753

Mortgagor's right, 15, 813

When mortgage on unplanted crops vests, 4, 903

Debts Secured by Mortgage, 15, 755, 816, 869

See *infra*, **ASSIGNMENTS; BONDS; NOTES.**

Absolute conveyance of mortgage, 15,
790

Antecedent debts, 15, 757

Ascertained or ascertainable, 15, 755

Blank as to indebtedness, 15, 772

Change in form of indebtedness, 15,
869

Contingent debts, 15, 757

Debt must come fairly within the terms used, 15, 756

Description of debt, 15, 755

Evidence of the debt, 15, 758

Examples of description, 15, 756, 757

Existence of debt sufficient, 15, 758

Extension of time of payment, 15,
870-872

Future advances, 15, 758

Identity of debt, 15, 756

Mistaken description, 15, 758

Necessity of debt, 15, 781

Parol evidence as to identity, 15, 757

Recitals in mortgage as evidence of,
15, 816

Remedy at law for collection, 15, 816

Sum ascertained by award, 15, 757

Unliquidated debts, 15, 757

Usury, 15, 766

What sufficient description, 15, 756

Dedication to public by mortgagor, 5,
398

Defeasance, 5, 510

Defeasance by separate instruments, see

EQUITABLE MORTGAGES, subhead, *Absolute Conveyance.*

Definition, 15, 727

Delivery, see *infra*, **EXECUTION AND DELIVERY.**

Descent and distribution, 24, 355

Description of Property, 15, 745

Examples, 15, 745-748

In general, 15, 745

Mortgages not void for uncertainty,
15, 746

Mortgages void for uncertainty, 15,
745

Parol evidence to identify, 15, 748

Part of land, 15, 746

Discharge, see *infra*, **PAYMENT; SATISFACTION; TENDER.**

Dower, 5, 899, 907; 15, 812

Effect of foreclosure sale, 15, 812

Equity of redemption, 5, 899; 15, 812

Mortgagor's interest, 5, 899

Mortgagor's interest after default, 5,
899

Redemption, 15, 812

Until default and foreclosure, 5, 900

Where mortgage is not paramount to,
5, 899

Where widow has released rights in mortgage, 15, 812

Where wife has not joined in mortgage, 5, 899

Whether mortgagee has taken possession, 5, 900

Duress, 6, 84, 93; 15, 764

Effect, 15, 777

Effect of mortgagor's discharge in bankruptcy, 11, 226

Ejectment

Against mortgagor, 6, 245

By Mortgagee, 6, 205

In Colorado, 6, 205

In Connecticut, 6, 205

In Maine, 6, 205

In Massachusetts, 6, 205

In Michigan, 6, 205

In Minnesota, 6, 205

In New York, 6, 205

In Oregon, 6, 205

In Pennsylvania, 6, 205

In Rhode Island, 6, 205

In Vermont, 6, 206

In Wisconsin, 6, 206

By mortgagor, 6, 245a

By purchaser of equity of redemption,
6, 245a

Defenses, 6, 245s

Mortgagee and Mortgagor as Parties, 6, 205

In Colorado, 6, 205

In Connecticut, 6, 205

- In Maine, 6, 205
- In Massachusetts, 6, 205
- In Michigan, 6, 205
- In Minnesota, 6, 205
- In New York, 6, 205
- In Oregon, 6, 205
- In Pennsylvania, 6, 205
- In Rhode Island, 6, 205
- In Vermont, 6, 206
- In Wisconsin, 6, 206
- Elevated Railroads**
 - Recovery of damages for injury to railroads, 23, 1061
- Emblements**, 15, 812
 - See *infra*, CROPS.
 - Mortgagor's right, 15, 812
 - What included, 15, 813
- Eminent domain, 6, 589, 628, 609; 15, 814, 818
- English mortgages, 15, 730
- Escrow, separate defeasance delivered as an escrow, 15, 793
- Essentials**, see *infra*, CONSIDERATION; EXECUTION AND DELIVERY; MORTGAGEABLE PROPERTY; PARTIES.
- Estoppel**, 15, 864
 - Absence of covenant for title, 15, 864
 - After-acquired property, 7, 10; 15, 749
 - In whose favor estoppel operates, 15, 864
 - Mortgagor, 7, 28; 15, 863, 864
 - Mortgagor denying his title, 15, 863
 - Purchaser of land subject to mortgage, 15, 835, 836
 - Representations of mortgagor, 15, 864
 - Subsequently acquired title of mortgagor, 7, 10; 15, 749
 - Usury, 15, 771
- Evidence**, see *infra*, PAROL EVIDENCE.
- Execution and Delivery**, 15, 740, 759
 - Acceptance, 15, 760
 - Equity of redemption, 15, 815
 - Examples, 15, 759-761
 - Necessity, 15, 759
 - What is sufficient delivery, 15, 760, 761
- Executors and Administrators**, 7, 257, 271
 - After foreclosure by executor or administrator, 7, 257
 - As mortgagors, 15, 741
 - Assignments, 7, 257, 289; 15, 849
 - Enforced by personal representative, 7, 257
 - Heir as trustee, 7, 257
 - Mortgagee's interest, 15, 739
 - Mortgage foreclosed by executors or administrators, 7, 273
 - Subrogation, 15, 868
 - Whether mortgage passes to, 7, 257
- Extension of mortgages**, see *infra*, RENEWAL AND EXTENSION OF MORTGAGES.
- False Pretenses**, 7, 733
 - Assignment, 15, 863
 - Representations as to improvements, 7, 733
- Representations as to incumbrances, 7, 733
- What pretense is criminal, 7, 733
- Fire Insurance**, 15, 826
 - Application of insurance money to debt, 15, 806
- Effect of Provision Requiring Mortgagors to Insure**, 15, 807
 - Alienation by mortgagor, 15, 809
 - Deed with defeasance, 15, 808
 - Examples, 15, 807, 808
 - Insurance in mortgagor's name, 15, 807
 - Mortgagee's lien upon policy, 15, 807
 - Policy payable to mortgagee, 15, 809
 - Provision against alienation, 15, 808
 - Subrogation, 15, 809
 - Whether foreclosure sale is alienation, 15, 808
 - Whether it runs with the land, 15, 808
- Insurable Interests**, 11, 314; 15, 805
 - How long mortgagor's interest continues, 15, 807
 - Insurance at expense of mortgagor, 15, 806
 - Mortgagee's claim upon the policy, 15, 807
- Mortgagor and Mortgagee**, 11, 314; 15, 805
 - After sale under foreclosure, 11, 315
 - Full value of property, 11, 315
 - Mortgage as collateral security, 11, 315
 - Mortgagor's interest, 11, 314
 - Several mortgages, 11, 314
 - Where foreclosure sale is vacated, 11, 315
 - Where property is mortgaged at full value, 11, 314
- Subrogation, 15, 806
- When insurance money must be applied to debt, 15, 806
- Whether mortgagee can enforce mortgage after receiving insurance money, 15, 806
- Whether mortgagee must apply insurance money to debt, 15, 806
- Mortgagee recovering from mortgagor**, 15, 826
 - Mortgagee's claim upon policy, 15, 806
 - Mortgagee's right to policy, 7, 1004
 - Provision against alienation, 15, 808
 - Subrogation, 15, 806, 809
 - Whether foreclosure sale is an alienation, 15, 808
 - Whether mortgage is an alienation, 15, 808
- Fixtures as Between Mortgagor and Mortgagee**, 8, 50
 - Annexation made after mortgage, 8, 51
 - Annexation merely to steady property, 8, 53
 - Bridges, rails, and other property of railroad, 8, 51

MORTGAGES—Cont'd**Fixtures as Between Mortgagor and Mortgagee—Cont'd**

- Buildings erected after foreclosure of mortgage, 8, 52
- Electric light wires, 8, 51
- Fact that annexations are called chattels, 8, 53
- Fixtures erected by lessee of mortgagor, 8, 52
- General rule, 8, 50
- Intention of mortgagor, 8, 53
- Looms, cards, and spinning machine frames, 8, 51
- Machinery in mill, 8, 50
- Machinery which is motive power of mill, 8, 51
- Machinery which is not motive power of mill, 8, 51
- Mortgagee consenting to fixture remaining personal property, 8, 51
- Mortgage of a factory eo nomine, 8, 51
- Physical annexation, 8, 50
- Presumption as to permanency, 8, 53
- Scales, 8, 50
- Steam engine, 8, 51
- Trade fixtures, 8, 52
- When machinery is fixture, 8, 51
- Where chattel mortgage is given on machinery, 8, 51
- Whether agreement between vendor and vendee binds subsequent mortgagee, 8, 52
- Whether same rule applies between heirs and executors, 8, 53
- Whether same rule applies between vendor and vendee, 8, 53
- Forcible entry and detainer, 8, 137
- Forfeiture**, 8, 448
 - Waiver, 8, 448
- Formal mortgages, 15, 788
- Fraud**
 - Of creditors, 15, 773
 - Mortgage obtained by fraud, 15, 773
 - Frauds*, see *infra*, STATUTE OF FRAUDS.
- Fraudulent Conveyances**, 15, 773
 - Articles Consumable in the Use**, 15, 775
 - Examples, 15, 775, 776
 - Not necessarily consumable, 15, 776
 - Provision that mortgagor shall retain possession, 15, 775
 - Where mortgagor does not use the articles, 15, 775
 - Benefits reserved to mortgagor, 15, 775
 - Burden of proof, 15, 774
 - Election of creditors, 15, 777
 - Examples, 15, 773-775
 - Fraudulent intent, 15, 774
 - Fraudulent preferences, 15, 777
 - Mortgagee's knowledge, 15, 774
 - Mortgagee's participation, 15, 774
 - Setting aside, 15, 774
 - Validity of mortgages in fraud of creditors, 15, 775
 - When not void, 15, 776

Where creditors do not intervene, 15, 777

Freight, 15, 752

Future-acquired property, see *infra*, AFTER-ACQUIRED PROPERTY.

Future Advances, 15, 758, 796

Certainty Required in Stating Amount

to Be Advanced, 15, 797

Examples, 15, 797, 798

Reasonable certainty only required, 15, 797

What is sufficient certainty, 15, 798

Mortgage implied, 15, 798

National banks, 15, 800

Obligatory advances, 15, 799

Optional Advances, 15, 799

As affected by actual notice, 15, 800

As affected by constructive notice, 15, 800

Registration, 15, 800

Parol evidence, 15, 798

Parol evidence to enlarge, 15, 802

Stating maximum, 15, 799

Validity, 15, 796

In England, 15, 796

In United States, 15, 796

Where extent of incumbrance can be ascertained, 15, 801

Geographical grouping of states, 15, 738

Gifts causa mortis, 8, 1343

Given to compound felony, void, 4, 657

Guardian and Ward, 9, 113

Guardian selling his estate upon breach of mortgage, 9, 113

Guardian using personal estate to pay interest on mortgage, 9, 114

Guardian using personal estate to redeem, 9, 114

Power of guardian to discharge, 9, 120

Power to mortgage, 9, 116

Habitual drunkenness, 15, 743

Heirs compelling purchaser to pay mortgage out of personality, 5, 257

Heir's interest, 15, 739, 740

Homestead, 9, 469

Wife's claim, 9, 453

Husband and wife, see *infra*, MARRIED WOMEN.

Identification of debts, 15, 756, 757

Identification of Property, 15, 740, 745

Parol evidence, 15, 748

Illegality of consideration, 15, 762

Improvements, 10, 259; 15, 814

Assessments, 10, 262

Betterments by stranger, 10, 261

Compensation, 15, 814

Covered by mortgage realty, 10, 260

Estoppel, 10, 260

Increased rents and profits, 10, 261

Mortgagee, 15, 255-260, 825

Believing himself to be absolute owner, 10, 261, 262; 15, 825

Consent of mortgagor, 10, 261; 15, 825

Increased rents and profits, 15, 825

Is in possession, 10, 261

Long in possession, 10, 262

- Makes dwelling habitable, 10, 261
 Purchaser at foreclosure sale, 10, 262; 15, 825
 Purchaser in good faith from a mortgagee, 15, 825
 What improvements may be made by him, 15, 825
- Mortgages**
 Allowance in accounting, 15, 825
 Purchase at mortgage sale, 10, 262; 15, 825
 In Alabama, 15, 732
 In Arkansas, 15, 732
 In California, 15, 736
 In Connecticut, 15, 732
 In Dakota, 15, 738
 In Delaware, 15, 735
 In Florida, 15, 736
 In Georgia, 15, 736
 In Illinois, 15, 732
 In Indiana, 15, 736
 In Iowa, 15, 736
 In Kansas, 15, 736
 In Kentucky, 15, 733
 In Louisiana, 15, 736
 In Maine, 15, 733
 In Maryland, 15, 733
 In Massachusetts, 15, 738
 In Michigan, 15, 736
 In Minnesota, 15, 736
 In Mississippi, 15, 735
 In Missouri, 15, 735
 In Montana, 15, 738
 In Nebraska, 15, 737
 In Nevada, 15, 737
 In New Hampshire, 15, 733
 In New Jersey, 15, 754
 In New Mexico, 15, 738
 In New York, 15, 737
 In North Carolina, 15, 733
 In Ohio, 15, 734
 In Oregon, 15, 737
 In Pennsylvania, 15, 734
 In Rhode Island, 15, 734
 In South Carolina, 15, 737
 In Tennessee, 15, 734
 In Texas, 15, 737
In United States
 Geographical grouping of states, 15, 738
 In Utah, 15, 738
 In Vermont, 15, 734
 In Virginia, 15, 734
 In Washington, 15, 738
 In West Virginia, 15, 735
 In Wisconsin, 15, 738
- Infants**
See infra, GUARDIAN AND WARD.
- Ratification and Avoidance**, 10, 650
 Conveyance subject to age of majority, 10, 650, 651
 Deed in fee, 10, 650
 Purchase-money mortgage, 10, 650
 What amounts to disaffirmance, 10, 650
 Void or voidable, 10, 631
- Injunctions**
 Waste, 10, 822; 15, 816
- Insanity, 15, 743
 In states following English doctrine, 15, 731
Insurance, *see infra*, FIRE INSURANCE.
- Inverse Order of Alienation**
 Debt charged on lands of decedents, 14, 711
 Examples, 14, 707-710
 General principles, 14, 707
 How equity of the grantee is enforced, 14, 713
 Judgment, 14, 711
 Lands contemporaneously sold, 14, 710
 Nature of incumbrance immaterial, 14, 711
 Notice, 14, 712
 Successive sales under execution, 14, 709
 Warranty, 14, 709
 Where land is in different states, 14, 708
 Where lands conveyed are charged with debt, 14, 709
- Investments by Trustees**, 11, 822
 English doctrine, 11, 822
 First mortgage, 11, 822
 In New York, 11, 823
 In Pennsylvania, 11, 823
 Junior mortgages, 11, 822
 Second mortgages, 11, 823
 Value of land, 11, 822
- Joint Tenants and Tenants in Common**
 Tenant who has paid his proportionate share, 11, 1110
 Whether tenant can compel mortgagee to resort to his co-tenant where he has paid his proportionate share, 11, 1110
- Judgment Lien**
 Mortgage on day judgment lien attaches, 12, 116
- Judgments**
Merger and Extinguishment, 15, 334
See infra, MERGER.
 Cause of action, 15, 336
 Counterclaim, 15, 337
 Judgment as a contract, 15, 338
 Judgment regarded as a new debt, 15, 338
 Judgment reversed, 15, 336
 Letters of administration, 15, 338
 Merger in judgment, 15, 336
 Promissory notes, 15, 336
 Set-off, 15, 336
 Statutory judgments, 15, 337
- Kinds of**, 15, 788
- Landlord and Tenant**
Whether Mortgagor and Mortgagee Are, 12, 665
 After conditions broken, 12, 665
 Mortgagee remains in possession by consent of mortgagor, 12, 665
 Mortgagor in possession, 12, 665
 Lateral or branch railroads, 12, 948
- Legal Title**, 15, 731
 Geographical grouping of states, 15, 738

MORTGAGES—Cont'd**Legal Title—Cont'd**

In Alabama, 15, 732
 In Arkansas, 15, 732
 In California, 15, 736
 In Connecticut, 15, 732
 In Dakota, 15, 738
 In Delaware, 15, 735
 In England, 15, 730
 In Florida, 15, 736
 In Georgia, 15, 736
 In Illinois, 15, 732
 In Indiana, 15, 736
 In Iowa, 15, 736
 In Kansas, 15, 736
 In Kentucky, 15, 733
 In Louisiana, 15, 736
 In Maine, 15, 733
 In Maryland, 15, 733
 In Massachusetts, 15, 733
 In Michigan, 15, 736
 In Minnesota, 15, 736
 In Mississippi, 15, 735
 In Missouri, 15, 735
 In Montana, 15, 738
 In Nebraska, 15, 737
 In Nevada, 15, 737
 In New Hampshire, 15, 733
 In New Jersey, 15, 734
 In New Mexico, 15, 738
 In New York, 15, 737
 In North Carolina, 15, 733
 In Ohio, 15, 734
 In Oregon, 15, 737
 In Pennsylvania, 15, 734
 In Rhode Island, 15, 734
 In South Carolina, 15, 737
 In Tennessee, 15, 734
 In Texas, 15, 737
 In Utah, 15, 738
 In Vermont, 15, 734
 In Virginia, 15, 734
 In Washington, 15, 738
 In West Virginia, 15, 735
 In Wisconsin, 15, 738

Liability of assignee, see infra, ASSIGNMENTS.

Liability of assignor, see infra, ASSIGNMENTS.

Liability of mortgagee, see infra, MORTGAGEE.

Liability of mortgagor, see infra, MORTGAGOR.

Limitation of Actions, 13, 704; 15, 810

Debt barred, 13, 705

New promise, 13, 760

Lis pendens, 13, 900

Manufacturing Corporations, 14, 272

Assent of stockholders, 14, 273

Examples, 14, 272, 273

In general, 14, 272

In New York, 14, 273

Property which may be mortgaged, 14, 272

Married Women, 14, 623

See infra, SEPARATE PROPERTY OF MARRIED WOMEN.

At common law, 15, 741

In United States, 15, 741

Mortgage binding though note void, 15, 743

Mortgagee, 15, 744

Mortgage on wife's land for husband's debts, 14, 584, 585; 15, 743

Personal liability for debt, 15, 742

Reformation, 15, 662

Surety, 15, 743

Mechanics' Liens, 15, 61

Mortgagee, 15, 61

Mortgagor, 15, 61

Notice, 15, 128

Priority, 10, 385; 15, 88

Merger, 15, 332

See infra, JUDGMENTS.

Invalid judgment, 15, 333

Judgment of foreclosure, 15, 333

Judgment set aside, 15, 333

Mortgage and Life Estates, 15, 320

Lien, 15, 320

Presumption, 15, 320

Whether the mortgage merges, 15, 320

Mortgage with Fee, 15, 321

Acquisition by a previous creditor, 15, 331

Both estates owned in same right, 15, 330

Covenants, 15, 330

Decree of foreclosure and sale, 15, 322

Deed absolute with defeasance, 15, 321

Equitable principles, 15, 322

Evidence, 15, 326

Evidence of intention, 15, 325

Husband and wife, 15, 330

Intent, 15, 324

Intent controls, 15, 325

Intention of owner, 15, 323

Interest of parties, 15, 326, 329

Intervention of another estate, 15, 331

Legal rule, 15, 321

Legal title defeasible, 15, 330

Merger contrary to interests of assignee, 15, 329

Mortgagee taking conveyance of land from mortgagor, 15, 327

Mortgage to secure note, 15, 321

Mortgagor as debtor, 15, 322

Payment by one not primarily liable, 15, 327

Presumption as to intention, 15, 326

Protecting holder against intervening title, 15, 327

Relation between parties, 15, 322

Right of redemption, 15, 331

Rights of innocent third persons, 15, 324

Security afforded by mortgage title, 15, 330

When intention formed, 15, 325

When merger does not take place, 15, 326

- When merger will not take place, 15, 322
 Where junior incumbrance exists, 15, 328
 New mortgage taken as collateral, 15, 333
 Payment of collateral security, 15, 334
 Sale, 15, 333
 Taking new mortgages, 15, 332
Mines and Mining Claims, 15, 592
 Accounting to mortgagee, 15, 593
 Whether mortgagor may work, 15, 592
Mistake
 Mortgagee as bona fide purchaser, 15, 680
 Modern English mortgages, 15, 730
Mortgageable Property, 15, 744
After-Acquired Property, 15, 749
 Domestic animals, 15, 752
 Earnings of a vessel, 15, 752
 Estoppel, 15, 710, 749
 Examples, 15, 750-753
 Furniture of a hotel, 15, 752
Future crops, see *infra*, **CROPS**.
 How operative, 15, 749
 In England, 15, 749
 In United States, 15, 749
 Miscellaneous, 15, 753
 Mortgage subject to whatever liens rest upon the property, 15, 752
 New and old sales, 15, 752
 Present contract, 15, 749
 Property having a potential existence, 15, 750
 Substituted property, 15, 752
 The doctrine at common law, 15, 750
 Whether it may be mortgaged, 15, 749
 Contingent interests, 15, 744
Description, 15, 745
 Examples, 15, 745-748
 In general, 15, 745
 Mortgages not void for uncertainty, 15, 746
 Mortgages void for uncertainty, 15, 745
 Parol evidence to identify, 15, 748
 Part of land, 15, 746
 Designation upon face of instrument 15, 745
 Examples, 15, 744, 745
Freight, see *infra*, **FREIGHT**.
 Identity, 15, 740, 745
 Imperfect title, 15, 744
 Improvements, 15, 748
 In general, 15, 744
 Interest not subject to mortgages, 15, 745
 Mortgages must be identified, 15, 740
 Preëmption in public lands, 15, 745
 Reversions and remainders, 15, 744
Mortgaged goods, intermixture with other property, 15, 58
Mortgagee, 15, 819
 See *infra*, **FIRE INSURANCE**.
 As to legal title, see *infra*, **LEGAL TITLE**.
- Improvements**, see *infra*, **IMPROVEMENTS**.
Rents and profits, see *infra*, **RENTS**.
 Acceptance, 15, 760
 Advances to protect property, 15, 827
 Adverse possession between mortgagor and mortgagee, 15, 246
Assignment
 Compelling mortgagee to assign, 15, 852
 Equitable rights of contribution, 15, 853
 Blank as to name of mortgagee, 15, 773
 Defendant in ejectment, 6, 245e
 Disbursements, 15, 826
 Fraudulent conveyance, 15, 774
 "In good faith," 15, 724
Liabilities, 15, 820
Accounting for Rents and Profits, 15, 821
Application of Rents and Profits, 15, 823
 Annual rests, 15, 824
 Assignee of mortgagee, 15, 824
 How rents and profits should be applied, 15, 823
 Interest in arrears, 15, 824
 Payment of interest on debt, 15, 823
 Recovery by mortgagor where there has been no application, 15, 824
 Reduction of principal, 15, 824
 Tenant purchasing mortgage, 15, 824
 Appointment of receiver, 15, 822
 Care and diligence in obtaining, 15, 821
 Examples, 15, 821-823
 Incident to mortgagee's right to redeem, 15, 823, 824
 Injury to premises by tenant, 15, 821
 Mortgagee in possession, 15, 821
 Occupation of premises by mortgagee, 15, 821
 Rents not actually received, 15, 821
 Rents that he might have received, 15, 821
 Subsequent incumbrances, 15, 823
 Where mortgage includes rents and profits, 15, 822
 For costs, 4, 322
 Repairs, 10, 261; 15, 824
 Measure of damages for injury to premises, 15, 819
 Mortgage for support of, 15, 758
 Owner, 17, 304
 Paying prior incumbrances, 15, 826
Possession, Right of, 15, 817
 At common law, 15, 817
 Eminent domain, 15, 818
 Ejectment after default, 15, 818
 Measure of damages for injury to premises, 15, 819

MORTGAGES—Cont'd**Mortgagee—Cont'd****Possession, Right of—Cont'd**

Mortgagee's right to hold mortgaged property, 15, 818

Right to redeem from tax sale, 15, 819

Statutes, 15, 811, 818

To protect security for his debt, 15, 817

Whether interest attachable, 15, 819

Whether it can be divested by mortgagor, 15, 817, 819

Whether mortgagee is purchaser for value, 15, 819

Whole premises, 15, 819

Relation to, 15, 817

Repairs, 10, 261; 15, 821, 824

Right to acquire an adverse title, 15, 820

Right to maintain detinue, 5, 654

Right to purchase equity of redemption, 15, 820

Right to redeem from tax sale, 15, 819

Rights and duties of, 15, 817

Taxes, 15, 820, 826; 25, 281

Trespass by, 15, 819

Whether bona fide purchaser, 16, 833

Whether His Interest Is Personal Estate, 15, 739

Assignment by personal representative, 15, 739

Heir or devisee, 15, 739

In England, 15, 739

Redemption, 15, 740

United States, 15, 739

Who entitled to enforce foreclosure, 15, 739

Whether interest is attachable, 15, 819

Whether mortgagee is purchaser for value, 15, 819

Who May Be, 15, 744

Aliens, 15, 744

Corporations, 15, 744

Married women, 15, 744

National banks, 15, 744

Mortgage with Attornment Clause

Whether within bills of sale acts, 8, 864

Mortgagor, 15, 740

See infra, FIRE INSURANCE.

Adverse possession, 1, 246

As owner of property, 15, 809

Estoppel, 15, 863

Executors and administrators, 15, 741

In general, 15, 740

Liabilities, 15, 815

Creditor's remedy, 15, 816

Cutting timber, 15, 817

Equity of redemption subject to execution, 15, 815

Mortgagor restrained from injuring property, 15, 816

Remedy at law for collection of debt, 15, 816

Waste, 15, 816

Where recital in mortgage creates a personal liability, 15, 816

Married Women, 15, 741

At common law, 15, 741

In United States, 15, 741

Mortgages binding though note void, 15, 743

Mortgages on wife's land for husband's debt, 15, 743

Personal liability for debt, 15, 742

Surety, 15, 743

Owner, 17, 304

Relation to the mortgage, 15, 809

Rights and Duties of, 15, 809

Against third persons, 15, 809, 810

Disposition of Premises, 15, 812

After-acquired title, 15, 815

Devise, 15, 812

Dower, 15, 812

Emblements, 15, 812, 813

Improvements, *see infra*, IMPROVEMENTS.

Lease, 15, 812

Rents, 15, 810, 812

Taxes, 15, 814

Tax titles, 15, 814; 25, 710

Injury to premises, 15, 810

Interference with the possession, 15, 810

Remedies, 15, 809

Retention of possession, 15, 809

Right to Possession, 15, 810

Action to recover possession, 15, 811

Against all others than the mortgagee, 15, 809, 810

Against mortgagee, 15, 810

Examples, 15, 810, 811

Implied right, 15, 810

In absence of statute, 15, 810

In general, 15, 810

Possession protected by statute, 15, 811, 819

Statute of limitations, 15, 811

Where mortgagor cannot fulfill his covenants without possession, 15, 810

Whether accountable for rent, 15, 810

Right to notice to quit, 6, 240

Signature, 15, 772

Who May Be, 15, 740, 744

Lunatics, *see infra*, INSANITY.

Executors and administrators, 15, 741

In general, 15, 740

Married Women, 15, 741

At common law, 15, 741

In United States, 15, 741

Mortgage binding though note void, 15, 743

Mortgage on wife's land for husband's debt, 15, 743

Personal liability for debt, 15, 742

Surety, 15, 743

Municipal Corporations**Power to Mortgage Property, 15, 1071**

As incident to the right to purchase, 15, 1071

Examples, 15, 1071

In general, 15, 1071

Prohibition against sale of real estate, 15, 1071

National Banks

Bank as mortgagee, 15, 744

Necessity of demand where mortgage is payable upon demand, 5, 528*d*

Negotiable instruments secured by, see infra, ASSIGNMENTS.

Notes, 15, 777

As to registration, see RECORDING ACTS.

Extension of time, 15, 870

Parol evidence to identify, 15, 778

Renewal of note, 15, 870

Separate Instrument of Defeasance, 15, 794

See EQUITABLE MORTGAGES.

Effect of notice upon subsequent purchaser, 15, 794

Examples, 15, 794, 795

Necessity of actual notice, 15, 795

Substitution of new note for old, 15, 870

Notice

Future Advances, 15, 800

Actual notice of junior incumbrance, 15, 800

Constructive notice of junior incumbrances, 15, 800

Origin and history, 15, 728

Owner, 17, 304

Parol Evidence, 15, 778; 17, 424

Absolute Sale as Mortgage, 15, 789

See EQUITABLE MORTGAGES.

Deed in alleged defeasance of different dates, 15, 789

Proof that separate defeasance is a part of the same transaction, 15, 788

When admissible, 15, 789

As a consideration, 15, 757

Future Advances, 15, 798

Admissibility to prove, 15, 798

Examples, 15, 798

To enlarge mortgage, 15, 802

To identify indebtedness secured, 15, 757

To identify mortgage notes, 15, 778

To identify property, 15, 748

Parties, 15, 740

See infra, MORTGAGEE, MORTGAGOR.

Mortgagors

Corporations, see CORPORATIONS.

Capacity, 15, 744

Who may be, 15, 740, 744

Parties to Actions

Where grantee of mortgagor assumes a mortgage, 17, 529

Partition, 17, 699

Co-tenant also a mortgagee, 17, 699

Co-tenants who have mortgaged their interests, 17, 699

Mortgagee after foreclosure, 17, 699

Mortgagee before foreclosure, 17, 699

Whether the partition affects mortgagee's interest, 17, 699

Partnership

Assignments, 15, 849

Power of Partner to Mortgage, 17, 1013

Acknowledgment by one partner, 17, 1014

By one partner in his own name, 17, 1014

Incident to the power to borrow, 17, 1013

In general, 17, 1013

Personal property, 17, 1013

Seal, 17, 1014

Signature and firm name, 17, 1014

Where firm is named as mortgagor, 17, 1014

Payment, 15, 872

After condition broken, 15, 875

Application of, 15, 876; 18, 243

See infra, RENTS.

As extinguishment of mortgage, 15, 872

Before due, 15, 875

Effect of, 15, 872, 875

Purchaser of estate paying off incumbrance, 15, 873

Where it is to mortgagor's advantage that mortgage continue to exist, 15, 872

Whether mortgagee can be compelled to receive payment before it is due, 15, 875

Pledge

Bond and Mortgage, 18, 649

After default, 18, 650

Assignment in writing, 18, 650

Bona fide pledgee for value, 18, 649

Enforcing security, 18, 650

Estoppel paper, 18, 650

Delivery alone, 18, 650

Fraudulent release, 18, 649

Parol agreement, 18, 650

Remedy, 18, 650

Rights of pledgee, 18, 649

Secret equities, 18, 649

Whether security may be pledged, 18, 649

Note and Mortgage, 18, 645

Enforcement of security, 18, 647

In general, 18, 645, 646

Necessity of written assignment, 18, 646

Pledgee possession in foreclosure, 18, 648

Pledgee as bona fide indorsee, 18, 645

Power to foreclose mortgage, 18, 648

Power to sell security, 18, 648

Prior equities, 18, 646

Recovery of face value of security, 18, 647

Rule in federal court, 18, 646

Sub-pledgee, 18, 648

Title to misappropriated securities, 18, 647

MORTGAGES—Cont'd**Pledge—Cont'd****Note and Mortgage—Cont'd**

Title under foreclosure, 18, 648

Whether a note or mortgage may be pledged, 18, 645

Whether pledgee takes mortgage free from objection, 18, 646

Possession, see *infra*, MORTGAGEE; MORTGAGOR.**Power to Mortgage**

Execution of, 18, 949

Default, 18, 949

Examples, 18, 949, 950

In general, 18, 949

Power of sale, 18, 949

Whether Included in Power of Sale, 18, 940

In general, 18, 940

Intention of donor, 18, 941

Preemption

In public lands, 18, 745

Priority, see *infra*, RECORDING ACTS.

Actual knowledge, 10, 390

Actual notice, 10, 391

Agreement Affecting

Agreement as notice to judgment creditors of grantee, 10, 385

Agreement for advances, 10, 385

Agreement that fourth mortgage should rank first, 10, 385

Effect of agreement of third persons, 10, 386

Good faith in agreement, 10, 386

Mortgage and mechanic's lien, 10, 385

Relative rank fixed by, 10, 384

Right of such agreement to record, 10, 385

Assignee claimant where assignor could not, 10, 386

Bona Fide Purchaser, 10, 378

Person taking mortgage for existing debt, 10, 388

Competing Liens

Liens of mortgage and one of execution, 10, 395

Taxes as mortgages, 10, 395

Unrecorded mortgage and judgment liens, 10, 395

Competing mortgages, 10, 380

Defects and Omissions

Correction of priority, 10, 394

Defects in description, 10, 384

Examples, 10, 393, 394

Omission in index, 10, 393

Subsequent cure of defects, 10, 393

Effect of circumstances showing knowledge, 10, 379

Equities existing between claimants, 10, 380

Exceptional cases, 10, 380

Fraudulent mortgage, 10, 389

General rule, 10, 376

Imperfect mortgages, 10, 377

Judgment, 10, 383

Judgment lien, 12, 111

Junior mortgages, 10, 381

Knowledge with reference to, 10, 390

Mechanic's Lien, 10, 385; 15, 88

Additions to building, 15, 90

After commencement but before completion, 15, 91

Examples, 15, 88-91

Extra work, 15, 90

Fraud, 15, 89

Improvements by mortgagee, 15, 91

Insurance money payable, 15, 89

Knowledge of mortgagor, 15, 90

Mortgagee having privilege of vendor, 15, 93

Purchase-money mortgage, 15, 89, 92

Railroads, 15, 90

Subsequent mortgage, 15, 88

Which lien paramount, 15, 88

Mortgagee acting in good faith, 10, 391

Mortgage executed to secure sureties, 10, 387

Mortgage priority, 10, 376

Mortgage security for preëxisting debt, 10, 391

Mortgages of even date, 10, 381

Mortgage to secure dower rights, 10, 388

Mortgage to secure present and future indebtedness, 10, 388

Notice, 10, 378

Of recorded assignment over unrecorded mortgage, 10, 386

Possession as notice of mortgagee's right, 10, 391

Reinscription, 10, 397

Diligence, 10, 397

Louisiana law, 10, 397

Necessity of, 10, 397

Relative to assignment, 10, 386

Release and assignment, 10, 396

Release of lien, 10, 396

Statutory liens, 10, 383

Tacking, 24, 1034

Unrecorded mortgage, 10, 378

Unrecorded mortgage and subsequent judgment, 10, 378

Unrecorded mortgage and executed levy, 10, 392

Unrecorded mortgage and sale without consideration, 10, 392

Unrecorded mortgage recorded within legally prescribed time, 10, 392

Vendee notified of defective mortgage, 10, 380

Vendee notified of unrecorded mortgage, 10, 379

Property, see *infra*, DESCRIPTION OF PROPERTY; MORTGAGEABLE PROPERTY.

Identification of property, 15, 740

Questions of Law and Fact

Effect, 15, 777

Railroads, see RAILROAD SECURITIES.**Receivers**

Appointment to enforce mortgage, 20, 47

Mortgagor wasting property, 20, 47

- Waste, 20, 50
 When receiver will be appointed, 20, 47
Recording Acts, 10, 377, 386; 20, 531
See infra, PRIORITY.
As to satisfaction, see *infra*, SATISFACTION.
 Antecedent indebtedness, 20, 592
 As between parties and privies, 15, 758
Assignment of Mortgages, 15, 844; 20, 532
 Effect of recording assignment, 10, 386
 Statutory provisions, 20, 532
 Subsequent assignment, 20, 533
 Subsequent transfer or discharge by mortgagee, 20, 533
 Unauthorized discharge, 20, 533
 What embraced by term "conveyance," 20, 532
 What need not be recorded, 20, 532
 When mortgage is not recorded, 20, 532
 Whether mortgage has been merged, 20, 532
 Whether mortgage has been released, 20, 532
 Whether record is notice to mortgagor, 20, 533
 Consideration, 20, 592
Deed Absolute Upon Its Face, in Reality a Mortgage, 20, 558
See EQUITABLE MORTGAGES.
 Conflict of authority, 20, 558, 559
 Entitled to be recorded according to its true character, 20, 560
 In general, 20, 558, 559
 Liberal construction of provisions relating to books of record, 20, 560
 Recorded according to its real character, 20, 559
 Recording the seal, 20, 560
 Resorting to index, 20, 560
 Statutes, 20, 560
 Whether in book for deeds or in book for mortgages, 20, 558
 Effect of not recording mortgage, 10, 377
 Extension of time, 20, 592
 Homestead right as to recording, 10, 384
 In general, 20, 531
 Mortgages of equitable interests, 20, 536
 Ohio statutes, 20, 569
 Rank of judgment lien of later registry, 10, 377
 Recording as notice, 10, 379
 Recording not necessary as to mortgagor, 10, 378
 Release of mortgage, 20, 533
 Surrender or cancellation of security, 20, 592
 Whether statute applies to mortgage, 20, 531
Redemption, see REDEMPTION.
Reformation of Instruments, 15, 655
 Assignee's right to reformation, 15, 658
 Boundaries, 15, 655, 656
 Correction after sale on foreclosure, 15, 658
 Defective deed of married women, 15, 662
 Deficiency, 15, 659
 Describing tract as containing certain number of acres, 15, 660
 Description, 15, 655
 Different conveyances in which same mistake was made, 15, 658
 Examples, 15, 655-663
 Foreclosure proceedings on mortgage, 15, 658
 Great difference between estimated and real quantity of land, 15, 661
 In general, 15, 655
 Intention to convey more land than deed covers, 15, 659
 Interest conveyed, 15, 661
 Judicial sale, 15, 659
 Land conveyed by metes and bounds, 15, 655
 Mistake as to quantity of land, 15, 657
 Mistake in date, 15, 661
 Mistake in names of parties, 15, 661
 Mistake in names of points of compass, 15, 662
 Mistake in numbers, 15, 662
 Mistake set up by way of defense, 15, 655
 More or less, 15, 659
 More or less land than sold, 15, 656
 Omission of name of trustee, 15, 663
 Omission of formality by married woman, 15, 662
 Representative of grantor, 15, 658
 Seals, 15, 661
 Statute of frauds, 15, 658
 What mistakes may be corrected, 15, 655
 Where grantor has no interest, 15, 662
 Where there is no warranty, 15, 657
 Words of inheritance, 15, 661
Registration, see *infra*, RECORDING ACTS.
Release and Discharge, 15, 870, 876
 Change in evidence of indebtedness, 15, 870
 Change of form of indebtedness, 15, 870
 Extension of note or bond, 15, 870
 In general, 15, 876
 Legal title, 15, 876
 Renewal of note, 15, 870
 Taking a new mortgage for old, 15, 871
 Taking for note, 15, 871
 Taking of new note, 15, 871
 Relief against forfeiture, 8, 449
Religious Societies, 20, 815
 Examples, 20, 815, 816
 Purchase-money mortgage, 20, 815
 Right to give mortgage, 20, 815
 Where forbidden to sell property, 20, 815
 Remedy, 15, 730, 731

MORTGAGES—Cont'd

Renewal and Extension of Mortgages, 15, 867

Change in evidence of indebtedness, 15, 870

Effect of renewal of note or bond, 15, 870

Execution of new note in mortgage, 15, 870

Extension of note or bond, 15, 870

Extension of time of payment, 15, 872

Giving instrument a wholly different character, 15, 870

Intention of parties, 15, 869

Judgment upon note, 15, 871

Lien of the debt, 15, 870

Satisfaction, 15, 869

Subrogation, 15, 869

Substitution of new note or bond, 15, 870

Successive renewals to notes, 15, 871

Taking new mortgage for old, 15, 871

Taking new note for accruing interest, 15, 871

Rents, 12, 734; 15, 810

Before possession taken, 15, 819

Examples, 15, 812, 813

Liability of mortgagor, 12, 737; 15, 810

Mortgagee of reversion, 12, 755

Mortgagee's Liability to Account for Rents and Profits, 15, 821

Annual rents, 15, 824

Application of Rents and Profits, 15, 823

Assignee of mortgagee, 15, 824

How rents and profits should be applied, 15, 823

Interest in arrears, 15, 824

Payment of interest on debt, 15, 823

Recovery by mortgagor where there has been no application, 15, 824

Reduction of principal, 15, 824

Appointment of receiver, 15, 822

Care and diligence in obtaining, 15, 821

Examples, 15, 821-823

Incident to mortgagee's right to redeem, 15, 823, 824

Injury to premises by tenant, 15, 821

Mortgagee in possession, 15, 821

Occupation of premises by mortgagee, 15, 821

Rents not actually received, 15, 821

Rents that might have been received, 15, 821

Subsequent incumbrances, 15, 823

Tenant purchasing mortgage, 15, 824

Where mortgage includes rents and profits, 15, 822

Mortgagee's right, 15, 819

Mortgagor's right, 15, 812

When right accrues, 15, 819

Where mortgagee expressly pledges, 15, 813

Whether mortgagor is accountable, 12, 737; 15, 810

Whether mortgagor must account, 12, 737; 15, 810

Where mortgagor retains possession, 15, 812

Res Judicata

Privy between mortgagor and mortgagee, 21, 146

Retention of Possession, 15, 809, 810

See infra, MORTGAGEE.

Action to recover possession, 15, 811

Against all others than mortgagee, 15, 809, 810

Against mortgagee, 15, 810

Disposition of Premises, 15, 812

After-acquired title, 15, 815

Devise, 15, 812

Dower, 15, 812

Emblements, 15, 812, 813

Improvements, 15, 814

Lease, 15, 812

Rents, 15, 812

Taxes, 15, 814

Tax titles, 15, 814

Examples, 15, 810, 811

Implied right, 15, 810

In absence of statute, 15, 810

In general, 15, 810

Possession protected by statute, 15, 811, 819

Statute of limitations, 15, 811

Where mortgagor cannot fill his covenants without possession, 15, 810

Whether accountable for rent, 15, 810

Sale

Implied warranty, 10, 126

Satisfaction, see *infra*, PAYMENT; RENEWAL AND EXTENSION OF MORTGAGES.

See REDEMPTION.

Entry on Record of, 15, 878

Examples, 15, 878-880

In general, 15, 878

Statutory mode, 15, 878

Who may enter satisfaction, 15, 879

Scire Facias, 21, 877

By whom action should be brought, 21, 878

By whom sale should be made, 21, 878

Defendant, 21, 877

Effect of sale, 21, 878

Extinguishing equity of redemption, 21, 878

Immediate cause of action appearing on face of writ, 21, 878

In Illinois, 21, 877

In Ohio, 21, 877

In Pennsylvania, 21, 877

Judgment against the property, 21, 878

Mortgage debt payable by installment, 21, 878

Proceedings in rem, 21, 878

Set-off, 21, 878

Unrecorded mortgages, 21, 877

Who are necessary parties defendant, 21, 878

- Seal, 15, 761
 Assignment of mortgage, 15, 842, 846
 Separate instrument of defeasance, 15, 790
 Secondary evidence, 13, 1132
Separate Property of Married Women, 22, 53
See infra, MARRIED WOMEN.
 Consideration of mortgages, 22, 53
 Husband and wife joining in mortgage, 22, 53
 Mortgage for debt of husband, 22, 53
 Mortgage to secure debts, 22, 53
 Where not for the benefit of her estate, 22, 53
 Where not for the benefit of the wife, 22, 53
 Whether mortgage is binding, 22, 53
 Signature of mortgagor, 15, 772
Specific Performance
 As defect in title, 22, 951
Enforcement of Contracts in Connection with Mortgage, 22, 973
 Agreement as to foreclosure and sale, 22, 973
 Agreement between junior and senior mortgagees, 22, 973
 Agreement to execute mortgage, 22, 973
 Agreement to perform covenants, 22, 973
 Agreement to remove mortgage lien, 22, 973
 Agreement to satisfy mortgages, 22, 973
 Where mortgage is barred by statute of limitations, 22, 958
Statute of Frauds, 8, 697
 Agreement that mortgagee shall not take possession, 8, 697
 Agreement to execute a mortgage, 8, 697
 Agreement to extend time for redemption, 8, 697
 Mortgage within statute, 8, 697
 Parol sale under a power of sale in mortgage, 8, 697
 Statutory mortgages, 15, 788
Stock
 Preferred stock as a form of mortgage, 23, 608
Streets and Sidewalks
 Dedication by mortgagor, 24, 8
 Whether mortgagee necessary party to proceedings to establish street, 24, 20
 Subject to a certain mortgage, 15, 833
Subrogation, 15, 864; 24, 249
 Advancing money to pay off mortgage, 24, 296
 Assignment of mortgages, 15, 866; 24, 250
 By express contract, 15, 864
 By operation of law, 15, 864
 Co-guarantor, 15, 865
 Co-surety, 15, 865
 Creditor, 15, 868
Equity of Redemption, 24, 259
 Assignee of equity who pays and takes up several notes, 24, 261
 Examples, 24, 259, 261
 Failure of purchaser's title, 24, 260
 In general, 24, 259
 Merger of the mortgage, 24, 261
 Mortgage paid and canceled by purchaser of equity of redemption, 24, 260
 Purchaser of an equity of redemption's rights, 24, 259
 Sale of equity of redemption upon execution, 24, 261
 Subject to payment of mortgage debt, 24, 260
 Examples, 15, 867-869; 24, 248-253
 Executors and administrators, 15, 868
 Formal discharge of mortgage by creditor, 24, 296
 Inequitable, 15, 865
 In favor of mortgagor himself, 15, 866
 In general, 24, 249
 Invalid mortgages, 15, 869
 In whose favor right exists, 15, 864
 Joint mortgagor, 15, 865
 Junior and senior incumbrancer, 15, 865
 Junior mortgagee paying assessment, 24, 252
Junior Mortgagees, 15, 867; 24, 269
 Agreement by prior mortgagee and mortgagor, 24, 273
 Assertion of right against intervening bona fide purchasers, 24, 272
 Co-mortgagees, 24, 274
 Failure to protect himself by purchase at foreclosure sale, 24, 272
 Junior mortgagee paying off incumbrance, 24, 269
 Marshalling securities, 24, 275
 Necessity of junior incumbrancer taking formal assignment, 24, 270
 Paying off incumbrance which does not cover property embraced by mortgage, 24, 272
 Payment not necessary for his protection, 24, 271
 Payment of an installment of a prior mortgage, 24, 273
 Payment of taxes, 24, 274
 Prior incumbrance embracing other property, 24, 273
 Taking of new mortgage by junior incumbrancer, 24, 274
 Tender by junior incumbrancer, 24, 270
 Time when junior incumbrancer may foreclose senior incumbrance, 24, 274
 Waiver of homestead right in senior mortgage, 24, 273
 What must be paid by junior mortgagee, 24, 273
 Where prior mortgage stands discharged of record, 24, 271

MORTGAGES—Cont'd**Subrogation—Cont'd**

- One voluntarily paying off mortgage by request of mortgagor, 15, 866
- Partner, 15, 867
- Party paying mortgage not a surety for debt, 24, 251
- Payment by person not primarily liable, 15, 864
- Payment of mortgage under agreement for a new mortgage, 15, 866
- Principal and surety, 15, 865
- Principal creditor, 15, 866
- Purchaser, 15, 868
- Relationship between the parties, 15, 865
- Renewal of mortgage, 15, 867
- Right of party interested in lien, 24, 249
- Rights of redeeming party, 24, 248-252
- Voluntary payment at request of mortgagor, 15, 866
- Where mortgagor pays after conveyance by him of mortgaged property, 15, 867
- Widow paying off lien, 24, 249

Succession, 24, 355

Sunday, 15, 763

Support, 15, 802

Assignments, 15, 850

Deeds conditioned for support and maintenance, 15, 802

Foreclosure, 15, 803

In general, 15, 802

Mortgage for Support of Mortgagee, 15, 758

Condition, 15, 758

In general, 15, 758

Redemption, 15, 759

Place where support is to be furnished, 15, 803

Redemption, 15, 759, 803

Suretyship

Creation of suretyship by agreement to assume mortgage debt, 24, 718

Mortgage of wife's separate property to secure debt of husband, 24, 720

Tacking, 24, 1034

Abolition by statute in England, 24, 1036

Adverse possession, 24, 1037

Examples, 24, 1034-1037

Further advances, 24, 1036

In general, 24, 1034

In United States, 24, 1036

Meaning of the term, 24, 1034

Priorities, 24, 1035

Rights of third persons, 24, 1036

Where a third claim is not a charge upon the land, 24, 1035

Where equity is equal law must prevail, 24, 1035

Where legal and equitable estate remains in mortgagor, 24, 1035

Taxation, 15, 826; 25, 228

Deduction of liabilities, 25, 228

Exemptions, 25, 180

Mortgagee, 15, 820, 826; 25, 281

Mortgagee recovering from mortgagor, 15, 826

Mortgagee's right to notice of sale, 25, 380

Mortgagor, 15, 814

Payment by mortgagee, 25, 281

Place of taxation, 25, 149

In general, 25, 149

Mortgage debt held by a non-resident, 25, 149

Mortgagee and land in different districts, 25, 150

Situs of note or bond, 25, 149

State where land lies, 25, 150

Redemption, 15, 819; 25, 415

Reimbursement of mortgagee, 25, 280

To whom land is taxed, 15, 820; 24, 122, 123; 25, 281

Whether taxable as personal property, 25, 102

Whether taxable as real property, 25, 106

Tax Titles, 15, 814; 25, 710

Whether mortgagee can acquire tax title, 25, 710

Whether mortgagor in possession can acquire tax title, 15, 814; 25, 710

Tenant for life, 12, 680

Tender, 15, 872, 873

After default, 15, 873

Effect of Tender, 15, 873; 25, 927

By whom made, 25, 928

Discharge of lien, 25, 927

In general, 25, 927

Lienor's right to possession, 25, 929, 931

Necessity of keeping tender good, 25, 929

Necessity of paying money into court, 25, 929

Tender after default, 25, 929

Tender must cover whole debt, 25, 928

To what liens doctrine applicable, 25, 931

Where possession has been taken, 25, 929

Insufficient, 15, 874

Junior incumbrancer, 15, 874

Made at law day, 15, 874

What sufficient, 15, 874

When tender may be made, 15, 874

Where tender should be made, 15, 874

Whether it discharges mortgage, 15, 873

Timber, 15, 817

Mortgagor cutting, 15, 817

Trespass

By mortgagee, 15, 819

Trust deeds and power of sale mortgages, see TRUST DEEDS AND POWER OF SALE MORTGAGES.

Trusts and Trustees

Mortgages of equitable estate, 27, 235

- Power of Trustee to Mortgage**, 27, 138, 139
 Examples, 27, 138-140
 In general, 27, 138
 When trustee may mortgage, 27, 138
 When trustee may not mortgage, 27, 139
- Undue Influence**
 Mortgagor and mortgagee, 27, 493
- Usury**, 15, 764; 27, 930, 943-946
See USURY.
 Agreement to extend time of payment, 15, 770
 Assignments, 15, 863
 Attorney's fees, 15, 769
Building and Loan Associations, 15, 766, 770
 Agent's commission, 15, 770
 Borrower not a member, 15, 770, 776
 Examples, 15, 770
 Impositions and fines, 15, 770
 Period shorter than a year, 15, 770
 Compound interest, 15, 770
 Defense of usury after foreclosure sale, 15, 771
 Devices, 15, 765
 Estoppel against setting up defense, 15, 771
 Examples of, 15, 765-768
 Examples of mortgages held not usurious, 15, 768, 769
 Forfeiture of entire interest, 15, 765
 Forfeiture of excess, 15, 764
 No usury laws, 15, 765
 Preexisting debt, 15, 766
 Purchasers of land subject to a mortgage, 15, 836
 Statutory provisions, 15, 764, 765
 Void in part and valid in part, 15, 765
- What Constitutes**, 15, 765-768
 Building and loan association, 15, 766
 Devices, 15, 765
 Discount, 15, 766
 Disguise and concealment, 15, 765
 Examples, 15, 765-768
 Intent, 15, 765
 Mortgages sold at a discount, 15, 766
 Preexisting debt obtained by usury, 15, 766
 Whether contract void, 15, 764
 Whether it works forfeiture of contract, 15, 764
 Who may assail the invalidity of mortgage, 15, 770
- Vadium mortuum**, 15, 728
- Validity**, *see infra*, CONSIDERATION; USURY.
 Blank as to indebtedness, 15, 772
 Blank as to name of mortgagee, 15, 773
 Duress, 6, 84, 93; 15, 764
Fraud of Creditors, 15, 773
 Articles Consumable in Use, 15, 775
 Examples, 15, 775, 776
- Not necessarily consumable, 15, 776
 Provision that mortgagor shall retain possession, 15, 775
 Where mortgagor does not use the articles, 15, 775
- Benefits reserved to mortgagor, 15, 775
 Burden of proof, 15, 774
 Election of the creditors, 15, 777
 Examples, 15, 773-775
 Fraudulent intent, 15, 774
 Fraudulent preferences, 15, 777
 Mortgagee's knowledge, 15, 774
 Mortgagee's participation, 15, 774
 Setting aside, 15, 774
 Validity of mortgages in fraud of creditors, 15, 775
 When not void, 15, 776
 Where creditors do not intervene, 15, 777
- Mortgage obtained by fraud, 15, 773
 Purchasers of land subject to mortgage, 15, 836
 Rights of purchaser at invalid sale, 15, 773
 Seal, 15, 763
 Sunday, 15, 763
- Vendor and Purchaser**
As to the conveyance of mortgaged lands, *see infra*, CONVEYANCE OF MORTGAGED LANDS.
Sale by Mortgagee, 28, 90
 Examples, 28, 90, 91
 How power created, 28, 90
 In general, 28, 90
 Power of sale implies power to convey, 28, 90
- Vendor's Lien**
 Express reservation compared with, 28, 186
- Vivum vadium**, 15, 729
- Waiver**
Foreclosure, 28, 557
 Accepting payment, 28, 557
 Action to obtain possession of land, 28, 558
 Assignment of mortgage, 28, 558
 Consideration, 28, 557
 Examples, 28, 557-559
 Foreclosure proceedings, 28, 557
 How mortgagee may waive, 28, 557
 In general, 28, 557
 Suing for the debt, 28, 557
 Irregularities in sale, 28, 560
 Right of redemption, 28, 560
- War**, 28, 609
- Waste**, 15, 816; 28, 896, 915
 Action by mortgagee, 28, 915
 Action for forfeiture of mortgage, 28, 915
 By mortgagee of, 10, 822
 Examples, 28, 896, 897
Injunction, 28, 933
 Waste by mortgagee in possession, 28, 936

MORTGAGES—Cont'd**Waste—Cont'd****Injunction—Cont'd**

Waste by Mortgagor in Possession,
28, 933

Examples, 28, 933-936

In general, 28, 933

Irreparable injury, 28, 934

Mortgagor's insolvency, 28, 934

Parties, 28, 934

Pending bill for foreclosure, 28,
935

Rendering security insufficient,
28, 934

Using property as used before
mortgage, 28, 935

What acts do not warrant injunc-
tion, 28, 935

When injunction will not lie, 28,
935

Mortgagee in possession, 28, 897, 916

Mortgagor, 28, 896

Security rendered inadequate, 28, 896

Treble damages, 28, 916

Welsh mortgages, 15, 729

When cloud upon title, 2, 300

When mortgagor tenant at sufferance,
12, 668

Whether mortgages are a conveyance,
4, 134

Witnesses, 29, 581

Mortgagor as witness, 29, 581, 582

Examples, 29, 581-583

In general, 29, 581

MORTMAIN, 9, 42; 15, 881; 20, 811

See CORPORATIONS; RELIGIOUS SOCIE-
TIES.

Construction of statutes, 23, 417

English statutes, 20, 811

Examples, 20, 811

Foreign corporations, 8, 332, 334

In general, 20, 811

New York statute, 20, 811

Statutes of, 5, 431

MORTUARY TABLES, 15, 881

Evidence, 15, 882

Life estates, 15, 884

Negligence, 15, 882

MOSSES, 15, 886**MOST**

Most convenient, 3, 91

Most direct route, 15, 886

Most public places, 15, 886

Most remarkable places, 15, 886

MOTHER, 15, 886**MOTHER'S SHARE, 15, 887****MOTIONS, 15, 887, 895**

See RECEIVERS.

For motion to quash indictment, see IN-
DICTMENT.

Sheriff's Sales

Motion to quash, see SHERIFF'S SALES.

To set aside judgments, see JUDGMENTS.

Admiralty, 15, 890

Affidavit, 15, 899

Absence of party, 15, 900

Arrest of judgment, 15, 901

Attorney's clerk, 15, 900

By whom made, 15, 900

Change of venue, 15, 901

Counter-affidavits, 15, 900

Entitling, 15, 899

Ex parte motions, 15, 894

For what purposes affidavit can be
used, 15, 900

Information and belief, 15, 900

Leave to renew, 15, 921

Motion for adjournment, 15, 901

Objection, 15, 901

Opposing motion, 15, 900

Refusal to file, 15, 901

Service, 15, 908

Signing, 15, 899

Waiver, 15, 901

Where no cause is pending, 15, 899

Amendment, 15, 901

Appeal, 15, 888

Leave to renew, 15, 923, 924

Rehearing, 15, 925

Application, 15, 898

Attorney's liability for costs, 15, 929

At what time objection may be taken,
15, 935

Audita Querela, 15, 889

Proceeding by, 1, 1008

Change of venue, 15, 895, 901

Clerical error, 15, 902

Consent, 15, 896

Consolidation, 15, 896

Contested, 15, 895

Change of venue, 15, 895

Consent, 15, 896

Consolidation, 15, 896

County in which triable, 15, 895

Definition, 15, 895

Enumerated and non-enumerated mo-
tions, 15, 897

Enumerated Motions

Examples, 15, 898

Rules for, 15, 897

What are, 15, 898

Examples, 15, 895

First district, 15, 896

In general, 15, 895

Motion to vacate order, 15, 896

Non-Enumerated Motions

Examples, 15, 898

Rules for, 15, 897

What are, 15, 898

Power of supreme court, 15, 896

Presumption that motion is made in
proper county, 15, 895

Proper county, 15, 895

When heard, 15, 896

Costs, 15, 925

Abandoned motions, 15, 931

Allowing amendment, 15, 928

Amount of, 15, 931

Attendance fee, 15, 930

Attorney's liability for, 15, 929

Clerk's fees, 15, 933

Collection, 15, 931

Collateral motions, 15, 932

Costs abiding event, 15, 932

- Execution, 15, 931
- Order served by mail, 15, 932
- Set-off against costs awarded to other party, 15, 932
- Stay of proceedings, 15, 931
- Taxation as part of costs of action, 15, 932
- Vacation of orders, 15, 932
- Default, 15, 931
- Demand for, 15, 927
- Discretion as to extra allowance, 15, 933
- Discretion of court, 15, 926, 929
- Execution, 15, 931
- Executor, 15, 928
- Ex parte affidavits, 15, 927
- Extra allowance, 15, 933
- Granting favor to moving party, 15, 928
- How granted, 15, 925
- Limitation of, 15, 930
- Motion in consequence of declaration of other party, 15, 930
- Motion papers, 15, 928
- Motion rendered useless by other side, 15, 931
- Neglect to enter, 15, 933
- Of a reference, 15, 925
- One notice, 15, 927
- Part of general costs in the action, 15, 925
- Party partly successful, 15, 928
- Party successful in part only, 15, 928, 929
- Practice, 15, 933
- Practice novel, 15, 929
- Practice unsettled, 15, 929
- Preparation of enumerated motions, 15, 931
- Prevailing party, 15, 927
- Punishment, 15, 929
- Rehearing, 15, 926
- Request for costs, 15, 930
- Scandal, 15, 929
- Setting aside default, 15, 928
- Special motions, 15, 926
- Subsequent term, 15, 927
- Successful resistance to motion, 15, 930
- Technical irregularities, 15, 929
- Unsuccessful motion, 15, 929
- Upon what dependent, 15, 925
- What are, 15, 925
- When granted, 15, 927
- When no costs will be granted, 15, 929
- Where order does not determine anything, 15, 929
- Who fixes amount, 15, 926
- Without, 15, 930
- County in which triable, 15, 895
- Court adjourned to chambers, 15, 906
- Definition, 15, 887, 895
- Demurrer, 15, 889
- Denial, 15, 936
- Discharge of order, 15, 934
- Discretion of Court**, 15, 923, 924, 934
 - Costs, 15, 926, 929
 - Extra allowance, 15, 933
 - Rehearing, 15, 924
 - Distinguished from petition, 15, 888
- Enumerated**
 - Examples, 15, 898
 - Rules for, 15, 897
 - What are, 15, 898
- Enumerated and non-enumerated, 15, 897
- Equity, 15, 934
- Errors of record, 15, 888
- Evidence, 15, 936
- Examples, 15, 895
- Execution**
 - Costs, 15, 931
- Ex Parte**, 15, 893
 - Affidavit, 15, 894
 - Definition, 15, 894
 - Examples, 15, 894
 - Object, 15, 894
- Extra allowance of costs, 15, 933
- First district, 15, 896
- For Judgment**, 12, 79
 - Notice, 12, 79
- General Appearance**, 15, 908, 915
 - Waiver of irregularities, 15, 915
- Guardian ad litem, 15, 890
- In general, 15, 895; 18, 491
- Irregularities**, 15, 906
 - Examples, 15, 907
 - Notice, 15, 906
 - Not referred to in motion papers, 15, 907
 - Waiver, 15, 907
 - When motion must be made, 15, 906, 907
- Judgments**
 - To set aside, 15, 888
- Kinds of, 15, 892
- Leave to Renew**
 - Affidavit, 15, 921
- Misnomer, 15, 890
- Motion papers*, see *infra*, AFFIDAVIT.
- Newly discovered evidence, 15, 922
- New trial*, see NEW TRIAL.
- Non-appearance, 15, 916
- Non-Enumerated**, 15, 899
 - Examples, 15, 898
 - Rules for, 15, 897
 - What are, 15, 898
- Notice**, 15, 901, 911
 - Service*, see generally, SERVICE OF PROCESS.
- After judgment, 15, 911
- Chargeable with knowledge, 15, 911
- Contents**, 15, 902
 - Clerical errors, 15, 902
 - Frivolity, 15, 903
 - Grounds**, 15, 904
 - Equity practice, 15, 904
 - Examples, 15, 904
 - General notice, 15, 904
 - Not sufficiently specific, 15, 904
 - Several grounds, 15, 904
 - Motion to strike out, 15, 903
 - Other and further relief, 15, 903
 - Place**, 15, 906
 - Address, 15, 908

MOTIONS—Cont'd

Notice—Cont'd

Contents—Cont'd

Place—Cont'd

General appearance, 15, 908
 Irregularities, 15, 906
 Particular appearance, 15, 908
 Signature, 15, 908
 Upon the record, 15, 906
 Relief sought, 15, 902
 Sheriffs, 15, 902
 Time, 15, 905
 Examples, 15, 905
 In general, 15, 905
 Next term, 15, 905
 Particular day for motion, 15, 905
 Title of suit, 15, 902
 Counter, 15, 915
 Default, 15, 916
 Definition, 15, 901
 Effect, 15, 913
 Filing, 15, 901
 General appearance, 15, 915
 Leave to renew, 15, 921
 Necessity, 15, 911
 Non-appearance of parties served, 15, 916
 Order to show cause, 15, 917
 Presumption of proof, 15, 915
 Proof of return, 15, 915
 Return, 15, 915
 Service, 15, 908
 See generally, SERVICE OF PROCESS.
 After judgment, 15, 911
 Against objection, 15, 912
 Agent, 15, 910
 Attorney of opposite party, 15, 910
 At what time service must be made, 15, 912
 Chargeable with knowledge, 15, 911
 Computation of time, 15, 913
 Copies of the affidavits, 15, 908
 How long before hearing, 15, 912
 Motions on the pleadings, 15, 909
 Necessity of notice, 15, 911
 New service, 15, 910
 Omissions, 15, 909
 Parties interested, 15, 910
 Presumption that papers are copies of the originals, 15, 909
 Reasonable notice, 15, 913
 Short notice, 15, 913
 Sufficient, 15, 909
 Upon whom service must be made, 15, 910
 Variance between copy and original, 15, 909
 Waiver of objections to notice, 15, 912
 What papers must be served, 15, 908
 When notice not necessary, 15, 912
 When time to commence running, 15, 913
 Whether any other notice necessary, 15, 911
 Whether process, 15, 908
 Who not entitled to notice, 15, 912
 Serving, 15, 901

Waiver of Irregularities, 15, 915

After service, 15, 915
 Appearance, 15, 915
 Contents, 15, 915
 Examples, 15, 915
 General appearance, 15, 915
 What amounts to, 15, 915
 Waiver of objections to notice, 15, 912
 When notice not necessary, 15, 912
 Whether any other notice necessary, 15, 911
 Who not entitled to notice, 15, 912
 Withdrawal, 15, 916

Of Course, 15, 892

Definition, 15, 892
 Examples, 15, 892, 893
 Notice, 15, 892
 What motions are, 15, 892, 893
 Writing, 15, 892

Open and close, 15, 918

Order by consent, 15, 934

Order to Show Cause, 15, 916

Affidavit, 15, 918
 Amendments, 15, 919
 As process, 15, 917
 Definition, 15, 916
 Discretion of court, 15, 917
 Equivalent to a notice of motion, 15, 917
 Examples, 15, 916, 917
 Objections, 15, 918
 Open and close, 15, 918
 Personal service, 15, 919
 Requisites, 15, 917
 Return, 15, 919
 Service, 15, 919
 When granted, 15, 917
 Whether reviewable, 15, 917

Papers, 15, 898

Amendment, 15, 901
 Entitling, 15, 899
 Entitling affidavit, 15, 899
 In general, 15, 898
 Irregularities, 15, 916
 Names of parties, 15, 899
 Objection, 15, 935
 Signature, 15, 899
 What paper should state, 15, 898
 Where no suit is pending, 15, 899

Parties, 15, 891

Names of parties in papers, 15, 899
 To actions, 15, 890

Pleading, 15, 889

Presumption that motion is made in proper county, 15, 895
 Proper county, 15, 895
 Power of court, 15, 896
 Power of courts of law, 15, 934
 Power of supreme court, 15, 896

Referees

Motion for Reference, 20, 680

Affidavit, 20, 680
 Affidavit by attorney, 20, 680
 By whom affidavit should be made, 20, 680
 Delay, 20, 681
 Difficult question of law, 20, 681

- General allegations in affidavit, 20, 680
- Prima facie case, 20, 681
- Res adjudicata, 20, 681
- What affidavit should state, 20, 681
- When motion may be made, 20, 680
- New Trial**, 20, 704
 - Insufficiency of evidence, 20, 704
 - Newly discovered evidence, 20, 704
 - Rejection of testimony, 20, 704
 - Upon what grounds motion may be made, 20, 704
- To Set Aside Report**, 20, 702
 - Delay in making motion, 20, 703
 - Examples, 20, 702, 703
 - Excessive fees, 20, 711
 - In general, 20, 702
 - Listening to ex parte explanations, 20, 702
 - Matters arising subsequent to submission, 20, 702
 - Misconduct of referees, 20, 702
 - Partiality, 20, 702
 - Referee's personal disqualifications, 20, 703
 - Vacillation or indecision, 20, 703
 - Waiver of objections, 20, 703
 - When court may set aside report, 20, 702
 - When motion must be made, 20, 703
 - Where verdict of jury would be set aside, 20, 702
- Rehearing**, 15, 924
 - Costs of motions, 15, 925
 - Costs of rehearing, 15, 925
 - Discretion of court, 15, 924
 - In general, 15, 924
 - Misapprehension of fact, 15, 924
 - Mistake of law, 15, 924
 - To whom application should be made, 15, 925
 - Where there is remedy by appeal, 15, 924
 - Whether order is reviewable, 15, 925
- Renewal**, 15, 919
 - Abuse of discretion, 15, 924
 - Annexing leave to denial of motion, 15, 920
 - Conclusiveness of first decision, 15, 921
 - Denial by default, 15, 922
 - Discretion of court, 15, 923
 - acts arising since decision of original motion, 15, 919
 - Facts not insisted upon at the hearing of the original motion, 15, 920
 - Instances, 15, 919-924
 - Newly discovered evidence, 15, 922
 - New matter, 15, 921
 - Notice, 15, 920
 - Other judge, 15, 920
 - Power of court to renew, 15, 919
 - Renewal on the merits, 15, 922
 - Res adjudicata, 15, 921
 - Review upon appeal, 15, 923, 924
 - Under what circumstances leave granted, 15, 920
 - Upon substantially the same facts, 15, 920
 - Waiver of right to appeal, 15, 919
 - When court may grant, 15, 920
 - Where denial a bar, 15, 922
 - Where leave has been previously granted, 15, 919
 - Without prejudice, 15, 920
- Replevin**
 - Where Bond Is Defective, 20, 1134
 - Form of bond, 20, 1135
 - Plea in abatement, 20, 1134
 - Time of motion, 20, 1134
 - Res adjudicata, 15, 922
- Scandal**, 15, 889
 - Costs, 15, 929
- Scope, 15, 888
- Service, see *infra*, NOTICE.
- Sheriffs, 15, 902
- Special**, 15, 893
 - Copy, 15, 893
 - Costs, 15, 929
 - Decision, 15, 893
 - Definition, 15, 893
 - Examples, 15, 893
- Specific appearance, 15, 908
- Stay of proceedings until hearing, 23, 529
- Time**
 - See *infra*, WHEN MOTIONS SHOULD BE MADE.
 - Computation of, 15, 913
- To correct judgments, 15, 891
- To Dismiss**
 - Want of jurisdiction, 12, 309
- To vacate order, 15, 896
- Use, 15, 888
- Vacating Judgment**
 - Want of jurisdiction, 12, 310
- Various rules of law and practice, 15, 934-936
- Waiver**, 15, 935
 - Irregularities in Notice**, 15, 915
 - After service, 15, 915
 - Appearance, 15, 915
 - Contents, 15, 915
 - Examples, 15, 915
 - General appearance, 15, 915
 - What amounts to, 15, 915
 - Of right to appeal, 15, 919
 - When heard, 15, 896
- When Motions Should Be Made**, 15, 913
 - Consent of parties, 15, 914
 - Examples, 15, 913, 914
 - Hearing on some day other than rule day, 15, 913
 - Leave of court, 15, 914
 - Matter of record, 15, 914
 - Motion noticed for a particular day, 15, 913
 - When relief denied, 15, 890
 - Where heard, 15, 934
 - Without prejudice, 15, 920
- Writing**, 15, 892
 - Presumption, 15, 935

MOTIVE, 15, 936*See generally, INTENT.***Criminal Law, 15, 937**

Evidence tending to show accused guilty of another offense, 15, 938

Evidence to prove, 15, 937

Instruction, examples of, 11, 273

MOUNTAIN

Foot of, 8, 77

MOVABLE PROPERTY, 15, 945*See PERSONAL PROPERTY.***MOVABLES, 15, 943**

Furniture, 15, 944

Goods, 15, 944

MULATTO, 15, 946**MULCT, 15, 947****MULTIFARIOUSNESS, 15, 947***See BILL IN EQUITY.*

In bill in equity, 2, 214

MULTIPLE, 15, 948**MULTITUDE, 15, 948****MUMMIFICATION, 15, 261****MUNICIPAL, 15, 948, 953****MUNICIPAL ACT, 1, 173****MUNICIPAL AID, 8, 597**

As a franchise, 8, 597

*Bona fide purchaser, see infra, ESTOPPEL.***Bonds***See, as to form of bond, validity of bond, etc., MUNICIPAL SECURITIES.*

Construction contracts, 19, 872

Presumption that governor's indorsement is regular, 19, 733

Railroad company's power to indorse, 19, 733

Subrogation, 19, 742

Bonds indorsed by the governor, 19, 742

Lien created by statute to protect bonds, 19, 743

Where state issues its own bonds, 19, 743

Burden of Proof, 15, 1271

Fraud in inception of paper, 15, 1271

Illinois, 15, 1271

Non-performance of conditions precedent, 15, 1271

Possession as prima facie evidence of ownership, 15, 1271

Conditions Precedent, 15, 1271*See infra, CONSTRUCTION AND COMPLETION OF ROAD.**Consent of people, see infra, VOTE OF PEOPLE.**Location of road, see infra, LOCATION OF ROAD.*

Burden of proof, 15, 1271

By whom condition imposed, 15, 1271

Delegation of power, 15, 1274

Effect of failure to comply, 15, 1272

Implied authority to impose conditions, 15, 1272

In general, 15, 1271

Injunction when condition is not complied with, 15, 1272

Modification, 15, 1273

Where imposed by vote of people, 15, 1273

Performance, 15, 1274**Presumptions, 15, 1273**

Recital that conditions have been performed, 15, 1295

Registry, 15, 1284

Sale below par, 15, 1265, 1288

Strict compliance, 15, 1271

Subsequent misconduct, 15, 1272

Substantial compliance, 15, 1272

Waiver, 15, 1273

By municipality, 15, 1273

Conditions submitted to electors, 15, 1273

What amounts to waiver, 15, 1273

When municipality may impose conditions, 15, 1271

Where statute declares bond void unless conditions are complied with, 15, 1302

Whether subscription binding, 15, 1272

Consolidation of Corporations, 15, 1257

In general, 15, 1257

Sale and consolidation, 15, 1258

Where corporation had power to consolidate, 15, 1257

Whether bond must be issued to consolidated corporation, 15, 1257

Constitutional Prohibitions and Limitations, 3, 700; 8, 598*See infra, STATUTES; VOTE OF PEOPLE.**Conditions precedent, see infra, CONDITIONS PRECEDENT.*

Donation voted previous to adoption of constitution, 15, 1252

Effect on existing statutes, 15, 1250

Estoppel, 15, 1302

Excessive issue, 15, 1606

Impairing obligations to contract, 15, 1251

In general, 15, 1250

Prohibition under state, 15, 1252

Subscriptions, 15, 1252

Where addressed to legislature, 15, 1250

Where addressed to municipality, 15, 1250

Whether vote to subscribe stock to railroad is contract, 15, 1251

Construction and Completion of Road, 15, 1284

Examples, 15, 1284, 1285

In general, 15, 1284

Strict enforcement, 15, 1284

Substantial compliance, 15, 1284

Under certain statutes, 15, 1286

What is sufficient compliance, 15, 1284, 1285

Where time is not essence of contract, 15, 1284, 1285

Coupons of municipal bonds, 4, 437

Disposal of bonds, 15, 1265

Duty of company to operate road, 8, 602

Elections, see infra, VOTE OF PEOPLE.

Estoppel, 15, 1292

Assent of taxpayers, 15, 1301

Authority of commissioners to pass upon fact implied, 15, 1299

Before issue of bonds, 15, 1292

Bonds issued in violation of constitutional provisions, 15, 1302

Bonds issued in violation of express statute, 15, 1302

Course of dealing, 15, 1293

Excessive Issues, 15, 1304

Bona fide purchaser, 15, 1308

Constitutional limitation, 15, 1606

Examples, 15, 1304-1308

Grounds for the doctrine, 15, 1305

In Iowa, 15, 1305

Legislative limitation, 15, 1304, 1305

Validity, 15, 1304

Irregularities in election, 15, 1301

Laches, 15, 1295

Misconduct of officers, 15, 1295

Municipality without power to issue bonds, 15, 1300

New York decisions, 15, 1303

Payment of interest, 15, 1293

Prima facie case for plaintiff, 15, 1299

Railway aid bonds, 15, 1242, 1295

Recital of conditions inconsistent with statute, 15, 1302

Recitals by unauthorized officials, 15, 1292

Recitals of compliance with statute, 15, 1298

Recitals of facts not within authority of officers issuing bonds, 15, 1300

Recital that bonds are issued in accordance with law, 15, 1299, 1300

Recital that conditions have been performed, 15, 1295

Records of county court, 15, 1293

Refunding, 15, 1293

Retention of consideration, 15, 1293

Rules governing municipal bonds, 15, 1308

Statute declaring bonds void unless conditions are complied with, 15, 1302

Substantial compliance with law, 15, 1299

To deny authority of officers, 15, 1292

Validity of consolidation, 15, 1296

"Were issued in pursuance of subscription," 15, 1302

Injunction, see *infra*, **RESTRAINING ISSUE OF BONDS**.**Interest**, 15, 1269

In general, 15, 1269

Where railroad agrees to pay interest, 15, 1269

Legislative Power Over Municipal Corporations, 15, 991, 1247; 19, 693See *infra*, **CONSTITUTIONAL PROHIBITIONS AND LIMITATIONS; NECESSITY OF EXPRESS AUTHORITY**.

Compelling corporation to enter into contract for public purpose, 15, 1247

Compelling corporation to incur debt, 15, 1248

Compelling municipal corporations to buy stock in private corporation, 15, 1247

In general, 15, 1247

Limitation of legislative power, 15, 1247

Railroad, 15, 1249

Ratification, see *infra*, **RATIFICATION**.

Limitation of indebtedness, 15, 1267

Location of Road, 15, 1286, 1287

Bona fide holders without notice, 15, 1287

Branch line, 15, 1287

Breach of condition, 15, 1286

Designation, 15, 1288

Examples, 15, 1286, 1287

In general, 15, 1286

Material variance, 15, 1288

Prior location, 15, 1286

Road built on different route, 15, 1286

Strict compliance, 15, 1286

Mandamus, 8, 602; 14, 192; 15, 1259

Another action pending, 14, 195

Circuit court of United States, 14, 196

Compelling officers to subscribe, 14, 194

Conditions, 14, 194

Corporation concluded by judgment, 14, 196

General rule, 14, 192

Issue of bonds, 14, 194

Judgment upon municipal aid bonds, 14, 195

Necessity of judgment, 14, 193; 15, 1249

Presentation for allowance, 14, 193

Signature by town clerk, 14, 195

Subscriptions, 14, 194

Surrender to illegal bonds, 14, 196

United States courts, 14, 193

Validity of bonds, 14, 194

When the writ lies, 14, 192, 193

Whether mandamus lies to compel, 14, 194

Manufacturing corporations, 14, 311; 15, 1245

Municipal Corporations

Legislative control, 15, 991

Necessity of Express Authority for Issue of Bonds, 15, 1236See *infra*, **LEGISLATIVE POWER OVER MUNICIPAL CORPORATIONS**.

Aid in construction of depots, 15, 1239

Authority strictly construed, 15, 1237, 23, 396

Bonds issued without authority, 15, 1238

Construction of Particular Statutes, 15, 1238

In Georgia, 15, 1238

In Illinois, 15, 1238, 1240

In Indiana, 15, 1240

In Iowa, 15, 1240

In Kansas, 15, 1240

In Louisiana, 15, 1240

MUNICIPAL AID—Cont'd**Necessity of Express Authority for Issue of****Bonds—Cont'd****Construction of Particular Statutes—**
Cont'd

- In Michigan, 15, 1240
- In Minnesota, 15, 1238, 1240
- In Mississippi, 15, 1240
- In Missouri, 15, 1238, 1240
- In Nebraska, 15, 1240
- In New Hampshire, 15, 1238
- In New Jersey, 15, 1240
- In New York, 15, 1238, 1240
- In Ohio, 15, 1240
- In Pennsylvania, 15, 1240
- In West Virginia, 15, 1239
- In Wisconsin, 15, 1240

Portion of county created corporation, 15, 1239

Railroad charter, 15, 1238

Examples, 15, 1237-1240

Generally, 15, 1236

Municipal corporation becoming a stockholder, 15, 1237

Obligation on company, 19, 698

Power of county commissioners to subscribe to railroad stock, 4, 382

Power of Legislature, 15, 991, 1247; 19, 698

See infra, LEGISLATIVE POWER OVER MUNICIPAL CORPORATIONS.

To submit to popular vote, 6, 281

Purposes, 15, 1240

See infra, LEGISLATIVE POWER OVER MUNICIPAL CORPORATIONS.

Bridges, 15, 1246

By what determined, 15, 1241

Distinction between public and private, 15, 1241

Manufacturing enterprises, 15, 1245

Mining enterprises, 15, 1245

Private enterprises, 15, 1245

Public purpose question for court, 15, 1242

Purpose must be public, 15, 1240

Railway Aid Bonds, 15, 1242, 1249, 1295

See infra, TAXATION.

Donation, 15, 1242

Negotiable bond, 15, 1242

Iowa constitution, 15, 1243

Iowa decisions, 15, 1243

Illinois decisions, 15, 1244

Michigan decisions, 15, 1243

Nevada, 15, 1244

Railway regarded as highway, 15, 1242

Road established in another state, 15, 1245

Texas, 15, 1244

Whether public purpose, 15, 1242

Schools and colleges, 15, 1246

Sewerage, 15, 1246

Question of Law or Fact

Public purpose, 15, 1242

Railroad Aid Bonds

See infra, PURPOSES; TAXATION.

What constitutes contracts, 15, 1251, 1252

Ratification, 15, 1253

Illustration of, 15, 1255

Irregularities and defects, 15, 1254

Payment of interest, 15, 1253, 1255

Ultra vires acts, 15, 1253, 1254

What legislature may ratify, 15, 1254

What municipality may ratify, 15, 1254

Restraining Issue of Bonds, 8, 602; 15, 1255

Acquiescence, 15, 1256

Bonds void in hands of innocent purchaser, 15, 1255

Illegal issue, 15, 1255

Taxpayers, 15, 1255

Void bonds, 15, 1256

Where like bonds have been issued, 15, 1256

Whether temporary injunction matter of right, 15, 1255

Sale below par, 15, 1265

Statutes, 15, 1239

Authorizing strictly construed, 15, 1237; 23, 396

Constitutional provisions requiring that subjects shall be expressed in title, 23, 254

Constitutional provisions that statute shall contain no more than one subject, 23, 274

Retroactive statutes, 15, 1240

Statutory liens and mortgages, 19, 698

Subscription for Stock by Municipal Corporations, 15, 1259

Effect of constitutional provision upon uncompleted subscriptions, 15, 1261

Enforcement by mandamus, 15, 1259

Examples, 15, 1259-1261

Executory contract, 15, 1260

Implied power to become stockholder, 15, 1259

Necessity of manual subscription on books of company, 15, 1261

Ordinance as subscription, 15, 1261

Resolution as subscription, 15, 1261

Revocation of authority, 15, 1260

Rights as stockholder, 15, 1261

Vote of people, 15, 1259

Vote of people as subscription, 15, 1261

What constitutes subscriptions, 15, 1261

Whether power to become stockholder must be expressly conferred, 15, 1259

Whether subscription constitutes contract, 15, 1259

Who may enforce, 15, 1259

Taxation

In Aid of Railroads, 25, 578

See infra, PURPOSES.

Assignability of taxation, 25, 579

Conditions, 25, 578

Departure from original scheme of work, 25, 578

Examples, 25, 578, 579

Grantee bound by conditions, 25, 579

Perpetual lease of road, 25, 579

Powers in general, 25, 578

Radical departure, 25, 578

Sale of road, 25, 579
 Taxing road to pay county's subscriptions, 25, 659
 Turnpikes, 27, 330
United States Courts
 Examples, 15, 1270
 General commercial law, 15, 1270
 Interpretation of constitutional laws of state, 15, 1269
 Iowa municipal aid cases, 15, 1270
 Obligations of contract, 15, 1270
Vote of People, 15, 1259, 1274
 Attacking bonds on account of irregularities in election, 15, 1278
 Conforming to statute, 15, 1275
 Constitutional provision, 15, 1274
 Effect of irregularities, 15, 1275
 Effect of popular vote alone, 15, 1275
 Effect of vote, 15, 1281
 Essential conditions, 15, 1274
 Estoppel, 15, 1301
 Evidence of compliance with law, 15, 1278
 In absence of an enabling law, 15, 1276
 In general, 15, 1274
 Inhabitants, 15, 1279
 Irregularities in election, 15, 1301
 Majority of qualified voters, 15, 1281
 Majority of voters, 15, 1279
Notice of Election, 15, 1276
 Calling town meeting, 15, 1276
 Examples, 15, 1276, 1279
 Name of road to be aided, 15, 1277
 Necessity, 15, 1276
 Omitting to state amount of bonds, 15, 1277
 Reasonable certainty, 15, 1276
 What sufficient notice, 15, 1276
 Who may give notice, 15, 1276
Petition for Election, 15, 1277
 Aliens, 15, 1277
 Conditional petition, 15, 1277
 Examples, 15, 1277, 1278
 Requisites and sufficiency, 15, 1277
 Right to withdraw name from petition, 15, 1282
 Signing by proxy, 15, 1277
 To whom petition should be addressed, 15, 1277
 Preliminary steps, 15, 1277
 Qualified voters, 15, 1280
 Record showing that statutory authority has been pursued, 15, 1278
 Registration, 15, 1282
 Right to rescind vote, 15, 1282
 Right to withdraw name from petition, 15, 1282
 Submitting more than one proposition, 15, 1276
 Subsequent vote, 15, 1275
 Two-thirds of qualified voters, 15, 1280
 Vote at special town meeting, 15, 1275
 "Voters," 15, 1279
 Where vote creates contract, 15, 1259, 1260
 Whether provision is directory or mandatory, 15, 1275
 I-D—75

Whether submission of question to a popular vote is an unlawful delegation of constitutional power, 3, 700
 Who may call the meeting, 15, 1276
 Who may order election, 15, 1276
MUNICIPAL CORPORATIONS, 15, 949
See AMOTION; BOARD OF HEALTH; BOROUGH; COUNTIES; CROSSINGS; DRAINS AND SEWERS; FIRE DEPARTMENTS; GAS COMPANIES.
See generally, TOWNS AND TOWNSHIPS.
See HAWKERS AND PEDDLERS; HEALTH; INTOXICATING LIQUORS; MARKETS; MUNICIPAL AID; MUNICIPAL SECURITIES; ORDINANCES; PARKS AND PUBLIC SQUARES; POLICE POWER; POOR AND POOR LAWS; QUARANTINE; STREET RAILWAYS; STREETS AND SIDEWALKS; SUMMARY PROCEEDINGS; THEATERS; TOWNS; TURNPIKES.
Aid bonds, see MUNICIPAL AID.
As to liability for horses frightened by objects in street, see HORSES.
As to liability for ice and snow in streets, see STREETS AND SIDEWALKS.
As to sale of unwholesome food, see PROVISIONS.
Borrowing money and issuing stock, see MUNICIPAL SECURITIES.
License
 For municipal licenses, see LICENSES.
 Local assessments, see LOCAL ASSESSMENTS.
 Municipal regulation and control of intoxicating liquors, see INTOXICATING LIQUORS.
 Municipal regulations and control of street railways, see STREET RAILWAYS.
 Ordinances, see ORDINANCES.
 School boards and districts, see SCHOOL AND SCHOOL LAWS.
 Streets, as to the authority of municipality to grant use of streets to railroads, see STREET RAILWAYS.
 Summary proceedings for violation of ordinances, see SUMMARY PROCEEDINGS.
Acceptance of Charter, 3, 141; 15, 962
 Whether necessary, 15, 962
 Acceptance of corporate powers, 6, 281
 Action, 15, 1193
Administration of Trusts, 11, 828; 15, 996, 997
 Whether corporation may be trustee, 11, 829; 15, 996; 27, 18
Adverse Possession
 Against, 1, 300
 Of an alley, 1, 302
 States holding that title may be acquired against, 1, 300, 301
 Alienation of land dedicated to public uses, 5, 419
Amendment, see infra, RECORDS.
Amendment and Repeal of Charter, 15, 971
 Assent of inhabitants, 15, 972

MUNICIPAL CORPORATIONS—Cont'd**Amendment and Repeal of Charter—Cont'd**

Power of legislature, 15, 971

Reorganization Under New Charter, 15, 972

Abolition of offices, 15, 973

Continued existence, 15, 973

Effect, 15, 972

Liabilities of old corporation, 15, 973

New form given to old corporation, 15, 972

Presumption as to legislature's intention, 15, 973

Revision, 15, 972

Rights of creditor, 15, 972

When Repeal Is Effected, 15, 974

Constitutional restrictions, 15, 976

General act, 15, 974

When special charter remains in force, 15, 974

Animals running at large, 15, 1189**Annexation and Consolidation, 15, 1007***See generally, infra, DISSOLUTION.**See infra, generally, DIVISION.*

Abridgement of officer's term of office, 15, 1019

Apportionment of liability, 15, 1016, 1017

Debts, 15, 1016

Effect of extension of corporate limits, 15, 1017

Effect on officers of annexed territory, 15, 1019

Effect on title to property, 15, 1017

Homestead, 15, 1018

Illegal Annexation, 15, 1019

Acquiescence, 15, 1020

Laches on part of inhabitants, 15, 1020

Presumption in favor of legality, 15, 1019

Ratification by statute, 15, 1020

Retrospective legislation, 15, 1020

Strict conformity with statute, 15, 1019

Who may question legality of annexation, 15, 1019

Limitation of municipal indebtedness, 15, 1141

Notice, 15, 1021

Power of Legislature, 15, 1007

Consent made necessary by statute, 15, 1009

Consent of inhabitants of territory, 15, 1008

Contingent and adjoining lands, 15, 1011

Delegation of power, 15, 1010

Delegation of power to municipality, 15, 1010

Farm lands, 15, 1011

In general, 15, 1008

Laying lots, 15, 1012

Necessity of consent of government, 15, 1010

Necessity of direct legislation, 15, 1009

Taxation, 15, 1009

What territory may be annexed, 15, 1011

Power to sell and mortgage, 15, 1019**Procedure, 15, 1021**

Amendment, 15, 1022

Application, 15, 1021

Description of territory, 15, 1021, 1022

Filing plat, 15, 1022

In Arkansas, 15, 1022

In Indiana, 15, 1022

In Ohio, 15, 1022

In Pennsylvania, 15, 1023

Notice, 15, 1021

Property, 15, 1016

Property in annexed territory, 15, 1017

Statutory procedure, 15, 1019

Streets, 15, 1018

Title of act, 15, 1008

Whether it dissolves original corporation, 15, 1017

Anticipation of indebtedness, 15, 1267**Anticipation of Revenues, 15, 1134**

How far revenues may be anticipated, 15, 1135

Warrants, 15, 1155

Whether revenues can be anticipated, 15, 1134

*Apportionment, see infra, DIVISION.***Apportionment of liability, 15, 1016, 1017****Arbitration, 15, 649; 15, 1049****Assault, 15, 1191****Assignment of contract, 15, 1106****Attorney and Client****Contract with Attorney, 15, 1118**

Additional salary to regular attorney, 15, 1122

Compensation, 15, 1120

Duty of corporation to pay compensation, 15, 1120

Examples, 15, 1120-1122

Examples of employment, 15, 1119

In general, 15, 1118

Injunction against employing, 15, 1120

Mayor of city, 15, 1119

Necessity of express authority, 15, 1118

Ratification of contract for compensation, 15, 1121

To defend city officer, 15, 1120

Unreasonable fee, 15, 1121

Where charter provides for city attorney, 15, 1119.

Limitation of municipal indebtedness, 15, 1133**Auctions, 15, 1188***Awarding and letting to lowest bidder, see infra, CONTRACTS.**Ayes and nays, see infra, MEETING.***Bids***As to advertising and letting contract to lowest bidder, see infra, CONTRACTS.***Billiard rooms, 15, 1181**

- Bonds of, 2, 466d**
See MUNICIPAL SECURITIES.
Aid bonds, see MUNICIPAL AID.
- Boundaries, 15, 1001**
 Acquiescence, 15, 1001
Annexation and Consolidation, 15, 1007
See infra, ANNEXATION AND CONSOLIDATION; RURAL LANDS.
Power of Legislature, 15, 1007
 Consent made necessary by statute, 15, 1009
 Consent of inhabitants of territory, 15, 1008
 Contingent and adjoining lands, 15, 1011
 Delegation of power, 15, 1010
 Delegation of power to municipality, 15, 1010
 Farm lands, 15, 1011
 In general, 15, 1008
 Laying lots, 15, 1012
 Necessity of consent of government, 15, 1010
 Necessity of direct legislation, 15, 1009
 Taxation, 15, 1009
 What territory may be annexed, 15, 1011
 Title of act, 15, 1008
 Delegation of power, 15, 1003
 Delegation to local boards, 15, 1004
 Delegation to municipality, 15, 1004
 Delegation to private citizens, 15, 1004
Exercise of Power Beyond Corporate Limits, 15, 1006
 Highways, 15, 1006
 In general, 15, 1006
 Non-resident entering limits, 15, 1007
 Generally, 15, 1001
 In England, 15, 1002
 Jurisdiction over rivers, 15, 1005
 Power to change, 15, 1001
 Power to fix, 15, 1001
 Rivers, 15, 1006
 Scope of legislative control, 15, 1002
 Shifting boundaries, 15, 1006
 Sufficiency of boundaries, 15, 1001
 Suits, 15, 1003
 What are corporate limits, 15, 1001
- Bounties, 15, 1052**
See BOUNTIES.
 When authorized by statutes, 15, 1052
 Within specified statutory authority, 15, 1052
- Bowling alley, 15, 1181**
- Bridges**
 Implied promise to pay for use, 15, 1082
 Legislative control, 15, 990
 Statutory liability to repair, 2, 554
- Buildings**
 Destruction of building as nuisance, 15, 1184
Erection of Frame Building, 15, 1171
See FIRE DEPARTMENT.
 Injunction against erection, 15, 1172
 Removal of building, 15, 1172
- Strict construction of provision, 15, 1173
- Regulations**
 Building permit, 15, 1177
 Fire escapes, 15, 1177
 Insecure or unsafe buildings, 15, 1176
 Inspection, 15, 1176
 Power of corporation, 15, 1176
 Removal of building through streets, 15, 1177
 Strict construction, 15, 1176-1178
- Burden of Proof**
 Liability for negligence, 15, 1152
 Burial of the dead, 15, 1175
- By-Laws**
See ORDINANCES.
- Enforcement of, 2, 711**
 Disfranchisement, 2, 711
 Forfeiture, 2, 711
 Imprisonment, 2, 711
 Penalty, 2, 711
 Power to enforce by fine, 2, 711
- Canals**
 Legislative control, 15, 990
 Celebration, 15, 1051
 Certiorari to council, 3, 66
- Charities, 15, 1062**
See infra, PROPERTY.
- Charter, see infra, ACCEPTANCE OF CHARTER; AMENDMENT AND REPEAL OF CHARTER; CREATION; SPECIAL CHARTER.**
 Judicial notice of, 3, 141
 Taken under eminent domain, 3, 141
 "City," 3, 256; 15, 952
 City council, 15, 1036
Claims, see infra, PRESENTATION OF CLAIMS.
- Classification, 15, 954**
 Involuntary quasi corporations, 15, 955
 Municipal corporations proper, 15, 954
Classification of population, see infra, CONSTITUTIONAL LAW.
- Combination to prevent bidding, 15, 1099**
Common council, see infra, GOVERNING BODY.
- Compromise, 15, 1049**
 Concealed weapons, 15, 1191
Consolidations, see infra, ANNEXATION AND CONSOLIDATION.
- Constitutional Law, 15, 963**
See infra, STATUTES.
 Act of legislature forbidding a city to levy taxes to pay judgments against it, 3, 749
 Alteration in mode of levying taxes, 15, 987
 Annexation and consolidation, 15, 1007
 Apportionment of debts and property, 15, 1023
 Approval by legislature, 15, 963
 Assent of two-thirds of legislature, 15, 963

MUNICIPAL CORPORATIONS—Cont'd**Constitutional Law—Cont'd**

In general, 15, 986

Legislative control, 15, 978

Liability for property destroyed by fire, 15, 1162

Miscellaneous provisions, 15, 963, 964

Prohibition to levy tax, 15, 987

Special Legislation, 15, 959, 978

Absolute prohibition against private legislation, 15, 979

Amendment of city charter, 15, 980

Classification, 15, 981

According to population, 15, 981

Judicial notice, 15, 985

Limited number of cities having specified population, 15, 981, 982

Other classification than by population, 15, 983

Population, how shown, 15, 983

Constitutional provision against, 15, 978

Examples, 15, 979

Boundaries of wards, 15, 981

Changing classification, 15, 980

Extending limits, 15, 979

Legalizing special election, 15, 980

Licensing power, 15, 980

Location of county seat, 15, 980

Power to issue bonds, 15, 980

Power to light streets, 15, 980

Removal of police, 15, 979

Special charter, 15, 980

Street improvements, 15, 979

Taxation, 15, 980

In general, 15, 959

What is special act, 15, 960

When court will interfere, 15, 978

Statute providing that claim shall be presented for payment, 15, 1193

Whether charter void in toto, 15, 964

Construction**Grant of Power Strictly Construed**, 15, 1041

Examples, 15, 1042

In general, 15, 1039-1041

Contempt, 15, 1036

Contracts, 15, 1080, 1106*See infra*, **LEGISLATIVE CONTROL; LIMITATION OF MUNICIPAL INDEBTEDNESS; ULTRA VIRES.****Advertising and Letting to Lowest Bidder**, 15, 1090, 1099

Abandonment of contract, 15, 1092

Amount of contract, 15, 1092

Arbitrary price, 15, 1091

Bids, 15, 1095

Acceptance, 15, 1095

Alteration of bids and specifications, 15, 1095

Combination to prevent bidding, 15, 1099

Completion of contract, 15, 1097

Discretion of officers, 15, 1096

Erroneous estimates, 15, 1095

Estimates, 15, 1095

Illegal bidder, 15, 1096

Indefiniteness of bid, 15, 1098

Information to bidder, 15, 1095

Injunction, 15, 1097, 1099

Liability of corporation for rejecting bids, 15, 1096, 1097

Mandamus, 15, 1097

Preventing bidder from withdrawing, 15, 1095

Provision that bids shall be opened at certain time, 15, 1098

Refusal, 15, 1095

Remedy of taxpayer, 15, 1099

Reserving the right to decline all bids, 15, 1096

Sureties, 15, 1097

Time for entering into contract, 15, 1098

What municipality may consider, 15, 1095

Who is lowest bidder, 15, 1095

Combination to prevent bidding, 15, 1099

Compliance with provisions, 15, 1090

Contract and advertising, 15, 1093

Effect of irregularities, 15, 1091

Estimates, 15, 1095

Combination to prevent bidding, 15, 1099

Fraud, 15, 1099

Injunction, 15, 1099

Mandamus, 15, 1097

Examples, 15, 10931, 1092

Exceptions, 15, 1093

Exclusive privileges, 15, 1093

Fraud, 15, 1099

Effect of fraudulent bid, 15, 1100

Improvements, 15, 1093

In general, 15, 1090

Injunction, 15, 1099

Irregularities as defense to action against city, 15, 1091

Mandamus, 15, 1097

Monopolies, 15, 1094

New York city, 15, 1091

Notice inviting proposal, 15, 1090

Patents, 15, 1093

Plans and specifications, 15, 1091

Power to dispense with advertising, 15, 1092

Professional services, 15, 1094

Reletting, 15, 1092

Specifications, 15, 1093

Strict compliance with provision, 15, 1091

Assignment, 15, 1106

For illumination, 15, 1118

Generally, 15, 1080

Implied Contracts, 15, 1081, 1086

Acceptance of services, 15, 1084

Examples, 15, 1082

Executory contract made without authority, 15, 1084

Obligations imposed by general law, 15, 1083

Obligations to do justice, 15, 1083

Principles upon which liability rests, 15, 1083

- Provision that contract shall be made in writing, 15, 1085
 Provision that contract should be advertised for bids, 15, 1085
 Purchase of real estate, 15, 1082
 Services for local improvements, 15, 1084
 Statute providing that contract shall be made in certain way, 15, 1085
 Use of bridge, 15, 1082
 Voluntary service, 15, 1084
 Whether liable for implied contract, 15, 1081
Improvements, see *infra*, IMPROVEMENTS.
 Liquidated damages, 15, 1081
Mode of Contracting, 15, 1086
 Annulment, 15, 1088
 Conveyance in mode prescribed by law, 15, 1084-1086
 Directory provisions, 15, 1088
 Examples, 15, 1087, 1088
 Generally, 15, 1086
 Implied contracts, 15, 1081, 1086
 Intervention of attorney-general, 15, 1088
 Necessity of appropriation, 15, 1088
 Necessity of seal, 15, 1090
 Ordinance, 15, 1089
 Party's duty to see that provisions are complied with, 15, 1087
 Resolve, 15, 1089
 Seal, 15, 1090
 Statute of fraud, 15, 1090
 Validity of contract, 15, 1086
 Where no mode is prescribed, 15, 1088
 Where there is no provision in statute, 15, 1089
 Writing, necessity of, 15, 1085-1089
Of Committee, 15, 1038
 Examples, 15, 1038, 1039
 Quorum of members of committee, 15, 1039
 Power to contract, 15, 1080
 Prohibited contract, 15, 1080
Ratification of Unauthorized Contracts, 15, 1102
 Attorney's compensation, 15, 1120
 Effect of ratification, 15, 1102
 Illegal contract, 15, 1103
 Method of Ratification
 Examples, 15, 1104
Mode of Ratification, 15, 1103
 Different mode, 15, 1104
 Formalities necessary to contract itself, 15, 1103
 In general, 15, 1103
 Power to ratify, 15, 1102
What Constitutes Ratification, 15, 1104
 Acceptance, 15, 1104, 1105
 Part payment, 15, 1105
 Vote of additional tax, 15, 1105
 Rescission, 15, 1107
Rights and Liabilities, 15, 1106
 Assignment, 15, 1106
 Rescission, 15, 1107
 Water and water companies, see WATER AND WATERWORKS.
Water Supply, 15, 1115
 Authority, 15, 1115
 Charter provision, 15, 1116
 Committee of city government, 15, 1117
 General welfare clause, 15, 1116
 In absence of express provision, 15, 1116
 Inconsistent provision, 15, 1115
 Injunction by taxpayers, 15, 1117
 Limitation of indebtedness, 15, 1115
 Power of courts, 15, 1117
 Term of years, 15, 1116
 When not restricted by charter, 15, 1080
Contracts for Public Works, 15, 1108
 See *infra*, IMPROVEMENTS.
 As for contracts on local improvements, see LOCAL ASSESSMENTS.
 Acceptance of municipality, 15, 1114
 Annulment of contract, 15, 1111
 Certificate of engineer, 15, 1114
 Change of plans, 15, 1114
Contractor's Bond, 15, 1109
 Completion of work by city, 15, 1110
 Conditions in bond, 15, 1109
 Duty to require bond, 15, 1109
 Examples, 15, 1109, 1110
 Effect of approval on property owners, 15, 1114
 Effect of limitation, 15, 1108
 Engineers, 15, 1113
 Estimates of engineer, 15, 1113
 Extra work, 15, 1108, 1114
 Failure to complete building, 15, 1110
 -1112
 Limits of expenditure, 15, 1108
Payments to Contractor, 15, 1110
 Failure to complete building, 15, 1110, 1111
 Overpayment, 15, 1111
 Payment in special tax bills, 15, 1111
 Payments out of special fund, 15, 1111
 Withholding money to meet claims, 15, 1110
 Right to make alterations, 15, 1113
 "Satisfactory" performance, 15, 1113
 Stipulations for corporate control, 15, 1112
 When expenditure is not limited, 15, 1109
Corporate limits, see *infra*, BOUNDARIES.
Council, see *infra*, GOVERNING BODY.
County
 Distinguished from county, 15, 954
 Whether county is municipal corporation, 15, 953
Courts, Incorporation by, 15, 961
 Constitutional law, 15, 961
 County court, 15, 961
 Examples, 15, 961, 962
 Opinion, 15, 961
 Provisions in general, 15, 961, 962

MUNICIPAL CORPORATIONS—Cont'd

Creation, 15, 955

See infra, CHARTER; EXISTENCE; LIABILITY; RIGHTS OF CREDITORS.

Acceptance of the act, 15, 956

By General Act, 15, 958

Abolition of special charter, 15, 958

Constitutional provision forbidding creation by special charter, 15, 959

Customary method, 15, 958

Examples, 15, 958, 959

Existing charter, 15, 957-959

Special act, 15, 960

By Implication, 15, 960

Examples, 15, 960, 961

Whether they may be created by, 15, 960

By Special Charter, 15, 958*See infra*, ACCEPTANCE OF CHARTER; CHARTER.

Constitutional provision forbidding creation by special charter, 15, 959, 978

Municipal purposes, 15, 958

Passage by legislature, 15, 958

Generally, 15, 955

In England, 15, 955

In United States, 15, 956

Legislative power of state, 15, 955

Notice to inhabitants, 15, 957

Number of inhabitants requisite, 15, 957

Prescription, 15, 956

Questioning existence of corporations, 15, 964

Special charter at common law, 15, 956

Surrender of special charter, 15, 957, 1199

Crossings, 19, 886

Cruelty to animals, 15, 1190

Curative act, 23, 453

Dead animals, 15, 1181

Debts, *see infra*, ANNEXATION AND CONSOLIDATION; LEGISLATIVE CONTROL.*Legislative control*, *see infra*, LEGISLATIVE CONTROL.**Definition**, 15, 952*See infra*, CITY.

County, 15, 953

Distinguished from county, 15, 954

District of Columbia, 15, 953

Membership, 15, 954

Person and place, 15, 953

Quasi corporations, 15, 953

School boards and districts, 15, 952

States, 15, 953

Towns, 15, 953

Villages, 15, 952

Delegation of Power by Municipality, 3,

699; 15, 1042; 19, 464

City bonds, 15, 1043

Employment of agents, 15, 1044

Establishment of excise department, 15, 1044

Legislature delegating to municipality, 15, 1042

Licenses, 15, 1044

Lighting streets, 15, 1044

Local improvements, 15, 1043

Ministerial duty, 15, 1044

Municipality binding itself not to exercise its powers, 15, 1045

Pounds, 15, 1044

Power of appointment of attorney, 15, 1044

Street railroads, 15, 1043

Surrender of powers by contract, 15, 1045

To change boundaries, 15, 1003

Wharves, 15, 1043

Where delegation is authorized by legislature, 15, 1044

Whether municipality can delegate its power, 15, 1042

Destruction of building to prevent spread of fire, *see* FIRE DEPARTMENT.*Devises*, *see infra*, LEGACIES AND DEVICES.**Discretion of Municipality**, 15, 1046

Equitable jurisdiction, 15, 1047

Disposition of property, *see infra*, PROPERTY.**Dissolution**, 15, 1198

Acquisition of new charter, 15, 1198

Act of legislature, 15, 1198

Effect of, 15, 1199

Invalid reorganization, 15, 1201

Legislature making no provision for payment of debts, 15, 1201

Liability, 15, 1201

Mandamus to enforce taxation, 15, 1201

Property, 15, 1200

Revival, 15, 1201

Examples, 15, 1198, 1199

Forfeiture of charter, 15, 1199

How dissolved, 15, 1198

Property and debts, 15, 1016

Surrender of charter, 15, 957, 1199

District of Columbia, 15, 953

Division, 15, 1016, 1023*See infra generally*, DISSOLUTION.**Apportionment**

Choses in action, 15, 1024

Debts, 15, 1025

Equitable jurisdiction, 15, 1025

Legislative provisions, 15, 1025

Money, 15, 1024

Of debts, 15, 1023

Of liabilities, 15, 1023

Of property, 15, 1023

Power of court, 15, 1026

Property within new corporation, 15, 1023

Unconstitutional act, 15, 1027

When legislature prescribes no regulations, 15, 1023

Whether old corporation holds all property, 15, 1023

Whether old corporation responsible for all existing debts, 15, 1023

Debts, 15, 1016

Equitable jurisdiction, 15, 1025

- Of Territory Into Wards**, 15, 1028
 Authority of council, 15, 1028
 Equality of representation, 15, 1028
 Procedure for making division, 15, 1028
 Power of legislature, 15, 1023
 Property, 15, 1016
 What constitutes, 15, 1023
 Whether one municipality can bind another, 15, 1028
- Docks**
 Legislative control, 15, 990
 Dogs, 15, 1189, 1190
 Drumming, 15, 1191
 Drunkenness, 15, 1191
 Embezzlement by municipal officers, 6, 490
- Eminent Domain**, see generally, EMINENT DOMAIN.
 Delegation of power to, 6, 518
 Entertainment, 15, 1051
- Estoppel**
 Act of officer, 19, 513
Limitations of Municipal Indebtedness, 15, 1137
 Acquiescence of inhabitants, 15, 1137
 Recitals, 15, 1137
 To claim title, 15, 1059
- Evidence**
Proof of Corporate Existence, 15, 965
 Admissions, 15, 966
 Copy properly authenticated, 15, 965
 De facto corporations, 15, 965
 How proven, 15, 965
 Inspection of records, 15, 965
 Whether question arises collaterally, 15, 965
 Exclusive privileges, 15, 1055
 Execution against property of individuals, 15, 1135
- Existence**, see *infra*, CREATION.
Proof of Corporate Existence, 15, 965
 Admissions, 15, 966
 Copy properly authenticated, 15, 965
 De facto corporations, 15, 965
 How proven, 15, 965
 Inspection of records, 15, 965
 Whether question arises collaterally, 15, 965
 Questioning, 15, 964
 False imprisonment, 7, 685
Farm land, see *infra*, TAXATION.
 Ferry franchises, 15, 986
 Fines and penalties, 15, 978
- Fire**, 15, 1170
As to destruction of buildings to prevent spread, see FIRE DEPARTMENT.
 Authority in absence of statute, 15, 1170, 1171
 Authority of municipal corporations, 15, 1170
 Destruction of private property to prevent the spread of fire, 18, 756
Erection of Frame Building, 15, 1171
 See FIRE DEPARTMENT.
- Injunction against erection, 15, 1172
 Removal of building, 15, 1172
 Strict construction of provision, 15, 1173
 Fire escape, 15, 1177
 Liability for not supplying apparatus for extinguishing, 15, 1147
 Liability of city for, 29, 7
 Prevention of fire, 15, 1170
- Foreclosure of Mortgages**
 When corporation necessary party, 8, 220
 Foreign attachment, 8, 297
Funds, see *infra*, LEGISLATIVE CONTROL.
 Gaming apparatus, 8, 1084; 15, 1181
Garnishment, 8, 1132
 Cities and towns generally exempt, 8, 1133
 In what states liable to, 8, 1132
 In what states not liable to, 8, 1132
 Waiver by, 8, 1135
- Gas Companies**
 Limitation of municipal indebtedness, 15, 1129
General act, see *infra*, CREATION.
- General Welfare Clause**, 15, 1188
 See *infra*, NUISANCES.
 Animals running at large, 15, 1189
 Assaults, 15, 1191
 Auctions, 15, 1188
 Authority under, 15, 1188
 Concealed weapons, 15, 1191
 Cruelty to animals, 15, 1190
 Drumming, 15, 1191
 Generally, 15, 1188
 Hour of closing saloons, 15, 1188
 Intoxication, 15, 1191
 Keeping dogs, 15, 1189
 Keeping gunpowder, 15, 1190
 Laundry business, 15, 1190
 Observance of the Sabbath, 15, 1188
 Preservation of peace and quiet, 15, 1191
 Profane swearing, 15, 1191
 Protection of trees, 15, 1188
 Taxes, 15, 1192
 Telephone charges, 15, 1192
 Vagrancy, 15, 1190
 What may be regulated, 15, 1188
- Governing Body**, 15, 1031
 See *infra*, MEETINGS.
 Amendment of record, 15, 1079
 Authority of individuals, 15, 1029
Committee, 15, 1038
 Contract of, 15, 1038
 Examples, 15, 1038, 1039
 Quorum of members of committee, 15, 1039
 Waterworks, 15, 1117
 Contempt, 15, 1036
 Conveyance of property, 15, 1066
 Joint body, 15, 1036
 Mode of exercise of powers, 15, 1042
 Officers differing from those provided for in charter, 15, 1031

MUNICIPAL CORPORATIONS—Cont'd**Governing Body—Cont'd**

- Presiding Officer**, 15, 1033
 - Casting vote, 15, 1034
 - Quo warranto, 15, 1033
 - Right to preside, 15, 1033
 - Right to vote, 15, 1034
- Ratification**, 15, 1038
- Rescission**, 15, 1038
- Representing corporation**, 15, 1028
- Suspension of rules**, 15, 1038
- What affairs must be transacted at corporate meeting**, 15, 1028
- Whether consisting of two branches**, 15, 1036
- Who Compose**, 15, 1031
 - In general, 15, 1031
 - Mayor, 15, 1032
 - Members' rights to seats, 15, 1031, 1032
 - When body does not include mayor, 15, 1032
 - When body includes mayor, 15, 1032

Grants

- Examples, 15, 1060
- Municipality, 15, 1060
- To people, 15, 1060
- Validity, 15, 1060
- What necessary to validity, 15, 1060

Guaranty, 15, 1107**Health regulation**, see *infra*, **POLICE REGULATIONS**, and see **HEALTH**.**Highways**, 15, 1006

- Legislative control, 15, 990
- Homestead, 15, 1018
- Hospitals, 9, 774
- Hour of closing saloons, 15, 1188
- Houses of ill-fame, 4, 655; 15, 1181

Identity, see *infra*, **NAME**.**Illegal annexation**, see *infra*, **ANNEXATION AND CONSOLIDATION**.**Implied contracts**, see *infra*, **CONTRACTS**.**Impounding stock**, 10, 192**Improvements**

- Contracts for**, 10, 290
 - See *infra*, **CONTRACTS**.
 - Certificate of street contracts, 10, 293
 - Charter authorization, 10, 290
 - Fraudulent bid, 10, 293
 - How contract shall be let, 10, 292
 - Injudicious contract, 10, 293
 - Lien in Pennsylvania, 10, 295
 - Lien for work, 10, 294
 - Lowest bidder, 10, 291, 293
 - Macadamized streets, 10, 293
 - Must be in conformity with charter, 10, 290
 - Parks, 10, 291
 - Paving contract, 10, 290
 - Subdivisions, 10, 292
 - Unauthorized contracts, 10, 292
- Discretion of municipal authorities**, 14, 210
- Implied contract to pay for**, 15, 1084

Indebtedness, limitation, see *infra*, **LIMITATION OF MUNICIPAL INDEBTEDNESS**.**Indictment**, 15, 1196

- Bridges, 15, 1197
- Examples, 15, 1196-1198
- Nuisances, 15, 1198
- Requisites of, 15, 1197
- Streets and highways, 15, 1196
- Whether corporation liable for, 15, 1196

Infectious diseases, 15, 1175**Infringement of patents by**, 10, 749**Inhabitants**, 15, 957

- Execution against, in New England states, 15, 1067

Injunctions, 10, 871, 959, 962, 963, 968See *infra*, **NUISANCES**.**Acquiescence in improvements by property owner**, 10, 960, 961**Advertising and letting to lowest bidder**, 15, 1097**Construction of waterworks**, 15, 1117**Drains**, 10, 964**Eminent domain**, 10, 964**Employment of attorney**, 15, 1120**Erection of wooden buildings**, 10, 965**Exercising authority over outside territory**, 10, 959**Expenditure under void ordinance**, 10, 960**Flooding abutting owners**, 10, 964**Founded in trust**, 10, 959**Illegal acts**, 10, 959**Illegal creation of debt**, 10, 962**Illegal warrants**, 15, 1217**Instances**, 10, 959**Irregularities in assessment of a tax**, 10, 960**Issue of bonds**, 10, 963**Jurisdiction of courts of equity**, 10, 959**Limitations of Municipal Indebtedness**, 15, 1140**Enjoining carrying out of contract**, 15, 1140**Examples**, 15, 1140**Taxpayer**, 15, 1140**Municipal officers misappropriating funds**, 10, 968**Notice to property owner**, 10, 960**Nuisance**, 10, 966**Opening streets and highways**, 10, 964**Ordinance producing injury to individuals**, 10, 962**Proper Parties**, 10, 963**Gross laches**, 10, 963**In Illinois**, 10, 964**In Iowa**, 10, 964**In Kansas**, 10, 963**In Massachusetts**, 10, 964**In Missouri**, 10, 964**In New York**, 10, 964**In Pennsylvania**, 10, 964**Other states**, 10, 964**Slaughter houses**, 10, 967**Violating statute**, 10, 960

When granted against municipality, 10, 959
 Wrongful appropriation of funds, 10, 962
 Inspection ordinances, 15, 1175
 Instruction, examples of, 11, 268, 269, 270, 272, 274
 Intoxication, 15, 1191
 Intoxicating liquors, 15, 1188
 Jeopardy, 11, 958
 Joint tenants and tenants in common, 15, 1058
 Journal, 15, 1037
Judicial Control of Powers, 15, 1046
 Discretion of municipality, 15, 1046
 Equitable jurisdiction, 15, 1047
 Interfering in discretionary powers, 15, 1046
Judicial Notice, 15, 985
 Charter, 12, 168
 Classification, 15, 985
 Conviction in municipal courts, 12, 169
 Municipal charter, 12, 157
 Judicial sale, 15, 1058
 Jurisdiction over rivers, 15, 1005
 Jury trial, 15, 978
 Keeping cows and hogs, 15, 1174
 Keeping gunpowder, 15, 1190
Laches, 15, 1020
 Illegal annexation, 15, 1020
 Of municipal officers, 12, 565
 Laundry business, 15, 1190
Lease, 12, 998; 15, 1058
 Compliance with charter, 12, 998
Power to, 15, 1071
 Annulment of lease, 15, 1072
 Dependent upon legislation, 15, 1072
 General rule of landlord and tenant, 15, 1072
 In general, 15, 1071
 Public building, 15, 1073
 Responsibility for rent, 12, 998
Legacies and Devises, 15, 1060
 Disabling or restraining statutes, 15, 1061
 Examples, 15, 1061, 1062
 In trust for particular object, 15, 1061
 What valid, 15, 1060
Legislative Control, 15, 976, 985; 19, 420, 421
 See infra, AMENDMENT AND REPEAL OF CHARTER; BOUNDARIES; DIVISION.
 As to municipal aid to private enterprises, *see* MUNICIPAL AID.
Administration of Trusts
 Change of name, 15, 997
 Charitable use, 15, 997
 In general, 15, 996
 Vested rights, 15, 996
Contracts, 15, 989
 Bridges, 15, 990
 Canals, 15, 990
 Distinction between public and local rights, 15, 989
 Dock and wharves, 15, 990

Highways, 15, 990
 Municipal aid, 15, 991
 Public buildings, 15, 990
 Public parks, 15, 991
 When legislature may compel municipality to incur a debt or enter into a contract, 15, 989
 Corporate funds, 15, 989
Debts, 15, 989
 Bridges, 15, 990
 Canals, 15, 990
 Distinction between public and local rights, 15, 989
 Docks and wharves, 15, 990
 Highways, 15, 990
 Municipal aid, 15, 991
 Public buildings, 15, 990
 Public parks, 15, 991
 When legislature may compel a municipality to incur a debt or enter into a contract, 15, 989
 Dissolution, 15, 976
 Exemption from taxation, 15, 986
 Ferry franchise, 15, 986
 Fines and penalties, 15, 978
General and Special Legislation, 15, 978
 Absolute prohibition against private legislation, 15, 979
 Amendment of city charter, 15, 980
Classification, 15, 981
 According to population, 15, 981
 Judicial notice, 15, 985
 Limited number of cities having specified population, 15, 981, 982
 Other classification than by population, 15, 983
 Population, how shown, 15, 983
 Constitutional provision against, 15, 978
Examples of Special Legislation, 15, 979
 Boundaries of wards, 15, 981
 Changing classification, 15, 980
 Extending limits, 15, 979
 Legalizing special election, 15, 980
 Licensing power, 15, 980
 Location of county seat, 15, 980
 Power to issue bonds, 15, 980
 Power to light streets, 15, 980
 Removal of police, 15, 979
 Special charter, 15, 980
 Street improvements, 15, 979
 Taxation, 15, 980
 When court will interfere, 15, 978
 Generally, 3, 692; 15, 976
 Limitations, 15, 985
Municipal Offices and Officers, 15, 993
 Authority of legislature in general, 15, 993
 Board of police, 15, 994
 Examples, 15, 993-995
 Officers to lay out streets, 15, 994
 Park commissioners, 15, 994
 Purely municipal offices, 15, 994
 Whether state or municipal office, 15, 993

MUNICIPAL CORPORATIONS—Cont'd**Legislative Control—Cont'd****Payment of Claims, 15, 991**

Equitable claim, 15, 993

Examples, 15, 991, 992

Necessity that claim be legal, 15, 993

When legislature may compel payment, 15, 991

Property, 15, 988

Acquired by eminent domain, 15, 988

In general, 15, 988

Private property, 15, 988

Public property, 15, 988

Validating Municipal Act, 15, 997

Local assessments, 15, 998

Taxation, 15, 997

Unconstitutional act, 15, 998

Vested Right, 15, 976

Examples, 15, 977

Whether powers of local government are vested rights, 15, 976

Where Creditors Are Affected, 15, 986

Alteration in mode of levying taxes, 15, 987

Prohibition to levy taxes, 15, 987

Reorganization, 15, 972

Liability, see *infra*, DIVISION; NUISANCES; RIGHTS OF CREDITORS.*Under contract, see *infra*, CONTRACTS.**Before incorporation, 15, 957***For Costs**

In criminal cases, 4, 323

For granting rival ferry franchise, 7, 946

For Officers and Agents, 4, 367; 19, 507*See *infra*, MUNICIPAL OFFICERS.**As to municipal securities, see MUNICIPAL SECURITIES.*

Acting in private capacity, 19, 513

Contracts, 19, 510

In general, 19, 509

Misconduct of officer, 19, 507

Negligence, 19, 507

Ratification, 19, 509

Torts, 19, 514

Torts when acting in a political capacity, 19, 514

Torts when acting in a private capacity, 19, 514, 515

Knowledge of defects, 14, 906

Of Inhabitants for Obligations of Corporation, 15, 1067

Constitutionality, 15, 1067

In New England states, 15, 1067

Origin of the practice, 15, 1067

Reorganization, 15, 972

Rights of creditors, 15, 972

Rights of property of corporation in old form, 15, 973

Liability for Torts, 15, 1141*See *infra*, MUNICIPAL OFFICERS.**Destruction of building to prevent fire, see FIRE DEPARTMENT.**Property destroyed by mobs, see MOBS. Streets and sidewalks, see STREETS AND SIDEWALKS.**Torts of officers and agents, see PUBLIC OFFICERS.***Acts Authorized by Statute, 15, 1153**

Invasion of private property, 15, 1154

Legislative sanction for public improvement, 15, 1154

Whether authority properly exercised, 15, 1153

As Affected by Want of Funds, 15, 1163*See *infra*, LIMITATION OF MUNICIPAL INDEBTEDNESS.*

Admissible as evidence, 15, 1164

Discretion in expenditures, 15, 1163

In general, 15, 1163

Power to raise funds, 15, 1164

Charities, 15, 1164

Discretionary and Legislative Powers

Direct and physical injury to property, 15, 1149

Manner of exercise, 15, 1148

Non-exercise, 15, 1145

Discretionary powers, 15, 1145

Drains and Sewers, 15, 1147*See DRAINS AND SEWERS.*

Examples, 15, 1141, 1142

Exercise of discretionary and legislative powers, 15, 1145

Failure in performance of duties, 15, 1164

Failure to abate nuisance, 15, 1146

Failure to execute ordinances, 15, 1154

Failure to provide suitable drains and sewers, 15, 1147

Failure to supply water and fire apparatus, 15, 1147

General rule, 15, 1141

Judicial nature, 15, 1148

Legislative powers, 15, 1145

Liability as Private Property Owner, 15, 1155

As owner of gas works, docks, etc., 15, 1155

Example, 15, 1155

In general, 15, 1155

Maintenance of dyke, 15, 1157

Owner of aqueduct, 15, 1156

Property on which it cannot be imposed, 15, 1157

Whether liability same as individual, 15, 1155

Whether regarded as individual, 15, 1155

Ministerial Duties, 15, 1149

Absolute ministerial duty, 15, 1150

Burden of proof, 15, 1152

Defective streets, see STREETS AND SIDEWALKS.

Failure to perform, 15, 1150

Implied liability, 15, 1150

Liability founded on negligence, 15, 1152

Liability in general, 15, 1110

Non-performance, 15, 1150

Proper performance of duty, 15, 1150

Whether statutes must expressly impose liability, 15, 1150

- Municipal and quasi municipal corporations, 15, 1143
- Negligence in devising plans, 15, 1149
- Nuisance, 15, 1146
- Omission to perform legal duty, 15, 1145
- Power exercised for private advantage, 15, 1141
- Property Destroyed by Mobs**, 15, 1157
 - Constitutionality of act, 15, 1158
 - Examples, 15, 1158, 1159
 - Judgment, 15, 1161
 - Liability at common law, 15, 1158
 - Measure and damages, 15, 1161
 - Notice to municipal authority, 15, 1160
 - Size and character of mobs, 15, 1159
 - Statutory liability, 15, 1158
 - Whether founded upon contract, 15, 1158
- Public health, 15, 1164
- Public purposes, 15, 1141
- Schools, 15, 1164
- Ultra vires, 15, 1165
- Libel and slander, 13, 449
- Limitation of actions, 13, 714, 725
- Limitation of Municipal Indebtedness**, 15, 1122, 1267
 - Action for money lost, 15, 1139
 - Annexation, 15, 1141
 - Anticipation of Revenues**, 15, 1134, 1267
 - How far revenues may be anticipated, 15, 1135
 - Warrants, 15, 1135
 - Whether revenues can be anticipated, 15, 1134
 - Bona fide purchases, 15, 1138
 - Bonded indebtedness, 15, 1125
 - Claims arising ex delicto, 15, 1127
 - Compulsory indebtedness, 15, 1125
 - Computation of Indebtedness**, 15, 1133
 - Bond in aid of railroad, 15, 1133
 - Date of valuation of taxable property, 15, 1134
 - Examples, 15, 1133, 1134
 - In general, 15, 1133
 - Interest coupons, 15, 1134
 - Uncollected taxes, 15, 1134
 - Constitutional provision, 15, 1122
 - Construction, 15, 1127
 - Contract for Lighting**, 15, 1128
 - Charter providing for lighting, 15, 1130
 - In general, 15, 1130
 - Lighting for term of years, 15, 1129
 - Contract for Water Supply**, 15, 1128
 - Necessity of water, 15, 1129
 - Whether contract can be made, 15, 1128
 - Contracts extending into future, 15, 1130
 - Contracts made before adoption of provision, 15, 1123
 - Current expenses, 15, 1126
 - Debts by operation of law, 15, 1125
 - Employment of attorney, 15, 1133
 - Enjoining municipal authority, 15, 1140
 - Estoppel**, 15, 1137
 - Acquiescence of inhabitants, 15, 1137
 - Recitals, 15, 1137
 - Examples of indebtedness, 15, 1131-1133
 - Examples of invalid contracts, 15, 1132, 1133
 - Floating indebtedness, 15, 1125, 1267
 - In general, 15, 1122
 - In Illinois, 15, 1122
 - Injunction**, 15, 1140
 - Enjoining carrying out of contract, 15, 1140
 - Examples, 15, 1140
 - Taxpayer, 15, 1140
 - In Iowa, 15, 1123
 - Interest coupons, 15, 1269
 - Issue of bonds, 15, 1131
 - Lien, 15, 1139
 - Limitations under state, 15, 1252
 - Meaning of "indebtedness," 10, 400; 15, 1132
 - Miscellaneous indebtedness, 15, 1131
 - Notice of limitations, 15, 1124
 - "Ordinary current expenses," 15, 1267
 - Over Issue of Bonds**, 15, 1267
 - Anticipation of revenues, 15, 1267
 - Floating indebtedness, 15, 1267
 - Interest coupons, 15, 1269
 - "Ordinary current expenses," 15, 1267
 - Railroad aid bonds, 15, 1267
 - What constitutes indebtedness, 15, 1267, 1269
 - Powers, 15, 1252
 - Railroad aid bonds, 15, 1267
 - Ratification, 15, 1137
 - Rent from market-house, 15, 1131
 - Repeal of existing powers, 15, 1123
 - Statutory provisions, 15, 1122
 - Suit by taxpayers, 15, 1140
 - Torts**, 15, 1127
 - Examples, 15, 1128
 - Whether liability can be enforced, 15, 1127
 - To what municipality limitations apply, 15, 1124
 - Validity of Part of Indebtedness**, 15, 1136
 - Bond first issued, 15, 1136
 - Examples, 15, 1137
 - When valid part cannot be distinguished from invalid, 15, 1137
 - Whether whole indebtedness is void, 15, 1136
 - What constitutes indebtedness, 15, 1267-1269
 - What Indebtedness Is Prohibited**, 15, 1124, 1126
 - Bonded indebtedness, 15, 1125
 - Charter providing for lighting, 15, 1130
 - Claims arising ex delicto, 15, 1127
 - Compulsory indebtedness, 15, 1125

MUNICIPAL CORPORATIONS—Cont'd**Limitation of Municipal Indebtedness—Cont'd****What Indebtedness Is Prohibited—Cont'd**

Construction, 15, 1127

Contract extending into future, 15, 1130

Contract for Lighting, 15, 1128

In general, 15, 1130

Lighting for term of years, 15, 1129

Contract for Water Supply, 15, 1128

Necessity of water, 15, 1129

Whether contract can be made, 15, 1128

Debts by operation of law, 15, 1125

Employment of attorney, 15, 1133

Examples of indebtedness, 15, 1131-1133

Examples of invalid contracts, 15, 1132, 1133

Floating indebtedness, 15, 1125

Issue of bonds, 15, 1131

Meaning of "indebtedness," 15, 1132

Miscellaneous indebtedness, 15, 1131

Rent from market house, 15, 1131

Torts, 15, 1127, 1128, 1129

Whether liability can be enforced, 14, 1127

Limits, see *infra*, **BOUNDARIES**.

Liquidated damages, 15, 1081

Lobbying contracts, 9, 907; 15, 1054

Lowest bidder, see *infra*, **CONTRACTS**.

Lowest responsible bidder, 21, 291

Mandamus, 14, 165

Advertising and letting contract to lowest bidder, 15, 1097

Amendment of record, 15, 1078

Books and Records**To Compel Delivery**, 14, 207

Amendment of records, 14, 208

Correction of records, 14, 208

When officer has been duly removed, 14, 207

Contract for public work, 14, 167

Contract of municipality, 14, 209

Custody of municipal books, 14, 173

Debt due to the state, 14, 174

Demand of performance, 14, 167

Discretion of municipal authorities, 14, 210

Distribution of public funds, 14, 173

Duty imposed by legislature, 14, 165

Elections

Authority to exclude votes, 14, 199

Counting votes as for separate persons, 14, 199

Examples, 14, 198

Generally, 14, 196

Issue of certificates of election, 14, 198

Ministerial acts, 14, 197

To city council, 14, 197

To compel holding of elections, 14, 196

Validity of election, 14, 197

Eminent domain, 14, 210

Estimates, 14, 210

Generally, 14, 165

Granting License, 14, 170

Arbitrary discrimination, 14, 171

License refused by mistake, 14, 171

Signing license, 14, 171

Whether writ will lie, 14, 170

Improvements, 14, 209

Erection of public buildings, 14, 209

Estimates, 14, 210

Generally, 14, 209

To compel performance of duty, 14, 209

Inspection of poll books, 14, 173

Inspection of Public Records, 14, 171

Continuous use of the office, 14, 171

Whether open to all, 14, 172

Whether the writ would lie, 14, 171

Instance in which writ lies, 14, 210

Limitation of municipal indebtedness, 15, 1140

Ministerial duty, 14, 165

Neglect by municipal officer, 14, 166

Payment and assessment of damages, 14, 210

Taxes collected by county treasurer, 14, 174

To correct records, 14, 173

To enforce by taxation the payment of judgment, 15, 1201

To pay over state funds, 14, 174

To pay proportion of taxes, 14, 174

When writ will be granted, 14, 165

Markets, see **MARKETS**.**Master and Servant****Liability**

For acts of independent contractors, 14, 841; 19, 561

Liability of MunicipalitySee *infra*, **MUNICIPAL OFFICERS**.

For negligence of servant, 14, 813

Malicious acts, 14, 825

Mayor**As Presiding Officer**, 15, 1033

Casting vote, 15, 1034

Quo warranto, 15, 1033

Right to preside, 15, 1033

Right to vote, 15, 1034

Powers and duty, see *infra*, **MUNICIPAL OFFICERS**.

Whether included in council, 15, 1032

Mechanics' liens, 15, 23, 202**Meetings**, 15, 1028**Ayes and Nays**, 15, 1036

Individual responsibility, 15, 1037

Journal, 15, 1037

Necessity for calling, 15, 1036

Nunc pro tunc, 15, 1037

Object of requirement, 15, 1037

Whether statutory provision directory, 15, 1036

Committee, 15, 1038

Contract of, 15, 1038

Examples, 15, 1038, 1039

Quorum of members of, 15, 1039

Individual member, 15, 1029

- Inferior and judicial or quasi judicial board, 15, 1031
 Joint bodies, 15, 1031
 Journal, 15, 1037
 Majority of members, 15, 1030
Notice
 Regular meetings, 15, 1034
 Special or adjourned, 15, 1036
 Power only exercised at corporate meetings, 15, 1028
 Presiding officer, 15, 1033
Quorum, see *infra*, **QUORUM**.
Regular Meeting, 15, 1034
 Notice of, 15, 1034
 Presumption in favor of, 15, 1034
Special and Adjourned Meetings, 15, 1034
 Adjourned meeting as a continuation, 15, 1035
 Contempt, 15, 1036
 Notice, 15, 1035
 Presumption of regularity, 15, 1035
 Provision for, 15, 1034
 What business may be transacted at adjourned meeting, 15, 1035
 What business may be transacted at special meeting, 15, 1036
Suspension of Rules, 15, 1038
 Ratification, 15, 1038
 Rescission, 15, 1038
 Time for holding meetings, 15, 1029
 What affairs must be transacted at corporate meeting, 15, 1028
 Who must be present to constitute a valid meeting, 15, 1030
Ministerial Duty
 Liability, see *infra*, **LIABILITY FOR TORTS**.
Mortgage
 Power to Mortgage Property, 15, 1071
 As incident to the right to purchase, 15, 1071
 Examples, 15, 1071
 In general, 15, 1071
 Prohibition against sale of real estate, 15, 1071
Municipal Officers, 19, 548
 See **PUBLIC OFFICERS**.
 Abolition of office, 19, 555
 Charter provisions, 19, 548
Compensation, 19, 555
 Abolition of office, 19, 555
 Addition to compensation, 19, 555
 Contract relation, 19, 555
 Reduction of compensation, 19, 555
 Strict compliance with charter or statute, 19, 556
 When a contract, 19, 556
 Control of corporation, 19, 549
Election and Appointment, 19, 549
 Appointment or election of a particular officer, 19, 551
 At common law, 19, 550
 Charter provision making a board judge of qualification and election of officers, 19, 551
 Jurisdiction of courts, 19, 551
 Legislative intent that municipal action shall be final, 19, 552
 Mandamus to compel election, 19, 550
 Manner in the absence of express provision, 19, 550
 Mode of election, 19, 550
 Necessity of election by ballot, 19, 550
 Non-residents, 19, 549
 Observance of municipal charter, 19, 549
Ordinances in Conflict with Charter, 19, 549
 Abridging term of office, 19, 549
 Choice of an officer in a different manner, 19, 550
 Making those eligible who by charter are not so, 19, 549
 Provisions as to mode of election, 19, 549
 Residence within the municipality, 19, 549
 Eligibility, 19, 549
 Extortion, 7, 586
 Garnishment, 19, 536
 In general, 19, 548
Legislative Control, 15, 993; 19, 526
 Authority of legislature in general, 15, 993
 Board of police, 15, 994
 Examples, 15, 993-995
 Officers to lay out streets, 15, 994
 Park commissioners, 15, 994
 Purely municipal officers, 15, 994
 Whether state or municipal office, 15, 993
Liability of Municipality for the Acts of Its Officers, 14, 813, 825; 19, 507, 557
 See *infra*, **LIABILITY**.
 Acts for the private benefit of the corporation, 19, 560
 Corporate duty, 19, 562
 Discretionary power, 19, 562
 Duty imposed upon corporation by law, 19, 560
 Duty imposed upon officer rather than upon corporation, 19, 561
 Exemptions, 19, 557
 Fellow servants, 19, 562
 Illegal acts, 19, 559
 Independent contractors, 14, 841; 19, 561
 Independent public officers, 19, 561
 In general, 19, 557
 Negligence or misconduct, 14, 813, 825; 19, 558
 Negligence or wrongful acts of independent contractors, 19, 561
 Private agents, 19, 561
 Scope of duty, 19, 562
 Ultra vires acts, 19, 559
 Unauthorized acts, 19, 559
 Water commissioner of a city, 19, 560
 What must appear to render corporation liable, 19, 561, 562

MUNICIPAL CORPORATIONS—Cont'd**Municipal Officers—Cont'd****Liability of the Officer to the Corporation, 19, 562a**

Honest mistakes, 19, 562a

In general, 19, 562a

Misconduct, 19, 562a

Mandamus, 19, 550

Powers and Duties, 19, 552

Contracting or dealing with municipality, 19, 554

Implied from necessity, 19, 552

Mayor, 19, 554

In general, 19, 554

Judicial duties, 19, 554

Trial of civil causes, 19, 555

Strict compliance with statutory and charter provisions, 19, 553

Removals from Office, 19, 562a

Cause, 19, 562b

Construction of statute or charter, 19, 562b

Delegation of power to remove, 19, 562a

Notice, 19, 562b

Power to remove, 19, 562a

Whether expulsion disqualifies for reelection, 19, 562b

Who may remove, 19, 562a

Residence, 19, 549

Right to elect or appoint, 19, 548

Right to recover for services, 19, 526

"Municipal purposes," 15, 958

Name, 15, 966

Bequests, 15, 967, 968

Change of, 15, 968

Contracts, 15, 967

Customary name, 15, 970

Effect of misnomer, 15, 969

English municipal corporation act, 15, 967

Examples in general, 15, 966

General rules as to name and style, 15, 967

How municipal corporations are named, 15, 969

Identity, 15, 967

Necessity, 15, 966

Power of attorney, 15, 967

Suits, 15, 967, 968

Suits after change of name, 15, 968

Two names, 15, 970

Variation, 15, 967

Where no name is adopted, 15, 970

Navigation, 16, 336

Novation, 16, 877

Nuisances, 15, 1178*See* NUISANCES.**Abatement, 15, 1183; 19, 922**

Appropriation of private property, 15, 1184

Civil action, 15, 1184

Criminal proceedings, 15, 1183

Destruction of buildings, 15, 1184

Destruction of property, 15, 1183

In general, 15, 1178, 1179

Legislative authority, 15, 1183

Nuisance per se, 15, 1182

Obstruction of streets, 15, 1185

Removal of drains, 15, 1184

Arbitrarily declaring thing to be a nuisance, 15, 1179

Arbitrary action of municipality, 15, 1179

Authority to declare certain acts nuisances, 19, 922

Billiard rooms, 15, 1181

Bowling alley, 15, 1181

Conclusiveness of decision of municipality, 15, 1182

Dead animals, 15, 1181

Disorderly houses, 15, 1181

Ejectment, 15, 1185

Examples, 15, 1179, 1180

Gaming apparatus, 15, 1181

Indictment of municipality, 15, 1198

In general, 15, 1178, 1179

Injunction to municipality, 15, 1183

Judicial authority, 15, 1179

Legalizing, 15, 1185

Liability for failure to abate, 15, 1146

Liability of Municipality, 15, 1186

Compensation of owner, 15, 1186

Destruction of property not a nuisance, 15, 1186

Maintaining nuisance, 15, 1186

Nuisance per se, 15, 1182

Power to abate, 15, 1178

Power to prevent, 15, 1178

Slaughter house, 15, 1180

Nunc pro tunc entry, 15, 1037

Officers, see infra, MUNICIPAL OFFICERS.

Opinion, 15, 961

Ordinary care, 16, 401

Parol Evidence**Record, 20, 510**

Examples, 20, 510-512

Explanation of defects or omissions, 20, 511

In favor of one who has performed work, 20, 511

In general, 20, 510

Minutes, 20, 510

Not required by law, 20, 511

Official oath, 20, 511

Proceedings of public bodies, 20, 511

Required by statute, 20, 511

To aid, 20, 510

To contradict, 20, 510

Payment of claims, see infra, LEGISLATIVE CONTROL.

Police power, 15, 1006

Police Regulations, 15, 1166*See generally, ORDINANCES; POLICE POWERS.**Fires, see FIRE DEPARTMENTS.**Regulation of operation of railways, see STREET RAILWAYS.**Streets, see STREETS AND SIDEWALKS.*

Burial of dead, 15, 1175

Delegation of power by state, 15, 1167

Generally, 15, 1166

- General Welfare Clause**, 15, 1188
See infra, NUISANCES.
 Animals running at large, 15, 1189
 Assaults, 15, 1191
 Auctions, 15, 1188
 Authority under, 15, 1188
 Concealed weapons, 15, 1191
 Cruelty to animals, 15, 1190
 Drumming, 15, 1191
 Generally, 15, 1188
 Hour of closing saloons, 15, 1188
 Intoxication, 15, 1191
 Keeping dogs, 15, 1189
 Keeping gunpowder, 15, 1190
 Laundry business, 15, 1190
 Observance of the Sabbath, 15, 1188
 Preservation of peace and quiet, 15, 1191
 Profane swearing, 15, 1191
 Protection of trees, 15, 1188
 Taxes, 15, 1192
 Telephone charges, 15, 1192
 Vagrancy, 15, 1190
 What may be regulated, 15, 1188
 Infectious diseases, 15, 1174
 Inspection ordinance, 15, 1175
 Keeping cows and hogs, 15, 1174
 Preservation of channel, 15, 1169
 Preservation of harbors, 15, 1169
 Preservation of landing, 15, 1169
Preservation of Public Health, 15, 1173
See BOARDS OF HEALTH; HOSPITALS.
See infra, NUISANCES.
See QUARANTINE.
 Cultivation of land, 15, 1174
 Public convenience, 15, 1167
 Public safety, 15, 1167
Regulations of Buildings, 15, 1176
See FIRE DEPARTMENTS.
 Building permit, 15, 1177
 Fire escapes, 15, 1177
 In general, 15, 1176
 Insecure and unsafe building, 15, 1176
 Removal of building through street, 15, 1177
 Political corporation, 18, 765
Population, classification, see infra, CONSTITUTIONAL LAW.
Power of Legislature, 19, 420, 421
See infra, LEGISLATIVE CONTROL.
 Appointment of local officers, 19, 420
 Prescribing general features of local government, 19, 421
 Right to local self-government, 19, 420
Powers, 15, 1039
Borrowing money and issuing stock, see MUNICIPAL SECURITY.
Control of streets, see STREETS.
Gas companies, see GAS AND GAS COMPANIES.
Health, see BOARD OF HEALTH.
Party wall, see PARTY WALL.
Quorum, see QUORUM.
Water companies, see WATER COMPANIES.
Waterworks, see WATER COMPANIES.
 Analysis of powers, 15, 1040
 Arbitration, 15, 1049
As to property, see infra, PROPERTY.
Bounties
See BOUNTIES.
 When authorized by statutes, 15, 1052
 Within specified statutory authority, 15, 1052
 Celebration, 15, 1051
 Compromise, 15, 1049
Contracts, see infra, CONTRACTS.
Corporate property, see infra, PROPERTY.
 Corporation binding itself not to exercise its, 15, 1045
Delegation of Power by Municipality, 15, 1042
 City bonds, 15, 1043
 Employment of agents, 15, 1044
 Establishment of excise department, 15, 1044
 Licenses, 15, 1044
 Lighting streets, 15, 1044
 Local improvements, 15, 1043
 Ministerial duty, 15, 1044
 Municipality binding itself not to exercise its powers, 15, 1045
 Pounds, 15, 1044
 Power of appointment of attorney, 15, 1044
 Street railroads, 15, 1043
 Surrender of powers by contract, 15, 1045
 Wharves, 15, 1043
 Where delegation is authorized by legislature, 15, 1044
 Whether municipality can delegate its power, 15, 1042
Discretionary and Legislative Power
Liability for non-exercise, see infra, LIABILITY FOR TORTS.
 Discretionary or mandatory, 15, 1047
Discretion of Municipality, 15, 1046
 Equitable jurisdiction, 15, 1047
 Entertainment, 15, 1051
 Essential to provisions of corporations, 15, 1040
 Exclusive privileges, 15, 1055
Exercise beyond corporate limits, see infra, BOUNDARIES.
 Granted in express words, 15, 1040
Grant of Powers Strictly Construed, 15, 1041
 Examples, 15, 1042
 In general, 15, 1039-1041
 In general, 15, 1039
Judicial Control of Powers, 15, 1046
 Discretion of municipality, 15, 1046
 Equitable jurisdiction, 15, 1047
 Interfering in discretionary powers, 15, 1046
 Lobbying contract, 15, 1054
Markets, see MARKETS.
 Mode of exercise, 15, 1042
 Necessarily implied, 15, 1040

MUNICIPAL CORPORATIONS—Cont'd**Powers—Cont'd**

Police regulations, see *infra*, POLICE REGULATIONS.

Powers as to property, see *infra*, PROPERTY.

Purchase of fire apparatus, 15, 1054

Regulations of occupations, see HAWKERS AND PEDDLERS; INTOXICATING LIQUORS; LICENSES; TAXATION, subhead, *Occupation, business, and privilege*.

Strictly statutory, 15, 1039

Surrender of powers by contract, 15, 1045

Taxation, see *infra*, TAXATION.

To Borrow Money, 15, 1232

See MUNICIPAL SECURITIES.

See *infra*, LIMITATION OF MUNICIPAL INDEBTEDNESS.

Distinction between contracting debts and borrowing money, 15, 1233

Distinguished from incurring indebtedness for improvements, 15, 1234

Implied power, 15, 1232

In Illinois, 15, 1233

In Iowa, 15, 1233

In Nebraska, 15, 1233

In Ohio, 15, 1232

In Wisconsin, 15, 1232

What is "borrowing money," 15, 1234

To suppress gaming houses, 8, 1084; 15, 1181

To suppress houses of ill-fame, 4, 655, 15, 1181

Wharves, Docks, etc., see *infra*, WHARVES.

Whether Discretionary or Mandatory, 15, 1047

"It is lawful," 15, 1048

"May," 15, 1048

Question of legislative intent, 15, 1047

Prescription, corporate right by, 15, 956

Presentation of Claims, 15, 1193

Allegation of proper presentation, 15, 1193

Amount of damages demanded, 15, 1195

Claim for recovery of taxes, 15, 1194

Condition precedent, 15, 1193

Constitutionality of statute, 15, 1193

Infringement of patent, 15, 1194

Mandamus, 15, 1195

Proper presentation, 15, 1194

Statute providing for, 15, 1193

To what officer presented, 15, 1194

What claims within statute, 15, 1194

Within what time presentation must be made, 15, 1195

Profanity, 15, 1191

Prohibition, 19, 275

Property, 15, 1057

See *infra*, ANNEXATION AND CONSOLIDATION; DIVISION; LEGISLATIVE CONTROL; PUBLIC BUILDINGS.

Power to lease, see *infra*, LEASE.

Power to mortgage, see *infra*, MORTGAGE.

Validity of grants, bequests, and devises, see *infra*, GRANTS.

Conditions attached to power, 15, 1057

Disposition, 15, 1063

Method of, 15, 1065

Authority of officer, 15, 1066

Corporate board, 15, 1066

Defective ordinance, 15, 1066

Examples, 15, 1065, 1066

In general, 15, 1065

When pointed out by charter, 15, 1065

Power to Dispose of, 15, 1063

Conditions in grant by municipality, 15, 1063

Examples, 15, 1063

Land dedicated by proprietor to public use, 15, 1064

Presumption of regularity, 15, 1066

Property not held for public use, 15, 1063

Public property, 15, 1064

Streets, alleys, and public grounds, 15, 1064

Trust property, 15, 1064

Whether sale can be annulled, 15, 1064

Estoppel to claim title, 15, 1059

Implied contract to purchase, 15, 1082

Judicial Sale, 15, 1058

Tax title, 15, 1058

Judicial Seizure of Property and Revenues, 15, 1067

Authority of legislature to allow seizure, 15, 1070

In New England states, 15, 1067

Liability of inhabitants, 15, 1067

Private property, 15, 1069

Property other than that used by public, 15, 1068

Property owned for profit, 15, 1069

Public buildings, 15, 1068

Public property, 15, 1068

Public revenue, 15, 1070

Public square, 15, 1068

Whether private property can be taken for corporate debts, 15, 1067, 1068

Land beyond corporate limits, 15, 1060

Municipal Purposes, 15, 1058

Examples, 15, 1058

What are, 15, 1058

Observance of conditions, 15, 1059

Power to Purchase and Hold, 15, 1057

Examples, 15, 1057-1060

Implied contract, 15, 1082

In absence of statute, 15, 1057

Joint tenants and tenants in common, 15, 1058

Power expressly conferred by statute, 15, 1057

Power to lease, 15, 1058

Restrictions, 15, 1059

Who may question power to hold, 15, 1062
 Public and private, distinguished, 4, 186, 187
Public Buildings, 15, 1072
Market, see **MARKETS**.
 Discretion as to building or repairing, 15, 1073
 Examples, 15, 1072, 1073
 Legislative control, 15, 990
 Letting for other purpose, 15, 1073
 Liability to execution, 15, 1068
 Right to erect, 15, 1072
 Right to hire, 15, 1072
 Theatrical entertainment, 15, 1073
 Use of building, 15, 1073
Public officers, see *infra*, **MUNICIPAL OFFICERS**.
Public Parks
 Legislative control, 15, 991
Public works, see *infra*, **CONTRACTS**.
 Purchase of fire apparatus, 15, 1054
 Quasi corporations, 15, 953
 Questioning existence of corporation, 15, 964
Quorum, see **QUORUM**.
 Committee of city council, 15, 1039
Quo Warranto, 15, 1033; 19, 674
 Compelling performance of municipal duty, 19, 675
 Examples, 19, 674, 675
 Forfeiture of charter or franchise, 19, 674
 In general, 19, 674
 Misconduct of municipal officers, 19, 674
 To city councils, 6, 388
 Unauthorized ordinance, 19, 674, 675
 Usurpation, 19, 674
 When the writ will be granted, 19, 674
 When the writ will not be granted, 19, 675
Railroads in Streets
Power to Grant Right, 23, 1095
 Authorized by general law, 23, 1095
 City's control over streets, 23, 1096
 Compensation to city, 23, 1097
 Conditional consent of city, 23, 1098
 Delegation of power by legislature, 23, 1094
 Examples, 23, 1095-1098
 In general, 23, 1095
 Liability of company to abutting owners, 23, 1096
 Necessity of express grant by legislature, 23, 1095
 Streets of Washington, 23, 1098
 Tortious acts of city, 23, 1097
Ratification of Municipal Act, 15, 997
Ratification, see *infra*, **CONTRACTS**.
 Act which corporation could not empower its agent to do, 19, 473
 Constitutionality of ratification by state, 19, 475
 Local assessments, 15, 998
 Taxation, 15, 997
 Unconstitutional act, 15, 998
 I-D-76

Records, 15, 1075
Amendment and Correction, 15, 1077
 Right of officer to amend, 15, 1078
As Evidence, 15, 1076
 Of corporate acts recorded, 15, 1076
 City council, 15, 1079
Custody of, 15, 1075
 Replevin, 15, 1075
 Right to office, 15, 1076
 Trover, 15, 1075
 Different council, 15, 1079
 Entry must be of public nature, 15, 1076
 How proven, 15, 1076
 In general, 20, 509
 Mandamus, 15, 1078
 Minutes, 20, 509
 Municipal record in evidence, 20, 510
Parol Evidence, 20, 510
 Examples, 20, 510-512
 Explanation of defects or omissions, 20, 511
 In favor of one who has expended money, 20, 511
 In favor of one who has performed work, 20, 511
 In general, 20, 510
 Minutes, 20, 510
 Official oath, 20, 511
 Proceedings of public bodies, 20, 511
 Record not required by law, 20, 511
 Record required by statute, 20, 511
 To aid, 20, 510
 To contradict, 20, 510
 Presumption to aid record, 20, 512
 Quasi corporations, 20, 509
 Sufficiency, 15, 1077; 20, 512
 Sworn copy, 15, 1077
 Who may amend, 15, 1079
Release
 Claim for personal injury, 20, 761
Repeal, see *infra*, **AMENDMENT AND REPEAL OF CHARTER**.
Replevin
Municipal Records, 15, 1076
 Title to office, 15, 1076
 To recover the records, 15, 1075
Res Judicata
 Corporation liable for nuisance of individual, 21, 162
 Respondeat superior, 21, 162
 Revival, 15, 1201
Rewards, 15, 1053; 21, 390
 Power of municipality, 15, 1053
 State admitting authority, 15, 1053
 States denying authority, 15, 1053
Rights of Creditors, 15, 986
 See *infra*, **DIVISION; LIABILITY**.
 Payment of claims, 15, 991
 Prohibition to levy taxes, 15, 987
 Reorganization, 15, 972
 Right to make bills and notes, 2, 351
 Rivers, 15, 1005
 Saloons, 15, 118
Scire Facias
 On municipal claims, 21, 878
 Vol. I

MUNICIPAL CORPORATIONS—Cont'd**Seals, 15, 970**

Adoption, 15, 970

As *prima facie* evidence of execution, 15, 971

Authority by charter, 15, 970

By whom it may be affixed, 15, 971

Contract, 15, 1090

Different seal from common seal, 15, 970

Necessity, 15, 970

Private and public corporations compared, 15, 970

Use of wrong seal, 15, 971

Validity of contract without, 15, 970

Service of process, 22, 126

Sheriff's Sales

Corporation as purchaser, 22, 600

Sidewalks, see **STREETS AND SIDEWALKS**.

Slaughter houses, 15, 1174, 1180

Smoke

Constitutionality of smoke ordinances, 22, 802

Special Charter, 15, 971

Abolition by general act, 15, 958

Acceptance of Charter, 15, 962

Whether necessary, 15, 962

Amendment, 15, 971

Amendment and Repeal, 15, 971

Assent of inhabitants, 15, 972

Power of legislature, 15, 971

Reorganization Under New Charter, 15, 972

Abolition of offices, 15, 973

Continued existence, 15, 973

Effect, 15, 972

Liabilities of old corporation, 15, 973

New form given to old corporations, 15, 972

Presumption as to legislature's intention, 15, 973

Revision, 15, 972

Right of creditors, 15, 972

When Repeal Is Effected, 15, 974See *infra* generally, **LEGISLATIVE CONTROL**.

Constitutional restrictions, 15, 976

General act, 15, 974

When special charter remains in force, 15, 974

Constitutional law, 15, 981

Constitutional provisions forbidding creation by, 15, 959

Creation by, 15, 958

Municipal purposes, 15, 958

Passage by legislature, 15, 958

Definition, 15, 971

Effect of general act, 15, 958

General law, 15, 957

Power of legislature, 15, 971

Prescribing mode in which powers shall be exercised, 15, 1042

Repeal, 15, 971

Surrender, 15, 957

Special legislation, see *infra*, **LEGISLATIVE CONTROL**; **SPECIAL CHARTER**.

Speed of Trains, 19, 886

See **CROSSINGS**.**States**

Whether municipal corporations, 15, 953

StatutesSee *infra*, **CONSTITUTIONAL LAW**; **LEGISLATIVE CONTROL**.**Constitutional Provisions Requiring that Subject Shall Be Expressed in Title, 23, 247**

Acts amending charter, 23, 249

Examples, 23, 247-250

Incorporation acts, 23, 247

In general, 23, 247

Insufficient titles, 23, 247, 230

Miscellaneous acts relating to municipal corporations, 23, 250, 251

Stockholders

Power to subscribe for stock, 23, 798

Streets and sidewalks, see **STREETS AND SIDEWALKS**.**Subscriptions for Stock by**

Constitutional amendment, 15, 1260

Suit before incorporation, 15, 957

Sunday, 24, 533

Sunday regulations, 15, 1188

Supplementary proceedings, 24, 609

Suretyship, 15, 1107

Surface Waters**Municipal Control and Regulation, 24, 942**

Accumulation of large volume of water, 24, 946

Accumulation of water on the surface of the street, 24, 943

Construction of drains and sewers, 24, 942

Defect in plan of street, 24, 945

Deficient plans, 24, 945

Determining where drains and sewers shall be built, 24, 945

Directing flow of rain water, 24, 946

Duty to keep waterways in repair, 24, 948

Error in judgment, 24, 945

Examples, 24, 942-949

Extraordinary and unprecedented freshets, 24, 948

General rule, 24, 942

In absence of statutory enactment, 24, 942

Injuries arising from regarding, etc., 24, 942

Insufficiency of drain, 24, 947

Liability of city, 24, 942-949

Neglect in grading street, 24, 948

Negligent construction of gutters, 24, 949

Plans must be reasonable, 24, 945

Preventing flow on adjoining property, 24, 945

Raising grade of street, 24, 944

Street railway, 24, 947

- Work of construction of drains and sewers, 24, 947
- Work preventing flow of water, 24, 943
- Surrender of special charter, 15, 957
- Taxation**, 15, 1311
 - Annexed district, 15, 1009
 - Bill to Remove Clouds**
 - Caused by invalid assessment, 2, 311
 - Municipal Securities**, 15, 1314
 - Duty of officer collecting, 15, 1314
 - Setting aside as a special fund, 15, 1313
 - Power to levy taxes to buy bond, 15, 1311
 - Prohibition to levy taxes, 15, 987
- Purpose**, 15, 1246
 - Bridges, 15, 1246
 - Schools and colleges, 15, 1246
 - Sewerage, 15, 1246
- Ratification by legislature, 15, 997
- Rural Lands**, 15, 1013
 - In Iowa, 15, 1013
 - In Kentucky, 15, 1013
 - In Pennsylvania, 15, 1015
 - Power of legislature to exempt rural lands, 15, 1016
 - Right of legislature to include, 15, 1013
 - Taxation at a lower rate, 15, 1015
 - Unequal benefits, 15, 1013
 - Where courts can interfere, 15, 1013
 - Whether a taking for public use without compensation, 15, 1013
- Taxes**
 - General welfare clause, 15, 1192
 - Statute providing that claim shall be presented to municipality, 15, 1194
- Tax sales, 15, 1057
- Telegraphs and Telephones**, 15, 1192
 - See TELEGRAPHS AND TELEPHONES.
- Territories**
 - Power to incorporate, 25, 962
- Torts**, see *infra*, LIABILITY FOR TORTS.
 - Effect of provision limiting amount of municipal indebtedness, 15, 1127
- Torts of officers and agents, 19, 514
- Towns**
 - Whether a municipal corporation, 15, 953
- Trees, 15, 1188
- Trover**
 - Municipal records, 15, 1076
- Trusts and Trustees**, 15, 996
 - Corporations as trustees, 11, 829; 15, 996; 27, 18
- Legislative Control**
 - Change of name, 15, 997
 - Charitable use, 15, 997
 - In general, 15, 996
 - Vested rights, 15, 996
- Regulations**, 11, 828
 - Change from one corporation to another, 11, 828
 - Diversion of trust funds, 11, 829
 - Funds for special uses, 11, 828
 - Legislative decision between towns claiming trusteeship, 11, 829
 - Regulation by legislature, 11, 828
 - Whether corporation may be trustee, 15, 996
- Ultra Vires**, see *infra*, generally, CONTRACTS.
 - See *infra*, LIMITATION OF MUNICIPAL INDEBTEDNESS.
 - Estoppel, 15, 1100-1102
 - In general, 15, 1081, 1100
 - Power of officers or agents to bind, 1100
 - Recovery of consideration, 15, 1102
 - Whether responsible for damages, 15, 1165
- Undertakings on appeal, 27, 447
- Usages and Customs**, 15, 1048
 - As evidence of incorporation, 15, 1049
 - In England, 15, 1048
 - In United States, 15, 1049
 - Whether powers may be enlarged or diminished by, 15, 1048, 1049
- Vagrancy, 15, 1190
- Validity of contract*, see *infra*, CONTRACTS.
- Validity of Grants, Bequests, and Devises**, 15, 1060
 - See *infra*, GRANTS; LEGACIES AND DEVISES.
- Vested rights*, see *infra*, LEGISLATIVE CONTROL.
- Veto, 28, 448
- Village, 15, 592
- Warrants**, see MUNICIPAL SECURITIES.
 - Funding acts and proceedings, 15, 1207
- Indorser's Liability**
 - When not liable, 15, 1212
- Interest, 15, 1216
- Waste**, 28, 903
 - Injunction, 28, 941
- Water**
 - Limitation of municipal indebtedness, 15, 1127
 - Water supply*, see *infra*, CONTRACTS.
 - Waterworks and water companies*, see WATERWORKS AND WATER COMPANIES.
- Wharves**, see WHARVES.
 - Legislative control, 15, 990
- Whether power to make ordinances is a delegation of legislative power, 3, 699
- Whether submission of a city charter to a popular vote is an unconstitutional delegation of constitutional power, 3, 699
- Writing**
 - Contract**
 - Ordinance, 15, 1089
 - Resolve, 15, 1089
 - Statute of fraud, 15, 1090
 - Where there is no provision in statutes, 15, 1089

MUNICIPAL COURTS, 15, 1202
 See generally, JUSTICE OF THE PEACE.
 At common law, 15, 1202

MUNICIPAL COURTS—*Cont'd*

- Certiorari, 3, 66
- Charter provision, 15, 1202
- Citizens as judges, 15, 1203
- Citizens as jurors, 15, 1203
- Citizens as witnesses, 15, 1203
- Delegation of legislative powers, 15, 1203
- Different names in different states, 15, 1202
- Franchise, 15, 1202
- Nonuser, 15, 1202
- Power to Establish, 15, 1202
 - Legislature of state, 15, 1202
- Prosecution, 15, 1202
- Violation of municipal regulations, 15, 1202

MUNICIPAL LAW, 15, 1204**MUNICIPAL RECORDS, see RECORDS.****MUNICIPAL SECURITIES, 15, 1204**

See MUNICIPAL AID.

See generally, MUNICIPAL CORPORATIONS; RAILROAD SECURITIES.

As to limitation of municipal indebtedness, *see* MUNICIPAL CORPORATIONS.

Bona Fide Holders, 15, 1287

See infra, ESTOPPEL.

Defense Available Against, 15, 1255, 1291

Estoppel, 15, 1291, 1292

In general, 15, 1291

Want of power to issue, 15, 1291

Unconstitutional act, 15, 1290

Who Are, 15, 1287

Constructive notice, 15, 1290

Examples, 15, 1289

Extent of authority, 15, 1290

Innocent purchaser of stolen bonds, 15, 1290

Lis pendens, 15, 1289

Notice of existing equities, 15, 1288

Notice on face of instrument, 15, 1290

One taking in payment of an antecedent debt, 15, 1289

Over-due coupons, 15, 1291

Pledgee, 15, 1289

Purchaser for less than par, 15, 1289, 1290

Purchaser for value without notice, 15, 1287

Purchaser of over-due bonds after judgment, 15, 1289

Temporary injunction, 15, 1289

Bonds, 15, 1225, 1263, 1308.

Conditions precedent, *see infra*, CONDITIONS PRECEDENT.

Estoppel, *see infra*, ESTOPPEL.

Municipal aid to railroads, *see* MUNICIPAL AID.

Purpose for which bonds may be issued, *see infra*, PURPOSES FOR WHICH BONDS MAY BE ISSUED.

"Bonded indebtedness," 15, 1264

Conditional delivery, 15, 1229

Countersigning, 15, 1228

Date, 15, 1230

Delivery, 15, 1225, 1228

Conditional, 15, 1229

Innocent holder, 15, 1229

Necessity, 15, 1228

Disposal, 15, 1265

Authority, 15, 1265

Delivery of bonds to company for stock, 15, 1265

Giving away bonds, 15, 1265

In general, 15, 1265

Provision that railroad shall not sell them less than par, 15, 1265

Sale below par, 15, 1265

Semi-annual interest, 15, 1265

Execution, 15, 1225

Form, 15, 1225

Funding bonds, 15, 1263

In general, 15, 1225

Lithograph facsimile of signature, 15, 1227

Necessity, 15, 1249

Negotiability, 15, 1229, 1230

New bonds invalidated, 15, 1265

Number, 15, 1230

Over Issue, 15, 1230, 1266

As to limitations on indebtedness, *see* MUNICIPAL CORPORATIONS.

Bonds first delivered, 15, 1266

In general, 15, 1266

Validity, 15, 1266

Place of payment, 15, 1230

Power to issue new bonds, 15, 1263

Remedy to enforce new bonds, 15, 1263

Renewal bond, 15, 1263

Restraining Issue, 15, 1255

See infra, INJUNCTION.

Acquiescence, 15, 1256

Bonds void in hands of innocent purchaser, 15, 1255

Illegal issue, 15, 1255

Taxpayers, 15, 1255

Void bonds, 15, 1256

Where like bonds have been issued, 15, 1256

Whether temporary injunction matter of right, 15, 1255

Seal, 15, 1228

Sealing

Necessity, 15, 1228

Statutory directions, 15, 1228

Signing, 15, 1226

By majority, 15, 1226

By mayor, 15, 1226

By municipal officers, 15, 1226

Countersigning, 15, 1228

Estoppel, 15, 1227

In absence of statute, 15, 1226

In blank, 15, 1227

Lithograph facsimile, 15, 1227

Necessity, 15, 1226

Presumption as to signature, 15, 1226

Recitals, 15, 1227

Substituted bonds, 15, 1263

Time of Maturity, 15, 1230

Estimating time from future date, 15, 1231

Maturity in shorter time than that prescribed by statute, 15, 1231

- Stipulations made with agents, 15, 1231
 Where statute is silent, 15, 1230
To Whom Payable, 15, 1229
 Payable to bearer, 15, 1229
 Whether statute is directory, 15, 1229
Burden of Proof, 15, 1271
 Fraud in inception of paper, 15, 1271
 In Illinois, 15, 1271
 Non-performance of condition precedent, 15, 1271
 Possession as prima facie evidence of ownership, 15, 1271
 Cancellation, 15, 1121
 Classes, 15, 1206
 Collection, 15, 1311
Collection and Payment
 When remedy limited to special tax, 15, 1316
Conditions Precedent, 15, 1271
See as to construction and completion of road, MUNICIPAL AID.
Consent of people, see *as to vote of people*, MUNICIPAL AID.
Location of road, see *as to location of road*, MUNICIPAL AID.
 By whom conditions imposed, 15, 1271
 Contract incomplete while conditions unperformed, 15, 1252
 Delegation of power, 15, 1274
 Effect of failure to comply, 15, 1272
 Implied authority to impose conditions, 15, 1272
 In general, 15, 1271
 Injunction when condition is not complied with, 15, 1272
Modification, 15, 1273
 Where imposed by vote of people, 15, 1273
 Performance, 15, 1274
 Presumption, 15, 1273
 Recital that conditions have been performed, 15, 1395
 Registry, 15, 1284
 Sale below par, 15, 1265, 1288
 Strict compliance, 15, 1271
 Subsequent misconduct, 15, 1272
 Substantial compliance, 15, 1272
Waiver, 15, 1272
 By municipality, 15, 1273
 Conditions submitted to electors, 15, 1273
 What amounts to waiver, 15, 1273
 When municipality may impose conditions, 15, 1271
 When railroad completed, 3, 384
 Where statute declares bond void unless conditions are complied with, 15, 1302
 Whether subscription binding, 15, 1272
Consent of people, see *as to vote of people*, MUNICIPAL AID.
 Consideration, 15, 1220
Consolidation of Corporations, 15, 1257
 In general, 15, 1257
 Sale and consolidation, 15, 1258
 Where corporation had power to consolidate, 15, 1257
 Whether bond must be issued to consolidated corporation, 15, 1257
 Constitutionality of legislative act forbidding city to levy taxes to pay judgments against it, 3, 749
Constitutional Law, 15, 1308
 Law of state at time of issue of bonds, 15, 1310
 Provision for payment, 15, 1308
 Subsisting remedies, 15, 1309
 Virginia bond cases, 15, 1310
Constitutional Prohibitions and Limitations
Conditions precedent, see *infra*, CONDITIONS PRECEDENT.
 Donation voted previous to adoption of constitution, 15, 1252
 Effect on existing statutes, 15, 1250
 Impairing obligations to contract, 15, 1251
 In general, 15, 1250
 Prohibition under state, 15, 1252
 Subscriptions, 15, 1252
 Where addressed to legislature, 15, 1250
 Where addressed to municipality, 15, 1250
 Whether vote to subscribe stock to railroad is contract, 15, 1251
Construction and Completion of Road, 15, 1284
 In general, 15, 1284
 Examples, 15, 1284, 1285
 Strict enforcement, 15, 1284
 Substantial compliance, 15, 1284
 Under certain statutes, 15, 1286
 What is sufficient compliance, 15, 1284, 1285
 Where time is not essence of contract, 15, 1284, 1285
 Countersigning, 15, 1228
Coupons of Municipal Bonds
 Actions upon, 4, 445
 Fraud or misconduct of agents of corporation, 4, 437
 Irregularities or frauds, 4, 437
 Power to issue bonds by laws of the state, 4, 437
 When there is no authority to issue the bonds, 4, 438
 Date, 15, 1230
 Definition, 15, 1206
Elections, see *infra*, VOTE OF PEOPLE.
Equity
 Whether any remedy in equity, 15, 1315
Estoppel, 15, 1292
 Assent of taxpayers, 15, 1301
 Authority of commissioners to pass upon fact implied, 15, 1299
 Before issue of bonds, 15, 1292
 Bonds issued in violation of constitutional provisions, 15, 1302
 Bonds issued in violation of express statutes, 15, 1302

MUNICIPAL SECURITIES—Cont'd**Estoppel—Cont'd**

- By act of officer, 15, 1211
- Course of dealing, 15, 1293
- Excessive Issue, 15, 1304**
 - Bona fide purchaser, 15, 1304
 - Constitutional limitation, 15, 1306
 - Examples, 15, 1304-1308
 - Grounds for the doctrine, 15, 1305
 - In Iowa, 15, 1305
 - Legislative limitation, 15, 1304, 1305
 - Validity, 15, 1304
- Irregularities in election, 15, 1301
- Laches, 15, 1295
- Misconduct of officers, 15, 1295
- Municipality without power to issue bonds, 15, 1300
- New York decisions, 15, 1303
- Payment of interest, 15, 1293
- Prima facie case for plaintiff, 15, 1299
- Railway aid bonds, 15, 1295
- Recital of conditions inconsistent with statute, 15, 1302
- Recitals by unauthorized officials, 15, 1292
- Recitals in bond, 15, 1227
- Recitals of compliance with statute, 15, 1298
- Recitals of facts not within authority of officers issuing bonds, 15, 1300
- Recital that bonds are issued in accordance with law, 15, 1299
- Recital that bonds have been issued in conformity with law, 15, 1300
- Recital that conditions have been performed, 15, 1295
- Records of county court, 15, 1293
- Refunding, 15, 1293
- Retention of consideration, 15, 1293
- Rules governing municipal bonds, 15, 1308
- Statute declaring bonds void unless conditions are complied with, 15, 1302
- Substantial compliance with law, 15, 1299
- To deny authority of officers, 15, 1292
- Validity of consolidation, 15, 1296
- Waiver of conditions, 15, 1273
- "Were issued in pursuance of subscription," 15, 1302

Excessive Issue

- Estoppel by Recitals, 15, 1304**
 - Bona fide purchaser, 15, 1304
 - Constitutional limitation, 15, 1306
 - Examples, 15, 1304-1308
 - Grounds for the doctrine, 15, 1305
 - In Iowa, 15, 1305
 - Legislative limitation, 15, 1304, 1305
 - Rules governing municipal bonds, 15, 1308
 - Validity, 15, 1304
- Execution against property of individuals, 15, 1315
- Guaranty, 15, 1107
- Injunction**
 - See *infra*, BONDS.

- Bona fide purchaser, 15, 1289
- Failure to comply with conditions, 15, 1272
- Illegal warrants, 15, 1217
- Notice of election, 15, 1276
- Interest, 15, 1269**
 - By what law computed, 15, 1269
 - Coupon bonds, 15, 1216, 1269
 - Estoppel by payment of, 15, 1293
 - From what time bonds bear, 15, 1269
 - Semi-annual, 15, 1265
 - When railroad companies agree to pay, 15, 1269
 - Where no provisions have been made for payment of, 15, 1269
- Interest on Warrants, 15, 1216**
 - Coupons, 15, 1216, 1269
 - Examples, 15, 1216, 1217
 - In Illinois, 15, 1216
 - In Missouri, 15, 1217
 - In Tennessee, 15, 1216
 - Non-payment for want of funds, 15, 1216
 - Retention of warrant after refusal to pay, 15, 1216
 - Where not authorized by statutes, 15, 1216
 - Where warrants are regarded as negotiable paper, 15, 1216
- "Issued," 15, 1282
- Judgment, 15, 1311**
 - Enforcement, 15, 1224
 - Examples, 15, 1311
 - In general, 15, 1311
 - Limitation of indebtedness, 15, 1311
- Law as construed by highest court of a state, 15, 1269
- Legislative Power Over Municipal Corporations, see *infra*, CONSTITUTIONAL PROHIBITIONS AND LIMITATIONS.**
- Compelling corporation to enter into contract for public purpose, 15, 1247
- Compelling corporation to incur debt, 15, 1248
- Compelling municipal corporation to buy stock in private corporation, 15, 1247
- In general, 15, 1247
- Limitation of legislative power, 15, 1247
- Railroad, 15, 1249
- Ratification, see infra*, RATIFICATION.
- Liability**
 - Unauthorized issue, 19, 511
- Limitation of Action, 15, 1261**
 - Coupons, 15, 1261
 - Form of action, 15, 1262
 - In general, 15, 1261
- Lis pendens, 13, 875, 1289
- Location of Road, 15, 1286, 1287**
 - Bona fide holders without notice, 15, 1287
 - Branch line, 15, 1287
 - Breach of condition, 15, 1286
 - Designation, 15, 1288
 - Examples, 15, 1286, 1287
 - In general, 15, 1286

- Material variance, 15, 1288
- Prior location, 15, 1286
- Road built on different route, 15, 1286
- Strict compliance, 15, 1286
- Mandamus**, 15, 1259, 1312
 - Appropriation of money in treasury, 15, 1312
 - Confers no power, 15, 1313
 - Directed to county officers, 15, 1311
 - From federal court, 15, 1314
 - Levy of taxes, 15, 1313
 - Limitation of time, 15, 1314
 - Penalty for refusing to obey writ, 15, 1314
 - Res adjudicata, 15, 1314
 - To compel delivery of bonds, 15, 1312
 - To obtain judgment, 15, 1313
- Mandatory or directory provisions, 23, 462
- Municipal Bonds**, see *infra*, BONDS.
 - Bona fide holders*, see *infra*, BONA FIDE HOLDERS.
- Negotiability**, 13, 875; 15, 1231; 16, 483
 - Coupons*, see COUPONS.
 - Aid bonds, 15, 1236
 - Bona fide purchaser, 15, 1232
 - Building courthouse, 15, 1234
 - Conditional on the construction of road, 16, 483
 - Corporate seal, 16, 483
 - Counties, 15, 1234; 16, 484
 - Distinguished from incurring indebtedness for improvements, 15, 1234
 - Form of security, 16, 483
 - General rule, 16, 483
 - Government bonds, 16, 484
 - Implied from power to borrow money, 15, 1236
 - Implied from power to purchase stock, 15, 1236
 - In general, 15, 1231
 - Municipal corporations proper, 15, 1235
- Power to Issue Negotiable Securities**, 15, 1232
 - Implied Power**, 15, 1232
 - To borrow money, 15, 1232
 - To issue negotiable bonds, 15, 1232
 - What is borrowing money, 15, 1234
- Quasi municipal corporations, 15, 1234
- State bonds, 16, 484
- Towns, 15, 1234
- United States treasury notes, 16, 484
- What securities are not negotiable, 16, 483, 484
- Whether implied from power to tax, 15, 1234
- Over-Issue of Bonds**, see MUNICIPAL AID.
 - Bonds first delivered, 15, 1266
 - In general, 15, 1266
- Limitation of Indebtedness**, 15, 1267
 - Anticipation of revenues, 15, 1267
 - Floating indebtedness, 15, 1267
- Interest coupons, 15, 1269
- "Ordinary current expenses," 15, 1267
- Railroad aid bonds, 15, 1267
- What constitutes indebtedness, 15, 1267-1269
- Validity, 15, 1266
- Payable out of Particular Fund**, 15, 1214
- Warrants**
 - Examples, 15, 1214, 1215
 - General fund, 15, 1214
 - In general, 15, 1214
 - Money not otherwise appropriated, 15, 1215
 - Out of what fund payable, 15, 1214
 - When payment is unconditional 15, 1215
- Payment**
 - Power to levy taxes, 15, 1311
- Provisions for**, 15, 1308
 - Constitutional law, 15, 1308, 1309
 - Income of specific property, 15, 1310
 - In general, 15, 1308
 - Law of state from time of issue, 15, 1310
 - Provisions for sinking fund, 15, 1310
 - Subsisting remedies, 15, 1309
 - Virginia bond cases, 15, 1310
- Power to issue, 19, 511
- Purposes for Which Bonds May Be Issued**, 15, 1237
 - See MUNICIPAL AID.
 - In general, 15, 1237
- Public Purposes**, 15, 1237, 1240
 - Bridges, 15, 1246
 - By what determined, 15, 1241
 - Distinction between public and private purposes, 15, 1241
 - Manufacturing enterprises, 15, 1245
 - Mining enterprises, 15, 1245
 - Private enterprises, 15, 1245
 - Purpose must be public, 15, 1240
 - Question for court, 15, 1242
- Railway Aid Bonds**, 15, 1242
 - Decisions in Illinois, 15, 1244
 - Decisions in Iowa, 15, 1243
 - Decisions in Michigan, 15, 1243
 - Decisions in Nevada, 15, 1244
 - Decisions in Texas, 15, 1244
 - Donation, 15, 1242
 - Iowa constitution, 15, 1243
 - Negotiable bond, 15, 1242
 - Whether public purpose, 15, 1242
- Railway regarded as highway, 15, 1242
- Road established in another state, 15, 1245
- Schools and colleges, 15, 1246
- Sewerage, 15, 1242
- Question of Law or Fact**
 - Public purpose, 15, 1242
- Ratification**, 15, 1253
 - Illustration of ratification, 15, 1255
 - Irregularities and defects, 15, 1254
 - Payment of interest, 15, 1253, 1255

MUNICIPAL SECURITIES—Cont'd**Ratification—Cont'd**

- Ultra vires acts, 15, 1253, 1254
- What legislature may ratify, 15, 1254
- What municipality may ratify, 15, 1254

Registration, 15, 1282

- Bona fide purchaser, 15, 1282
- Equities existing between municipality and transferee, 15, 1282, 1283

Evasion, 15, 1283

Failure to comply with conditions precedent, 15, 1284

"Issued," 15, 1282

Liability of corporation, 15, 1282, 1283

Regularly and legally issued, 15, 1284

Statutory requirements, 15, 1282

Whether registry is a judicial function, 15, 1284

Sale below par, 15, 1265

Script Intended to Circulate as Money, 15, 1213

Liability under, 15, 1213

New promise, 15, 1214

Validity, 15, 1213

Whether city is released, 15, 1213

Whether warrants can be enforced, 15, 1213

Signing, 15, 1226

By majority, 15, 1226

By mayor, 15, 1226

By municipal officers, 15, 1226

Countersigning, 15, 1228

Estoppel, 15, 1227

In absence of statute, 15, 1226

In blank, 15, 1227

Lithograph facsimile, 15, 1227

Necessity, 15, 1226

Presumption as to signature, 15, 1226

Recitals, 15, 1227

Statute of Limitation

Warrants, 15, 1122

Statutory remedies, 15, 1315

Suits Under Municipal Warrants, 15, 1218

By Whom Suit May Be Brought, 15, 1223

Assignee, 15, 1223

Assignee in own name, 15, 1223

Bearer, 15, 1224

Form of assignment, 15, 1223

Holder, 15, 1223

Defenses, 15, 1223

Defenses to Actions of Warrants, 15, 1220

Account allowed by county board 15, 1120

Cancellation, 15, 1221

Consideration, 15, 1220

Examples, 15, 1220, 1221

Illegality, 15, 1220

In general, 15, 1220

Payment, 15, 1221

Enforcement of judgment, 15, 1224

Payment, 15, 1221

Effect of payment, 15, 1221

To bearer, 15, 1221

Transfer of warrant, 15, 1221

Statute of limitation, 15, 1222

Ultra Vires, 15, 1222

Authority of officer, 15, 1123

Compliance with statute, 15, 1123

In general, 15, 1222

Purchase of a value, 15, 1222

Want of authority, 15, 1222, 1223

What defense can be set up, 15, 1222

Usury, 15, 1223

When Suit May Be Brought, 15, 1218

Examples, 15, 1219, 1220

Upon presentation, 15, 1218

Where there is no money in treasury 15, 1219

Suretyship, 15, 1107

Taxation

Duty of officers collecting, 15, 1314

Power to levy taxes, 15, 1311

Setting aside a special fund, 15, 1313

Tort of officer, 15, 1211

Town Bonds, 26, 172

In Alabama, 26, 172

In Arkansas, 26, 172

In Connecticut, 26, 173

In Georgia, 26, 173

In Illinois, 26, 173

In Indiana, 26, 173

In Iowa, 26, 174

In Kansas, 26, 174, 175

In Kentucky, 26, 175

In Louisiana, 26, 175

In Maine, 26, 176

In Massachusetts, 26, 176

In Michigan, 26, 177

In Minnesota, 26, 177

In Missouri, 26, 177

In Montana, 26, 178

In Nebraska, 26, 178

In New Hampshire, 26, 178

In New Jersey, 26, 178

In New York, 26, 179

In North Carolina, 26, 181

In Ohio, 26, 181

In Oklahoma, 26, 182

In Pennsylvania, 26, 182

In South Carolina, 26, 182

In Tennessee, 26, 182

In Texas, 26, 182

In Vermont, 26, 182

In Virginia, 26, 183

In Wisconsin, 26, 183

In Wyoming, 26, 184

Ultra Vires

Ratification, 15, 1253, 1254

Warrants, 15, 1222

Authority of officer, 15, 1123

Compliance with statute, 15, 1123

In general, 15, 1222

Purchase of a value, 15, 1222

Want of authority, 15, 1222, 1223

What defense can be set up, 15, 1222

United States Court, 15, 1314

Examples, 15, 1270

General commercial law, 15, 1270

Interpretation of constitutional laws of state, 15, 1269

Iowa municipal aid cases, 15, 1270

Mandamus to state officer, 15, 1314

Obligations of contract, 15, 1270

Usury, 15, 1223; 27, 1029

Vote of People, 15, 1259, 1274

Attacking bonds on account of irregularities in election, 15, 1278

Conforming to statute, 15, 1275

Constitutional provision, 15, 1274

Effect of irregularities, 15, 1275

Effect of popular vote alone, 15, 1275

Effect of vote, 15, 1281

Essential conditions, 15, 1274

Estoppel, 15, 1301

Evidence of compliance with law, 15, 1278

In absence of an enabling law, 15, 1276

In general, 15, 1274

Inhabitants, 15, 1279

Irregularities in election, 15, 1301

Majority of qualified voters, 15, 1281

Majority of voters, 15, 1279

Modifying conditions, 15, 1273

Notice of Election, 15, 1276

Calling town meeting, 15, 1276

Examples, 15, 1276, 1279

Name of road to be aided, 15, 1277

Necessity, 15, 1276

Omitting to state amount of bonds, 15, 1277

Reasonable certainty, 15, 1276

What sufficient notice, 15, 1276

Who may give notice, 15, 1276

Petition

Right to withdraw name from, 15, 1282

Petition for Election, 15, 1277

Aliens, 15, 1277

Conditional petition, 15, 1277

Examples, 15, 1277, 1278

Requisites and sufficiency, 15, 1277

Signing by proxy, 15, 1277

To whom petition should be addressed, 15, 1277

Preliminary steps, 15, 1277

Qualified voters, 15, 1280

Record showing that statutory authority has been pursued, 15, 1278

Registration, 15, 1282

Right to rescind vote, 15, 1282

Right to withdraw name from petition, 15, 1282

Submitting more than one proposition, 15, 1276

Subsequent vote, 15, 1275

Two-thirds of qualified voters, 15, 1280

Vote at special town meeting, 15, 1275

"Voters," 15, 1279

Whether provision is directory or mandatory, 15, 1275

Whether vote creates contract, 15, 1259, 1260

Who may call the meeting, 15, 1276

Who may order election, 15, 1276

Warrants, 15, 1206

Action, *see infra*, SUITS UNDER MUNICIPAL WARRANTS.

Bill in equity to have illegal warrant canceled, 15, 1220

"Bills of credit," 15, 1208

By whom drawn, 15, 1207

Calling in and redeeming warrants, 15, 1212

Cancellation, 15, 1221

Bill in equity to have illegal warrant canceled, 15, 1220

Definition, 15, 1206

Delegation of authority, 15, 1207

Demand, 15, 1211, 1212

Directory statutes, 15, 1210

Discharge from liability, 15, 1212

Distinguished from bills of exchange, 15, 1208

Effect of indebtedness, 15, 1211

Estoppel by Acts of Officer, 15, 1211

Crimes and torts, 15, 1211

Whether wrongful act can create estoppel, 15, 1211

Execution, 15, 1207

Forgery, 8, 482

Form, 15, 1210

Incidental powers, 15, 1206

Indorser's Liability, 15, 1212

Creditor's right to refuse to accept warrants, 15, 1213

Examples, 15, 1212

In general, 15, 1212

Negotiable instruments, 15, 1212

Interest on, 11, 388; 15, 1216

Coupons, 15, 1216

Examples, 15, 1216, 1217

In Illinois, 15, 1216

In Missouri, 15, 1217

In Tennessee, 15, 1216

Non-payment for want of funds, 15, 1216

Retention of warrant after refusal to pay, 15, 1216

Where not authorized by statutes, 15, 1216

Where warrant is regarded as negotiable paper, 15, 1216

Ministerial duties, 15, 1207

Nature of such instruments, 15, 1208

Negotiability, 15, 1208

Defenses available between original parties, 15, 1208

Examples, 15, 1209, 1210

Expressly negotiable in form, 15, 1209

Implied power to issue negotiable paper, 15, 1209

In absence of statute, 15, 1210

In general, 15, 1208

In whose name suit may be brought, 15, 1223

Prevention of fraud, 15, 1209

Mandamus, *see* MANDAMUS.

Officer's discretion, 15, 1207

Order of payment, 15, 1217

Original debt, 15, 1213

Payable out of Particular Fund, 15, 1214

Examples, 15, 1214, 1215

General fund, 15, 1214

In general, 15, 1214

Money not otherwise appropriated, 15, 1215

Out of what fund payable, 15, 1214

Vol. I.

MUNICIPAL SECURITIES—Cont'd**Warrants—Cont'd****Payable out of Particular Fund—Cont'd**

When payment is unconditional, 15, 1215

Payment, 15, 1211, 1221

Effect of, 15, 1221

To bearers, 15, 1221

Transfer of warrants, 15, 1221

Power of quasi municipality, 15, 1206

Power to discount warrants, 15, 1218

Power to issue, 15, 1206

Presentment, 15, 1211

Reissue After Payment, 15, 1218

Whether warrant may be reissued, 15, 1218

Right of action on original debt, 15, 1213

Right to enjoin issue of illegal warrants, 15, 1217

Script Intended to Circulate as Money, 15, 1213

Liability under, 15, 1213

New promise, 15, 1214

Validity, 15, 1213

Whether city is released, 15, 1213

Whether warrants can be enforced, 15, 1213

Seal, 15, 1207

When due, 15, 1218

When liability becomes fixed, 15, 1211

Where new indebtedness is created, 15, 1211

Whether promissory notes are bills of exchange, 15, 1208

Words prescribed by states, 15, 1210

What decisions control, 15, 1269

MUNICIPAL TAXATION, see TAXATION.**MURDER, 9, 541**

See BLOOD STAINS; SELF-DEFENSE.

As to the defenses for murder, see HOMICIDE.

Jurisdiction, see HOMICIDE.

Accessories, 9, 575

See infra, AIDERS AND ABETTERS, CONSPIRATORS; PRINCIPALS.

See ACCESSORIES.

After Fact, 9, 576

Definition, 9, 576

Passively allowing felon to escape, 9, 576

Relationship of brother and sister, 9, 577

Relationship of husband and wife, 9, 576

Relationship of parent and child, 9, 576

Before Fact, 9, 575

Definition, 9, 575

Means need not be those prescribed, 9, 576

Of what degree of murder guilty, 9, 576

Person must have been absent at commission of crime, 9, 575

Responsibility for all consequences of unlawful acts, 9, 576

What constitutes one an accessory, 9, 575

Where adviser countermands his order, 9, 576

Affray

Killing individual interposing to stop an affray, 1, 755

Aiders and Abettors, 9, 574

See AIDERS AND ABETTERS.

See infra, ACCESSORIES; CONSPIRATORS; PRINCIPALS.

Advising person to administer poison, 9, 575

Aiding in a robbery, 9, 575

Bystander participating, 9, 575

Guilty as principal, 9, 574

Loaning weapon, 9, 574

Mere presence not sufficient, 9, 574

Necessity of prior conspiracy, 9, 574

Standing upon watch or keeping guard, 9, 575

Arrest, 1, 755, 757; 9, 552

Bail, where prisoner is accused of, 1, 6

By poison, see POISONING.

Circumstances to rebut presumption of malice, 9, 544

Committed in another county, 28, 203

"Concealed" not synonymous with "lying in wait," 3, 407

Conspirators, 4, 597; 9, 571

See CRIMINAL CONSPIRACY.

See infra, ACCESSORIES; PRINCIPALS.

Chicago anarchists' case, 9, 572

Death probable result of acts committed, 9, 572

In committing robbery, 9, 571

Murder by one murder by all, 4, 618, 619; 9, 571

Not essential that name of deceased should be known to conspirator, 9, 572

Purpose of conspiracy must be unlawful, 9, 573

Responsibility of each conspirator's co-conspirator, 9, 573

Specific agreement to kill, 9, 571

Where means are not specifically agreed upon, 9, 573

Cooling time, 9, 543

Counseling a man to commit suicide, 9, 541

Definition, 9, 541

Degrees of, 9, 554

At common law, 9, 554

Drunkenness, 9, 617

Element lacking in murder of second degree, 9, 555

Explained and distinguished, 9, 554

First Degree, 9, 557

By lying in wait, 9, 557, 559

By means of poison, 9, 557, 558

By perpetration of a felony, 9, 557

Definition, 9, 557

Deliberately, 9, 562

Deliberation, 9, 562

Depraved mind, 9, 563

In Alabama, 9, 560
 In Arkansas, 9, 560
 In California, 9, 560
 In Florida, 9, 560
 In Indiana, 9, 561
 In Iowa, 9, 561
 In Kansas, 9, 561
 In Massachusetts, 9, 561
 In Minnesota, 9, 561
 In Missouri, 9, 561
 In Nebraska, 9, 562
 In Nevada, 9, 562
 In New Jersey, 9, 562
 In New York, 9, 562
 In Pennsylvania, 9, 564
 In Tennessee, 9, 565
 In Texas, 9, 565
 In West Virginia, 9, 566
 In perpetration of a felony, 9, 559
 Lying in wait, 9, 565
 Lying in wait without intent to murder, 9, 559
 Meaning of premeditation, 9, 558
 Perpetration of a robbery, 9, 566
 Poison, 7, 566
 Poison administered negligently, 9, 559
 Rebuttal of evidence of malice, 9, 559
 Time necessary for premeditation, 9, 558
 In California, 9, 555
 In Iowa, 9, 555
 In Maryland, 9, 555
 In Michigan, 9, 555
 In Minnesota, 9, 555
 In Missouri, 9, 556
 In Nevada, 9, 556
 In New Hampshire, 9, 556
 In Pennsylvania, 9, 556
 In Tennessee, 9, 556
 In Texas, 9, 556
Murder in the Third Degree
 In Wisconsin, 9, 570
Murder in the Fifth Degree
 In New Mexico, 9, 570
 Other degrees, 9, 570
 Premeditation, 9, 555
 Presumption as to degrees, 9, 557
 Presumption as to deliberation, 9, 557
Second Degree, 9, 566
 Design to kill in the midst of a conflict, 9, 567
 Implied malice, 9, 569
 Illustrations, 9, 568
 Intention to do great bodily harm, 9, 567
 In Alabama, 9, 568
 In California, 9, 568
 In Delaware, 9, 568
 In Iowa, 9, 568
 In Missouri, 9, 568
 In Tennessee, 9, 569
 In Texas, 9, 569
 In Wisconsin, 9, 569
 Premeditation, 9, 569
 Want of premeditation, 9, 567

What is, 9, 566
 Willfully but not deliberately, 9, 569
 Statutory provisions, 9, 554
Descent and Distribution
 Murderer taking estate of person murdered, 24, 362
 Distinguished from manslaughter, 9, 541, 577
 Existence of war, 9, 612
 Extraterritorial crime, 28, 203
 Firing recklessly into a crowd, 9, 544
 Homicide while committing a felony, 9, 553
Indictment, see generally, INDICTMENT.
See HOMICIDE.
 Accessories, 15, 364
 Conviction of lower degree of crime, 15, 363, 364
Infanticide, 15, 221
 A dead-born child, 15, 222
 Burden of proof, 15, 225
 Child must be wholly delivered, 15, 221
 Compression of umbilical cord, 15, 225
 Debility, 15, 226
 Definition, 15, 221
 Evidence, 15, 228
 Examples, 15, 226
 Fractures, 15, 226
 Hemorrhage, 15, 226
 Hydrostatic test, 15, 223
 Independent circulation, 15, 222
 Live child, 15, 222
 Medical evidence, 15, 222
 Neglect causing death, 15, 226
 Protracted delivery, 15, 226
 The respiratory organs, 15, 223
 The umbilical cord, 15, 222
 In federal jurisdiction, 9, 541
 Instruction, examples of, 11, 267-271
 "In the king's peace," 9, 541
 In the peace of the state, 9, 542
Jeopardy
 Conviction of lower degree of murder, 11, 944
 Death of party after conviction for assault, 11, 946
 Killing several persons, 11, 944
 Murder and intent to kill, 11, 944
 Killing enemy's subjects, 9, 542
 Killing one person in an attempt to kill another, 9, 553
 Killing with a specific malicious intent, 9, 542
 Libel and slander, 13, 341, 388
 Limitation of prosecution, 9, 618
 "Lying in wait," 3, 407; 9, 559; 13, 627
Malice, 9, 542
See MALICE.
 Cooling time, 9, 543
 Degrees of murder, 9, 555
 Essential element, 9, 542
 Malice aforethought, 9, 542
 Malice prepense, 9, 542
 Must exist at time of homicide, 9, 543
 Necessity of ill-will against deceased person, 9, 542

MURDER—Cont'd**Malice—Cont'd**

Necessity of particular malice against person killed, 9, 571

Necessity of specific intent, 9, 542

Passion after intent formed, 9, 543

Presumed to continue, 9, 551

Presumption, 9, 725

As to degrees of murder, 9, 557

Time for deliberation, 9, 543

What constitutes the requisite, 9, 542

Willful omission of duty, 9, 542

Malice Implied, 9, 544

By the act of killing, 9, 548

By the Means Used, 9, 545

Deadly weapon, 9, 545

Deadly weapon question of law, 9, 548

Defendant in habit of carrying deadly weapon, 9, 546

Means calculated to produce death under peculiar circumstances, 9, 548

Poison, 9, 548; 15, 250

What is a deadly weapon, 9, 547

Circumstances in mitigation, 9, 545

Interfering between combatants, 9, 545

Throwing a glass, 9, 545

Malice Shown by Surrounding Circumstances, 9, 548

Examples, 9, 548

Mutual agreement to engage in combat, 9, 550

Threats by defendant against deceased, 9, 550

Manslaughter

Absence of malice, 9, 577

Merger, 15, 363

Mutual Combat

Malice presumed from agreement, 9, 550

Nature of the intent, 9, 542

Poison, 9, 548; 15, 249

Advising another to administer, 9, 575

Malice, 9, 548; 15, 250

"Premeditated design," 9, 541

Premeditation, 9, 541, 558

Murder in the second degree, 9, 567, 569

Principals, 9, 570

See *infra*, ACCESSORIES; AIDERS AND ABETTORS.

Abolition of distinction between principals and accessories, 9, 571

Acting through another, 9, 570

Actual or constructive presence of principal in the second degree, 9, 571

Definition of principal in the second degree, 9, 971

General rules, 9, 570

In the first degree, 9, 570

In the second degree, 9, 570

Necessity of actual presence, 9, 570

Necessity of malice of principal in the second degree, 9, 571

Prisoner Whom Others Attempt to Rescue

Guilt of, 1, 757

Specific intention to do an unlawful act, 9, 555

Succession

Murderer taking estate of person murdered, 24, 362

Suicide

Mutual agreement of two persons to kill themselves, 24, 492

Threats and Threatening Letters, 25, 1065

Evidence of former threats, 25, 1066

Former threats by the deceased, 25, 1066

Murder by means of a threat, 25, 1065

To show malice and deliberation, 9, 550; 25, 1066

Through medium of an insane person, 9, 570

Through medium of a person acting innocently, 9, 570

Time for deliberation, 9, 543

Trespass as a provocation, 9, 586

What homicide constitutes, 9, 542

Wills

Beneficiary murdering testator, 29, 245

MUST, 16, 1

MUTE, 16, 2

See DEAF AND DUMB PERSONS.

MUTILATE, 16, 2

MUTILATION, 16, 2

MUTINOUS, 16, 3

MUTINY, 16, 3

See MILITARY LAW.

Master of vessel, 14, 971

MUTUAL, 16, 3

Mutual accounts, see ACCOUNTS.

Mutual assent, 16, 15

Mutual Associations

Taxation

Exemptions, 25, 168, 169

Mutual combat, 16, 15

Mutual consent, 16, 15

Mutual credit, 16, 15

Mutual dealings, 16, 16

Mutual debts, 16, 16

Mutual demands, 16, 16

Mutual mistake, 16, 108

Mutual promises, 19, 283

MUTUAL INSURANCE, 16, 16

As to concealment, see INSURANCE.

As to insurance agencies, see INSURANCE AGENTS.

As to the policy, see INSURANCE.

As to reinsurance, see INSURANCE.

As to reputation, see INSURANCE.

As to waiver and estoppel, see INSURANCE.

As to warranty, see INSURANCE.

Abandonment, 16, 106

Consent of members, 16, 107

Differences among members, 16, 107

Illegal object, 16, 107

Incorporated society, 16, 107

In general, 16, 106

- Principles applicable to co-partnership, 16, 107
- Pro rata distribution, 16, 107
- Action**
 - Assessment, 16, 74
 - Benefits accruing after commencement of, 16, 90
 - Compliance with by-laws, 16, 92
 - Contingent liability, 16, 92
 - Disability, 16, 93
 - Fraud of beneficiary, 16, 93
 - Nominal damages, 16, 91
 - Officers' liability, 16, 96-98
- Admission**
 - Pleading, 16, 101
- "Affianced wife," 16, 63
- Agency, 16, 22
- Alienation of property, 16, 40
- Annual interest plan, 16, 70
- Assessments**, 16, 59, 65, 93
 - Action on**, 16, 74
 - Compliance with by-laws and provisions, 16, 75
 - Defenses, 16, 76
 - Demand, 16, 75
 - Evidence, 16, 75
 - Insufficient defenses, 16, 76
 - Liability on note, 16, 76
 - Pleading, 16, 74, 75
 - Provisions of contract and by-laws, 16, 74
 - Valid defenses, 16, 76
- Collecting**
 - Assignment of policy, 16, 73
 - At what time payment begins to run, 16, 72
 - Compliance with by-laws, 16, 71
 - Effect of failure to give notice, 16, 71
 - Insanity, 16, 71
 - Necessity of personal notice, 16, 72
 - Notice, 16, 70
 - Notice by circular, 16, 71
 - Notice by publication, 16, 73
 - Sickness, 16, 73
 - Subordinate lodges, 16, 73
 - Waiver of formalities, 16, 71
- Illegality, 16, 76
- Necessity, 16, 39
- Notice, 16, 73
- Power and duty of officers in making, 16, 65
- Assignability of premium notes, 16, 40
- Assigns, 16, 64
- Beneficial Associations Distinguished from Charities**, 2, 174
 - Exemption from taxation, 2, 174
 - In general, 2, 174
- Beneficiaries**, 2, 176; 16, 46
 - Affianced wife, 16, 49
 - Change of Beneficiary**, 16, 52
 - At what time change may be made, 16, 53
 - By-laws, 16, 55
 - Change at will, 16, 54
 - Consent of beneficiary, 16, 57
 - Consideration, 16, 55
 - Distinguished from ordinary insurance policies, 16, 52, 53
 - Estoppel, 16, 54
 - Examples, 16, 52-57
 - Formalities, 16, 55
 - Governed by by-laws, 16, 55
 - Impossible conditions, 16, 56
 - Insurable interest, 16, 54
 - Revocation, 16, 53
 - Right to change, 16, 52
 - Waiver by reason of beneficiary, 16, 56
 - Waiver of by-laws, 16, 56
 - When change complete, 16, 56
- Construction of constitution and by-laws**, 16, 48
- Death, 2, 177
- Definition, 2, 176
- Designation, 16, 46
- Equitable interests, 16, 49
- Families and heirs, 16, 48
- In general, 16, 46
- Insurable interest, 16, 47
- Law of situs, 16, 50
- Legal representatives, 16, 48
- Limitations, 2, 177
- Limitations and Their Constructions**, 16, 50
 - Construction of term "or," 16, 52
 - Families and heirs, 16, 51
 - General rule as to construction, 16, 51
 - In general, 16, 50
 - Liberal construction, 16, 51, 52
 - Where several beneficiaries are named in certificate, 16, 52
 - Widows, orphans, and devisees, 16, 51
- Limitations by charter, 16, 48
- Power of appointment, 16, 50
- Property right in contract, 16, 49
- Real property, 16, 49
- Residuary clause of will, 16, 50
- Right to appointment of, 16, 50
- Rules for members, 2, 177
- Rules of association, 2, 177
- Title to Proceeds of Contract**
 - Administrators, 16, 65
 - "Affianced wife," 16, 63
 - "Children," 16, 63
 - Estoppel, 16, 64
 - "Family," 16, 63
 - "Heirs," 16, 62-64
 - In general, 16, 61
 - Mistake in payment, 16, 65
 - Personal representatives, 16, 65
 - Ultra vires, 16, 47
 - Who may be beneficiary, 16, 47
- Benefit assessment, 16, 19
- Benevolent object, 16, 25
- Burden of proof, 16, 103
- By-laws*, see *infra*, CONSTITUTION AND BY-LAWS.
- Certificate of Membership**, 2, 175; 16, 28
 - Amount in gross, 16, 29
 - As policy of insurance, 16, 28
 - Assessments, 16, 31

MUTUAL INSURANCE—*Cont'd***Certificate of Membership**—*Cont'd*

Conditions and provisions of certificate, 16, 31

Consideration of the contract, 16, 31

Endowment, 16, 33

Essential features, 16, 28

Extent and Nature of Liability, 16, 34

Contract of membership, 16, 35

In general, 16, 34

Insolvency of the society, 16, 37

Sick and funeral benefits, 16, 36

Stipulations that assessment shall not exceed certain sum, 16, 35

Termination of relationship, 16, 37

Terms of certificate in conflict with provisions of by-laws, 16, 36

Fire policy, 16, 34

Forfeiture for non-payment, 16, 31

Fraud of agent, 16, 32

From what time membership dates, 16, 31

Graduated sum, 16, 29

Infants, 16, 33

In general, 16, 28

Intent of legislature, 16, 31

Intent of parties, 16, 31

"Old style" insurance, 16, 33

Premium Notes, 16, 37

Alienation of the property, 16, 40

As part of contract, 16, 38

Assignability, 16, 40

Breach of contract, 16, 38

Deficiency, 16, 39

Effect of failure to pay, 16, 38

Forfeiture for failure to make payment, 16, 38

In general, 16, 37

Necessity of assessments, 16, 39

Recovery upon breach, 16, 38

Remedies and defenses, 16, 88

Surrender of the policy, 16, 32

Terms of the contract, 16, 30

Title to Proceeds of Contract

Administrators, 16, 65

"Affianced wife," 16, 63

"Children," 16, 63

Estoppel, 16, 64

"Family," 16, 63

"Heirs," 16, 62-64

In general, 16, 61

Mistake in payment, 16, 65

Personal representatives, 16, 65

Uncertain period of payment, 16, 29

What constitutes the contract, 16, 30

Whole term life certificate, 16, 33

Charter, 2, 176

Children, 16, 63

Conflict of Laws, 16, 50

Law of situs, 16, 50

Consent

Change of beneficiary, 16, 55

Of members to change of purpose, 16, 26

Constitution and By-Laws, 16, 27, 40

Amendment, 2, 176

Assessments, 16, 66

Non-payment of assessment not in accordance with, 16, 67

Signature, 16, 67

By-laws in general, 2, 176; 16, 41

Change of beneficiaries, 16, 55, 56

Conformity to general requirement, 16, 42, 92

Construction, 2, 174; 16, 46, 48

Effect of violation, 16, 44

Effect upon contract, 16, 40

Examples, 2, 173, 174

Expulsion of members, 16, 42, 43, 77

Forfeiture

Compliance with, 16, 82

Of contract of membership, 16, 46, 77

Provisions, 16, 46

Formalities, 16, 43

Guaranty and reserve funds, 16, 58

Invalid by-laws, 2, 173; 16, 42

Jurisdiction of courts, 16, 43

Mandatory and directory requirement, 16, 44

Notice, 16, 71

Payment of sick benefits, 16, 43

Penalty, 16, 46

Pleadings, 16, 100

Presumption of knowledge of members, 16, 41

Principles of agency, 16, 45

Prohibition, 2, 173

Provision as to entire amount becoming due and payable, 16, 46

Regulations adopted by officers, 16, 41

Retroactive laws, 16, 45

Strict construction, 2, 174; 16, 46

Suspension, 16, 44

Ultra vires acts, 16, 45

Unreasonableness, 2, 173

Validity, 2, 173; 16, 42

Waiver, 16, 45

Construction, 2, 172, 173; 16, 64

Beneficiaries, 16, 50

Construction of the term "or," 16, 52

Families and heirs, 16, 51

General rule as to construction, 16, 51

In general, 16, 50

Liberal construction, 16, 51, 52

Where several beneficiaries are named in certificate, 16, 52

Widows, orphans, and devisees, 16, 51

Of by-laws, 2, 174; 16, 46, 48

Of constitution and by-laws, 2, 174; 16, 46, 48.

Contingent liability, 16, 92

Contract, see *infra*, **CERTIFICATE OF MEMBERSHIP**.

Contract for benefit of others than those specified in charter, 16, 27

Contribution, 16, 105

Damages, 16, 88, 89

Nominal damages, 16, 91

Date of membership, 16, 31

Defenses, 16, 74, 88

Insufficient defenses, 16, 76

Valid defenses, 16, 76

Deficiency in funds, 16, 39**Definition, 16, 17**

Of beneficial associations, 2, 171

Directors**Assessments, 16, 65**

Annual interest plan, 16, 70

By-laws, 16, 66

Classification of members, 16, 69

Compliance with requirement of by-laws and constitution, 16, 66, 67

Contract of member, 16, 66

Deposit notes as part of capital, 16, 69

Discretion, 16, 67

Discretionary powers, 16, 65

Enforcing premium assessment, 16, 70

In general, 16, 65-70

Limitation, 16, 70

Losses paid by previous, 16, 68

Losses sustained, 16, 70

Non-payment not in accordance with by-laws, 16, 67

Power of directors, 16, 65

Regular assessment, 16, 68

Resolutions, 16, 68

Signature, 16, 67

Subordinate lodges, 16, 69

Guaranty funds, 16, 57-60

Liability, 16, 96-98

Powers, 2, 176

Disability, 16, 93**Discipline, 16, 23****Dissolution, 2, 178; 16, 106**

Charter, 2, 178

Differences among members, 16, 107

Illegal object, 16, 107

Incorporated society, 16, 107

In general, 2, 178; 16, 106

Principles applicable to co-partnership, 16, 107

Pro rata distribution, 16, 107

Distinctions, 16, 17**Distinguished from Insurance Companies, 2, 174**

Examples, 2, 175

In general, 2, 174

Distribution, 16, 105

Double liability, 16, 95

Endowment, 16, 33**Endowment fund, 16, 61****Equitable interests, 16, 49****Equitable jurisdiction, 16, 88****Estoppel, 16, 54, 64****Evidence**

Admissible evidence, 16, 102

Assignee of member, 16, 104

Books of company, 16, 104

Burden of proof, 16, 103

Circumstantial evidence, 16, 103

Good standing of member, 16, 104

Failure to pay assessments, 16, 103

Inadmissible evidence, 16, 102

In general, 16, 102

Mailing notice, 16, 104

Priest as witness, 16, 104

Prima facie, 16, 104

Proof required by by-laws, 16, 103

Receiver, 16, 104

Execution, 16, 91**Executors and Administrators, 16, 65**

Parties to action, 16, 98

Exemption from taxation, 2, 174**Expense fund, 16, 61****Expulsion of Members, 16, 43**

By-laws, 16, 42, 43, 77

Distinguished from forfeiture and suspension, 16, 77

General rule, 16, 42, 43

Injunction, 16, 78

Injustice, 16, 78

Jurisdiction of society, 16, 77

Mandamus, 16, 78

What the court will inquire into, 16, 77

Extent and Nature of Liability, 16, 34

Contract of membership, 16, 35

In general, 16, 34

Insolvency of society, 16, 37

Sick and funeral benefits, 16, 36

Stipulations that assessment shall not exceed certain sum, 16, 35

Termination of relationship, 16, 37

Terms of certificate in conflict, with provision of by-laws, 16, 36

Failure to pay assessment, 16, 38**"Family," 16, 51****Fire policy, 16, 34****Foreign Corporations***Doing business in other states, see generally, FOREIGN CORPORATIONS.*

Non-compliance with statutory conditions, 8, 342

Forfeiture and Suspension of Contract, 2,

178; 16, 38, 46, 77

See infra, REINSTATEMENT; WAIVER.

Action by society, 16, 79

Appeal, 16, 82, 88

By-laws, 16, 77

Construction of provisions, 16, 82

Distinguished from expulsion, 16, 77

Effect of suspension, 16, 78

Essentials, 16, 78

Forfeiture of property interests, 16, 78

Examples, 16, 87, 88

Failure to pay monthly dues, 16, 83

Forfeiture of property rights, 16, 80

Fraud, 16, 93

Injunction, 16, 78

Injustice, 16, 78

Jurisdiction of the society, 16, 77

Mandamus, 16, 78

Non-payment of assessments, 16, 81

Notice to accused, 16, 83

Reasonable expulsion, 16, 80

Reasonableness of by-laws, 16, 82

Reinstatement, 16, 87

Remedy, 16, 80

Restoration after death, 16, 87

Verbal agreement, 16, 81

MUTUAL INSURANCE—Cont'd**Forfeiture and Suspension of Contract—
Cont'd**

What the courts will inquire into, 16, 77

Formation, 2, 172

Forms of organization of benefit societies,
16, 21

Fraud, 16, 93, 97

Funds, see *infra*, GUARANTY AND RE-
SERVE FUNDS; SEPARATION OF
FUNDS.

Government, 16, 23

Guaranty and Reserve Funds

Application of funds, 16, 59

As condition precedent to transaction
of business, 16, 59

Assessment, 16, 59

Character and purpose, 16, 58

Disposition, 16, 60

Interest, 16, 58

Preservation, 16, 60

Procurement, 16, 58

"Heirs," 16, 51, 62

Impossible conditions, 16, 56

Incorporated societies, 2, 172

Infants, 16, 33

Injunction, 16, 78

Insolvency, 16, 37, 105, 106

Insurable Interest, 16, 47, 49*See* INSURANCE.

Intent of legislature, 16, 31

Intent of parties, 16, 31

Interest, annual interest plan, 16, 70

Internal management, 16, 26

Joinder of parties, 16, 99

Jurisdiction of federal court, 16, 18

Kinds of Mutual Insurance, 16, 88**Benefit Assessment**, 16, 19

Benevolent object, 16, 25

Consent of members to change of
purpose, 16, 25

Constitution and by-laws, 16, 27

Contract for benefit of other than
those specified in charter, 16, 27

Discipline, 16, 23

Forms of organization of benefit so-
cieties, 16, 21

Government, 16, 23

Internal management, 16, 26

Legal statutes, 16, 24

Majority rights, 16, 27

Minority rights, 16, 27

Mutual profit, 16, 25

Object for which they are organized,
16, 25

Powers, 16, 26

Rules and characteristics, 16, 23, 24

Rules governing private corpora-
tions, 16, 27

Secret societies, 16, 22-26

Unincorporated associations, 16, 21

Voluntary associations, 16, 27

Whether subject to general laws gov-
erning insurance company, 16, 24

Legal status, 16, 24

Liabilities of members, 2, 175

Liability of officer, 16, 96

Limitation of action, 16, 93

Majority rights, 16, 27

Mandamus, 16, 78, 91

Minority rights, 16, 27

Misrepresentations, 16, 96

Mortuary funds, 16, 60

Mutual profit, 16, 25

Nominal damages, 16, 91

Notice, 16, 70

Assignment of policy, 16, 73

At what time payment begins to run,
16, 72

By circular, 16, 71

By publication, 16, 73

Compliance with by-laws, 16, 71

Effect of failure to give, 16, 71

Forfeiture, 16, 83

Insanity, 16, 71

Necessity of personal, 16, 72

Sickness, 16, 73

Subordinate lodges, 16, 73

Waiver of formalities, 16, 71

Object for which they are organized, 16, 25

"Old style," policy, 16, 33

Partnership, 16, 22

Party to Action, 16, 98

Executors and administrators, 16, 98

Joinder, 16, 99

Personal representatives, 16, 98

Statutory provisions, 16, 98

Payment, 16, 74

Payment to trustees, 16, 94

Penalties, 16, 46

Personal representatives, 16, 65

Pleading, 16, 75, 99

Allegations, 16, 99-101

Amount due, 16, 100

By-laws, 16, 100

Certificate at common law, 16, 100

Complaint, 16, 99

Compliance with by-laws, 16, 100

In California, 16, 101

Limited liability, 16, 100

Performance of condition, 16, 101

Requisites of a declaration, 16, 99

Waiver, 16, 101

Policy, see *infra*, CERTIFICATE OF
MEMBERSHIP.

Powers, 16, 26

Powers of officers, 2, 176

Power to appoint, see *infra*, BENE-
FICIARIES.**Premium Notes**, 16, 37

Alienation of the property, 16, 40

As part of contract, 16, 38

Assessment, 16, 18

Assignability, 16, 40

Breach of contract, 16, 38

Deficiency, 16, 39

Effect of failure to pay, 16, 38

Forfeiture for failure to make pay-
ment, 16, 38

In general, 16, 37

Necessity of assessments, 16, 39

Recovery upon breach, 16, 38

Winding up, 16, 105

Premiums, see INSURANCE.

Publication of notice, 16, 71-73

Real property, 16, 49

Receiver, 16, 98

Evidence, 16, 104

Insolvency, 16, 105

Policy holder, 16, 105

Recovery

Benefits accruing after commencement of action, 16, 90

Regulation adopted by officers, 16, 41

Reinstatement, 16, 87

Appeal, 16, 88

Compliance with provisions, 16, 87

Decision of officers, 16, 87

Payment of arrears, 16, 87

Restoration after death, 16, 87

Restoration of member's name, 16, 87

Relations, 16, 63

"Relatives," 16, 51

Release, 16, 74

Relief and disability funds, 16, 60

Remedies, see INSURANCE.

Remedies and Defenses, 16, 88

Compliance with by-laws, 16, 93

Disability, 16, 93

Double liability, 16, 95

Fraud of beneficiary, 16, 93

Limitation of action, 16, 93

Misrepresentations in application, 16, 96

Officer's liability, 16, 96-98

Part payment, 16, 95

Ultra vires, 16, 95

Residuary clause, 16, 50

Retroactive by-laws, 16, 45

Rights and responsibilities of members, 2, 175

Rules and characteristics, 16, 23, 24

Rules governing private corporations 16, 27

Secret societies, 16, 22-26

Separation of Funds, 16, 57

Duties of directors with respect to, 16, 57

Endowment funds, 16, 61

Expense funds, 16, 61

Guaranty and Reserve Fund, 16, 58

Application of funds, 16, 59

As condition precedent to transaction of business, 16, 59

Assessment, 15, 59

Character and purpose, 16, 58

Disposition, 16, 60

Incorporators and promoters, 16, 59

Interest, 16, 58

Preservation, 16, 60

Procurement, 16, 58

Mortuary fund, 16, 60

Relief and disability funds, 16, 60

Sick benefits, 16, 43

Suicide, 16, 102

Suspension, see *infra*, FORFEITURE AND SUSPENSION OF CONTRACT.

Suspension of by-laws, 16, 44

Taxation, 2, 174

Title to Proceeds of Contract

Administrators, 16, 65

"Affianced wife," 16, 63

"Children," 16, 63

Estoppel, 16, 64

Family, 16, 63

"Heirs," 16, 62-64

In general, 16, 61

Mistake in payment, 16, 65

Personal representatives, 16, 65

Trustees

Payment to, 16, 94

Ultra Vires, 2, 175; 16, 45, 95

Beneficiaries, 16, 47

Unincorporated associations, 16, 21

Unincorporated societies, 2, 172

Usages and customs, 2, 176

Voluntary association, 16, 23, 27

Waiver

Conditions, 16, 93

Forfeiture, 16, 83

Assessments, 16, 84

Denying power to agents, 16, 86

Examples, 16, 83-87

Implied waiver, 16, 86

In general, 16, 83

Intention of insurer, 16, 85

Necessity that assessments be paid, 16, 86

No knowledge of breach of condition, 16, 85

Question of law or fact, 16, 84

Receipt of assessment, 16, 85

Receipt on condition that assured is in good health, 16, 85

Sending notice to suspended members, 16, 86

Subordinate lodges, 16, 85

Pleading, 16, 101

Whether subject to general laws governing insurance companies, 16, 24

Whether the policy holders are partners, 26, 63

"Widows," 16, 51

Winding up, 16, 105

See *infra*, DISSOLUTION.

Policy holder, 16, 105

MUTUALITY OF CONTRACT, 16, 108

MUTUANT, 16, 108

MUTUARY, 16, 108

MUTUUM, 16, 108

MY, 16, 108

My arrival, 16, 109

My books, 16, 109

My brother's son, 16, 109

My chambers, 16, 109

My desire, 16, 110

My estate, 16, 110

My house, 16, 110

My land, 16, 110

My nephew, 16, 486

My plantation, 16, 110

My property, 16, 110

My son, 16, 111

My wife, 16, 111

MYSELF, 16, 111

MYSTERY, 16, 111

MYSTIC WILL, 16, 111

